

**Stop Sexual Harassment Before It Stops You
A Guide for AFGE Members and Representatives**

The American Federation of Government Employees (AFGE) is a labor organization affiliated with the AFL-CIO which represents approximately 600,000 employees of the United States federal government and the government of the District of Columbia.

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What is Sexual Harassment?

EEOC Definition

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, 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 working environment.”

29 C.F.R. Section 1604.11

Sexual harassment on the job is a serious situation. It occurs when someone bothers you **in a sexual way** because of your gender and that behavior affects your job or your job environment. Federal law (Title VII of the Civil Rights Act of 1964) and your Local AFGE union contract make sexual harassment **ILLEGAL**. Therefore, you can take action and do something about it.

Under the law, there are two basic kinds of illegal sexual harassment. The legal terms for them are “quid pro quo” and “hostile environment” harassment. The term quid pro quo simply means something given in exchange for something else. Quid pro quo sexual harassment happens when a supervisor or another person with authority over an employee states or implies an **unwelcome** sexual demand in exchange for the employee's job or job benefit...and then follows through with the threat. Even if nobody threatens an employee's job, sometimes **unwelcome** sexual conduct or conduct directed at one because of one's gender can poison his or her work environment. This is called hostile environment sexual harassment. It can happen when a supervisor, co-worker, or someone else with whom the employee comes in contact creates an abusive, sexually charged work environment because of the employee's gender.

Anyone can fall pray to sexual harassment. Both men and women may be victims of sexual harassment. Similarly, either a man or a woman may be a harasser.

Recent Supreme Court Cases

Oncale v. Sundower Offshore Services, Inc., 523 U.S. 75 (1998)

United States Supreme Court held that sexual harassment by an individual who is the same gender as the person whom he or she is harassing may constitute illegal sexual harassment.

Faragher v. City of Boca Raton, 524 U.S. 775 (1998)

Burlington Industries Inc., v. Ellerth, 524 U.S. 742 (1998)

United States Supreme Court joined these two cases together and rendered one ruling. The Court held that “quid pro quo” sexual harassment that does not lead to an undesired job consequence may still be illegal if the harassment created a hostile environment. Further, the Court held that employers are only “vicariously liable,” i.e. automatically liable, if the harassment led to a “tangible loss,” i.e. an undesired job consequence. If the harassment did not lead to an undesired job consequence, then employers are not liable if they can prove that (1) the employee did not reasonably take advantage of any prevention offered by the employer, and (2) the employer exercised reasonable care to prevent and promptly correct unwelcome behavior.

ApolloMedia Corporation v. Reno, Attorney General, No. 98-933 (April 19, 1999)

United States Supreme Court, without rendering an opinion, affirmed judgment of a lower court. By doing so, the Court upheld the federal 1996 Communications Decency Act that makes it a crime to send e-mails that are obscene or lewd in order to annoy or harass individuals.

Types of Sexual Harassment

	Hostile Work Environment	Quid Pro Quo
Definition	When unwelcome conduct based on the victim's sex "unreasonably interferes with work performance" or creates an "intimidating, hostile, or offensive work environment."	This for that: demanded exchange in which the victim is to grant sexual favors in exchange for the supervisor's help in retaining the victim's job or obtaining some new job benefit.
The Harasser	Supervisors, co-workers, and even by non-employees such as vendors, consultants, customers or clients.	Supervisor, person with power to influence target's employment or educational situation.
The Victim	Anyone whose work is effected by the harassment, not only the targeted individual.	The direct target of the harassment.
Unwelcome	Victim did not ask for it and regards it as offensive... How did the recipient react to it?	Victim did not ask for it and regards it as offensive; submission does not necessarily mean that sexual advance is welcome.
Frequency	Severe and Pervasive.	Once is Enough!
Tangible Loss	There does not need to be a tangible loss for a finding of a hostile environment.	If there is no tangible loss, then must analyze whether a hostile environment was created.

More about Quid Pro Quo

There are several important points to remember about quid pro quo -- sexual favors in exchange for job benefits -- sexual harassment. First, quid pro quo sexual harassment can only be committed by a supervisor or somebody in the agency who has power to give or withhold some job benefit from the harassed individual.

Second, quid pro quo sexual harassment may involve more than direct, obvious requests for sexual favors in exchange for job benefits. It may also involve indirect, implicit requests for sexual favors in exchange for job benefits.

Third, quid pro quo sexual harassment is only harassment if the conduct was unwelcome to the harassed individual. Whether the conduct was welcome to the harassed individual is determined by the individual's conduct and statements. However, acquiescence to a sexual demand and/or silence is not a sign of welcomeness. In other words, if a harassed individual participates in the sexual act(s) required of him or her because he or she was concerned for their job, their participation in the sexual act(s) does not prove that the harassment was welcome.

Last, as a result of recent Supreme Court decisions, when one proves quid pro quo sexual harassment, the agency may be automatically held liable if there was a tangible job loss to the harassed individual. This is true even if the agency didn't have any opportunity to correct the supervisor's behavior. Even if the employer has specifically prohibited the conduct, the employer will still be held liable. This is because the supervisor is considered to be the agent of the employer or the agency itself.

Checklist

- Once or more
- Stated or implied
- Unwelcome
- Demand for a sexual favor
- In exchange for a job benefit
- By a supervisor or person in authority
- Carry through on the threat
- Tangible job loss

More about Hostile Environment

While it is easy to decide if a situation is quid pro quo sexual harassment, it is often hard to determine whether unwelcome conduct of a sexual nature has created enough of a hostile or offensive workplace for a judge to consider the situation illegal hostile environment sexual harassment.

An environment will be found to be sexually harassing when there is a severe and pervasive pattern of unwelcome sexual conduct that creates a hostile, annoying or offensive work environment. In general, there must be more than one incident of harassment and the incidents (altogether) must be harmful to the victim's personal or professional well-being.

For conduct to be considered sexual harassment, it must be unwelcome or offensive to someone in the workplace. Sometimes the conduct or language is so crude that it is reasonable to assume that any listener would be offended. For example, if one employee makes sexual advances toward another using sexually derogatory and vulgar language such as, "come on slut, give me some of that." However, not all statements are so blatant and therefore it is harder to determine if the conduct is unwelcome. In these more difficult cases, *the welcomeness depends on the recipient's response to the words or conduct. Saying "I find that behavior unwelcome" is the best method of establishing that the conduct is unwelcome.* The more direct and forceful the victim is in telling the harasser to stop, the more likely the conduct will be seen (by a judge) as unwelcome.

The standards for proving "welcomeness" based on employee's conduct differ between hostile work environment harassment and quid pro quo harassment. In quid pro quo situations, an employee may be able to prove that the conduct was unwelcome even if he or she participated in the sexual conduct with the harasser. In contrast, initiation and/or participation by an employee in the sexual conduct with the harasser is proof of welcomeness in a hostile work environment situation. Therefore, consensual dating, mutual joking, group banter where everyone participates, and consensual touching do not amount to sexual harassment for any of the people participating since they participated. Beware, silent observation is not participation.

In order for the agency to be held liable for the harassment, the agency must know or have had the ability to know about the harassment and failed to do something to stop it.

Types of Behavior that may constitute sexual harassment

There may be additional behaviors that could cause a work environment to be sexually hostile.

Verbal Conduct that Might Constitute Sexual Harassment

- ◆ Direct demand for sexual favors
- ◆ Making kissing sounds, whistling, smacking, or other noises suggesting sex or cat calling
- ◆ Asking personal questions about one's sexual life
- ◆ Use of demeaning names such as "Cutie", "Sugar", "Sweetie", "Honey", "Darling", "Hey baby," "Doll," "Babe," "Hunk," "Girl," or "Boy" (when referring to an adult), "Dear," "Pussycat," or "Broad," etc.
- ◆ Referring to men or women by their private body parts
- ◆ Making sexual or sexually obscene comments or innuendoes
- ◆ Telling sexually explicit jokes or stories, telling sexist jokes or stories, turning work discussions to sexual topics, or using sexual innuendoes during work discussions
- ◆ Asking about sexual fantasies, preferences, or history
- ◆ Discussing sexual activities
- ◆ Sexual teasing
- ◆ Telling lies or spreading rumors about a person's sex life
- ◆ Making lewd or suggestive comments regarding an employee's appearance (body, clothing, anatomy or looks) or personal life
- ◆ Making sexual advances or repeated requests for dates even after recipient indicates that they are unwelcome
- ◆ Publicly berating members of one sex but not the other
- ◆ But . . . asking someone out for a date is not harassment, as long as you're prepared to take "no" for an answer.

Physical Conduct that Might Constitute Sexual Harassment

- ◆ Actual or attempted rape or sexual assault
- ◆ Touching or rubbing oneself sexually in front of another person
- ◆ Stalking; hanging around a person without legitimate reason
- ◆ Blocking, leaning over, intentionally brushing up against, or cornering a person
- ◆ Invading someone's personal space in a way that indicates a desire for sexual activity
- ◆ Giving personal gifts that are unsolicited
- ◆ Assault in retaliation of person refusing sexual advance
- ◆ Touching that is sexual in nature, such as massaging, touching a person's clothing, hair or body, hugging, kissing, patting, stroking, grabbing, pinching, hand of knee

Visual Conduct that Might Constitute Sexual Harassment

- ◆ Public displays of pornography
- ◆ Sexually suggestive graffiti
- ◆ Sexually suggestive or exploitive posters, pin-ups, calendars, cartoons or magazine clippings
- ◆ Sending sexually explicit e-mail messages
- ◆ Viewing pornography via Internet in the work environment
- ◆ Leering, eyeballing, looking someone up and down, and staring at an individual or an individual's private body parts

Hazing may constitute sexual harassment

Hazing may occur where a man or woman becomes part of a workforce that is made up entirely of members of the opposite sex. For example, when a woman joins an entirely male construction group or police force. Hazing activity that may create a sexually hostile work environment includes:

- ◆ group exclusion and shunning of a worker due to the worker's gender;

- ◆ requests by workers for the workers of the other gender to engage in group rituals to be part of the “club,” for example requesting female police officers to allow themselves to be tattooed on their behinds as a ritual for joining the “club;”
- ◆ sabotaging or making more difficult the work of the workers of different gender.

Using Technology to Sexually Harass

More and more harassers are taking advantage of technology to assist them with their harassment. The most common abuse of current technology is sending sexually harassing messages or images through e-mail. Another common abuse is viewing sexually laden sites, such as pornography, at the workstation via internet.

There are more creative abuses as well. In a recent case, an employee made a photo-montage of his co-worker in the nude by downloading a nude photograph of a model off the internet and super-imposing a photograph of his co-worker’s face in the place of the model’s face. The Court found this to be sexual harassment.

Many state legislatures are in the process of or have passed laws making it a crime to send e-mail with the intent to harass to or from computer terminals in their state. So, in addition to be a violation of sexual harassment laws, one might find oneself also violating a state criminal statute if one sends an e-mail message that is sexually harassing.

Severe and Pervasive

Upon looking through the types of conduct — listed on the previous pages — that may constitute sexual harassment, some people find themselves wondering: how can calling a co-worker “baby” a few times or ogling a co-worker once be illegal hostile environment sexual harassment? The answer is, it is not. Not all offensive sex-based behavior creates a hostile sexual harassment environment. Instead, the law requires that the unwelcome sex-based behavior be “severe and pervasive.”

The “severe and pervasive” standard can be likened to driving a car in the fog. Sometimes when the fog rolls in, it is very mild and there might be limited visibility but you can still see the cars in front and behind you. That is not a hostile environment. However, when the fog is thick and you *cannot* see the lights of the car in front or behind you, then that is a hostile environment. In other words, the atmosphere has to be saturated and thick with unwelcome sexual conduct in order for a hostile sexual harassment environment to be created.

There is no magical yard-stick or thermometer by which one can measure whether a situation is now severe and pervasive. A sexually hostile environment will exist where the offensive incidents or activities occur fairly frequently. Where the offensive events

are rare or isolated, the workplace will not be considered sexually hostile. However, different federal judges will reach different conclusions on exactly how many incidents are necessary to establish unlawful sexual harassment.

The conduct must also be severe. Some judges believe that frequent harassment in and of itself is severe. Other judges believe that the harassment must occur frequently and the actions must be egregious. The differences in judges' interpretations of the standard of "severe and pervasive" sometimes leads to startling results.

Although difficult to gauge, there are factors that assist in determining whether the conduct is severe and pervasive. Ask yourself,

- ◆ Would I be upset if someone in my family were being treated this way?
- ◆ Would I act differently if a member of my family was in the room?
- ◆ Am I making work life more difficult for my employee or co-worker because of his or her gender?
- ◆ Does the behavior "cross the line" from bad taste to unlawful employment harassment?

Don't Cross the Line: Factors to consider

- ◆ nature of conduct: whether the conduct is physical or verbal
- ◆ whether the conduct is frequently repeated
- ◆ whether the conduct is hostile and blatantly offensive
- ◆ whether the harasser is a co-worker or a supervisor
- ◆ whether the harassment is by more than one person
- ◆ whether the conduct may bother others in the work place
- ◆ whether the harassment is directed at more than just one person
- ◆ whether his or her body language indicates that he or she wants me to stop or stay away

Severe and Pervasive, What do you think?

A supervisor subjected his employee to undue attention, did not remove graffiti that implied she was having an affair with him, did not quell rampant rumors that she was having an affair with him, and limited her assignments. See Mangano v. Reno, Attorney General, 99 FEOR 3183 (EEOC Comm. 1999).

Severe and Pervasive.

A male co-worker pulled open the blouse of a female co-worker and exposed her breasts. Later that day, he tried to lure her into his office. This was the only behavior that he ever did to her that could constitute sexual harassment. In other words, it was an isolated incident. After investigation, the male co-worker was suspended for three days without pay. See Jackson v. Washington Hilton Hotel (DC 1997).

Not severe and pervasive.

Over the course of three years, a supervisor on one trip gave hotel clerks the impression that he was sharing a room with his female employee, took her to dine at Hooters, and insisted that she work in his hotel room despite her protests. The supervisor also made sexually explicit comments on and off throughout the three years. See Penry v. Federal Home Loan Bank of Topeka (10th Cir. 1998).

Not severe and pervasive.

A female co-worker was often subject to the use or display of fake penises constructed from rubber sealant by multiple co-workers, co-workers touching her breasts, verbal abuse and offensive literature. One or more of these behaviors occurred on a weekly basis over the course of 20 years. See Wilson v. Chrysler Corp. (7th Cir. 1999).

Severe and pervasive.

Domestic Violence and Soured Relations

The distinction between the work environment and one's personal life is sometimes blurred when one's significant other, or past significant other, begins behaving in a sexual manner or sexually harassing one at work. A significant other may be one's boyfriend, ex-boyfriend, girlfriend, ex-girlfriend, partner, spouse, estranged spouse, or ex-spouse.

When two employees enter into a consensual sexual relationship with another employee, this may present problems in the workplace. Domestic violence within a relationship and/or when one individual in the relationship later wants to end the relationship are two situations which may lead to sexual harassment in the workplace. The fact that the significant other has, or once had, a consensual sexual relationship with you *does not* mean that his or her current behavior of a sexual nature at work is now welcome and therefore that he or she is now allowed to sexually harass you at work.

Domestic Violence

Often times, when an abuser is no longer able to contact his or her abused significant other at home, the abuser will begin harassing at the work place. The same standards regarding sexual harassment apply, regardless of who is the harasser. In other words, if the conduct would be considered sexual harassment if just any co-worker behaved in the same manner, then it is sexual harassment even though the abuser once had a consensual sexual relationship with the abused. Individuals in abusive relationships should remember that in addition to external devices such as restraining orders and/or pressing criminal charges, employees may ask the employer to prevent sexual harassment from occurring at the work place by the abusive significant other. For more information on domestic violence, see *Domestic Violence: An AFGE Guide for Union Action*.

Soured Relationships

The employee seeking to end a relationship needs to communicate very clearly the desire to end the relationship and the unwelcomeness of any further sexual advances or conduct, *particularly further advances or conduct occurring at the work place*. Once this is stated, it should be clear that any further sexual conduct will be considered unwelcome. In addition, if either person has any type of supervisory authority over the other, that person may not threaten or engage in any job retaliation in response to the failed relationship.

Mixed Signals & Blaming the Victim

- ◆ Statistics show that most women will not confront their harasser.

- ◆ Harassed individuals may feel they have too much to lose if they were to confront or complain.
- ◆ Fear of retribution, job loss, humiliation, and not being believed are among the reasons that individuals do not complain.

The question of whether the employee welcomed the conduct becomes more difficult when the employee does not communicate clearly her feelings to the harasser. For example, a supervisor in whom an employee has no interest may ask her on a date. If she says that she is busy that night, rather than that she does not wish to date him, he may continue to ask her out. The employee may have been unwilling to communicate her real feelings for several reasons: fear of offending her supervisor; desire not to embarrass him; or general politeness. No matter what the reason for her indefinite response, it is likely unclear to the supervisor at this point that the request for dates is unwelcome. It may also later be unclear to a judge, jury or arbitrator whether the conduct was unwelcome.

It is also very important for the employee not to participate in any way with sexual conduct that she does not welcome. If she does, it may later be found that she welcomed the conduct even if she really only took part in it because of peer or other pressure. Therefore it is advised that one does not (1) reciprocate sexual touching if it is unwelcome, (2) engage in sexual banter, use vulgar language, or make sexual jokes, or (3) pinch, pat or otherwise initiate sexual contact with others if you find it distasteful yourself.

Unfortunately, society, judges, juries and arbitrators have sometimes blamed the victim for encouraging harassment when the victim had no intention of doing so. Judges, juries and arbitrators have decided against victims on the basis of conduct they see as encouraging the harasser, such as (1) using sexual mannerisms around the harasser, (2) wearing revealing or tight clothing, and (3) inviting the harasser out or otherwise initiating social contact with the harasser after the harassing events occurred.

If you are having trouble convincing others that you were sexually harassed because after the harassing events, you maintained contact with the harasser, remind them that both women and men in the workplace are encouraged “not to burn bridges.” Many victims of sexual harassment maintain cordial relationships with their harassers for years afterward because they need the harasser as a job reference or for some other similar reason.

Sexual Favoritism

Ms. Broderick, a federal lawyer, complained to her supervisor that the workplace was "run like a brothel." In her workplace, senior employees were having affairs with junior employees and rewarding them with cash bonuses and promotions, although Ms. Broderick was not involved in any affairs personally. After Ms. Broderick complained, she received poor reviews and her supervisor threatened to fire her. She sued and won the first case of sexual favoritism sexual harassment.

Sexual Favoritism requires a brothel like environment. Sexual Favoritism may not be found to exist if the allegation is merely that a Supervisor promoted his or her Spouse , however unfair that may be.

Sexual relations at the workplace can lead to discipline even if the conduct is consensual. Agencies expect employees to perform work, not social activities, at the workplace. Thus, workplace sexual activities may lead to discipline even if there is no unlawful sexual harassment. In addition, even if the sexual activity is consensual, others in the workplace may be offended.

Under the law, there is a third type of illegal sexual harassment that is a combination of the other two main types. This type of sexual harassment is called *sexual favoritism*. Not all courts recognize sexual favoritism as unlawful sexual harassment. Illegal sexual favoritism may occur when a supervisor rewards employees who participate in sexual activities but does not reward an employee who has not participated in sexual activity. This is true even if the employee who has not participated has not been asked to participate. As a result, the employee who does not participate in or approve of the behavior is penalized. It is similar to quid pro quo harassment because an employee may not receive job benefits and promotions that others who submit to sexual demands receive. It is like hostile environment sexual harassment in that the sexual atmosphere in the office makes the work environment difficult.

Since sexual favoritism sexual harassment has only been considered by some courts unlawful since 1988, the law is not yet very clear on what constitutes sexual favoritism sexual harassment and what does not. The EEOC however has said that single or isolated instances of favoritism based on a consensual sexual relationship is not unlawful to other employees, even though it may seem unfair. The favoritism must be widespread and extensive to be unlawful sexual favoritism sexual harassment.

If favoritism based on employees giving sexual favors is widespread in a workplace, both male and female colleagues who do not welcome the conduct can establish illegal sexual harassment. This is so even if they are not the targets of the sexual requests and even if those who received the favorable job treatment willingly gave the sexual favors.

The reason this type of activity is illegal is that it creates a very negative image. It implicitly tells women that the supervisors see them as "sexual playthings," which can be very demeaning for women in the workplace.

What Should I do? It is happening to me!

Saying to the potential harasser that you do not approve of his or her behavior is the best method of indicating that you find the conduct unwelcome. This will help you to stop future harassment.

According to studies, the majority of individuals who find themselves accused of sexual harassment were not aware that their behavior was offensive. These studies suggest that had the individual been told, he or she would have stopped the offensive behavior. Therefore, telling the harasser “no” may stop the conduct early on.

You are not alone if you do not feel comfortable telling the harasser to stop. In fact, studies have found that most women do not feel comfortable confronting a male harasser by saying “no” while the harassment is ongoing. If you cannot verbally tell the harasser to stop at the time of the harassment, make your wishes known through body language such as looking angry, turning away, walking away, or pushing the harasser away if the harasser is acting in an assaultive manner.

Noting your feelings in writing and presenting a copy of your letter to the harasser IN PERSON and in front of a WITNESS is another manner in which you can say “no.” Remember, before you give the harasser the letter, make a copy for yourself and store your copy in a safe place away from work. Providing the harasser with a letter will prevent the harasser from being able to claim that he or she did not know the conduct was unwelcome in the event that you later file a charge or grievance.

Organize your thoughts. Make sure in your discussion or letter to the harasser that you (1) state the specific behavior that bothers you, (2) explain how it makes you feel, (3) explain specifically what you would like to have happen next, for example, “I would like you to stop telling me dirty jokes,” or “I would like you to remove that pin-up calendar from the wall,” or “please stop hugging me.”

Sexual relations at the workplace can lead to discipline even if the conduct is consensual. Agencies expect employees to perform work, not social activities, at the workplace. Thus, workplace sexual activities may lead to disciplines even if there is no unlawful sexual harassment. In addition, even if the sexual activity is consensual, others in the workplace may be offended.

Recognize the Harassment

Trust your instincts to tell you when there is a problem. If something offends you, makes you uncomfortable, or frightens you, don't ignore it. If it feels serious it probably is serious. Recognize that you — no matter what people may say — are not at fault for a harasser's behavior. It is very common for harassed individuals to wonder if they did anything to provoke the harassment and to hold themselves responsible. Don't blame yourself. Sexual harassment has more to do with power than it does with anything else.

If you still have doubts, talk with your friends, colleagues, union steward, and/or the Women's/Fair Practices coordinator in your AFGE Local.

Confront the Harasser

If you feel comfortable, tell the harasser to (please) stop since the behavior is unwelcome to you.

Document

Gather evidence of the harassment, even if you are initially unsure that you wish to pursue the situation.

- ⇒ Keep a record of the incidents including date, time, place, and anyone who may have overheard or witnessed the event. Write down word for word what was said by all involved. Write down in detail any gestures or acts that the harasser did, if any, and your responses.
- ⇒ Ask witnesses to write down exactly what they heard or observed soon after the incident. Ask them to be detailed in their description and have them sign the statement at the end of the document.
- ⇒ If you decide to tape record the harasser, remember to check to make sure whether it is legal to do so without the harasser's knowledge of the taping in your state.
- ⇒ Look for other victims of the same harasser. Since harassers are frequently repeat offenders, ask others you can trust if they have experienced the same thing. You may find that people who have left their former positions did so because of sexual harassment.
- ⇒ Gather evidence of your good job performance. Often, harassers try to attack the victim's work performance in order to justify the harasser's behavior. Keep copies of your job evaluations and any other evidence regarding the quality of your work. This evidence may be pivotal if the harasser claims you are lying about the harassment in order to cover up your poor work performance.
- ⇒ Keep copies of any receipts or statements regarding costs that you may incur in order to seek therapy or medical intervention (doctor's notes, doctor's bills, parking receipts, other transportation costs) as a result of the sexual harassment.

Go to your AFGE Union

Talk to your steward and/or Women's/Fair Practices Coordinator and give him or her all of the details, even those that are embarrassing and unpleasant. Make sure you tell the union what you would like to have happen. The steward should have a talk with your supervisor, or if the supervisor is the harasser, go over his or her head to the supervisor's supervisor or to the labor relations staff. Often, the union steward can get an immediate conference with the highest level management official available (such as the Chief of Personnel, the Commanding Officer, or the Facility Director) when sexual harassment concerns are raised.

If management refuses to immediately take care of the problem, the union can file a grievance against management, or help you file an EEO complaint against the agency for failing to provide a work environment free of sexual harassment.

If the harasser is a union member, there are several ways for the union to deal with the problem. After investigating the situation, the steward may speak to the member directly and ask the member to stop, or, if the member refuses to stop involve management. Additionally, the union can take internal union action. The AFGE Constitution provides that union members shall not engage in conduct unbecoming a union member. A member who sexually harasses another member is not upholding this clause of the Constitution.

Complain to the Agency's EEO Counselor

Although the EEO Counselor is not there to represent you, the counselor may be able to help you get the harasser to stop. Additionally, if you ever decide to file a formal charge with the EEOC or bring a civil suit, the law requires you to have first contacted the EEO Counselor within 45 days of the last time you were sexually harassed.

What Should I Do? Checklist

- Recognize the Problem
- Say No
- Gather Evidence
 - Evidence of the Harassment
 - Evidence of your work performance
- Go to AFGE
 - Union Steward
 - Local Women's Coordinator
 - Organize!
- Go to the Agency's EEO Counselor

- Within 45 days of harassment
- Your union representative can come with you!

Don't forget, in order for the agency to be ultimately liable in situations of a hostile work environment, they must KNOW about the harassment. Complaining to the EEO Counselor means that the agency knows!

Agency Liability

	Quid Pro Quo	Hostile Work Environment
Harassment by Supervisor	Strict Liability	Agency is vicariously liable if it can demonstrate that: (1) no tangible work detriment occurred, & (2) the Agency exercised reasonable care to prevent and promptly remediate the behavior, & (3) the employee unreasonably failed to take advantage of any preventive or corrective opportunities offered by the employer. <u>Burlinton Industries, Inc. v. Faragher v. City of Boca Raton</u>
Harassment by Co-Worker	n/a	Employer liable if it knew or should have known of the harassment and failed to take immediate and appropriate corrective action.
Harassment by Non-Employee	n/a	Employer liable if it knew or should have known of the harassment and failed to take immediate and appropriate corrective action within its control.

Once quid pro quo harassment is proven to have occurred, the agency is automatically responsible. In order for the agency to be held liable for a hostile environment (or for sexual favoritism), the agency must know or have had the ability to know about the harassment and failed to do something about it.

There are three basic situations in which the agency will be considered to know about the sexual harassment. First, when the harasser is the supervisor or a management level employee. Second, when someone tells a supervisory employee, management or the EEO counselor. Third, when it is such common knowledge that practically everyone knows. When the agency knows in one of these three ways, then the agency must take action that is necessary to correct the problem. At a minimum, the agency needs to investigate the situation and discipline the harasser if the investigation reveals harassment.

As a result of the November 21, 1991 signing of the 1991 Civil Rights Act, federal employees are now entitled to compensatory damages. Compensatory damages are awards of money for actual losses suffered for intentional discrimination. Compensatory damages include lost employment benefits, medical costs, "out of pocket" expenses, pain and suffering, and emotional distress that resulted from the discrimination.

Soon after the 1991 Act went into effect, the Equal Employment Opportunity Commission (EEOC), the Merit Systems Protection Board (MSPB) and arbitrators began awarding compensatory damages. On June 14, 1999, the Supreme Court held in West v. Gibson that the EEOC is entitled to award compensatory damages.

Compensatory damages are capped at \$300,000. In other words, an employee can only receive up to \$300,000 in compensatory damages even if more was lost. Remember that this cap is a ceiling: one is not automatically entitled to \$300,000.

Make your claim for compensatory damages with the agency as early as possible, and be creative but reasonable!

Statistics of Interest

More than half of employees with access to the Internet at work have received adult-oriented, racist, sexist or improper e-mail at work. "Money," USA TODAY Pg. 1B (April 5, 1999).

Almost seventy percent (70%) of respondents in an NBC News poll say calling a co-worker 'babe' or 'honey' is offensive. "Washington Wire," Wall Street Journal, Pg. A1 (April 24, 1998).

Seventy-seven percent (77%) of respondents in an NBC News poll say telling dirty jokes in the office is offensive. "Washington Wire," Wall Street Journal, Pg. A1 (April 24, 1998).

Fifty-nine percent (59%) of respondents in an NBC News poll believe that asking a co-worker for a date is permissible, but eighty-nine percent (89%) say it is not permissible

to ask repeatedly after being refused. "Washington Wire," Wall Street Journal, Pg. A1 (April 24, 1998).

Fifty percent (50%) of respondents in an NBC News poll disapprove of asking a co-worker of the opposite sex about his or her private life. "Washington Wire," Wall Street Journal, Pg. A1 (April 24, 1998).

Only thirty-three percent (33%) of respondents in an NBC News poll find hugging a co-worker of the opposite sex offensive. "Washington Wire," Wall Street Journal, Pg. A1 (April 24, 1998).

In a survey of 456 (private-sector) companies, forty-three percent (43%) of the claims of sexual harassment were against a direct supervisor or other superior, fifty percent (50%) of the claims were against a co-worker, and the remaining seven percent (7%) were against a customer or vendor. Grimsley, "Co-Workers Cited in most Sexual Harassment Cases," Washington Post Pg D1 (June 14, 1996).

In a survey of 313 (private-sector) companies that in total had 1,335 claims of sexual harassment, the alleged harasser was reprimanded in thirty five percent (35%) of the claims, there was mediation &/or counseling for parties in thirty-five percent (35%) of the claims, the alleged harasser was terminated in sixteen percent (16%) of the claims, the allegation was dismissed in fifteen percent (15%) of the claims, the complainant was transferred in four percent (4%) of the claims, and the alleged harasser was transferred in three percent (3%) of the claims. Grimsley, "Co-Workers Cited in most Sexual Harassment Cases," Washington Post Pg D1 (June 14, 1996).

Sexual harassment costs a typical Fortune 500 company \$6.7 million per year in absenteeism, low productivity, and employee turnover. Training and Development (March 1999).

Effects of Sexual Harassment

Sexual harassment may have a terrible impact on the victim in several ways: psychologically, physically and economically. It can also affect the victim's family, sometimes very seriously. Finally, even seemingly insignificant harassment can hurt the union and the employer in many short-term and long-term ways.

Psychological Effects On The Victim

Sexual harassment victims can suffer a wide range of emotional reactions. While some victims may suffer severe depression, many suffer from self-blame, self-doubt, humiliation, loss of interest in work, frustration and powerlessness, anger and loss of trust.

Self-blame, self-doubt and humiliation.

Common emotional reactions to sexual harassment are self-blame, self-doubt, and humiliation. Victims often react to sexual harassment by blaming themselves for the actions of the harasser. They wonder what they are doing wrong, whether they are dressing the wrong way, talking the wrong way, or acting the wrong way. Some victims try to make themselves unattractive hoping that this will stop the harassment. For example, they might try to gain weight or wear unattractive clothing. Victims also blame themselves for not promptly or ever telling the harasser to stop. Victims are afraid that people will believe that they "let it happen."

All of this self-blame can lead to self-doubt, another common reaction to sexual harassment. Victims of sexual harassment may come to feel that they are inferior and unworthy, which can then lead to even worse psychological reactions. Victims of sexual harassment also suffer from humiliation. They feel embarrassed and demeaned that they are being treated like sexual objects instead of people there to do a job in the workplace.

Loss of interest in work.

Many victims of sexual harassment come to feel a serious lack of interest in their job. They are unable to enjoy their work and dread going there each day.

Frustration and powerlessness.

Victims also feel frustrated and powerless. They are frightened that, if they fight the harassment, they may lose their jobs, which they can't afford to do. If they don't fight the

harassment, however, they find themselves losing their self-respect and self-esteem. Because they don't know what to do, they feel powerless to do anything.

Anger.

Victims frequently feel extreme anger and rage toward their harasser. Unfortunately, this anger often remains pent-up for many years, because many victims feel they cannot tell anyone about it. Many feel they can't confront the harasser, for fear of job loss or the perception of other workers that they are too sensitive. Many feel they cannot tell their spouse or partner because of how that person might react. Finally, many feel they cannot tell friends because it is too personal, embarrassing and humiliating.

Loss of trust.

Victims sometimes develop a lack of trust in the other gender in general. They are frightened of other men or women in the workplace or others they see on the street. In severe cases, they sometimes lose trust in their spouses or partners. As a result of this loss of trust, sexual harassment victims may later find it difficult to work outside of the home.

Depression.

The most severe psychological reaction that victims of sexual harassment tend to suffer from is clinical depression. Clinical depression is characterized by extreme sadness or loss of interest in usual activities and pastimes and at least four of the following things nearly everyday for at least two weeks:

- * poor appetite or weight loss;
- * increased or decreased sleep;
- * loss of interest or pleasure or decreased sex drive;
- * loss of energy or fatigue;
- * feelings of worthlessness or guilt;
- * decreased concentration;
- * thoughts of death.

Physical Effects On the Victim

Victims of sexual harassment can also suffer physical effects from the harassment. Victims have suffered from a variety of physical ailments as a result of their harassment. Some of them include:

- * headaches;
- * backaches;
- * nausea, throwing up or other stomach ailments;
- * fatigue or sleeping disorders;
- * eating disorders;
- * hair falling out in clumps;
- * lowered immune system due to stress attacks.

The physical effects can be so severe that victims may end up in the hospital.

Economic Effects On The Victim

In addition to the psychological and physical effects, victims of sexual harassment also may suffer negative economic effects. The negative economic effects can come about for several reasons. First, the victim may lose his or her job for refusing to submit to sexual advances and have to settle for a lower paying position. Second, one may quit the job in order to end the harassment, causing job interruption and possibly the need to accept a lower paying position. The long term effects of job interruptions like these can be: forfeiting time accrued toward a pension or seniority, loss of health benefits, and concern by employers that the individual is not reliable. Third, in order to avoid the harassment, one may avoid job duties or opportunities that one would otherwise accept. Doing this may have a negative effect on one's career advancement. Finally, the victim may wind up with high doctor, counselor or attorney bills to pay off as a result of the harassment. See "Compensatory Damages," on page 20.

The Steward's Role

A Member Comes To You

Listen. The first thing you should do when a member comes to you with a sexual harassment problem is listen to the complaint. Be understanding and responsive. Try to get as many details as you can; but remember that it may be very difficult for the victim to talk in detail about the events.

Reassure Victims frequently fear they will be blamed, publicly shamed or threatened with reprisals. You should let the victim know that you are concerned and that the union is seriously interested in helping her or him solve the problem and will do whatever it can to guard against her fears.

Build If you think the incident is grievable, begin to build a case. Encourage the victim to make a record, including time, place and details of the incidents. Try to get witnesses. Try also to inquire discreetly to see if there are other victims at the workplace.

Maintain Maintain the confidentiality of the victim and of the harasser. Both people will feel like they have their reputations on the line and the victim may fear more reprisal the more widely circulated the story. Do what you need to do to investigate, but try to be sensitive to these issues.

Grieve If the union grieves the complaint, management may seek to solve the problem by transferring either the harasser or the victim. Depending on the victim's wishes, you should insist that if anyone is to be moved, it should be the harasser, not the victim. If the victim requests a transfer, you should demand that the job be of equal status and pay. You should also emphasize to management that transferring the harasser may only create a harassment

situation in another workplace. Other forms of discipline should be examined (e.g., threats of firing if sexual harassment reoccurs).

Education for all Members

Part of your role as union steward is to educate yourself and the members. A solution to sexual harassment in the workplace begins with an understanding of the problem. You can take advantage of a variety of formal and informal educational methods, such as:

- Attend conferences and seminars about sexual harassment and/or the grievance process;
- Distributing AFGE's mini-brochures & any other materials on the subject;
- Making sure the AFGE Sexual Harassment poster provided by the Women's Department is hung in a prominent place;
- Introducing the topic at coffee break, for example.

WHAT CAN THE UNION DO?

There are many things that local unions can do to fight sexual harassment. The main goals should be to educate union members, make them sensitive to the problem, and to create a climate that discourages sexual harassment and encourages victims to turn to the union for assistance when it occurs.

Educate The Members

Local unions can help educate union members by:

- * Distributing education material to inform members about sexual harassment, including this booklet, AFGE's mini-brochures "Sexual Harassment In The Federal Government" and "Sexual Harassment In The D.C. Government," the AFGE Sexual Harassment poster, and any other appropriate materials;
- * Including articles on sexual harassment in the newsletter;
- * Encouraging discussion of the topic at local and executive meetings;
- * Sponsoring seminars on sexual harassment;
- * Including the topic of sexual harassment at conferences --and not just women's conferences;

- * Including training on handling sexual harassment grievances as part of your steward training program.

Show The Membership That It Matters

The union should think about ways to impress upon the membership the seriousness of sexual harassment and the local union's commitment to ending it. Consider:

- * Establishing an anti-sexual harassment policy through local or council resolutions;
- * Determining the extent of the problem in the workplace by surveying the membership (anonymously);
- * Supporting efforts to expand protection for victims of sexual harassment (such as laws that require employers to educate and train workers, laws that broaden penalties for employers who allow harassment, and laws that make it easier for victims of sexual harassment to collect unemployment compensation if they leave a job).

Negotiate Protection

Local union leadership should study the present union contract language on discrimination to determine whether it is adequate to deal with sexual harassment. If not, additional protections should be negotiated. Some important protections the union should seek to include are:

- * A statement in the antidiscrimination clause that sexual harassment is a form of sex discrimination. This will tell the union members and agency officials that the issue is important, and ensure that sexual harassment will be covered by the grievance procedure;
- * A requirement that arbitrators in sexual harassment cases have prior experience or training in the area;
- * Making sexual harassment grievances among those cases eligible for an "expedited procedure," which allows the grievance to skip the initial steps of the grievance process.

Designate A Union Contact For Complaints

Because victims are often reluctant to bring their complaints to a steward who may not be sympathetic, the local union should think about designating a particular person as the union contact for sexual harassment complaints. Once this is done, the union should make sure that the person or people chosen get additional training on how

to deal with sexual harassment problems. Union leadership should make sure the membership knows who is the contact person for sexual harassment problems.

The union should exercise great care in choosing the contact person. Because most sexual harassment victims are women, the union should probably designate a woman for this position. This may make it easier for victims to tell the union contact about what is happening. In addition, the union should choose someone who is well-respected, intelligent and understanding. A logical choice for most AFGE Locals will be the Local Women's Coordinator.

Questions and Answers

After reading this booklet, you should have a good understanding of sexual harassment and how to combat it. You may still have some questions, however. Below are some of the most common questions. If you need more specific information, you should contact your elected District Women's Coordinator or the AFGE Women's/Fair Practices Department.

Q Can my supervisor be held legally liable for harassment, or is it just the agency?

A Federal employees can only sue the head of the agency for most forms of sexual harassment. This is in sharp contrast to the private sector where it is typical for individual supervisors to be held personally liable for harassment.

Q Shouldn't women who join mostly male workforces have to put up with rough language, dirty jokes and some hazing? After all, the men are treating the women the same as they treat each other.

A There is an ongoing myth that men in mostly male work environments treat the women who join just like they treat each other. This is not necessarily true. Instead, some men in these environments increase their use of foul language and sexual conduct to make it more difficult for the new women to succeed. In some lawsuits, courts have held that increased sexual conduct that results from a woman joining a mostly male workforce is illegal sexual harassment.

Q Don't people in the workplace find it complimentary when others whistle at them, give them gifts, or make sexual comments to them?

A Very frequently -- NO! Mostly people feel humiliated and degraded by this behavior. Victims understand sexual harassment for what it is -- a power play using sexual conduct as a weapon. It is a weapon to make the victim feel like a sex object, rather than a valuable employee.

Q Is sexual harassment of men, either by a woman or a man, illegal?

A Yes. Although sexual harassment is generally committed by men against women, men also can be targets of illegal sexual harassment. Unwelcome sexual conduct against workers of either sex may be the basis for a case of illegal sexual harassment.

Q Isn't it true that many women lie about being sexually harassed, either to cover up for job problems or to get back at men who have hurt them in some way, or fantasize the whole situation?

A NO. A survey of Fortune 500 managers that Working Woman magazine (December 1988) conducted showed that false reports are rare. People in the workplace have very little incentive to lie about being sexually harassed. Unfortunately, victims are too often blamed for the problem and often suffer career detriment from coming forward. That is why sexual harassment often goes unreported. In a recent study mentioned in Training and Development (March 1999), forty to ninety percent (40-90%) of women report having been the victims of some form of sexual harassment on the job. Yet, only ten to fifteen percent (10-15%) of those women "responded assertively" or reported the incident. More than fifty percent (50%) of the women stated that they did nothing in response to the harassment.

Q When my supervisor persistently yells at me and others, using swear words that are not sexually oriented, is he guilty of sexual harassment because he is a man and I am a woman?

A When a supervisor yells at employees in a nonsexual way, that is not sexual harassment simply because the supervisor is a man and one of the employees is a woman. If however the supervisor persistently uses sexually abusive language or persistently yells at an employee because of her sex, that is likely sexual harassment. If your supervisor is yelling at you, but it is not sexual harassment, you likely still have rights you can pursue. Your union contract likely spells out that supervisors must treat employees with fairness and respect, or has other similar language. If it does, you can pursue your rights under the contract.

Q Can my employer be held responsible for harassment by people outside the government -- such as customers, contractors, or vendors?

A Your employer has the obligation to provide a workplace free from unlawful sexual harassment. This may be more difficult when the harasser is a not another employee but the employer must try to eliminate the behavior in any event.

Q Won't cracking down on sexual harassment make the workplace boring and too serious?

A On the contrary, cracking down on sexual harassment will make the workplace more enjoyable for everybody. Policies against sexual harassment are directed at repeated, unwelcome sexual harassment. They are not directed at friendly and mutually enjoyable interaction that doesn't offend those involved or others. It is the offensive interactions that sexual harassment policies and laws are trying to stop. These types of interactions usually involve assertions of power, not mutually enjoyable, affectionate, or romantic feelings.

Development of the Law

- 1964** The Civil Rights Act of 1964 becomes law. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, national origin, and sex. There is no mention of sexual harassment in the law or its legislative history.
- 1975** Former female employees charge that their male supervisor forced them to quit with his offensive sexual advances. This is not sex discrimination, a court finds, only a “personal urge” of the supervisor. Corne v. Bausch & Lomb, Inc., 390 F. Supp. 161 (D. Ariz).
- 1976** The humiliation and termination of a female employee by her male supervisor because she rejected his sexual advances, if proven, would be sex discrimination, a court rules, because it was an artificial barrier to employment that was placed before one gender and not the other. Williams v. Saxbe, 413 F. Supp 654 (D.D.C.).
- 1977** This case was an appeal from a trial court decision finding that a male supervisor did not discriminate on the basis of sex against a female employee when he solicited from her sexual favors because he found her “attractive” and then retaliated when she rejected his advances and he felt “rejected.” The appeals court rules that if a female employee was retaliated against because she rejected the sexual advances of her boss, this is sex discrimination in violation of Title VII. Barnes v. Costle, 561 F.2d 983 (D.C. Cir.).

1980 The Equal Employment Opportunity Commission (EEOC), the agency that enforces Title VII, issues guidelines interpreting the law to forbid sexual harassment as a form of sex discrimination. 29 C.F.R. 1604.11.

1981 For the first time a federal appeals court endorses the EEOC's position that Title VII liability can exist for sexual insults and propositions that create a "sexually hostile environment," even if the employee did not lose any tangible job benefits as a result. Bundy v. Jackson, 641 F.2d 934 (D.C. Cir.).

In another case, a federal district court decides that firing a male employee because he rejected the sexual advances of his male supervisor violates Title VII. The discrimination was based on the employee's gender, because a similarly situated woman would not have had sexual demands made of her, the court decides. Wright v. Methodist Youth Services, 511 F. Supp. 307 (N.D. Ill.).

1983 An employer that had a policy forbidding sexual harassment is held liable for the sexist name-calling of a female air traffic controller because it failed to take corrective action when the employee complained. Katz v. Dole, 709 F.2d 251 (4th Cir.).

1985 Physical violence can amount to sexual harassment, an appeals court says, even if the conduct is not overtly sexual. All that is necessary, the court rules, is that the unwelcome conduct be on the basis of the victim's gender. McKinney v. Dole, 765 F.2d 1129 (D.C. Cir.).

1986 Addressing the sexual harassment issue for the first time, the Supreme Court ruled that a woman who had sex with her boss a number of times because she was afraid of losing her job if she refused could sue for sexual harassment. The question is not whether the employee's conduct was voluntary, but whether the boss's conduct was unwelcome, the Court explains. An employer can be held liable for sexual harassment committed by its supervisors if it knew or should have known about the conduct and did nothing to correct it, the Court adds. Meritor Savings Bank v. Vinson, 477 U.S. 57.

1988 Male construction workers haze three female colleagues. Even though some of the conduct was not specifically sexual in nature, it occurred because of the female employees' gender. Such gender based harassment is prohibited by the law, a court of appeals finds. Hall v. Gus Construction Co., 842 F.2d 1010 (8th Cir.).

1990 The EEOC issues a policy statement saying that sexual favoritism is a form of sexual harassment; it takes the position that isolated incidents of consensual favoritism do not violate Title VII and that sexual favoritism does violate the law when the advances are unwelcome or the favoritism is so widespread that it has become an unspoken condition of employment.

1991 A sexually hostile environment violating Title VII is found where women are a small minority of the work force and crude language, sexual graffiti, and pornography pervade the workplace. Title VII is “a sword to battle such conditions,” not a shield to protect pre-existing abusive environments, the court declares. Robinson v. Jacksonville Shipyards, 760 F. Supp. 1486 (M.D. Fla.).

In another case a court finds that male and female sensibilities differ, and the appropriate standard to use in sexual harassment cases is that of a “reasonable woman” rather than a “reasonable person.” The court concludes that the conduct in question - unsolicited love letters and unwanted attention - might appear inoffensive to the average man, but might be so offensive to the average woman that it creates a hostile working environment, the court rules. Ellison v. Brady, 924 F.2d 872 (9th Cir.).

The Senate Judiciary Committee conducts hearings on the nomination of Judge Clarence Thomas to Associate Justice of the United States Supreme Court. At issue is whether, while he was chairman of the EEOC, Thomas sexually harassed female assistant Anita Hill, now a law professor. The alleged conduct occurred in private, Hill did not officially report it, and she continued to freely associate with Thomas even after she changed jobs. Although some senators believed Hill’s charges, the Senate nevertheless voted to give Thomas a seat on the Court. The hearings brought the issue of workplace sexual harassment out in the open, however, and began an ongoing debate between men and women over just what harassment is and what should be done about it.

The Civil Rights Act of 1991 becomes law. Among its provisions is Section 1981a, a provision for jury trials and compensatory damages when intentional discrimination, including sexual harassment occurs. At the request of AFGE, the Senate amended Section 1981a to include language specific language to extend this right to federal employees.

1992 Sexual harassment returns to front-page status with new publicity about the Navy’s Tailhook scandal. After an initial delay, the Navy investigated allegations that women attending a convention of naval personnel at a Las Vegas hotel were forced to run through a gauntlet of male personnel and subject themselves to unwelcome touching. The investigation of these and similar allegations led to the discipline of several high ranking naval officers for permitting the situation to occur.

Addressing the issue of sexual harassment in public schools, the Supreme Court rules that a high school student can collect money damages if she can prove her claim that her high school took no action to halt sexual harassment against her by one of her male teachers. Franklin v. Gwinnett County Public Schools, 503 U.S. 60.

A study by Working Woman magazine reports that over 62 percent of readers polled had experienced sexual harassment, but only 26 percent reported the harassment to their organizations.

1993 In its second decision on sexual harassment in employment, the Supreme Court rules that an employee claiming a sexually hostile environment need not prove any tangible psychological injury or serious effect on "psychological well being." The lower courts held that a hostile environment exists only if it affects a person's psychological well-being and therefore interferes with work performance. The Supreme Court reversed, holding that, even though a discriminatorily abusive work environment may not seriously affect an employee's psychological well-being, it still may affect job performance or advancement and so proof of psychological harm is not necessary for a successful suit. It is enough if (1) the employee subjectively perceives a hostile work environment as a result of gender-based conduct and (2) the conduct was severe or pervasive enough to create an objectively hostile work environment - one that a reasonable person would find hostile. Harris v. Forklift Systems, 114 S. Ct. 367.

A mining company in northern Minnesota is found liable in the first successful sexual harassment lawsuit by a group. Over 100 individuals are in the class of women who experienced sexual harassment. Jensen v. Eveleth Taconite Co., 61 FEP Cases 1252, 824 F. Supp. 847 (D. Minn.).

The EEOC issues proposed guidelines on workplace harassment. The guidelines would apply to harassment on the basis of gender that is not sexual in nature, as well as harassment on the basis of race, color, religion, national origin, age, or disability. The 1980 EEOC guidelines covered harassment consisting of conduct that is sexual in nature. The proposed guidelines issued in 1993 make it clear that harassment that is not sexual in nature but is based on gender is also forbidden by Title VII.

1994 The issue of sexual harassment once again becomes front-page news when a federal lawsuit is filed against President Clinton alleging that he sexually harassed a woman in 1991 when he was the governor, and she was an employee, of the State of Arkansas. The allegation is that Governor Clinton misused his authority in an effort to obtain sexual favors from a state employee.

In its third case involving sexual harassment in employment, the Supreme Court holds that provisions of the Civil Rights Act of 1991 that liberalize remedies regarding jury trials and damages do not apply to cases that arose before the 1991 Act took effect. Landgraf v. USI Film Products, 511 U.S. 244.

1995 California Court held that an employer's obligation to take remedial/corrective action after it learns of sexual harassment, does not end because of the voluntary termination of the conduct by the harasser. Fuller v. City of Oakland, 47 F.3rd 1522 (1995).

- 1996** A federal court upholds the dismissal of a manager who was fired for disregarding his boss's order not to discuss an ongoing sexual harassment investigation with other employees. The court rejects the manager's argument that he had been engaged in activity protected by law when he discussed the investigation with another employee. Morris v. Boston Edison Co, 942 F.Supp. 65 (D.Mass.).
- 1996** A federal court upholds the dismissal of a female employee who made unfounded harassment charges against a male manager after their romantic relationship had ended. Cerwinski v. Insurance Services Offices, 1996 WL 562988 (S.D.N.Y.).
- 1997** US Supreme Court decides that a civil law suit alleging sexual harassment can go forward during the presidency of the President of the United States and should not be delayed until his term in office ends. Jones v. Clinton (1997).
- A U.S. appeals court rules that a sexual harassment investigation need not be perfect and that the employer need not take the action the complainant suggests, so long as the action is reasonably calculated to prevent harassment. Knabe v. Boury Corp., 114 F.3d 407 (3rd Cir.).
- 1998** Supreme Court holds that sexual discrimination consisting of same sex sexual harassment is actionable under Title VII. Oncale v. Sundower Offshore Services, Inc., 523 U.S. 75.
- 1998** Supreme Court holds that employers are vicariously liable for supervisory acts that cause a hostile work environment but does not result in tangible work detriment for employees, unless, (1) the employer has exercised reasonable care to correct the problem and (2) the employee has failed to reasonably avoid harm. In the instant case, the employer is vicariously liable for the supervisor's act that cause the hostile work environment for it failed to exercise reasonable care when it failed to disseminate sexual harassment policy, failed to track conduct of supervisors, and failed to give employees assurances that harassing supervisors could be bypassed when registering complaints. Faragher v. Boca Raton, 524 U.S. 775.
- 1998** Supreme Court holds that sexual harassment (in the form of an unfulfilled *quid-pro-quo*-like threat) by a supervisor against a worker is actionable when the harassment was severe and pervasive but did not lead to adverse job consequences under the rubric of hostile work environment. Ellerth v. Burlington Industries, 524 U.S. 742.

- 1998** A federal district court, applying the new Ellerth/Faragher rule, dismisses a hostile environment claim by an employee because she failed to report the harassment promptly. Montero v. AGCO Corp., 19 F.Supp. 2d 1143 (E.D. Cal.).
- 1999** Supreme Court, in a 5-4 vote, holds that EEOC has authority to award compensatory damages to federal employees. Adopting the argument presented in AFGE's *amicus* brief, the Court overturns two court of appeals cases which had found that compensatory damages were only available in federal court. West v. Gibson (June 14, 1999).