

The risks of reporting sexual harassment - AvvoStories

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Sexual harassment is a form of [gender discrimination](#), and it's illegal. But it's still widespread, and in some industries, like [technology](#) and [astronomy](#), even endemic.

Despite legal protections for victims, sexual harassment is underreported. Victims are reluctant to report harassment for many different reasons, but two of the most common are that they don't always understand what constitutes illegal harassment and the workplace culture protects the aggressor. How do you know if behaviors that make you uncomfortable at work are actually illegal, and what can you do to protect yourself if they are?

What counts as harassment?

What's offensive to one person may be fine—even amusing—to another. It's hard to know where to draw the line between a hostile environment and harmless flirting, especially because harassment is often accompanied by gaslighting, a manipulation that encourages victims to doubt their own perceptions. But if interactions at work leave you feeling vulnerable rather than valued, you are probably not just being too sensitive.

Sexual harassment is governed by Title VII of the Civil Rights Act of 1964, the landmark legislation that prohibits employment discrimination based on race, color, religion, sex, and national origin. Title VII applies to employers with 15 or more employees, including employment agencies, labor organizations, and all levels of government. But in almost all cases, even if you are your boss's only employee, harassing behavior is illegal under local regulations that mirror Title VII.

The U.S. Equal Employment Opportunity Commission (EEOC) defines sexual harassment more broadly than many people realize:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

In the most common scenario, the victim of harassment is a female subordinate of a male harasser, but the victim as well as the harasser may be a woman or a man. The victim doesn't have to be of the opposite sex. The harasser doesn't have to be a superior in the workplace hierarchy—they may be the victim's supervisor, but they may also be an agent of the employer, a supervisor in another area, a co-worker, or a non-employee. In fact, the victim doesn't even have to be involved in the interaction—they could be anyone affected by the offensive conduct. The primary requirement of sexual harassment is that the harasser's behavior must be unwelcome.

Although the definition above states that the behavior must be sexual in nature, the phrase "intimidating, hostile or offensive work environment" has long been understood to encompass all gender-based discrimination. A typical example would be a boss who frequently tells sexist jokes, or attributes work performance outcomes to sexual stereotypes (whether in earnest or in jest).

What are the risks of reporting?

Fear of retaliation is probably the biggest obstacle to reporting harassment. Retaliation is defined as:

- employment actions such as termination, refusal to hire, and denial of promotion;
- other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance; and
- any other action—such as an assault or unfounded civil or criminal charges—that is likely to deter reasonable people from pursuing their rights.

Retaliation is illegal. Employers and coworkers may not retaliate against an individual for speaking up against discrimination or harassment, or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII. However, in 2015, the federal government found that 44 percent of internal discrimination complaints were for retaliation.

Victims of harassment are often junior employees or low-wage workers who desperately need their job but could be easily replaced. Job insecurity reinforces the power dynamic that is often at play in situations of harassment because victims cannot afford to be out of work while they hope for justice in a legal claim.

But even when the response to a harassment claim falls short of illegal retaliation, more subtle forms of reprisals and alienation can still take place. Employees who report offensive behavior may find themselves socially ostracized by coworkers, left out of important decisions, and quietly bypassed for opportunities. Especially if the harasser is in a position of authority or well-liked, the victim may be blamed not only for the harassment, but for harming the perpetrator and destroying cohesion in the workplace.

The risks of reporting harassment are in fact very similar to the results of sexual harassment—reduced opportunities, increased stress, and decreased productivity. The significant difference is that reporting opens the possibility of putting an end to the harasser's reign of terror.

How can you protect yourself?

Despite the risks, anyone who is experiencing sexual harassment should speak up and directly tell the harasser that their behavior is unwelcome. It's important to establish, unequivocally, that the behavior is unwanted and that the harasser was aware the behavior was unwanted—a critical component of illegal harassment.

Careful documentation of every incident is also vital. Include the time, place, and circumstances surrounding the behavior, as well as any witnesses and what actions, if any, were taken in response. This can help you prove to yourself that it's not "all in your head" before you take action, and provides a record to support your case in the event of legal action.

Before [taking legal action](#), you should make an official complaint to your employer's human resources department or through the company grievance system. If this is ineffective, the next step is to file a complaint with the EEOC and the agency that enforces your state's anti-discrimination laws. The EEOC will issue a "right to sue" letter, which allows you to file a lawsuit against the harasser and your employer for sexual harassment under Title VII of the Civil Rights Act.

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