

SEXUAL HARASSMENT

THE "TAKEAWAY" FOR MANAGERS™

Sexual Harassment — the "TAKEAWAY" for Managers™ Leader's Guide

Overview:

The four areas covered in *Sexual Harassment — the "TAKEAWAY" for Managers™*—The Legal Definition of Sexual Harassment; A Proactive Response; The Importance of Documentation; and The Fear of Retaliation—are reinforced by four corresponding “takeaways,” information that’s especially important to come away with, summed up in an easy-to-remember sentence.

These four areas and their takeaways comprise the basic information that all managers and supervisors should have regarding their role in sexual harassment prevention and intervention. *Sexual Harassment — the "TAKEAWAY" for Managers™* focuses on how to take a proactive approach to prevent and deal with sexual harassment, and how doing so can protect managers and their organizations from lawsuits and promote a harassment-free environment.

Prepare for the Session:

- Preview the *Sexual Harassment — the "TAKEAWAY" for Managers™* program, and consider how the four topics work together to confront sexual harassment in the workplace.
- Read through the Leader's Guide.
- Make sure you have a Discussion Question handout for each participant.
- Stress that sexual harassment in the workplace is a serious issue with legal ramifications.
- Greet participants in a friendly manner.

Open the Session:

- Introduce yourself and welcome the participants to the training session.
- Introduce the *Sexual Harassment — the "TAKEAWAY" for Managers™* program, explaining that it covers *four key areas*: The Legal Definition of Sexual Harassment; A Proactive Response; The Importance of Documentation; and The Fear of Retaliation.
- Ask participants as they watch the program to think about why these areas are important for managers to understand.
- Let participants know that there will be a short discussion portion of the program, with an opportunity to comment and/or ask questions.
- Show the *Sexual Harassment — the "TAKEAWAY" for Managers™* program (running time: 12 minutes).
- Review the four topics and their corresponding takeaways as follows:
The Legal Definition of Sexual Harassment (*There are two categories of harassment according to federal law: Quid Pro Quo and Hostile Work Environment.*); A Proactive Response (*Proactive managers avoid lawsuits.*); The Importance of Documentation (*Protect yourself and your organization with good documentation.*); and The Fear of

Retaliation (*Retaliation against a harassment complaint is strictly illegal.*)

PREVIEW

Present the Material:

Topic 1: The Legal Definition of Sexual Harassment

Learning Points:

- ❖ Legally, sexual harassment is a form of discrimination. If an employee covered by a legally protected category such as sex, sexual orientation, or gender identity is subjected to an ongoing, pervasive pattern of unwelcome behavior that's sexual in nature, he or she is being sexually harassed.
- ❖ **Quid Pro Quo** harassment literally means “this for that,” and involves an exchange. An example would be if a boss used a job reward (like a raise or promotion) or punishment (like the threat of being fired) to force an employee into a sexual relationship.
- ❖ **Hostile Work Environment** harassment occurs when the atmosphere at work is *severely and pervasively* intimidating, hostile, or offensive *and* the victim is covered under a federally protected category.

The “TAKEAWAY”: *There are two categories of harassment according to federal law: Quid Pro Quo and Hostile Work Environment.*

Topic 2: A Proactive Response

Learning Points:

- ❖ Managers should be proactive, keeping their eyes and ears open, and staying on the lookout for any signs of sexual harassment.
- ❖ A manager should be careful to never personally engage in harassing behavior. When a harasser is in a supervisory role, the organization (and the manager) is almost always legally liable.
- ❖ Managers are liable for sexual harassment between coworkers if they knew or should have known about it and took no steps to stop it.

The “TAKEAWAY”: *Proactive managers avoid lawsuits.*

Topic 3: The Importance of Documentation

Learning Points:

- ❖ If you receive a complaint about sexual harassment, or just suspect that it's occurring, document everything pertinent.
- ❖ Your notes should be specific as to times, dates, and details, as well as objective, unbiased, and work-related. (Keep in mind that your record of the situation may eventually be used in court.)
- ❖ Ask the target of the harassment to keep a record of it as well.

The “TAKEAWAY”: *Protect yourself and your organization with good documentation.*

Topic 4: The Fear of Retaliation

Learning Points:

- ❖ Sexual harassment often goes unreported because the target fears retaliation, either from the harasser or from their organization.
- ❖ Managers should let employees know that sexual harassment will not be tolerated and that there will be no negative repercussions for reporting it.
- ❖ Make clear to all employees that retaliation against a harassment complaint is illegal.

The “TAKEAWAY”: *Retaliation against a harassment complaint is strictly illegal.*

Start Discussion:

- Distribute the Discussion Questions handout.
- Read the 4 questions on the Discussion Questions handout to participants, and explain that they will have 5–8 minutes for discussion based on the questions.
- Ask participants to take the handout Quiz.
- Have participants form small groups of 3–5 people for the discussion portion of the training.

Discussion Questions:

How might a manager be guilty of quid pro quo sexual harassment?

Sample answers:

1. *“By implying that he or she will give someone special consideration at work if the person will agree to a date.”*
2. *“By inappropriately touching an employee and then promising that person a raise for not complaining.”*
3. *“By threatening to fire someone who refuses sexual advances.”*

What’s an example of inappropriate behavior at work that may signal illegal sexual harassment?

Sample answers:

1. *“Hugging or other unprofessional physical contact.”*
2. *“Sending emails or texts with sexual content to coworkers.”*
3. *“Pestering someone for a date when they’ve said they’re not interested.”*

Why is it important to document harassing behavior?

Sample answers:

1. *“So that you have a record in case of a lawsuit.”*
2. *“So you can point out specific problematic behavior to the harasser.”*
3. *“To give yourself a complete picture of the problem.”*

How might you lessen the fear of retaliation for reporting harassment?

Sample answers:

1. *“Tell employees that retaliation against anyone reporting harassment is strictly illegal.”*
2. *“Post information about reporting sexual harassment so that everyone can see it.”*
3. *“Let employees know that you and the organization don’t tolerate any form of harassment.”*

Quiz Answer Key

1. Words alone can't count as illegal sexual harassment.
TRUE/FALSE
2. Sexual harassment is a form of discrimination according to the law.
TRUE/FALSE
3. When a harasser is in a supervisory role, the organization (and the manager) is almost always legally liable.
TRUE/FALSE
4. As long as there are witnesses to sexual harassment, there's no need to document it.
TRUE/FALSE
5. Many people don't report sexual harassment because they are afraid of retaliation.
TRUE/FALSE
6. Managers are legally liable for sexual harassment between coworkers if they knew or should have known about it and did nothing to stop it.
TRUE/FALSE
7. Sexual harassment can occur between people of the same sex.
TRUE/FALSE
8. Good documentation includes your opinions as well as the facts.
TRUE/FALSE
9. Sexual harassment must not be occurring if no one is complaining.
TRUE/FALSE
10. Illegal sexual harassment can occur with a third party such as a vendor, customer, or patient.
TRUE/FALSE

Conclude the Session:

1. Reassemble the group.
2. Recap the following key concepts from *Sexual Harassment — the "TAKEAWAY" for Managers™*:
 - **There are two categories of harassment according to federal law: Quid Pro Quo and Hostile Work Environment.**
 - **Proactive managers avoid lawsuits.**
 - **Protect yourself and your organization with good documentation.**
 - **Retaliation against a harassment complaint is strictly illegal.**
3. Remind participants that sexual harassment can be a serious problem, with legal ramifications for the organization, and for them.
4. Take questions.
5. Thank everyone for participating, and express your hope that participants will take what they've learned at the session and help their organization to be free of sexual harassment.

Sexual Harassment — the "TAKEAWAY" for Managers™
Handout

Discussion Questions

How might a manager be guilty of quid pro quo sexual harassment?

What's an example of inappropriate behavior at work that may signal illegal sexual harassment?

Why is it important to document harassing behavior?

How might you lessen the fear of retaliation for reporting harassment?

Quiz

1. Words alone never count as illegal sexual harassment.
TRUE/FALSE
2. Sexual harassment is a form of discrimination according to the law.
TRUE/FALSE
3. When a harasser is in a supervisory role, the organization (and the manager) is almost always legally liable.
TRUE/FALSE
4. As long as there are witnesses to sexual harassment, there's no need to document it.
TRUE/FALSE
5. Many people don't report sexual harassment because they are afraid of retaliation.
TRUE/FALSE
6. Managers are legally liable for sexual harassment between coworkers if they knew or should have known about it and did nothing to stop it.
TRUE/FALSE
7. Sexual harassment can occur between people of the same sex.
TRUE/FALSE
8. Good documentation includes your opinions as well as the facts.
TRUE/FALSE
9. Sexual harassment must not be occurring if no one is complaining.
TRUE/FALSE
10. Illegal sexual harassment can occur with a third party such as a vendor, customer, or patient.
TRUE/FALSE

Sexual Harassment — the "TAKEAWAY" for Managers™ Transcript

As a manager, you've got a lot to deal with, not the least of which is setting a good example of professional, and legally compliant behavior, for those who report to you. It's a lot of responsibility, and it's especially important in the area of sexual harassment.

We're going to talk about four areas of particular concern for managers:

- ***The Legal Definition of Sexual Harassment***
- ***A Proactive Response***
- ***The Importance of Documentation***
- ***The Fear of Retaliation***

Sexual harassment lawsuits are common, and they cost organizations millions of dollars and lots of headaches. Let's talk about *the legal definition of sexual harassment*, something managers need to know.

The Legal Definition of Sexual Harassment

In legal terms, sexual harassment is a form of discrimination. Federal law makes it *illegal* to discriminate on the basis of race, color, religion, sex (including gender-identity and pregnancy, childbirth, or pregnancy-related medical conditions), national origin, age (for those over 40), sexual orientation, parental status, disability, or genetic information.

So, if an employee covered by one of these protected categories is subjected to an ongoing, pervasive pattern of unwelcome behavior that's sexual in nature, he or she is being sexually harassed. How do you know if a problem is serious enough to be a violation of the law? The courts use what's called a "reasonable person standard" to determine that. What would a reasonable person think?

There are two kinds of sexual harassment, according to the law:

Quid Pro Quo harassment literally means "this for that," and it involves an exchange. An example would be if a boss used a job

reward (like a raise or promotion) or punishment (like the threat of being fired) to force an employee into a sexual relationship.

Hostile Work Environment harassment occurs when the atmosphere at work is *severely and pervasively* intimidating, hostile, or offensive *and* the harassing behavior involves one of the federally protected categories that we mentioned.

“STUART’S ALWAYS GOT HIS HANDS ON ME. I TRY TO KEEP A DESK BETWEEN US, BUT HE LIKES TO SNEAK UP FROM BEHIND SO I CAN’T AVOID HIM. I DON’T EVEN WANT TO COME TO WORK ANYMORE.”

People usually think of sexual harassment as involving lewd behavior, but sometimes the discrimination is gender-based rather than sexual, as when employees are assigned to less desirable shifts, given harder assignments or less lucrative territories, or are demeaned because they’re female, male, transgender, or have a particular sexual orientation. That’s illegal discrimination that can also be considered sexual harassment.

Sexual harassment can occur between people of the same or different sex, and between people with the same or different levels of authority at work. It can even involve third parties, such as customers, patients, or vendors.

Under federal law, because as a manager you can take what’s called **TANGIBLE EMPLOYMENT ACTION**—in other words, you have the authority to hire, fire, demote, promote, or reassign another employee—your organization is subject to something called **VICARIOUS EMPLOYMENT ACTION LIABILITY**. That means it can be sued if *you* harass or discriminate against someone at work, or someone that you supervise does and you ignore it—and *you can be sued, too*.

The Legal Definition of Sexual Harassment

THE TAKEAWAY

There are two categories of harassment according to federal law: Quid Pro Quo and Hostile Work Environment.

Managers should have a proactive response, keep their eyes and ears open, and stay on the lookout for any signs of sexual harassment. To nip sexual harassment in the bud, a manager needs to be aware and ready to take action.

And of course, a manager should be careful to never personally engage in harassing behavior. When a harasser is in a supervisory role, the organization, and the manager, is almost always legally liable.

A Proactive Response

It's usually not hard to recognize the signs of harassment. Some examples of sexual harassment at work that could lead to a hostile work environment—and a lawsuit—are sexual propositioning or badgering someone for a date; inappropriate touching like back rubs, hugging, or “accidentally” brushing up against someone; sending sexual content through email or texting; displaying sexually explicit material; posting inappropriate sexual content on social media; or even leering or obscenely gesturing.

“YOU WANTED TO SEE ME?”

“YEAH. COME ON IN. HAVE A SEAT. STUART, I WANT TO TALK YOU ABOUT YOUR INTERACTION WITH JACKIE. THEY'RE INAPPROPRIATE AND DISRESPECTFUL.”

“I'M JUST BEING FRIENDLY. SHE'S CUTE. ANYWAY, I DON'T THINK I BOTHERING HER.”

“I SAW THE TWO OF YOU TOGETHER JUST NOW. YOUR ATTENTIONS ARE OBVIOUSLY UNWELCOME. AND EVEN IF THEY WEREN'T, THEY'RE INAPPROPRIATE AT WORK. SHE LOOKED VERY UNCOMFORTABLE. YOU NEED TO KEEP YOUR HANDS TO YOURSELF, AND YOU NEED TO STOP PESTERING HER, NOW.”

“JACKIE HADN'T COMPLAINED, BUT I OVERHEARD SOME COMMENTS AND I STARTED PAYING CAREFUL ATTENTION. SHE WAS OBVIOUSLY HAVING A PROBLEM WITH STUART. I TOLD HIM THAT WHAT HE WAS DOING WAS UNACCEPTABLE AND THAT IT HAD

TO STOP IMMEDIATELY OR THERE WOULD BE REPERCUSSIONS. I TOLD JACKIE THAT I'D TALKED TO HIM ABOUT THE SITUATION, AND THAT IF SHE HAD ANY MORE PROBLEMS, SHE SHOULD TELL ME. SHE LOOKED RELIEVED."

Whether you hear directly from an employee that he or she is experiencing sexual harassment, witness it yourself, or are told about it by a third party—or even if you just have an inkling that there's a problem, address it right away. Managers are liable for sexual harassment between coworkers if they knew or should have known about it and took no steps to stop it.

Discuss the situation with the parties involved and with HR.

Sexual harassment impacts a person's emotional, physical, and professional well-being. It should always be taken seriously.

Both the government and anti-discrimination groups recommend, partly for legal reasons, that people who believe they're being harassed inform the harasser directly that the inappropriate advances, comments, or behavior are unwelcome and must stop. This can be done in the presence of and with the support of management and/or HR.

Infrequent or isolated incidents of inappropriate behavior happen in every organization. People sometimes do make mistakes, after all, and while not illegal, these can be warning signs that managers should heed. Sometimes people don't realize that their behavior is inappropriate and they'll stop it when made aware of it. Being proactive, can help you prevent more serious problems down the road.

By modeling respectful, professional behavior, and by expressing strong disapproval of sexual harassment at work, as a manager, you're in the best position to help create a harassment-free workplace.

A Proactive Response

THE TAKEAWAY

Proactive managers avoid lawsuits.

The importance of documentation can't be overemphasized. If you receive a complaint about sexual harassment, or just suspect that it's occurring, document everything pertinent.

The Importance of Documentation

Keep a written record of all relevant incidents and conversations, keeping your notes specific as to times, dates, and details, as well as objective, unbiased, and work-related. Have the person bringing the harassment complaint do the same.

“THE LAST INCIDENT WAS A COUPLE OF DAYS AGO WHEN I WAS GETTING MY LUNCH FROM THE KITCHEN. ROB WALKED IN AND SAID, ‘HEY STEVE, WHAT DO YOU CALL A GAY BOXER?’ WHEN I IGNORED HIM, HE SAID, ‘FRUIT PUNCH.’”

“THAT’S UNACCEPTABLE BEHAVIOR. YOU SHOULDN’T HAVE TO PUT UP WITH IT. NOT TO MENTION WHAT AN UNBELIEVABLY BAD JOKE THAT WAS.”

“YEAH, TERRIBLE, BUT AT LEAST THAT ONE WAS CLEAN. ANYWAY, IT’S BEEN GOING ON FOR A WHILE NOW. I PROBABLY SHOULD HAVE COME TO YOU SOONER. I JUST WISH HE’D GIVE IT A REST.”

“DON’T WORRY, I’LL TALK TO HIM. AND THANKS FOR BRINGING THE SITUATION TO MY ATTENTION.”

“WHEN I TALKED TO ROB ABOUT TEASING STEVE ABOUT BEING GAY, HE TOLD ME I WAS EXAGGERATING, THAT IT ONLY HAPPENED ONCE. BUT STEVE HAD KEPT A WRITTEN RECORD OF THE OFFENSIVE REMARKS, WHEN THEY WERE MADE, AND ALL THE TIMES HE’D ASKED ROB TO STOP. SO I SHOWED ROB THE DOCUMENTATION AND TOLD HIM HIS BEHAVIOR WAS SEXUAL HARASSMENT. HE APOLOGIZED TO ME AND LATER TO STEVE, AND THE INAPPROPRIATE BEHAVIOR STOPPED.”

The documentation will show whether a pattern of sexual harassment is present and serve as your guide as you administer your organization’s disciplinary policies. It’s the point of reference from which you can discuss the situation with the harasser, and track positive changes in the behavior, or escalations of it. Keep in mind that your records of the situation may eventually be used in court.

The Importance of Documentation

THE TAKEAWAY

Protect yourself and your organization with good documentation.

The fear of retaliation for reporting sexual harassment is a common problem. Many people live with sexual harassment at work because they're afraid to report it. They're afraid they'll be perceived as a complainer, troublemaker, or tattletale. They fear that stepping forward might adversely affect future employment decisions like raises and promotions, or even get them fired.

The Fear of Retaliation

Managers communicate verbally and in written form to their employees about organization policy and employee rights and responsibilities under the law. As such you should assure your employees that retaliation for reporting sexual harassment is *strictly illegal*.

"PETE WON'T STOP SENDING THOSE GROSS TEXTS. IN FACT, THEY'RE GETTING WORSE."

"PETE'S JUST BEING PETE. IGNORE HIM."

"YOU DON'T UNDERSTAND. THEY'RE REALLY OFFENSIVE. I'M GOING TO TALK TO SANDY ABOUT IT."

"I WOULDN'T COMPLAIN TO MANAGEMENT. THEY'RE GOING TO THINK YOU'RE NOT A TEAM PLAYER."

"PETE WOULDN'T STOP SENDING ME SEXUALLY EXPLICIT TEXT MESSAGES. I WAS AFRAID TO SAY ANYTHING. I THOUGHT COMPLAINING WOULD SOMEHOW REFLECT BADLY ON ME. BUT THE SITUATION WAS AFFECTING MY ABILITY TO DO MY JOB AND FRANKLY, ENOUGH IS ENOUGH."

SO I WENT TO MY MANAGER. SANDY PUT A STOP TO IT, AND SHE EVEN THANKED ME FOR LETTING HER KNOW ABOUT THE PROBLEM.”

It’s important to let all employees know that they will not be retaliated against if they make a sexual harassment claim. Employees should have a copy of their organization’s policies and procedures regarding sexual harassment, and a copy should be posted as well.

Many states mandate various amounts of employee training regarding sexual harassment. Make sure you’re in compliance.

The Fear of Retaliation

THE TAKEAWAY

Retaliation against a harassment complaint is strictly illegal.

As a manager, you have the opportunity to lead the fight against sexual harassment in the workplace by recognizing it, responding proactively to stop it, documenting the situation in a professional manner, and providing assurances that reporting it won’t lead to retaliation.

Sexual harassment causes serious practical harm to both an organization and the individual it’s directed against, so nip it in the bud.

PREVIEW