

Sexual Harassment Prevention Training

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Disclosure

I have no relevant financial conflicts of interest in relation to this activity to disclose.

Learning objectives

- 1) Define sexual harassment & review examples of conduct that may constitute unlawful sexual harassment (SH)*
- 2) Discuss options for those who experience—or witness—SH
- 3) Identify the protections & remedies available for those reporting SH
- 4) Review employers' responsibilities and potential strategies to prevent, investigate & correct SH in the workplace

*As outlined by the Illinois Human Rights Act (IHRA).

Source: State of Illinois' Department of Human Rights *State of Illinois Sexual Harassment Prevention Training v2.0* (www.Illinois.gov/DHR/Training).

Section 1

Defining Sexual Harassment Under the Illinois Human Rights Act

Section 1: Define Sexual Harassment

What is SH under the Illinois Human Rights Act?

Unwelcome sexual advances, requests for sexual favors, or conduct of a sexual nature when:

- ▶ Submission is made a term or a condition of employment (explicit or implicit);
- ▶ Submission to — or rejection of — such conduct is used as the basis for employment decisions; or
- ▶ Such conduct substantially interferes with work performance or creates an intimidating, hostile, or offensive working environment (by intent or as a result of).

Section 1: Define Sexual Harassment

Types of unlawful SH

Quid Pro Quo

“You do something for me, and I’ll do something for you.”

In order to receive a promotion, raise, preferred assignment, or other type of job benefit (or avoid something negative like discipline or an unpleasant assignment) — the employee must do something sexual in return.

Hostile Work Environment

“The air is full of sexual references and it bothers me.”

Unwelcome sexual advances, requests for sexual favors, or any conduct of a sexual nature have the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

Section 1: Define Sexual Harassment

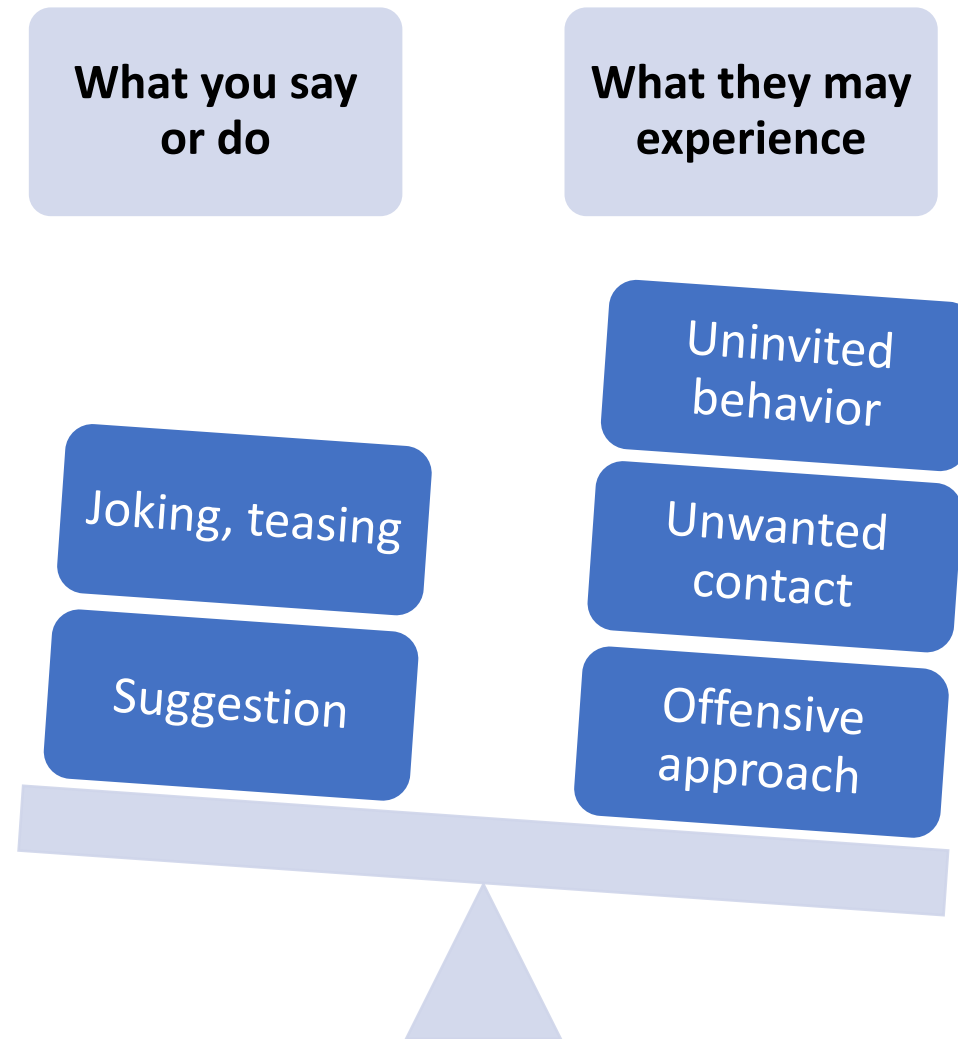
How does it happen?



Section 1: Define Sexual Harassment

When does it cross the line?

- ▶ Consent can be revoked at any time
- ▶ When someone experiencing SH behavior says, "stop talking to me like this" **it must stop**
- ▶ The perpetrator cannot use as a defense "Well you started it." or "You were ok with it at first."



Section 1: Define Sexual Harassment

But this only applies to the work environment, right?

- ▶ Not limited to the physical location where the employee is assigned
- ▶ **Extends to other worksites** including off-site, mobile, or moving worksites/locations

Long-Term or Residential Care

- The community
- Resident outings
- Potlucks, family nights, fundraisers
- Other work-related events, meetings, or celebrations

LTC Pharmacy

- The pharmacy
- The LTC community
- Vaccine clinics
- Work-related events, meetings, or celebrations

Section 1: Define Sexual Harassment

Any employee can be a victim, regardless of their:

- ▶ Gender identity
- ▶ Sexual orientation
- ▶ “Non-employee” status (such as contractors or consultants performing work for an employer)
- ▶ Status as a bystander or witness (as opposed to being the direct target of the behavior)

Section 1: Define Sexual Harassment

Who might perpetrate SH?

- ▶ Managers, supervisors & other leaders (ie, “bosses”)
- ▶ Employees & non-employees who harass co-workers
- ▶ Customers/patrons or other third parties (vendors, sales reps, etc)
- ▶ This is regardless of:
 - Gender identity
 - Sexual orientation



Section 1: Define Sexual Harassment

Inappropriate conduct = unwanted +

Sexual talk

- Comments, remarks
- Innuendos
- Jokes
- Questions
- Stories
- Referring to another as “girl,” “hunk,” “doll,” “babe,” “honey,” “tootsie,” etc
- Teasing
- Telling lies or spreading rumors about a person’s sex life
- Turning work discussions to sexual topics

Sexual comments or questions about someone’s

- Body
- Clothing
- Fantasies
- History
- Looks
- Preferences

Suggestive actions

- Deliberate touching, leaning over, or cornering another person
- Kissing sounds, howling and smacking lips
- Massaging neck, shoulders, etc
- Sexual looks or gestures, or whistling at someone
- Touching another employee such as their clothing, hair, or body

Aggressive behavior

- Pressure to go on a date
- Pressure for sexual favors
- Sending letters, telephone calls, e-mails, texts, or other materials of a sexual nature
- Actual or attempted rape or sexual assault

Section 1: Define Sexual Harassment

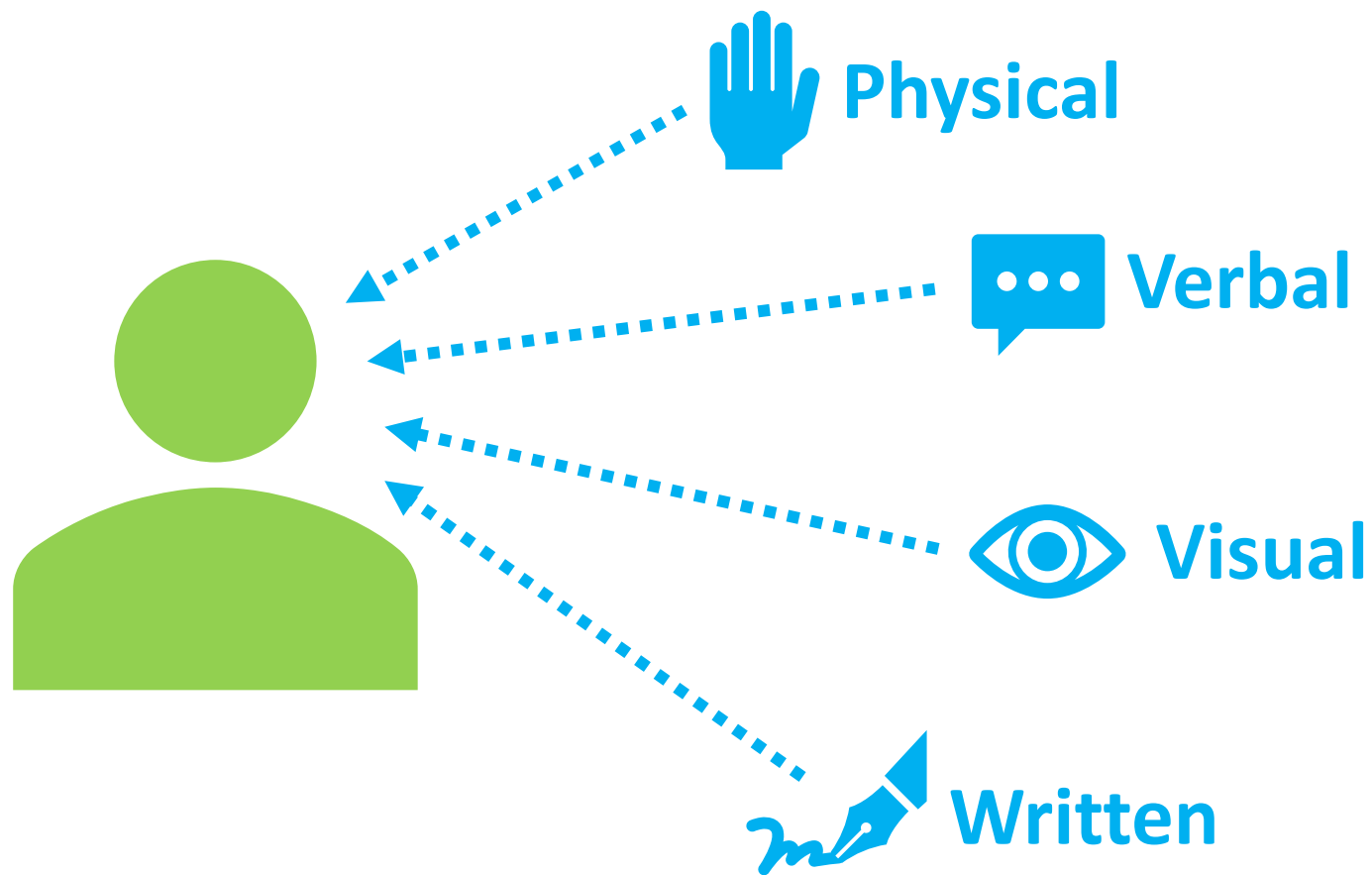
Don't forget online, off the clock, off site, or even out of state

Including
Chat
Comments
E-mail
Instant messages
Posts
Social media such as: <ul style="list-style-type: none"> • Facebook • Twitter • Instagram • SnapChat • YouTube
Text

- ▶ Flirting and requests or demands to go on a date or have sex
- ▶ Sending inappropriate pictures or videos including sexually graphic material
- ▶ Using sexual language or comments including sexually offensive language
- ▶ Cyber stalking

Section 1: Define Sexual Harassment

It takes all forms



Section 1: Define Sexual Harassment

Stop and think—what would you do?



- ▶ A co-worker has always joked around:
 - Teasing
 - Acting playfully affectionate
 - Referring to others as “little girl” or “little boy”

- ▶ A new team member mentions that they are offended by this behavior and think its unprofessional

Section 2

Reporting Sexual Harassment

Section 2: Reporting Sexual Harassment

What are my rights if I experience, witness, or become aware of unwelcome sexual conduct?

You have the right to tell the person to stop

- ▶ The unwelcome behavior must stop upon request
- ▶ If the behavior continues, it violates the law

You have the right to report the sexual harassment

- ▶ Several reporting options are available

Section 2: Reporting Sexual Harassment

Option I: Report SH to your employer



- ▶ **Your Supervisor or any member of management** you trust; they are responsible for knowing the employer's internal complaint reporting, investigation, and resolution process
- ▶ **Human Resources staff** investigate & resolve SH complaints; you can report SH directly to the HR department, particularly if the perpetrator is a supervisor or manager
- ▶ **Sexual Harassment Reporting Officers** may be designated by some larger companies to specifically receive and investigate SH complaints
- ▶ *Always consult your employer's SH policy for specific reporting contact information*

Section 2: Reporting Sexual Harassment

Option II: Contact the IL Sexual Harassment & Discrimination hotline



- ▶ Calls are confidential and can be made anonymously
- ▶ Representatives can help callers navigate reporting options and share additional information related to counseling, legal assistance & frequently asked questions

Section 2: Reporting Sexual Harassment

Option III: File a charge

IL Department of Human Rights (IDHR) enforces the IHRA

- ▶ Victims of sexual harassment may file a charge at any time within 300 days of the incident(s)
- ▶ IDHR has the authority to investigate employers who have 1 or more employees
- ▶ To start the process, submit a Complainant Information Sheet to IDHR

U.S. Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964

- ▶ Federal law makes it illegal to engage in sexual harassment or retaliation
- ▶ Victims of SH may file a charge at any time within 300 days of the incident(s)
- ▶ The EEOC has authority to investigate employers who have 15 or more employees

Section 2: Reporting Sexual Harassment

Stop and think—what would you do?



- ▶ You've always enjoyed some lighthearted flirting with a cute co-worker, all in fun
- ▶ After a breakup, you get requests to go out and share the misery, which you turn down
- ▶ Your co-worker keeps pressing for a date & starts to call or text you off hours

Section 3

Protections & Remedies Available to Those Who Report Sexual Harassment

Section 3: Protections for Reporting Sexual Harassment

Protections

- ▶ If someone retaliates against you because you asked them to stop, it violates the law
- ▶ Anyone who reports sexual harassment or participates in investigations is protected from retaliation

Section 3: Remedies for Sexual Harassment

Available remedies after IDHR or EEOC investigation

- ▶ The Complainant (the employee) may go on to file a:
 - Civil lawsuit
 - Federal lawsuit
 - Complaint with the Illinois Human Rights Commission (HRC) if IDHR found “substantial evidence” of a violation
- ▶ Complainants who prevail in the HRC or court may receive an order awarding remedies to make the Complainant “whole”
- ▶ Remedies may include back pay, lost benefits, clearing of a personnel file, damages, hiring, promotion, reinstatement, front pay where reinstatement is not possible, and attorney’s fees & costs

Section 3: Remedies for Sexual Harassment



Stop and think—what would you do?

- ▶ You work in a place where a common pass-time is dissecting co-workers' looks and deciding whether they're "doable"
- ▶ When you talked to your manager months ago, they said they'd investigate, but you've heard nothing since
- ▶ It's always annoyed you, and recently you overheard a couple of other team members complain about it, too

Section 4

Employer Responsibilities and Potential Strategies to Prevent, Investigate & Correct Sexual Harassment in the Workplace

Section 4: Employer Responsibilities for Sexual Harassment

Employers are ultimately responsible

- ▶ When SH is perpetrated by their employees or non-employees against:
 - Customers or patrons in “places of public accommodation”
 - Other employees or non-employees
- ▶ When their employees or non-employees are harassed by:
 - Customers or patrons
 - Third-parties (vendors, sales reps, delivery personnel)

Section 4: Employer Responsibilities for Sexual Harassment

What is the risk?



Harassment by managers or supervisors

- ▶ Employers are *strictly liable* for sexual harassment perpetrated by its members of management *regardless* of whether the employer knew of the harassment

Harassment by co-workers or non-employees

- ▶ Employers are *liable* for sexual harassment perpetrated by an employee (co-worker) or non-employees (contractors, consultants, vendors) *only if*:
 - The employer knew or reasonably should have known of the harassment
 - and
 - Failed to take prompt corrective action

Section 4: Employer Responsibilities for Sexual Harassment

Prevent incidence of SH in their workplaces

- ▶ Develop, implement & regularly communicate the employer's SH **policy**
- ▶ Provide **training** for managers & employees on sexual harassment prevention
- ▶ Clearly **communicate** how to report incidents of SH or conduct of a sexual nature



Section 4: Employer Responsibilities for Sexual Harassment

What can you do?

- ▶ Review your policies:
 - What do they say?
 - Does it outline reporting & possible consequences for inappropriate behavior?
- ▶ Check that you're in compliance with training, communications & posting – make a schedule
- ▶ Set up a process or routine for managers & supervisors to:
 - Monitor their work environment to ensure it is free of sexual harassment — be aware of the conduct within their supervision
 - Lead by example & model appropriate conduct — refrain from conduct of a sexual nature
 - Perform SH “climate checks” throughout the year; discuss the topic at team or staff meetings, in-service day, or as part of structured communication such as division/unit newsletters



Section 4: Employer Responsibilities for Sexual Harassment

Investigate all reports of SH

- ▶ **Immediately respond** to a complaint of SH & initiate an inquiry or investigation
- ▶ Interview the complainant (victim) and **take reasonable action to protect the victim** from retaliation or experiencing further SH during the investigation
- ▶ Interview all relevant **witnesses**
- ▶ Interview the alleged **perpetrator** of the SH
- ▶ **Document** the investigation results & maintain the file as an employment record

Section 4: Employer Responsibilities for Sexual Harassment

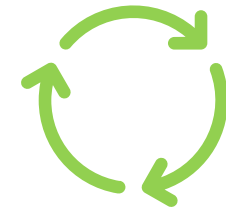
Correct any incidence of SH

- ▶ Take **appropriate corrective disciplinary action** (up to & including termination) where organizational policy has been violated
- ▶ In situations where conduct did not rise to the level of SH or a policy violation (but is concerning or may be considered grooming behavior), consider counseling, training & closer supervision of the employee who exhibited the behavior



Section 4: Employer Responsibilities for Sexual Harassment

Make a point to follow up



- ▶ Take reasonable action to reduce likelihood of future SH incidents:
 - **Updating policies** & communicate them to the workforce
 - Provide **supplemental or tailored** SH training
 - Consider restructuring the working environment or reporting relationships
- ▶ **Follow up** with the complainant (victim) regularly to ensure they — and the workplace — remain free from SH

Section 4: Employer Responsibilities for Sexual Harassment

Stop and think—what would you do?



- ▶ You're a manager and an employee – who's single – comes to you, saying that a co-worker keeps pressing for a date
- ▶ The employee explains that they've asked the person to stop, but it didn't seem to have an effect

Summary

Sexual harassment (SH) is prohibited*

- ▶ It is a civil rights violation for “any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment”†
- ▶ Tolerance of SH in the workplace creates a hostile environment for employees, reduces productivity & increases legal liability
- ▶ The State encourages employers to adopt & implement policies to ensure workplaces are safe for employees to report SH concerns without fear of retaliation, loss of status, or loss of promotional opportunities

Training is required

- ▶ Every IL employer is required to provide employees with SH prevention training‡
- ▶ All employees regardless of their status must be trained (including, short-term, part-time, interns & independent contractors working on site with staff)

References

- ▶ State of Illinois Department of Human Rights: *State of Illinois Sexual Harassment Prevention Training v2.0*. www.Illinois.gov/DHR/Training.
- ▶ Illinois Compiled Statutes: Illinois Human Rights Act. 775 ILCS 5/2-102(D)/2-209.

Resources for reporting sexual harassment

Resource	IL Sexual Harassment & Discrimination Hotline	IL Department of Human Rights (IDHR)	U.S. Equal Employment Opportunity Commission (EEOC)
Phone	1-877-236-7703	1-800-662-3942 312-814-6200 (Chicago) 217-785- 5100 (Springfield) 866-740-3953 (Chicago & Springfield TTY) 618-993-7463 (Marion) 217-740-3953 (Marion TTY)	1-800-669-4000 1-800-669-6820 (TTY) 1-844-234-5122 (ASL Video Phone)
Website	Illinois.gov/SexualHarassment	Illinois.gov/dhr	eeoc.gov
What they can do	Provide assistance on options & next steps	Enforce the IL Human Rights Act	Enforce Title VII of the Civil Rights Act of 1964
Illinois offices		Chicago: 100 W Randolph St, Suite 10-100, Chicago, IL 60601 Springfield: 535 W. Jefferson, 1 st Fl, Intake Unit, Springfield, IL 62702 Marion: 2309 W Main St, Marion, IL 62959	Chicago District: 230 S Dearborn St, Chicago, IL 60604 St Louis District: 1222 Spruce St, Rm 8.100, St. Louis, MO 63103

THANK YOU!