



# Anti-Harassment in the Workplace

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## **ANTI-SEXUAL HARASSMENT IN THE WORKPLACE**

“For over 20 years, our focus has been on people. We work hard every day to make our dealerships the kind of places where customers value our services, vendors enjoy doing business and employees are proud to work.” This same type of commitment is required internally, too. Our interactions with each other in the workplace are to be respectful and professional. In keeping with this commitment, we want to ensure that all managers and employees know how to conduct themselves in a manner that creates and maintains a respectful and harassment and discriminatory free work environment. We also want to ensure that you have the right information to ensure a great workplace for everyone”.



## **Let's Review**

- Culture
- Diversity
- Inclusion
- Stereotypes
- Prejudice
- Disparate Treatment
- Disparate Impact
- Microaggressions
- Compassion
- Sensitivity
- Awareness
- Discrimination
- Legal Protection – Title VII, Equal Pay Act, Age Discrimination Act, ADA, GINA



## **HARASSEMENT vs ASSAULT (Definitions)**

### **Sexual Misconduct**

It is a broad term that includes ANY non-consensual behavior/action of a sexual nature that is committed by force or intimidation, or that is otherwise unwelcome.

This term includes sexual exploitation, sexual intimidation, sexual assault, and sexual harassment. Misconduct can occur between members of the same sex and while fully clothed.

### **Sexual Exploitation**

It involves taking non-consensual sexual advantage of another person, even though the behavior might not constitute one of the other sexual misconduct offenses.

- Examples: Distribution or publication of sexual or intimate information about another person without consent or knowledge of all parties. *Specific Examples: electronic recording, photographing, or transmitting sexual or intimate utterances, sounds, or images.*

### **Sexual intimidation**

It is an implied or actual threat to commit a sex act against another person, or behavior used to coerce participation in a sex act such as:

Stalking - persistent calling, texting, or Internet posting, as well as physical stalking, when the context of the communication or the nature of the stalking is of a sexual or intimate nature

Voyeurism - involves both secretive observation of another's sexual activity or secretive observation of another for personal sexual pleasures.

### **Sexual consent**

It is sexual intimacy that requires all participants consent to the activity. Consent between two or more people is defined as an affirmative agreement through CLEAR actions or words to engage in sexual activity.

The person giving the consent must act freely, voluntarily, and with an understanding of their actions when giving consent. Lack of protest or resistance DOES NOT constitute consent, nor does silence mean consent has been given. A **prior relationship** also does not constitute consent.



### **Sexual Assault**

It is intentional sexual contact, characterized by use of force, threats, intimidation, abuse of authority or when the victim does not or cannot consent.

It includes rape, forcible sodomy and other unwanted indecent contact (e.g., kissing against another person's will) that is aggravated, abusive or wrongful (to include unwanted and inappropriate sexual contact) or attempts to commit these acts.

Consent means words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person.

An expression of refusal or lack of consent through words or conduct means there is no consent (i.e., NO MEANS NO).

Lack of verbal or physical resistance or submission resulting from the accused's use of force, threat of force or placing another person in fear does not constitute consent.

The victim's lack of verbal or physical resistance or submission resulting from intoxication, from unconsciousness due to sleep or alcohol consumption, or from any other conditions which render the person substantially incapacitated or substantially incapable of understanding the nature of the sexual act, declining participation in the act or communicating unwillingness to engage in the sexual act DOES NOT CONSTITUTE CONSENT.

A current or previous dating relationship shall not constitute consent.

The manner of dress of the victim shall not constitute consent.



## Harassment

It is aggressive pressure or intimidation.

### Examples of Harassing Behaviors

- Yelling and screaming
- Repeated public ridicule
- Threats of physical violence or intimidation
- Derogatory comments about non-protected issues: i.e. sexual orientation, attire, weight
- Rumors and gossip
- Blatant favoritism with work assignments, shifts, rewards & recognition
- Practical jokes and unwanted teasing

### Types of Harassment

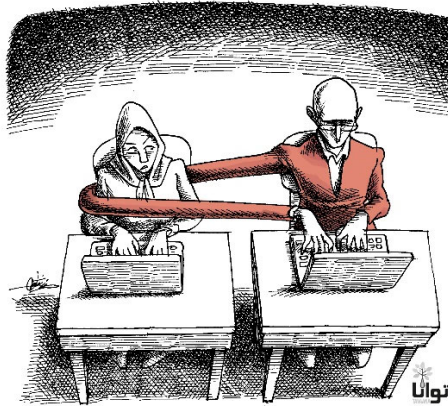
- **Discriminatory Harassment** –occurs when someone feels a hostile work environment has been created due to harassing words or behaviors targeted at people that belong to a **protected class** Title VII, the American with Disabilities Act and the Age Discrimination Employment Act define protection related to:
  - Race
  - Color
  - National Origin
  - Religion
  - Gender
  - Physical or mental disability
  - Age 40 and over

### Examples of discriminatory harassment:

- Making fun of someone's accent or mannerisms
- Making derogatory comments about a religious practice
- Making derogatory comments about someone's home country
- Using offensive slang to refer to someone's race, national origin or religion
- Implying someone cannot do a job because of the protected category
- Telling jokes that denigrate individuals in a protected category



**Sexual Harassment** – the harassing behavior is characterized by comments and/or behaviors of a sexual nature.



**Two major areas of sexual harassment:**

- Quid pro quo
- Hostile Work Environment

**Quid pro quo** – 'This for that'. When employment status, job duties or opportunities are dependent on the employee responding to the sexual advances of a person that can materially affect any of the above.

**Examples of Quid Pro Quo Harassment**

- Employment is contingent upon granting a sexual favor
- Raises or promotions are offered in return for sexual favors
- Special awards, trips, recognition is offered
- Work assignments, shifts, job duties can be improved or damaged based on sexual favors

**Hostile Work Environment** – The employee finds it stressful or difficult to work due to the actions of others of a sexual nature.

### **Examples of Hostile Work Environment Harassment**

- Posters, calendars, pictures, cartoons of a sexual nature
- Sexual comments
- Undue attention and/or looking at others suggestively
- Offensive gestures
- Unwanted invitations
- Touching, rubbing, etc.
- Telling, listening or using obscene/off-color jokes, suggestions
- Giving congratulatory pats on the rear end or hugging
- Using labels such as “sweetie”, “honey”, “babe”, etc.
- Using labels such as “hunk”, “fox”, “stud”, etc.
- Commenting on a person's gender or body (weight, figure, size)
- Rating bodies out loud
- Throwing kisses, winking or licking lips or teeth
- Telling others of your sexual practices
- Suggesting an affair or relationship that does not exist

### **Sexual harassment is when:**

- The actions are sexual in nature
- The actions are unwanted
- The actions either form a 'pattern of behavior' or an incident is 'severe' in nature

### **Key points to remember:**

- Sexual harassment is not gender specific. Same sex harassment can occur.
- The object of the harassment does not have to suffer any form of loss for a complaint to be considered valid.
- One incident typically does not necessarily constitute harassment. If someone indicates that behavior is unwanted or unacceptable and the person committing the act stops then the initial act is typically not considered harassment. (With the exception of serious acts that typically threaten continued employment or safety.) Organizations get into trouble when they don't immediately take action to address complaints.





## How to Stop Harassment?

**Legal Side:** EEOC – Equal Employment Opportunity Commission

**Increased Lawsuits:** Overall, expect sexual harassment complaints to increase both on a state and federal level.

### How to Avoid EEOC Charges & Harassment Lawsuits:

- ✓ Consistency
- ✓ Fairness
- ✓ Proper Hiring
- ✓ Sound Policies
- ✓ **Others?**



## Employees?

- **Avoid** behavior that may be misconstrued as possible sexual harassment.
- **Avoid** sexual jokes, comments, and e-mails.
- **Respect** a person's indication that your conduct or attention is not welcome.
- **Not** invade another individual's personal space.
- **Not** touch anyone without their permission.
- Clearly **inform** those engaging inappropriate sexual orientated behavior that they find it objectionable.
- **Seek assistance** promptly if they are the target of or observe severe or repeated instances of behavior that they believe qualify as sexual harassment.

## Victim?

- **Clearly** communicate to the harasser - verbally, in writing, through a third party, or in some other way - that the conduct is unwelcome.
- **Evidence** that the victim participated in the conduct that she or he later challenged, would generally defeat a harassment claim, since participation communicates welcomeness.
- However, **participation does not** necessarily mean the conduct is welcome.
- In particular submission to sexual demands does not necessarily mean that the conduct was welcome.
- The victim or person affected by the conduct should promptly report it or file a complaint - if the conduct continues after the perpetrator becomes aware it is unwelcome.

## Management? "Open Door Policy"

- Monitor workplace behavior, enforce respect.
- Treat all complaints seriously and confidentially. Do not ignore any allegation.
- Post/disseminate EEO Policy.
- Know Your Company Policy
- Respond to allegations immediately; investigate, as appropriate.
- Be sensitive but impartial.
- Interview parties and relevant witnesses.
- Ask opened-questions.
- Collect relevant documentation/evidence.
- Take appropriate corrective action, follow-up
- Ensure no retaliation.
- Document your actions.

***Do you know who to talk to in your organizations if you want to report a complaint?***



**RETALIATION** – most frequently alleged basis of discrimination in the federal sector and the most common discrimination finding in federal sector cases.

It occurs when employers treat applicants, employees, or people closely associated with these individuals, less favorably for reporting discrimination, participating in a discrimination investigation or lawsuit, or opposing discrimination (for example, threatening to file a charge or complaint of discrimination)



## Workplace Bullying

**No place for it – anywhere!**

### Why it happens?

- ✓ Allowed to bully
- ✓ Position of power
- ✓ Good performers

### Cost to the Company?

- ✓ Absenteeism
- ✓ Low Morale
- ✓ Turnover
- ✓ Medical costs

## Leadership and Accountability

Senior leaders should demonstrate a commitment publicly that harassment (or similar misconduct) should not be tolerated. How?

- Allocate sufficient resources to human resources
- Consider organizational reporting changes to neutralize HR
- Recruit and evaluate HR talent based upon the effectiveness of their ability to prevent and address harassment
- Periodically evaluate the company's response to sexual harassment complaints

## Professionalism

Goal is to create an environment of respect and professionalism

- Professionalism encompasses:
  - Creating an environment free of harassment in any form
  - Valuing the diversity of our team members and customers
  - Demonstrating respect and sensitivity to all
  - Acting in a mature manner in every work environment
  - Respecting the privacy of others
  - Using language that reflects your intelligence and skills
  - Refusing to allow personal relationships to damage the work environment or the company's reputation



## The Harassment Free Workplace

Everyone deserves to work in a safe and respectful environment.  
Employees have responsibilities.

### **Responsibility:**

- Have a clear, zero tolerance policy
- Have a well-defined complaint process with multiple points of entry
- Have a documented investigation process
- Proactively make all employees aware of the law and complaint process

### **Your Responsibility:**

- Know the law
- Behave in accordance with the law, regulations and policies
- Report harassment and discrimination if you observe it
- Cooperate fully in any investigations



**Corporate Membership**

**Compensation**

**Compliance**

**Background Screening**

**Recruiting & Talent Acquisition**

**HR Consulting**

**Training**

**Leadership Development**



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