Harassment and Discrimination

INCIDENT

She reported her boss had sexually harassed her — then she was fired

It started the day Wanda met her new boss.

After a successful interview, the man who would be overseeing her fundraising work walked her out down some stairs. As they made small talk, Wanda, felt his hands press on her shoulders and squeeze them.

The way he touched her was odd, Wanda thought when she got home. But she was thrilled by the prospect of her new job, something that made it easier to dismiss the encounter.

A few days into her new role, it became clear this was part of a pattern of inappropriate behavior.

Things escalated after Wanda caught her boss staring at her breasts repeatedly.

“He looked at my breasts, looked down at his genital area, looked back (at me), opened his palms and looked back down,” Wanda recalled.

“I’m in a state of shock that any man would do that and just keep going and pretend that nothing happened.”

Wanda says she confronted her boss about some of his behavior, but he denied it and told her he didn’t know what she was talking about.

As someone who comes from an abusive background, Wanda says her experience was even more traumatizing — especially the gaslighting.

Wanda decided to report the harassment to her employer in the spring of 2018, three years after it began. She says it took time

to start the reporting process because her boss wielded a lot of power and was well-liked.

Wanda detailed the harassment to the department at her workplace that handled such cases and they conducted an internal investigation.

“For me to go up against a powerful person among the powerful circle by any measure … was tough,” she says.

“(I felt) no one would believe me and everyone would blame me.”

After five months, the department determined her boss’s behavior did not violate the workplace’s harassment code.

Further, the investigator said there was a lack of reliable evidence to support that the alleged conduct was sexual in nature.

Shortly after the department closed the investigation, Wanda went on sick leave. Less than two weeks later, she was terminated.

“I was devastated. I was emotionally crushed,” she says.

NEED TO KNOW

Harassment in the workplace is a serious matter. Many lives have been badly affected by sexual harassment, bullying and other forms of harassment.

Harassment is also a safety issue, because a distressed worker may be unable to concentrate on the job and stay alert to hazards. Harassment can also lead to workplace violence.

This kind of behavior is not tolerated in the workplace. If you ever find yourself a target of harassment, you do not have to put up with it. You have the law on your side to stop it. It is forbidden by company policies and union policies as well as by federal and state or provincial laws.

One type of workplace harassment is sexual harassment. Sometimes it is in the form of threats if the person does not go along with sexual advances, or promise of job rewards if the person does.

Another type of sexual harassment is the creation of an intimidating or offensive work environment. Sexual pictures and offensive language are examples.

Sexual harassment can be physical and involve unwanted touching or physical assault. It can be verbal in the form of off-color jokes or non-verbal in the form of gestures. A male harassing a female is the common scenario, but females do harass males, and same-sex harassment also occurs.

Other kinds of harassment are also harmful. Hostility, teasing, ridiculing, humiliating or undermining another worker are all forms of harassment. When workers gang up on someone, it is known as mobbing. Victims of bullying and mobbing have been known to turn violently on their attackers and also to commit suicide.

Harassers have been known to pick on co-workers because of ethnic background, race, religion, physical ability, appearance, economic status and many other characteristics. The harasser may try to defend such behavior as friendly teasing and might actually believe this to be true, but if the recipient objects to the behavior, he or she has every right to ask that it stop.

Sexual harassment is any unwelcome sexual advance or conduct on the job that creates an intimidating, hostile or offensive working environment. Any conduct of a sexual nature that makes an employee uncomfortable has the potential to be sexual harassment.

As an employer, you have a responsibility to maintain a workplace that is free of sexual harassment. It is your legal obligation!!!

Apart from the legal obligation to maintain a safe, sexual harassment, it makes perfect business sense. If you let sexual harassment in your business, you will pay a high price in poor employee morale, low productivity, and a flood of lawsuits and big legal bills.

Sexual harassment comes in many forms:

- A supervisor implies to an employee that the employee must sleep with him to keep a job.

- A sales clerk makes demeaning comments about female customers to his coworkers.
- An office manager in a law firm is made uncomfortable by lawyers who regularly tell sexually explicit jokes.
- A cashier at a store pinches and fondles a coworker against her will.
- A secretary's coworkers belittle her and refer to her by sexist or demeaning terms.
- Several employees post sexually explicit jokes on an office intranet bulletin board.
- An employee sends emails to coworkers that contain sexually explicit language and jokes.

The harasser can be the victim's supervisor, manager, or coworker. An employer may even be liable for harassment by a nonemployee (such as a vendor or customer), depending on the circumstances.

Who Can Be Sexually Harassed

Sexual harassment is a gender-neutral offense, at least in theory: Men can sexually harass women, and women can sexually harass men. However, statistics show that the overwhelming majority of sexual harassment claims and charges are brought by women claiming that they were sexually harassed by men.

People of the same sex can also sexually harass each other, as long as the harassment is based on sex rather than sexual orientation, which is not a protected characteristic under Title VII. For example, if a man's coworkers constantly bombard him with sexually explicit photos of women, and this makes him uncomfortable, he might have a sexual harassment claim. If, however, a man's coworkers tease and belittle him because he is gay, that might not be illegal harassment under federal law as it is currently interpreted. However, such conduct may be illegal under laws enacted by certain states, or even cities. Even if this type of behavior isn't illegal, it also isn't appropriate, and savvy employers will put a stop to it promptly so everyone can get back to work.

The line between harassment based on sex and harassment based on sexual orientation becomes blurred when gender-based stereotypes are at play. Courts have held when a woman is harassed and discriminated against because she does not act sufficiently feminine; similarly, a man who is harassed for having effeminate mannerisms and gestures is protected. These same employees might not be protected if their harassers relied more explicitly on homophobic slurs and remarks. Again, however, smart employers won't parse the legal details.

BUSINESS / REGULATION

Discrimination or harassment in the workplace should never be tolerated – they undermine productivity and expose businesses to potentially costly lawsuits. Federal law protects employees from discrimination on the basis of race, gender, and a number of other protected characteristics. Federal law also protects employees from harassment, a form of sex discrimination that includes unwelcome sexual advances or taunts.

Discrimination in Employment

The Civil Rights Act of 1964 provides citizens and residents of the United States with protection from various forms of discrimination in a variety of situations. One area in which discrimination is barred is in employment. This federal law prohibits employers from discriminating against employees or job applicants based on religion, sex, national origin, race or color. This law applies to employers who have 15 or more employees, but it's a good idea to abide by this law regardless of your company's size because it's good practice and there may be similar state laws that apply to smaller companies.

Depending on the type of discrimination, an employer will have to act in a certain way. For example, preventing religious discrimination involves also providing reasonable accommodations for the person's religious beliefs and practices. This includes not scheduling selection or examination activities that conflict with a current or prospective employee's religious needs. Of course, if the accommodation would cause an undue hardship to the

employer, it’s not considered “reasonable” and doesn’t need to be instituted.

Sexual Harassment in Employment

Employers must provide a safe and secure workplace for their employees. Being safe and secure includes preventing sexual harassment at work. Sexual harassment is prohibited under the same laws that prohibit other types of discrimination, such as religious or race-based discrimination. Sexual harassment is defined as unwelcome sexual advance or conduct on the job that creates a hostile, offensive, or intimidating workplace environment. Sexual harassment can take many forms, and both men and women can be the victim of sexual harassment. As an employer, it’s important that you prevent sexual harassment at your business by taking some easy steps:

- Train employees regarding sexual harassment.
- Monitor your workplace.
- Create a sexual harassment policy that is easy to understand.
- Encourage employees to come forward and take complaints seriously.

Following these steps will not only help you prevent sexual harassment at your business, it can also limit your liability in the event that sexual harassment does occur.

STATISTICS

The Equal Employment Opportunity Commission released a report earlier this year filled with Workplace Discrimination statistics for the fiscal year 2018. The report shows that the EEOC found a resolution for more 91,000 charges of occupational discrimination. Below you will find several more notable statistics from the report.

- There were 2,473 workplace discrimination charges in 2018
- Overall, victims of discrimination won financial damages

totaling over $505 million
- The number of retaliation charges stands at 39,469
- The number of sex discrimination charges reached almost 25,000
- Discrimination charges centered on religion totaled 2,859
- The number of age discrimination charges stands at 16,911
- The EEOC helped victims of sexual harassment acquire a total of $56.6 million
- Race-related workplace discrimination charges totaled 24,600

The U.S. Equal Employment Opportunity Commission received 76,418 charges of workplace discrimination in fiscal year 2018

the 2018 total EEOC charges of 76,418 continues a downward trend over the last several years. In fact, from 2008 to 2016, the average number of charges was 94,000. In 2017, the total dropped to 84,254, and dropped again last year by a similar amount.

The FY 2018 data show that retaliation continued to be the most frequently filed discrimination charge filed with the agency, followed by sex, disability and race. The agency also received 7,609 sexual harassment charges—a 13.6 percent increase from FY 2017—and obtained $56.6 million in monetary benefits for victims of sexual harassment.

The charge numbers show the following top five reasons alleged, in descending order:

- Retaliation: 39,469 (51.6 percent of all charges filed)
- Sex: 24,655 (32.3 percent)
- Disability: 24,605 (32.2 percent)
- Race: 24,600 (32.2 percent)
- Age: 16,911 (22.1 percent)

EEOC's FY 2018 enforcement and litigation data's sizeable decrease in the total number of charges filed against employers—the number of charges filed was the lowest in over a decade.

But in of fiscal year 2018 there was a sharp increase in enforcement activity around sexual-harassment issues.

The EEOC filed 41 lawsuits alleging sexual harassment in FY 2018—a 50 percent increase from FY 2017.

Despite the drop in the total number of charges, the EEOC's statistics show a sharp increase in the number of charges alleging sexual harassment. The 7,609 charges alleging sexual harassment in FY 2018 is the highest number of those charges since FY 2011—a year when the EEOC received almost 24,000 more charges overall than it did in FY 2018.

PREVENTION

If you are the recipient of unwanted sexual attention or other forms of harassment, speak up. Tell the harasser you object to the behavior. You should make notes if incidents of harassment continue, including the times, places and witnesses. Report harassment to your supervisor or the person designated in your company to receive such complaints. Find out the company procedure for filing a complaint and for following it through until the problem is resolved. If the person doing the harassing is your supervisor, go to that person's boss.

If you observe harassment in your workplace, do something about it. Speak up and report the problem to someone in authority in your company. Countless cases of harassment have continued because bystanders did nothing about it.

Do not engage in harassment, and do not encourage it. Do not treat it as entertainment by laughing or gossiping at the victim's expense. Treat all of your co-workers with respect – and expect others to do so, too.

Employers must ensure the health and safety of workers and that other persons are not put at risk by the business. The process can be accomplished by the following measures.

1. **Build good relationships in a respectful work environment**

- Have a ‘no sexual harassment-tolerated’ work culture.
- Have a code of conduct that describes expected behaviors and what misconduct and serious misconduct is.
- Set the core values of your business.
- Promote good work relationships.
- Recognize and promote diversity.
- Set up a conflict management process.
- Set up a process for people to report sexual harassment.
- Set up systems to support workers at a greater risk of being harassed.

1. **Educate workers about sexual harassment**

Train employees at least once a year by conducting training sessions for employees. These sessions should teach employees what sexual harassment is, explain that employees have a right to a workplace free of sexual harassment, review your complaint procedure, and encourage employees to use it.

- Let your workers know what acceptable/non-acceptable work behavior is, and that sexual harassment will not be tolerated.

Train Employees on

- what sexual harassment is.
- what your sexual harassment policy contains.
- what worker should do if they experience sexual harassment.
- what workers can do if they see sexual harassment.
- Ensure your induction for new workers covers the information above.
- Talk about sexual harassment at team meetings and toolbox talks.
- Put up posters reminding workers what’s acceptable work behavior.

1. **Train supervisors and managers** at least once a yearly by conducting training sessions for supervisors and managers that are separate from the employee sessions. The sessions should educate the managers and supervisors about sexual harassment and explain how to deal with complaints.

2. **Develop good managers**

   - Give your managers leadership training to help them effectively manage and supervise workers.
   - Expect managers to intervene early to call out and deal with any unreasonable behavior before it escalates.

1. **Make sure everyone knowns their responsibilities**

   - While businesses must effectively deal with sexual harassment at work, everyone at work has a role in dealing with it.
   - Make everyone at work aware of their roles and responsibilities.

Workers

- have duties to take reasonable care for their own health and safety and to take reasonable care that they don't harm others while at work.
- must cooperate with reasonable policies and procedures about sexual harassment the business has in place that have been notified to them.
- must comply, so far as is reasonably practicable, with any reasonable instruction about sexual harassment given by the business so the business can comply with the law
- should report sexual harassment they experience or see so their business can do something about it.

1. **Make your sexual harassment policies, processes and systems transparent**

   - Have a sexual harassment policy that outlines expectations for acceptable behavior and your commitment to deal with sexual harassment.
   - Put in place a policy on alcohol consumption at work events.
   - Make sure processes/systems cover how you will deal with sexual harassment including.
   - what training workers and managers will receive.
   - how workers report sexual harassment, and what protection/support they will receive.

- how you will investigate and deal with reports.
- how you will check that preventative measures are effectively managing the health and safety risks arising from sexual harassment.

1. **Make sure your workers know how to report sexual harassment**

- Make sure workers know that you want to be told when sexual harassment occurs, and will support and protect those who report sexual harassment.
- Set up multiple ways (formal, informal, anonymous) to report sexual harassment.

Tell workers:

- how to record instances of sexual harassment.
- the more specific information the better.
- how to report about sexual harassment they directly experience or see to you.
- what to expect after they report sexual harassment including how you will support and protect them from reprisals.

1. **Provide protection and support to workers who experience sexual harassment or see sexual harassment**

- Protect all the people involved (including both sides of the complaint, support people and witnesses) from victimization (being punished, bullied, intimidated).
- Support can come from within the organization (trained sexual harassment contact persons) or other parties such as unions, or employee assistance programs.
- Provide the support as soon as possible after you receive a report of sexual harassment.

General principles for dealing with reports of sexual harassment

- Take all reports of sexual harassment seriously
- Act promptly
- Clearly communicate the process
- Protect the people involved
- Support the people involved
- Maintain confidentiality

- Treat everyone involved fairly
- Keep good documentation