
Introduction

Statistics show that sexual harassment is a common problem. A study conducted by the Merit Systems Protection Board indicated that within the Federal Government alone, more than 40 percent of women felt that they had been sexually harassed on the job at one time or another. In addition, sexual harassment is the fastest rising type of alleged discrimination. The EEOC received 6,127 charges of sexual harassment in 1990 and this number rose to 15,618 in 1998.

Sexual harassment is not just a woman's problem. Thirteen percent (13%) of the sexual harassment charges filed in 1998 were from men claiming that they were harassed. Also, the harassment of anyone in the workplace affects all employees who must cope with the tension, stress, and possibly decreased performance that is often associated with a hostile work environment.

Sexual harassment is everyone's problem, especially yours, because the manager's and supervisor's primary job is the effective and efficient control of workplace operations. In addition, managers and supervisors can be held liable for sexual harassment if they know or reasonably should have known about the behavior and did nothing about it. Appendix A in this guide outlines the Director's Policy on sexual harassment, making it clear that FEMA is committed to maintaining a work environment free from sexual harassment.

At first impression, many managers and supervisors may not think sexual harassment is a problem in their organization. One of the most common problems that occurs from sexual harassment cases is that of apparent supervisory indifference to employee complaints that were raised informally. The EEOC and the courts have frequently noted that various levels of management were aware—or should have been aware—that a problem existed because of previous employee complaints, but that managers had ignored or shrugged off the information. Why is this so? Several explanations are likely:

Introduction (Continued)

- They don't take the complaint seriously and/or they assume the complainant is being "overly sensitive" or a "troublemaker."
- They find the subject matter embarrassing and don't want to have to discuss the subject or confront other employees over the issue.
- They assume that "boys will be boys" (or "girls will be girls"), and that the problem will resolve itself.
- They are generally uncomfortable with conflict and confrontation.

In this unit, you will learn about:

- The law that protects individuals from sexual harassment.
- The definition of sexual harassment.
- The behaviors that constitute sexual harassment.
- Key terms associated with sexual harassment.
- Appropriate supervisory actions given a series of field-specific sexual harassment case studies.

The Law in a Nutshell



Sexual harassment is a form of sex discrimination, in violation of Title VII of the Civil Rights Act of 1964. In 1980, the EEOC issued guidelines declaring sexual harassment as an unlawful employment practice. In 1986, the Supreme Court affirmed those guidelines and the definition.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of employment, or
2. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting this individual, or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.



The Law in a Nutshell (Continued)

To prevent or stop sexual harassment, you must first be able to recognize it. Listed below are several examples of behavior that can constitute sexual harassment.

Verbal	Nonverbal	Physical
<ul style="list-style-type: none"> ▪ Calling an adult a girl, hunk, doll, babe, honey, etc. ▪ Sexual innuendoes, teasing, jokes, or stories ▪ Whistling/cat calls ▪ Talking about sexual preferences or fantasies ▪ Asking questions about social or sexual activities ▪ Repeatedly asking someone out who is not interested ▪ Spreading rumors about a person's sex life ▪ Unwanted pressure for sexual favors ▪ Sexual comments about anatomy 	<ul style="list-style-type: none"> ▪ Leering, staring, or looking a person up and down (elevator eyes) ▪ Displaying sexually explicit pictures, objects, materials, or cartoons ▪ Giving personal gifts ▪ Facial expressions such as winking, throwing kisses, or licking lips ▪ Sexual or obscene gestures with hands or through body movements 	<ul style="list-style-type: none"> ▪ Massages ▪ Touching a person's clothing, hair, or body ▪ Unwanted, deliberate touching ▪ Blocking a person's path ▪ Actual or attempted rape or sexual assault

Key Definitions



- **Quid pro quo.** One of two forms of sexual harassment, quid pro quo is a Latin derivative meaning “this for that.” It is a form of sexual harassment where submitting to sexual demands becomes an implicit or explicit term or condition of employment; e.g., “You can have a promotion but only if you have sex with me.” This form of sexual harassment is much more blatant and easy to identify.
- **Hostile work environment.** This is the second form of sexual harassment. It involves sexual conduct that has the purpose or effect of unreasonably interfering with a person’s job performance or that creates an intimidating or offensive work environment. Whereas quid pro quo has a uniquely sexual context, hostile environment does not; it can exist for minorities, older people, disabled people, and religious groups as well.
- **Reasonable person standard.** In determining whether a sexually oriented behavior is severe or pervasive enough to create a hostile environment, the Supreme Court adopted the “Reasonable Person” standard in 1993. That is, when making a determination, the behavior, taken as a whole, must be viewed from the perspective of a typical, reasonable man and woman. The adoption of this standard was an attempt to balance the perspective and to avoid hypersensitivity. However, even though an agency might win a lawsuit filed by a “hypersensitive” employee, it is incredibly time-consuming, costly, and painful for both parties. Hence, it is far better to avoid all conduct that could be perceived as harassing or offensive, than to be forced to argue: “I did not mean it” or “He/she is being unreasonable.”

Key Definitions (Continued)



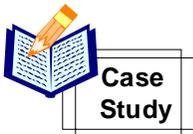
- **Vicarious liability.** Employers like FEMA are liable for the discriminatory actions committed by its managers and supervisors. A recent court ruling makes it even more important for managers and supervisors to attend to harassment issues and to be sure that all employees know about the EEO complaint processing system. The court ruled that an employer (including its managers and supervisors) will be “vicariously liable” for sexual harassment if the employer fails to prove that it exercised “reasonable care” to prevent and correct the harassment, and that the employee was unaware of the EEO complaint processing system. This ruling has the following implications for supervisors and managers.
 - 4 The Agency can be held liable if a manager or supervisor is aware of an incident of sexual harassment and fails to report the incident, even if the event involved another manager or supervisor and/or did not occur in the manager’s or supervisor’s work unit.
 - 4 Make sure that all of your employees are aware of the Agency’s policy on sexual harassment (see Appendix A) and they are aware of FEMA’s EEO complaint process (outlined in Unit 3).
 - 4 Make sure that FEMA’s EEO policies and the EEO complaint process are posted in public areas within the DFO.
 - 4 If the employee has knowledge of the EEO complaint process and chooses not to use it, then the problem lies with the employee. If the Agency does not inform employees of their rights and of the EEO complaint process, then the Agency may be held liable.

Case Studies in Sexual Harassment

Instructions:

On the following pages are a series of real-world situations that you are likely to encounter on the job. After you complete each case study, review the appropriate answer(s) that follow each case study.

- If your answer is correct, review the learning points associated with the case study and move on to the next case.
- If your answer is wrong, review the relevant material indicated, and try again. In addition, review the Director's Policy on Sexual Harassment (no. 3-97) in Appendix A.



CASE STUDY ONE: REFUSING TO ACCEPT NO AS AN ANSWER

During a disaster, many of the staff in the DFO develop very close friendships due to the relative isolation of the disaster location. Many members of the staff frequently dine together and socialize in the evenings. Harry, a Permanent Full Time employee (PFT), confides to his co-worker named Jill that Sue, a DAE, won't leave him alone. He says that initially he enjoyed socializing with her and enjoyed their friendship. However, Sue told him she wanted more than a friendship and began calling him to go out every evening. Harry began to avoid Sue and finally told her he was not interested in her and asked her to leave him alone. Now, Sue is going out of her way to be rude to him in the DFO. Jill has observed Sue's behavior toward Harry on several occasions and decides to tell their first-level supervisor about the situation. The supervisor decides not to take any action because she knows Sue personally and feels that she is under a great deal of stress due to a recent divorce.

1. What should the first-level supervisor have done differently in this situation?

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Case Studies in Sexual Harassment (Continued)



Answer

Answer to Case Study One: Refusing To Accept No As an Answer

What should the first-level supervisor have done differently in this situation?
Your answer is correct if it contains these elements:

- Harry's supervisor is responsible for maintaining an environment free of sexual harassment. Harry could very likely interpret Sue's behavior as unwelcome sexual advances (i.e., hostile environment). Therefore, the supervisor should not have ignored this situation.
- The supervisor should discuss the matter with Sue and warn her of the implications of her behavior (i.e., that it could be interpreted as sexual harassment). She should tell her to stop pressuring Harry for dates and to stop being rude to him.
- The first-level supervisor should contact the ERO to discuss the issue if Sue continues to ask Harry for dates.
- Harry's supervisor should ensure that he is aware of his rights (the Agency's policy on sexual harassment, the complaint process, etc.).

If your answers were incorrect, return to pages 2.5 and 5.1 through 5.4 for review.

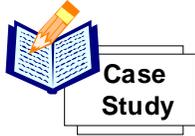
Learning Points



Learning Points

- 4 Supervisors and managers must be sensitive to the fine line that divides permissible social behavior from sexual harassment.
- 4 While there is no harm in employees asking other employees for a date, excessive persistence can be perceived as sexual harassment.
- 4 Persisting in an effort to obtain a date, hanging around a person, and pestering a person to change his or her mind can be properly viewed as sexual harassment.
- 4 Supervisors cannot permit friendships to interfere with their obligation to assure a work environment free from harassment.

Case Studies in Sexual Harassment (Continued)



CASE STUDY TWO: TROUBLE ON THE INTERNET

You have an office in close proximity to Sam who is at the same management level as you are. You both report directly to the Federal Coordinating Officer (FCO). The other day, you received a complaint from a woman who is part of the administrative staff. She said that Sam frequently accesses sexually explicit material on his computer through the Internet and she finds it offensive. Yesterday, you had an urgent matter to discuss with Sam so you knocked on his door and quickly walked into his office. You noticed that Sam was viewing sexually explicit material on the computer screen. Sam appeared embarrassed and quickly shut off the computer.

What should you do? (Circle the most appropriate responses below.)

- a. Ignore the situation.
- b. Have a heart-to-heart talk with Sam.
- c. Discuss the matter with the FCO.
- d. Discuss the matter with the ERO.

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Case Studies in Sexual Harassment (Continued)



Answer

Answer to Case Study Two: Trouble on the Internet

- Answer A: Ignore the situation. This answer is incorrect. Sam has set up a hostile environment situation. A member of the administrative staff is complaining about his behavior and she finds it offensive. Sam's behavior is also a violation of the Agency's Standards of Conduct.
- Answer B: Have a heart-to-heart talk with Sam. At this point, it would not be appropriate to discuss the matter with Sam. The matter needs to be taken care of immediately. The discussions you have with Sam may be ineffective and this would increase the likelihood that the administrative staff member would file a complaint.
- Answer C: Discuss the matter with the FCO. This answer is correct. Supervisors and managers should first try to resolve the issue with the person's immediate supervisor. Disciplinary action would be appropriate for this situation.
- Answer D: Discuss the matter with the ERO. This also would be the correct course of action if Sam continued to access sexually explicit material after warnings from the FCO.

If your answers were incorrect, return to pages 2.7 and 5.1 through 5.4 for review.

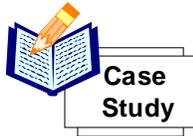
Learning Points



Learning Points

- 4 Be sensitive to employees' complaints and when they may perceive a hostile work environment.
- 4 Managers and supervisors are obligated to take quick, decisive action to immediately stop the unwelcome or offensive behavior, regardless of their relationship to those involved or whether the offensive conduct is within their sphere of authority or control.
- 4 Good intentions (in this case having a heart-to-heart talk with Sam) can be perceived as condoning or prolonging the behavior.
- 4 Managers or supervisors may be subject to disciplinary action if they ignore the harassment.
- 4 The Agency could be vicariously liable if a management official has knowledge of a hostile environment incident and fails to act to correct the situation.

Case Studies in Sexual Harassment (Continued)



CASE STUDY THREE: WHEN JOKING GOES TOO FAR

A group of employees in one section of the DFO developed the habit of taking coffee breaks together. They began telling jokes that soon evolved into very graphic sexual stories. An employee from the section approached the ERO complaining that she was offended by the sexual nature of the stories. She wanted to remain completely anonymous. The employees were her peers and she was afraid that she would be ostracized from the work group if they knew she complained. She just wanted the offensive sexual stories and jokes to stop.

The ERO reported the issue to you, the supervisor in the section, without identifying the employee who complained.

As the supervisor, how would you handle this situation?

What, if anything, could you do to prevent a situation such as this from occurring in the first place?

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Case Studies in Sexual Harassment (Continued)

Answer to Case Study Three: When Joking Goes Too Far



Answer

As the supervisor, how would you handle this situation? Your answer is correct if it contains these elements:

- Hold a department meeting and tell employees that sexual jokes and stories are inappropriate in the workplace and that you want them to stop immediately.
- Do not identify the employee who complained.
- Inform employees that their behavior can be interpreted as sexual harassment.
- Check in with the ERO after you have taken the above actions to assure the harassing environment has been extinguished.
- If necessary, provide training to the entire section on sexual harassment prevention.

What, if anything, could you do to prevent a situation such as this from occurring in the first place? Your answer is correct if it contains these elements:

- Address expectations for workplace conduct in the first staff meeting. Emphasize that professional, respectful conduct is expected and discrimination and harassment will not be tolerated in the workplace.
- Invite an ERO to a staff meeting to answer questions and clarify issues.
- Model appropriate behavior by conducting yourself in a professional, businesslike manner.
- Stress to employees that they can bring their questions or concerns to their supervisor or to the ERO.

If your answers were incorrect, return to pages 2.7 through 2.8 and 5.1 through 5.4 for review.

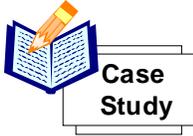
Case Studies in Sexual Harassment (Continued)

Learning Points



- 4 Confront situations promptly and directly.
- 4 Set expectations about workplace conduct up front.
- 4 Maintain confidentiality of employees whenever possible. In this situation, the harassment could be stopped without revealing information about the person who complained. If the employee who complained was revealed, she could file a complaint of retaliation if she was later treated poorly or denied a job opportunity.
- 4 Managers and supervisors can be held liable for sexual harassment if they knew or reasonably should have known about the behavior. In this case, if the employee decided to make a formal complaint, the supervisor may have been held liable because the supervisor should have been aware that these kinds of jokes were being told.

Case Studies in Sexual Harassment (Continued)



CASE STUDY FOUR: THE DATING GAME

A manager in a DFO was able to get his girlfriend deployed into a position where she was minimally qualified. Trouble soon started because she was unable to carry her load of the work and others had to take on many of her functions.

The DAE's first-level supervisor approached the ERO with the problem asking for assistance on how to handle the issue. She explained the DAE's poor performance and her relationship with the manager. The first-level supervisor told the ERO that she had taken the issue to the manager and nothing changed. When the ERO approached the manager, he denied any problems stating that "people were just out to make trouble." However, upon further investigation, the ERO found out that the manager's relationship with the DAE was common knowledge.

What should the manager have done differently in this situation?

What should the first-level supervisor have done differently in this situation?

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Case Studies in Sexual Harassment (Continued)

Answer to Case Study Four: The Dating Game



What should the manager have done differently in this situation? Your answer is correct if it contains these elements:

- The manager should not have allowed his girlfriend to be deployed in his chain of command, and he should not have placed her in a job she was not qualified for.
- The manager should have understood the legal ramifications of his relationship with the DAE and the consequences of not acting upon the issue.
- The manager should have been more sensitive to the consequences of his behavior with the DAE on the DFO staff.
- The manager should have admitted his relationship with the DAE and then worked with the ERO to remedy the situation.

What should the first-level supervisor have done differently in this situation? Your answer is correct if it contains these elements:

- The supervisor should have documented the DAE's performance and issued warnings so her allegations would be more substantiated.
- The supervisor could have talked to the next level management official or the Office of Human Resource Management for appropriate resolution of the issues.

If your answer was incorrect, return to pages 2.2, 2.4, 2.6, 2.7, and 5.1 through 5.3 for review.

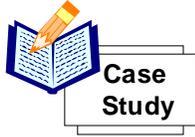
Case Studies in Sexual Harassment (Continued)

Learning Points



- 4 Managers and supervisors who give preferential treatment to those with whom they are having relationships can create a hostile work environment. It can also unlawfully deny other qualified workers the opportunity to fill the position the preferred employee filled.
- 4 Even though activities of a sexual nature may be welcome to the direct recipient, sexual harassment will be found if the activities are sufficiently pervasive or severe to interfere with the work or performance of other employees.
- 4 In this type of situation, other employees could reasonably conclude that their prospects for employment, job opportunities, or advancement are being adversely affected by their failure to provide sexual favors to the supervisor.
- 4 Managers and supervisors need to be keenly aware that they are role models for appropriate behavior in the work place.
- 4 Managers and supervisors can be held liable for sexual harassment if they knew or reasonably should have known about the offensive behavior.
- 4 Managers and supervisors who abuse their authority by using their position for the financial gain (i.e., to hire) for a close personal friend may be disciplined.

Case Studies in Sexual Harassment (Continued)



CASE STUDY FIVE: A TOUCHY SITUATION

A permanent full-time employee (PFT) whom you have worked with on several disasters is generally considered a good person to work with. As his supervisor, you find him to be a hard worker with an easy-going nature and a great sense of humor. However, the PFT has a habit of putting his arms around the shoulders of women or placing his hand on their backs when he is talking to them. Most of the women do not appear to mind, but you have noticed that a few have appeared uncomfortable. He does not engage in this behavior with men.

What should you do? (Circle the most appropriate responses below.)

- a. Ignore the situation. No one has complained to you about his behavior.
- b. Talk to the PFT about what you have observed and the possible implications of his actions.
- c. Discuss the matter with the ERO.
- d. Discuss the matter with the FCO.

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Case Studies in Sexual Harassment (Continued)



Answer to Case Study Five: A Touchy Situation

- Answer A: Ignore the situation. This answer is incorrect. Because you have noticed that some women are uncomfortable with the PFT's behavior, there is potential for a hostile environment situation.
- Answer B: Talk to the PFT. This answer is correct. It would be important to tell the PFT what you have observed and explain to him that his behavior could be interpreted as sexual harassment. Tell him to stop putting his arms around women.
- Answer C: Discuss the matter with the ERO. This answer would be correct if the PFT's behavior continued after you counseled him. You could inform the ERO what you have observed and the actions that you have taken. This answer would also be correct if you wanted guidance prior to counseling the employee.
- Answer D: Discuss the matter with the FCO. It would be premature to discuss the matter with the FCO. However, if the PFT's behavior continues after you counsel him, then the FCO should be informed. Also, if the PFT's behavior is pervasive in the DFO (i.e., there is frequent physical contact and touching between employees), then the FCO should be informed.

If your answer was incorrect, turn to pages 5.1 through 5.4 for review.

Learning Points



- 4 Physical contact with employees that is not required by the job—particularly if the employees object to it—is often considered sexual harassment.
- 4 Even though a person's intent may be innocent, managers and supervisors need to be aware of when an employee's behavior may be unwelcome and perceived as sexual harassment.

Summary and Transition



In this unit you completed sexual harassment case studies. You were also presented with the correct answers to and learning points drawn from each case study. In the next unit, you will complete case studies in age discrimination.

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