

# SEXUAL HARASSMENT IN THE WORKPLACE

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TRUE OR FALSE?



## 2 QUESTION 1

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If your intentions are good, your behavior isn't harassment.

- A. True
- B. False

### 3 ANSWER

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FALSE

Harassment depends upon how the conduct is received, and not the intent.



A “Reasonable Person” Standard is employed.

## 4 QUESTION 2

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If everyone else thinks a co-workers behavior is OK, you should just accept it, even if it bothers you.

- A. True
- B. False

## 5 ANSWER

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FALSE

If you find another employee's conduct offensive, you should report it before it becomes severe or pervasive.

## 6 QUESTION 3

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If an employee reports sexual harassment to supervisor, but asks that the supervisor not report or investigate the harassment, the supervisor should respect the wishes of the victim.

- A. True
- B. False

## 7 ANSWER

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FALSE

Supervisors and administrators are obligated to report unlawful workplace harassment. Once they are on notice, the District is on notice, and must comply with its legal obligation to investigate and appropriate action.

## 8 QUESTION 4

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If an employee complains about workplace harassment, and an investigation does not prove the allegations to be true, the reporting employee can be disciplined for filing the complaint.

- A. True
- B. False



## 9 ANSWER

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FALSE

Employees who report workplace harassment are protected by the law against retaliation. This includes retaliation by the alleged perpetrator, or anyone on their behalf, as well as retaliation by a supervisor. Any suspected retaliation should be immediately reported to the District for appropriate action.

## 10 QUESTION 5

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If a co-worker texts you offensive photos to your personal device outside of work hours, this is not something that the District needs to investigate.

- A. True
- B. False

# || ANSWER

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FALSE

The District is responsible for investigating any conduct alleged to be creating a hostile work environment for an employee. This includes conduct that happens outside of work or involves an employee's personal technology device(s).

## 12 QUESTION 6

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If an employee willingly extended a friend request to a supervisor or co-worker on social media, and then becomes uncomfortable with the other person becoming too familiar, the employee should report this to a supervisor/administrator.

- A. True
- B. False

## 13 ANSWER

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TRUE

Again, if the conduct is creating a hostile work environment, regardless of whether the contact was initially voluntary, it is the District's obligation to investigate and take action as appropriate.

## 14 QUESTION 7

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HR may need to tell an employee if his/her physical gestures, such as tight hugging or shoulder massages, are making others uncomfortable.

- A. True
- B. False

# 15 ANSWER

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TRUE

This would fall under the “Reasonable Person” Standard with regard to what is acceptable behavior in the workplace.

While some employees would opt to tell a coworker directly that they do not like the way they are touching them, not everyone feels comfortable doing that, and thus may prefer to bring their concern to an administrator for appropriate action.

Administration will let the employee know that the conduct is unwelcome.

There is a qualitative difference between giving a hug to say hello and rubbing someone’s shoulders when it is not welcome contact.



## 16 QUESTION 8

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If an employee repeatedly makes sexual jokes in the teachers' lounge, and no one involved in the conversation complains, the District bears no responsibility for the employee's conduct.

- A. True
- B. False



# 17 ANSWER

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FALSE

Sexual jokes in the workplace are never ok and can create a hostile environment for anyone who hears them. It is the District's responsibility to address this conduct.

## 18 QUESTION 9

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A single incidence does not need to be reported or investigated, as it cannot constitute harassment.

- A. True
- B. False

## 19 ANSWER

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FALSE

While generally harassment must be repeated and or pervasive to be actionable, one severe incident may be sufficient to create a hostile environment.

The employee should report the conduct, so that it can be investigated by the District and so appropriate action can be taken.

## 20 QUESTION 10

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Terms of endearment (honey, sweetie, darling) may be considered verbal sexual harassment.

- A. True
- B. False

## 21 ANSWER

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TRUE

Unwelcome terms of endearment can make a person uncomfortable and constitute sexual harassment.

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# SEXUAL HARASSMENT AT WORK

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UNDERSTANDING WHAT IS AND WHAT IS NOT SEXUAL HARASSMENT



## 23 FACT PATTERN I

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- Employee alleges that her coworker made repeated unwelcome sexual advances toward her.
- An investigation discloses that the alleged “advances” consisted of various invitations to join a group of employees who regularly socialized at dinner after work.

Sexual Harassment?

## 24 ANSWER

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### NOT Sexual Harassment

The coworker's invitations, viewed in that context and from the perspective of a reasonable person, would not have created a hostile environment and therefore did not constitute sexual harassment.



## 25 FACT PATTERN 2

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- Female employee alleges that her supervisor subjected her to unwelcome sexual advances that created a hostile work environment.
- The investigation into her complaint discloses that her supervisor began making intermittent advances in 2014, but she did not complain to the administration about the harassment.
- In 2016, she filed an official complaint after the conduct continued and worsened.
- The female employee, in explaining why she waited so long to report the conduct, stated that she feared she would lose her job and that she thought she could resolve the conduct on her own.

Does the employee's failure to report the conduct for two years undercut her claim?

## 26 ANSWER

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No.

In this instance, the investigator determined that the female employee was credible and concluded that her delay in reporting the conduct did not impact her credibility or undercut her claim.

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# SEXUAL HARASSMENT AT SCHOOL

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YOU BE THE JUDGE



## 28 FACT PATTERN I

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A male student is regularly teased by other students, and mean notes and threats are regularly left in his locker merely because he is new to the school. The behavior has become persistent.

How should this conduct be investigated?

- As bullying?
- As gender-based harassment?

## 29 ANSWER

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On its face, this appears to be an issue of bullying, and should be investigated as such.

If facts arise throughout the investigation process that indicate the male student is being targeted on the basis of protected class (gender, race, religion etc.), then the investigator should treat it as an issue of civil rights harassment/discrimination.

## 30 FACT PATTERN 2

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A female and male student get into a fight over a seat on the school bus, but there is no history of conflict between the two students nor does the fight seem to be based on the students' genders.

How should the investigation of this incident be conducted?

- As basic student discipline?
- As bullying?
- As gender-based harassment?

## 31 ANSWER

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On its face, this would appear to be simply a student disciplinary matter and, absent additional information to the contrary, should be handled as such.

## 32 FACT PATTERN 3

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- Noelle, a female student, did not conform to normal female stereotypes.
- Noelle was regularly called names by classmates such as “slut,” “whore,” and “fat ass” beginning in middle school and the behavior continued throughout high school.
- Noelle was also physically assaulted by her classmates on numerous occasions.
- In order to support her Title IX claim, the harassment Noelle endured must have been on the basis of sex.
- How should the judge decide?



## 33 THE RULING

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- The court held that the name calling and assaults appeared to have been based on sexual stereotyping because Noelle did not conform to female stereotypes.

See *Harrington v. City of Attleboro*, 172 F. Supp. 3d 337 (D. Mass. 2016)

## 34 FACT PATTERN 4

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- J.R. was a Hispanic middle school student who was 5'4" and weighed 260 lbs.
- J.R. was constantly bullied and harassed by peers because of his weight, physical appearance and race.
- J.R. alleged that classmates harassed him on a daily basis because of his female like appearance and their actions questioned his sexuality and manhood.
- In court, the Defendant moved to dismiss J.R.'s Title IX claim due to his failure to allege harassment based on sex.
- How should the judge decide?

## 35 THE RULING


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- The court DENIED the Defendant's Motion to Dismiss the Title IX claims because the Plaintiff had sufficiently pled that J.R. was bullied and harassed because of his failure to conform with male gender stereotypes and not merely the target of verbal statements with offensive sexual connotations.

*See Reed v. Kerens Indep. Sch. Dist.*, No. 3:16-CV-1228-BH, 2017 WL 2463275 (N.D.Tex. June 6, 2017)

## 36 FACT PATTERN 5

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- 5<sup>th</sup> grade student LaShonda alleged that she endured harassment by her classmate, G.F.
  - Specifically, LaShonda alleged that G.F. attempted to touch her in private areas, directed vulgarities at her, and behaved in a sexually suggestive manner toward her. LaShonda described eight separate instances of sexual harassment, occurring on average once every 22 days over a six-month period.
  - The incidents were reported to LaShonda's teachers and building principal, and each incident was addressed on a separate, individual basis.
  - Although G.F. was threatened with disciplinary action, G.F. persisted.
  - LaShonda's mother brought suit on LaShonda's behalf against the school board, the teachers involved and the building principal. The complaint alleges that the "deliberate indifference" by the school board and its employees to the unwelcome sexual advances of G.F. upon LaShonda created an intimidating, hostile, offensive and abusive school environment in violation of Title IX.
  - How should the judge decide?
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## 37 THE RULING

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- The judge held that the Title IX damages action may proceed against school board and employees for student-on-student harassment, but only where the school is deliberately indifferent to sexual harassment, of which the school has actual knowledge, and that harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.

NOTE: This can be a lot of smaller incidents, that when considered in the aggregate, create a hostile environment for the student.

See *Davis v. Monroe County Board of Education et al*, 526 US 629 (1999)