

Where to Find Help if You are Sexually Harassed

[The following is the second installment in a two-part series examining sexual harassment in the American workplace.]

Sexual harassment is no longer corporate America's "dirty little secret." Media coverage and intellectually honest discussion over the past 15 years has served to educate the workforce and give strength to those who have been victimized. Today, we examine the process to file a claim of sexual harassment.

If something in the workplace makes you feel uncomfortable or unreasonably interferes with the performance of your job responsibilities, you should approach your immediate supervisor. The various laws against sexual harassment presume that a responsible employer will take action when it is made aware of unacceptable conduct. To that end, employers are afforded the first opportunity to investigate a claim of sexual harassment. If you are uncomfortable speaking with your supervisor, or if he or she is the cause of the offensive conduct, you may go directly to your boss's supervisor. If you are still reluctant to broach the topic, you should seek out your Human Resources ("H.R.") representative. In some companies, this department is also known as "Human Relations," "Employee Relations," or by its more dated nomenclature, "Personnel."

In the corporate organizational structure, H.R. acts as the employee ombudsman, a neutral entity that creates a buffer between employees and management. Although it may be difficult to trust the company or its agents during an emotionally volatile period, H.R. exists to ensure the fair treatment of workers. Often, the persons most knowledgeable about the law and various governmental agencies are assigned to that department. They regularly interact with the federal Equal Employment Opportunity Commission ("EEOC") and its various sister entities in each state. H.R. professionals adhere to strict standards of confidentiality. Based upon facts disclosed during the initial interview, H.R. will conduct a discrete investigation which may include interviews, document review and/or an inspection of the allegedly hostile environment. If they conclude that the corporate code of conduct has been breached, they will initiate the appropriate remedial measures including discipline of the offender. In an internal proceeding such as that, the aggrieved party will realize improved working conditions but would not receive financial compensation.

An individual may also choose to seek an external remedy. Both the federal government and fair employment agencies in the various states can commence an investigation. While an aggrieved person may simultaneously file federal and state actions, it is important to note that there are advantages and disadvantages to both systems. At the federal level, sexual harassment is proscribed conduct under Title VII of the 1964 Civil Rights Act. Title VII only applies to those companies with 15 or more employees. Less-staffed companies are subject to state fair employment practice ("FEP") statutes. While an EEOC complaint can shield the identity of the complaining party, many states do not offer such protection. This may be a major concern for an employee in a small office or industrial shop.

Claims filed with the EEOC must be registered within 180 days of the last incident of harassment. Upon completing its investigation, the EEOC will make a determination as to whether it believes that the complainant has been harassed and if the illegal conduct can be

proven in court. If it substantiates the claim, the EEOC can either decide to prosecute the matter on behalf of the aggrieved individual or issue a “right to sue” letter. In the latter instance, the document authorizes the individual to pursue the action independent of the government.

Given the seriousness of the offense, some victims are surprised to learn that few lawsuits based on sexual harassment are actually tried before a judge or jury. The reason is that like most federal civil litigation, more than a year can elapse between the time a complaint is filed and the time the case is ready for trial. In between, there is a lengthy process known as “discovery” during which the plaintiff and defendant will exchange relevant documents, demand written answers to numerous questions (“interrogatories”) and take the deposition of all persons with knowledge of the facts. Depending on the plaintiff’s injuries, expert witnesses may be engaged to render reports and testify as to the damage sustained and the appropriate calculation of any monetary award.

As with all litigation, the case will tend to strengthen or weaken for each side. The defendant(s)’ willingness to settle directly correlates to its self-perception of the likelihood of success at trial. Moreover, defendants typically have greater financial resources than plaintiffs. While the victim is out of work and unable to find new employment, the individual defendant often will remain employed, and the defendant corporation will continue to earn revenue. Thus the litigation becomes a war of attrition in which the plaintiff pits principle against the defendants’ wealth. And while plaintiff attorneys generally accept such engagements on a contingency recovery basis (33 1/3%), defense counsel serves on an hourly-fee basis. Additionally, many of the most accomplished attorneys are affiliated with large law firms whose practice is exclusively defense-oriented. (A colleague of mine, a nationally-renowned plaintiff lawyer specializing in sexual harassment claims, is a notable exception.) Protracted litigation often favors the defendant who can seek multiple adjournments and engage in aggressive motion practice. A defendant corporation may view its legal bill as a better alternative to a sizeable settlement or adverse publicity.

A successful federal court plaintiff may seek reinstate to her or his former position; compensatory damages for lost back pay and future earnings; punitive damages; and attorneys’ fees.

Corporations are often willing to settle cases rather than risk being convicted in the court of public opinion. Publicly-traded companies may seek to protect share value and goodwill. The amount of the settlement offer is frequently determined by the defendant’s assessment of the plaintiff’s resolve.

Sexual harassment is a serious offense. An individual who believes she or he is or has been the victim of such illegal conduct should immediately seek out legal counsel with specialized expertise. Failure to act in a timely manner will result in loss of the claim.

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