



**KENTUCKY  
PERSONNEL  
CABINET**

Office of Diversity, Equality, and Training

# Sexual Harassment Prevention

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# Agenda

- Define Sexual Harassment
- Why is it important to prevent harassment in our workplace?
- Review Commonwealth's Policy Statements on Harassment Prevention/Sexual Harassment
- Agency and Personal Liability
- Bystander Responsibilities
- Retaliation
- Complaint Filing Options



# Why is this important?

- **Our Values**
- **Compliance (Title VII)**
- **State and Federal Law**
- **Agency Liability**



# Survey Says...

According to EEOC testimony and research using random samples:



1 in 4

women say they have been sexually harassed



4 in 10

say they have experienced unwanted sexual conduct



6 in 10

say they have experienced sexist, crude, or offensive language/visuals/behaviors.



# What Constitutes Sexual Harassment?



Sexual harassment is a form of sexual discrimination which is defined by Title VII of the Civil Rights Act of 1964 as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.” It can also include offensive comments regarding someone’s sex, sexual orientation, or pregnancy.



# What Constitutes Sexual Harassment (cont'd)?



## Is it or isn't it?

Conduct is sexual harassment and illegal when:

- Conduct is so frequent or severe it creates a hostile work environment,
- Employment is impacted due to acceptance/rejection of request for sex or sexual favors, OR
- Employment is impacted by others' conduct of a sexual nature.

# Types of Harassment

The three most common types of illegal harassment are:

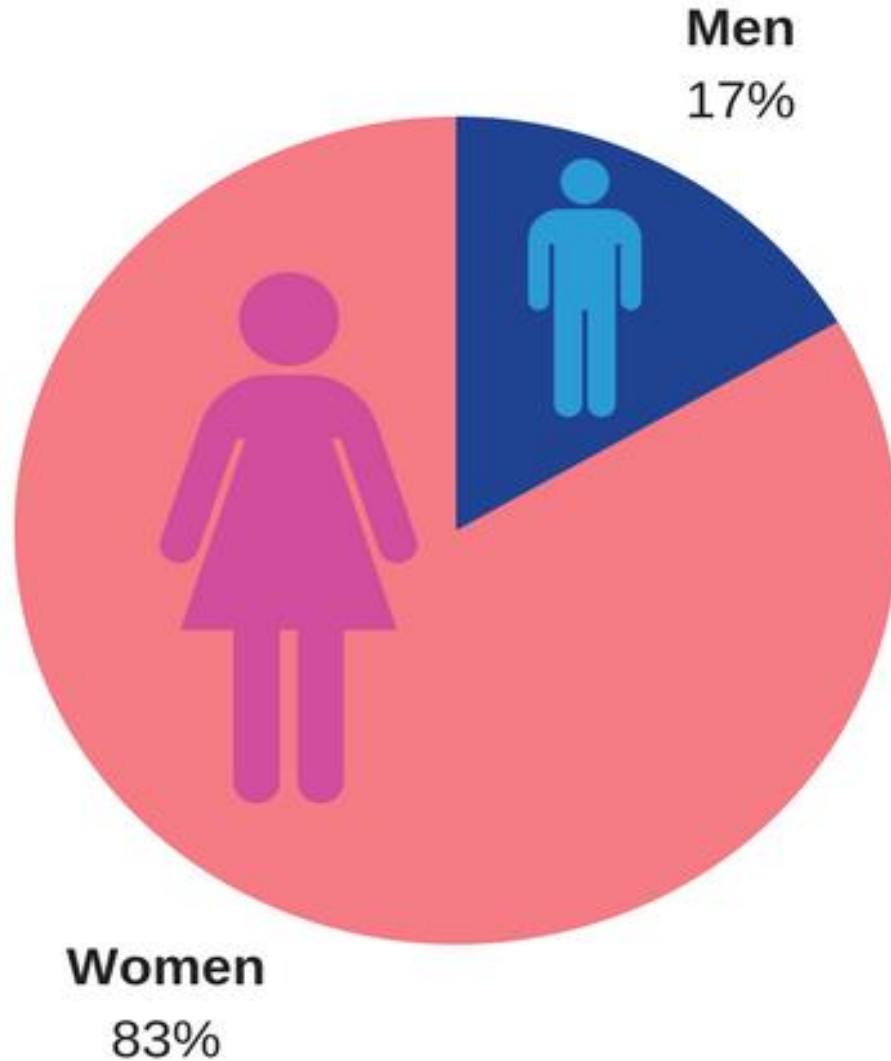
- **VERBAL** – Offensive jokes and language, threats and comments about a person’s physical appearance or personal life are examples of verbal harassment.
- **PHYSICAL** – Touching, holding, grabbing and other unwanted gestures of a sexual or non-sexual nature.
- **NON-VERBAL** – Staring at a person’s body, offensive gestures and circulating degrading or offensive letters, pictures, email or cartoons.

\*Please note, this is not an all-inclusive list of examples of harassment.





# Who?



Last year (2016), almost 17% of reports were filed by Males, about 83% filed by Females.

Source: EEOC, Select Taskforce on the Study of Harrassment in the Workplace, June 2016 Report



# Commonwealth Policy Statement on Harassment Prevention

The Commonwealth of Kentucky does not tolerate harassment of any kind. All employees must avoid offensive or inappropriate behavior at work. Further, all employees are responsible for assuring that the workplace is free from harassment at all times. Types of prohibited conduct include, but are not necessarily limited to: harassment because of one's race, color, national origin, sex, age, religion, sexual orientation, gender identity, veteran status, genetic information, disability, political affiliation, or ancestry.

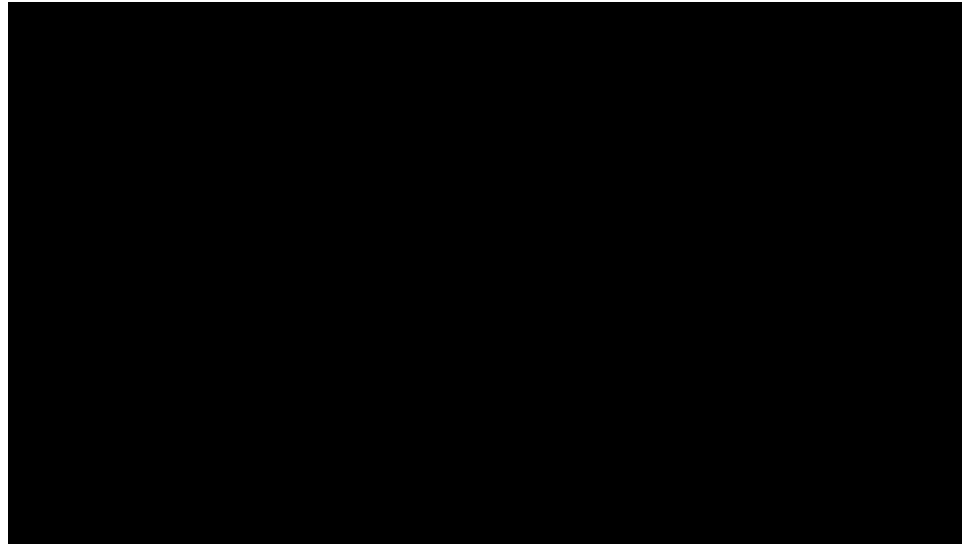


# Commonwealth's Sexual Harassment Policy

- State law prohibits unwelcome sexual advances, requests for sexual acts or favors, with or without accompanying promises, threats, or reciprocal favors or actions; or other verbal or physical conduct of a sexual nature that creates or has the intention of creating a hostile or offensive working environment.
- Examples of prohibited conduct include, but are not limited to, lewd or sexually suggestive comments, off-color language or jokes of a sexual nature; slurs and other verbal, graphic or physical conduct relating to an individual's sex; or any display of sexually explicit pictures, greeting cards, articles, books, magazines, photos or cartoons.



# Take a Look...



# EEOC Guidelines on Sexual Harassment

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

- \* Submission to such conduct is made either explicitly or inexplicitly a term or condition of an individual's employment, or
- \* Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
- \* 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.



# Who Can Commit Workplace Harassment or Create a Hostile Work Environment?

**ANYONE**

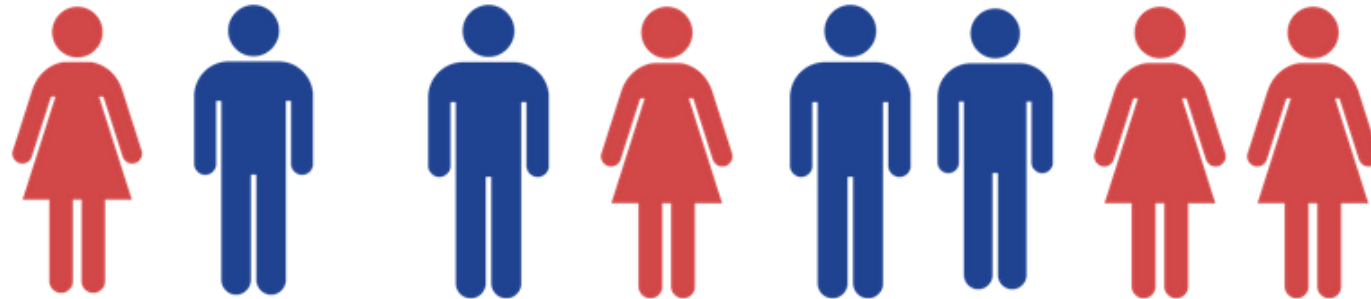
- Management Personnel (managers, supervisors, directors, department heads, people you report to)
- A Co-Worker
- A Non-Employee



# Harasser & Victim

Both the victim and harasser can be either gender or the same gender, and can hold any position in the agency.

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee, such as a client, customer, or shareholder.



## Bottom Line:

Harassment occurs across job level, gender, and age.



# Hostile Work Environment

Occurs when verbal or physical conduct unreasonably interferes with an employee's work, or creates an intimidating, or offensive working environment

or

## Quid Pro Quo

“Something for Something”





# Potential Harassing Behaviors

- Pervasive sexist comments
- Sexually suggestive jokes, stories, comments, posters, emails, texts
- Repeated sexual advances or request for dates
- Unwanted sexual attention (staring at or inappropriate touching of body)
- Sexual comments about appearance, clothing or body parts
- Request for sex or sexual favors in exchange for job benefit
- Offensive comments about someone's sexual orientation or gender identity
- Company or manager awareness of inappropriate conduct but no action taken



# Key Issues

Was the conduct unwelcome?

- The conduct is considered unwelcome if the employee did not invite the conduct and regarded it as undesirable.

Examples include, but are not limited to:

- Sexual advances & references
- Slurs, comments, jokes, innuendos
- Inappropriate touching, gestures, pictures, slang expressions, etc.

# Key Issues (cont.)

Was it based on a protected class status?

Was the conduct severe and pervasive?

- Would a reasonable person find the behavior offensive, intimidating or abusive?
- Tangible effect on job not necessary
- Psychological harm not necessary

# Agency Liability: Tangible Employment Action

An employer is always liable for harassment by a supervisor on a prohibited basis that culminates in a tangible employment action.

If a tangible employment action results from harassment by a supervisor, the agency is automatically liable.

Examples of tangible employment actions include:

- Hire and/or Fire
- Promote or Fail to Promote
- Demote

Terms and Conditions:

- Reassignment, Work schedule
- Compensation
- Unsolicited change in duties or responsibilities
- Change Benefits



# Agency Liability: Hostile Environment Created by Management

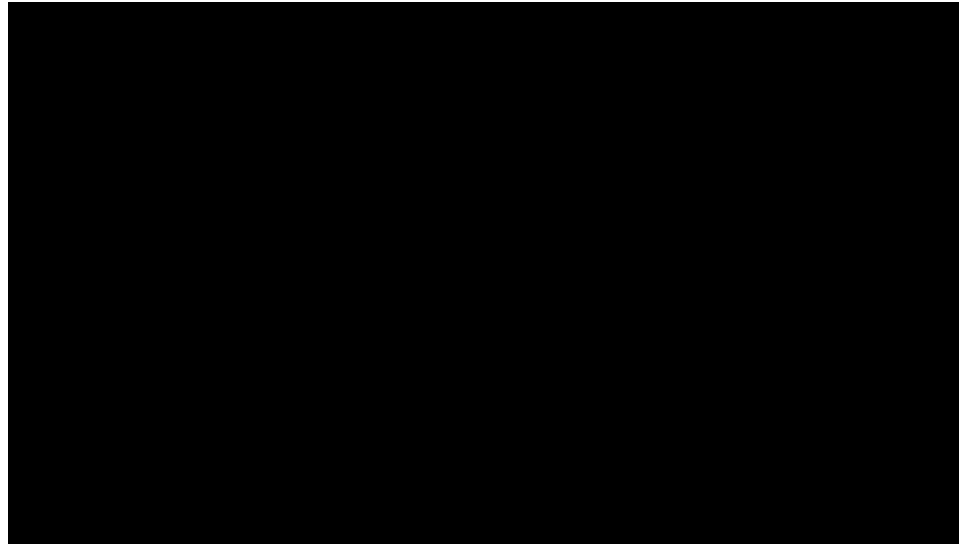
Agency is liable unless both elements of an affirmative defense are met:

- 1) If the agency exercised reasonable care to prevent and promptly correct the harassment; and
- 2) The employee unreasonably failed to take advantage of any preventative or corrective opportunities offered by the agency or to avoid harm otherwise.

# Agency Liability: Hostile Environment Created by Co-Worker or Non-Employee

- Agency is liable if it knew or should have known of the harassment and failed to take immediate and appropriate action
- Agency knowledge is assumed if:
  - The victim complains about harassment to management personnel;
  - The conduct occurred in the presence of the supervisor; or
  - The conduct is widespread.

# Bystander Exercise



# It's On Us: Don't Be A Bystander

- **Bystander Intervention:**
  - Intervening if you see behavior or hear language that promotes harassment.

## WHY?

- It promotes an inclusive workplace.
- It let's others feel supported.
- It creates an environment that does not tolerate harassment.





# 5 Steps to Intervening

1. Notice an event
2. Recognize there is a problem
3. Take responsibility for acting
4. Decide how to respond appropriately
5. Respond

# Step 1: Notice an Event

- Recognize actions or patterns of behaviors that might signal harassment.
- Ex: someone saying inappropriate things, unwanted touching, etc.

# Step 2: Recognize There is a Problem

- Ask yourself: does action need to be taken?
- If I don't act, could the situation get worse?
  - If YES, proceed to step three.

# Step 3: Take Responsibility For Acting

- Know your role in the situation... It's all of our responsibilities.
- If it was my friend or family member, would I want someone to act?

# Step 4: Decide How To Respond

Options include:

- Direct
- Distract
- Delegate
  - Resources to consider:
    - Workplace Security
    - Supervisors
    - Human Resources
    - KEAP
    - Police/911

# Step 5: Respond

- Take Action!
- Do something, and don't just ignore the behavior.

# Retaliation

Complaints of harassment will be promptly and carefully investigated, and all employees are assured that they will be free from any and all reprisal or retaliation from filing such complaints.



# Retaliation (cont.)

It is unlawful for any employer to retaliate against an employee for filing a complaint and/ or participating in an investigation

- Resisting sexual advances or intervening to protect others

Retaliation has occurred when a harassment victim suffers a negative action as a result of reporting the harassment.

*Bottom Line:*

When an employee complains of Sexual Harassment, YOU or others in the agency must not take any action the employee views as punishment or retaliation against the complainant.





# Retaliation (cont.)

Three essential elements of retaliation:

1. Protected activity – opposition to discrimination or participation in the statutory complaint process
2. Adverse actions – denial of promotion, job benefits, demotion, suspension, termination, reprimands, negative evaluations
3. Causal connection – between the protected activity and the adverse action

# Retaliation (cont.)

## Protected Activity

EEOC regulations protect those individuals who:

- Oppose a practice made unlawful by one of the employment discrimination statutes; or
- File a charge, testify, assist, or participate in any manner in an investigation, proceeding, hearing or litigation under Title VII.

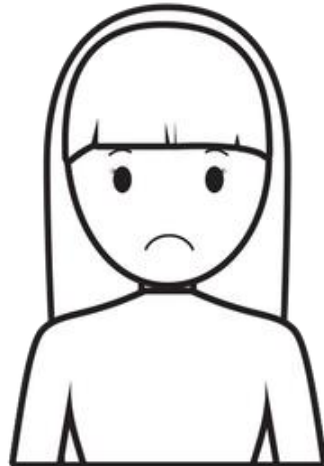
# Responding to Harassment

- Approach the harasser
- Explain how you are offended
- Ask the harasser to change his/her behavior
- Agree on terms for future interactions
- Follow complaint procedures
- Share concern with Management

# Reasons Victims Don't Take Action

They worry:

- Nobody will believe them
- Nothing will happen
- They will be blamed for causing the offending actions
- About social retaliation (humiliation and ostracism)
- About professional retaliation (damage to their career and reputation).



# Complaint Filing Options

- Supervisor/Executive Director
- EEO Coordinator/Counselor
- Mediation (KEMP)
- Grievance Process (30 Days)
- Personnel Board (60 Days to 1 Year)
- Office of Diversity, Equality and Training (30 Days)
- Kentucky Commission on Human Rights (180 Days)
- Equal Employment Opportunity Commission (EEOC) (300 Days)



# Common Responses to Workplace Sexual Harassment

Two studies found that:

**30%**

take action to stop it  
(less than half file a  
formal complaint)



**70%**

do NOT take action to stop it  
(instead they avoid the  
harasser, deny or downplay  
the conduct, or ignore  
/endure what is happening)



# Taking Action: What is YOUR Responsibility

- **Know and Comply with Commonwealth Policy**
- **Immediately Report to HR any complaint you receive or incidents you witness**
- **Do NOT retaliate against an employee**
- **Work to ensure the harassment stops and does not reoccur**



# Taking Action

- Speak up
- Know the signs
- Practice zero tolerance
- Don't retaliate (also against the law)



- Build culture of respect
- Raise awareness with mandatory employee training
- Start at the top (make sure leaders are fully aware of the law)
- Steer clear of inappropriate behaviors

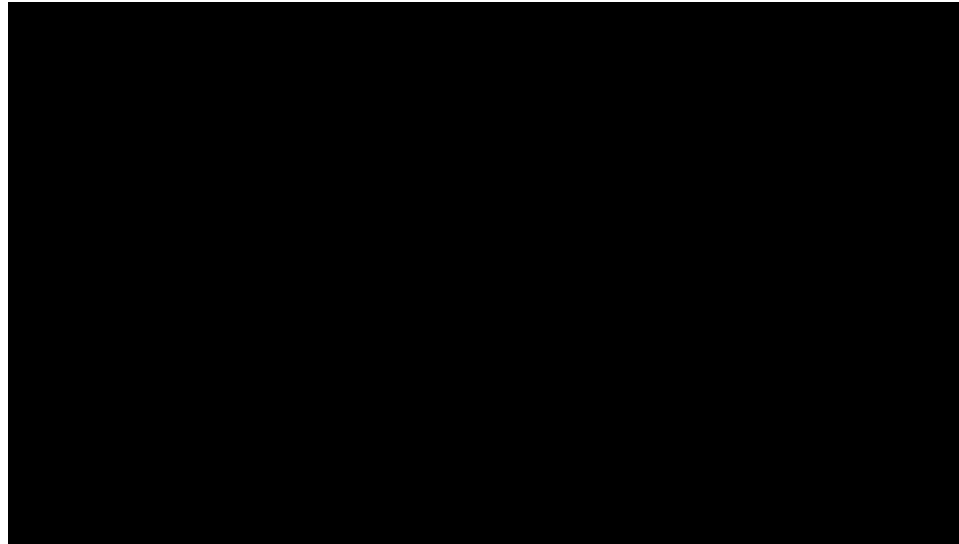


- Filter what you say and do at work
- Empower your people to speak up
- Document all reported claims and take all reports seriously





# Bystander Exercise



Let's Recap....



Harassment is defined by the Commonwealth of Kentucky as any unwelcome verbal or physical conduct based on the following protected bases:

Race, color, national origin, sex, age, religion, sexual orientation, gender identity, veteran status, genetic information, disability, political affiliation, or ancestry.



When:

The conduct culminates in a tangible employment action,

or

The conduct was sufficiently severe or pervasive to create a hostile work environment.

Harassment of ANY KIND will not be tolerated.



# Questions?

<https://personnel.ky.gov/Pages/diversity.aspx>

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