

Practical Questions About Dealing With Sexual Harassment In The Workplace

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"It is hard to believe [someone with a known history of alleged sexual harassment] could get past the human resources department of a Fortune 500 company" – Andrew Ross Sorkin.

Unfortunately, reality is not that simple or comforting. Sexual harassment is not confined to small companies, or less-prestigious professions. In reality, people working in high-powered jobs may simply be facing even more powerful harassers. Sexual harassment and sexual assault are under-reported events, and employees sometimes find that their company's administration is more interested in protecting the organization than in decisively stopping a harasser or addressing unlawful conduct.

Although sexual harassment is unlawful whether committed against men or women, a recent magazine [survey](#) revealed that around 1 in 3 women between the ages of 18 and 34 have experienced sexual harassment in the workplace. It is likely that the percentage of women who are subjected to harassment is much higher, as sexual harassment often goes unreported or unrecognized. Many people may not realize that not just unwelcome touching, but verbal comments, inappropriate "jokes" and unwanted advances also are examples of sexual harassment. In fact, verbal comments are the most common type of sexual harassment encountered at work.

Contrary to common misperceptions like the one quoted above, wealthy, high-level executives and well-educated professionals unfortunately can be just as capable of harassment as anyone else. Indeed, recent events in the news have confirmed this, with various examples and cases showing that even the most educated, prestigious and highly paid employees can face harassment from those at the top levels of well-known organizations and professions. High-ranking employees may be targeted by even more powerful harassers, and therefore may find it even more daunting to take action against them when a dispute with a top professional or executives might endanger their future in a lucrative and prestigious industry such as law, finance or media.

How Do I Know If What Has Happened Is "Sexual Harassment?"

Various laws protect employees from sexual harassment and give them remedies to fight against it. Companies also often have policies that, by their terms, prohibit unprofessional conduct beyond what is technically "unlawful" under laws such as the [Federal Civil Rights Act of 1964 \(Title VII\)](#), the [New York State Human Rights Law](#) and [New York City Human Rights Law](#), and the [California Fair Employment and Housing Act](#).

Look at your company's policy or handbook and see if there is language that describes the behavior you believe might be sexual harassment. Even if your company's policy does not address the specific behavior, the laws in place cover varying degrees of inappropriate and unwanted advances, including verbal comments or written messages (whether inside or outside the workplace), which could be considered offensive or unprofessional. If it feels wrong, is unwelcome, or affects your work

environment in any way, then you should trust your instincts. Consulting an attorney to identify and gauge your options to stop harassment also may help you to determine an appropriate response.

To learn more about what constitutes sexual harassment under the law and the various forms harassment may take, check out our article on [Knowing Your Legal Rights in the Fight Against Sexual Harassment](#).

What If I “Went Along” with the Harassment or Had a Consensual Relationship with the Harasser?

That is OK – you are still protected by the laws against harassment even if you “laughed along” with the conduct or were in a relationship with the harasser. One type of sexual harassment, called “quid pro quo,” occurs when an employer conditions a job offer, promotion or other favor on an employee’s willingness to submit to sex and/or sexual harassment. “Quid pro quo” harassment also occurs when an employee is threatened with a demotion, discipline, termination or other consequences for not going along with sexual demands and/or other harassment. Note that even if someone “goes along” with the harassment to protect or help their career, the unwelcome or forced conduct is still unlawful. Conduct can also be considered unlawful or criminal even if someone has been or is in a relationship with the harasser.

It also is important to preserve all messages (including texts, emails and voicemails), photos, etc., even when they are private, personal and/or sensitive (including your own jokes or comments), as such material likely would be considered vital evidence.

What If I Don’t Think Anyone Will Believe Me? What If It’s Just My Word Against the Word of the Harasser? I Can’t “Prove” the Harassment, Right?

Even if no one else witnessed the harassment, or if the harassment was verbal or quick, and no one acknowledged it, your memory and experience of the harassment are evidence that it happened (including for legal purposes).

If you are experiencing frequent or repeated harassment with no single major example, consider keeping a running list or diary of the conduct. Keep your notes in a safe place, such as a personal computer or notebook that cannot be easily lost or confiscated by an employer. Do not delete things, do not throw your phone away, and make sure that everything is saved, backed up and preserved in case you switch carriers, mobile plans, cloud services or devices. Make sure your notes stay in your possession and are easy to update. If you are receiving harassing emails or texts, do your best to save all of these communications. If someone else also witnessed the sexual harassment, talking with that person may help validate your experience, and also could reassure you that your recollection is correct.

Keep in mind, however, that none of these things are required to have a legitimate, truthful harassment complaint.

What If the Harasser Is a High-Ranking Executive, the Owner or a Big Client? Who Can I Go To About It, and Who Could Do Anything About It?

Everyone is entitled to a workplace free of sexual harassment, *no one* is above the law, and no one is so

rich, famous or powerful that it is OK for them to force unwanted sexual behavior on someone else. The management, human resources or legal department of an organization also should recognize that promptly addressing harassment is in everyone's interest (often including the harasser). Obviously, however, it may be unnerving or frightening to be harassed by or to challenge someone who outranks almost anyone to whom you might report the harassment, especially where the harasser holds power over your job or income. In such situations, however, it is that much more important to seek help rather than continuing to feel trapped. Again, consultation with an attorney may help to determine a course of action, or could provide you with someone else who can communicate on your behalf.

Do I Have to Report Sexual Harassment?

In some (but by no means all) situations, the law states that individuals must report sexual harassment and provide their employers with a chance to correct the inappropriate behavior before a lawsuit can be brought against them. If you experience sexual harassment at work, review your company's sexual harassment policy, and report the conduct to the appropriate person. If there is no policy, go to someone in human resources or legal, or to a member of management who you trust. If the harassment is coming from the very person you would usually report harassment to (such as a direct supervisor), try to find someone else with the authority to address misconduct. If you can, make your report in writing or follow up in writing, in order to make it clear that you reported the inappropriate behavior.

Generally, it is not advisable to make audio or video recordings of such meetings or discussions without the knowledge of others. Some states, such as New York, are "single party consent" states, which means that you must be a participant in any discussion you are surreptitiously recording in order for the recording to be legal. Other states, however, require the consent of all parties to a discussion in order to record. The potential legal ramifications usually outweigh the possible benefits of recording others without their knowledge. Again, consultation with an attorney may help you determine your best approach.

What If Human Resources or My Manager Is Not Sympathetic? What If I Am Asked to Do Things as Part of an Investigation that I'm Not Comfortable With?

Consult an attorney, postpone any meetings regarding the harassment and explain that you need to seek legal advice. Do not be afraid to ask them to change things that make you uncomfortable (such as signing a statement you do not agree with or meeting with company attorneys without representation of your own).

Make sure you understand and have fully read and received advice on any document you sign. If you do not agree with the content of something you are being asked to sign, make that clear in writing. If you are told that you are signing only to acknowledge receipt of the document, make sure the document says this. You can add the phrase "under protest" or "as to receipt only" to your signature to show that your signature does not indicate your agreement with the contents of the document. Do not let your employer pressure you into signing something you don't understand or don't agree with.

Can I Make Human Resources or Someone Else Keep My Complaint or Report Secret or Confidential?

If the company investigates your complaint or report, it often will become known by at least someone

else that you complained about improper conduct, though not all of your coworkers will necessarily know about it (or all of the details). Complete confidentiality therefore cannot truly be promised or guaranteed. The harasser, too, will almost always have to be confronted with the allegations in order to investigate them. If you have told a coworker or supervisor about the harassment but asked them to keep it a secret, company policies (or genuine concern) may require that person to report what they have been told, despite the request that it be kept in confidence.

What If My Complaint Makes the Situation Worse? Will I Just Lose My Job or Be Forced Out of the Company?

If the company, managers or your coworkers start treating you differently, demote you, or fire you due to your sexual harassment complaint, that is unlawful retaliation. If you believe you have been retaliated against, you should report the retaliation and see an attorney about possible legal recourse.

While not all investigations are handled fairly or end satisfactorily, many employers and organizations genuinely want to eliminate such conduct and will act to address the harassment, punish the harasser and protect the individual being harassed. Even if you experience retaliation or some uncomfortable interactions after a complaint, you will not necessarily lose your job or have to move on. Some temporary awkwardness after a complaint may be natural or not badly intended, whereas intentional retaliation or ostracism may be intended to make you leave your job instead of the company actually dealing with the harassment.

Should I Quit My Job If I Am Experiencing Sexual Harassment?

It is up to you how you want to deal with your harasser or the harassment. For many people, quitting a job without having another source of income lined up could subject them to serious financial hardship. However, no one should have to tolerate unwelcome sexual conduct. If the harassing conduct is frightening or threatening, you should act immediately, whether by reporting the harassment to a manager, human resources or the legal department, an attorney or even the police if you feel you are may be harmed.

It should be noted that resigning from your job may affect your legal claims, although legal remedies should never be put ahead of your own safety. Try to speak with an attorney before taking a step like quitting in response to harassment. All too often, it is the employee who is being harassed whose life is disrupted more than that of the person who is committing the harassment. However, if you feel you are under threat or in danger by remaining at work, you should always do what you believe is necessary to ensure your safety. In such situations, you should consider reporting the harasser's conduct to the police.

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