**Is This Sexual Harassment? The Library Edition**

**June 24, 2021**

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**EEOC Resources**

Sexual Harassment Factsheet: <https://www.eeoc.gov/fact-sheet/facts-about-sexual-harassment>

A new guidance document posted June 15, 2021, “Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity” addresses EEOC’s established legal positions on LGBTQ+ related matters: <https://www.eeoc.gov/laws/guidance/protections-against-employment-discrimination-based-sexual-orientation-or-gender>

* Discrimination based on gender identity is discrimination based on sex.
* Sexual orientation discrimination states a claim of sex discrimination under Title VII.
* Title VII applies nationwide and protects employees from discrimination based on sexual orientation or gender identity regardless of state or local laws. This is true in federal actions in places where state or local law does not prohibit discrimination based on sexual orientation or gender identity.
* It is unlawful for an employer to create or tolerate severe or pervasive harassment based on sexual orientation or gender identity.
* Employers may have separate bathrooms men and women or may have unisex or single-use facilities but they may not deny an employee equal access to a bathroom that corresponds to the employee’s gender identity.
* Accidental misuse of a transgender employee’s preferred pronouns does not violate Title VII, but intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment.

Report on Prevention of Workplace Harassment:

Checklists: <https://www.eeoc.gov/checklists-and-chart-risk-factors-employers>

Risk factors chart: <https://www.eeoc.gov/chart-risk-factors-harassment-and-responsive-strategies>

Promising Practices for Preventing for Harassment: [https://www.eeoc.gov/laws/guidance/promising-practices-](https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment) preventing-harassment

**Indiana State Personnel Department Policies on Harassment**

Workplace Harassment Prevention Policy: <https://www.in.gov/spd/files/harasspol.pdf>

Governor’s Policy Statement: <https://www.in.gov/spd/files/gov_policy.pdf>

Workplace Harassment Information: <https://www.in.gov/spd/policies-and-procedures/workplace-harassment-information/>

**Indiana State Library**

Patron Code of Conduct: <https://www.in.gov/library/about/general-information/policies-of-the-indiana-state-library/patron-code-of-conduct/>

Sample Public Library Personnel Policies containing workplace harassment provisions and sexual harassment policies can be found on ISL’s website here: <https://www.in.gov/library/services-for-libraries/ldoresources/public-library-policies/personnel-and-policy-manuals/>

**American Libraries Magazine**

Stop Sexual Harassment in Your Library (article containing list of helpful phrases): <https://americanlibrariesmagazine.org/2017/11/01/stop-sexual-harassment-your-library/>

1. **Cases**

**VERY RECENT CASES**

**EEOC vs. Limeños Corporation d/b/a Ceviche House**, Case No. 20-1143 (US Dist. Ct. PR)(06/23/2021)

Federal court ordered a restaurant to pay $130,691 in a sexual harassment and retaliation discrimination lawsuit filed by the U.S. EEOC. The restaurant’s co-owner and general manager subjected a female server to sexual harassment (by making humiliating comments about female servers’ bodies, referring to female employees as whores, and frequently discussing his own sexual experiences with female servers). Co-owner retaliated against employee when she complained by intensifying the harassment and threatening her job and her safety, making her work conditions so intolerable she was forced to resign. EEOC expressed concern about employer creating a sexually hostile work environment, especially in the hospitality industry, where so many workers are vulnerable to this kind of abuse.

In addition to monetary relief, the court’s judgment, requires restaurant to:

* Provide training for five years to its owners, officers, managers, and administrative assistants
* Implement a new employee policy against sexual harassment and retaliation
* Provide annual written reports to EEOC certifying compliance
* Report on any sex-based discrimination occurring in the workplace over the next five years.

Press release dated 6-14-2021 on EEOC website

**Walmart Stores East, LP** will pay $410,000 and provide other relief to settle a sexual harassment lawsuit brought by the U.S. EEOC. From 2014 to 2018 a male employee of Walmart regularly made unwelcome sexual comments (vulgar comments about bodies of female employees, commented on female co-workers’ breasts and buttocks, and told a female co-worker “I can’t wait to see you in these,” referring to thong underwear) and touched female co-workers without their consent (including pressing his crotch against a co-worker’s buttocks). Other unwelcome advances to female co-workers included repeatedly inviting them to hang out alone with him despite having been rejected and graphically stating that he wanted to have sex with female employees who had told him they were not interested. Walmart management knew of the conduct for years, including having received written complaints. EEOC attorney said “Sexual harassment causes damage in any workplace, but it is especially pernicious when it affects multiple victims over several years.”

The three-year consent decree, provides:

* Walmart to compensate victims:
	+ $175,000 in monetary damages for a woman who was harassed for years, reported the misconduct to management multiple times, and forced to resign when Walmart management not only failed to stop the harassment but advised her to “stand up” for herself.
	+ $235,000 for the remaining class of victims.
* Walmart enjoined from creating a hostile work environment based on sex in the future.
* Company must institute procedures to prevent future discrimination:
	+ Training for employees at the store where it happened to prevent future harassment and to ensure that workers understand their right to be free from sexual harassment on the job.
	+ Targeted one-on-one training for supervisor who was store manager.
	+ Periodic reports to the EEOC re future allegations of sexual harassment.
	+ Educate management employees about their responsibility to make workplace safer and more respectful and to prevent and eradicate sexual harassment.

LANDMARK DECISION

**Bostock v. Clayton County** (US Sup. Ct., 6/15/2020) held that employment discrimination against an individual on the basis of sexual orientation or transgender status is sex discrimination prohibited under Title VII of the Civil Rights Act of 1964. Trio of cases decided in one opinion found the following actions unlawful under Title VII:

* A child welfare services coordinator fired after his employer learned he had joined a gay softball league.
* A sky diving instructor fired after his employer learned he was gay.
* A funeral director fired after her employer learned that she was a transgendered woman planning to transition.

The Supreme Court held that Title VII makes it unlawful for a covered employer to take an employee’s sexual orientation or transgender status into account in making employment related decisions.

**III. Harassment Policies**

**Indiana State Personnel Website –Select provisions from state’s Harassment Prevention Policies**

### Reporting a Complaint of Workplace Harassment

#### Notification of Appropriate Staff or Agency

Individuals who believe they have been subjected to sexual harassment or individuals who have knowledge of sexual harassment against or by a State employee may report the incident and/or alleged harasser to the following persons who have been identified and trained to receive complaints of sexual harassment:

* Employee Relations Division, State Personnel Department, Phone: 317.232.3080
* Agency Human Resource Office – AA/EEO Division
* Indiana Civil Rights Commission (ICRC), Phone: 317.232.2600
* Equal Employment Opportunity Commission (EEOC), Phone: 317.226.7212 or toll free at 800.669.4000
* Supervisor

#### Description of Misconduct

An accurate record of objectionable behavior or misconduct is needed to resolve a formal complaint of sexual harassment. Verbal reports of sexual harassment must be reduced to writing by either the complainant or the individual(s) designated to receive complaints, and be signed by the complainant. Individuals who believe they have been or currently are being harassed should maintain a record of objectionable conduct to effectively prepare and corroborate their allegations.

While the State encourages individuals to keep written notes in order to accurately record offensive conduct or behavior, it must be recognized that, in the event that a lawsuit develops from the reported incident, the confidentiality of the complainant’s written notes may not be recognized under Indiana law, and the notes may have to be disclosed.

#### Time Frame for Reporting Complaints

The state encourages a prompt reporting of complaints so that rapid response and appropriate action may be taken. However, due to the sensitivity of these problems and because of the emotional toll such misconduct may have on an individual, no limited time frame will be instituted for reporting sexual harassment complaints. Late reporting of complaints will not in and of itself preclude the State from taking remedial action.

1. **Library Conduct Policies in Relevant Part**

**Indiana State Library Patron Code of Conduct**

Behavior that interferes with library services and activities (including the ability of library staff to perform their work and the ability of other patrons to effectively use and enjoy the library facilities) is prohibited in all areas of the library building. This includes, but is not limited to:

* Obscene or abusive language or acts
* Threatening or intimidating others (for example: abusive language, threats of violence or harassment, staring at or following others through the building, engaging in unwanted or inappropriate touching, unwanted or inappropriate sexual advances, innuendo, or jokes)

Visitors whose conduct or activities violate this Patron Code of Conduct policy will be asked to modify their behavior. Further failure to comply with this policy will result in the suspension of library privileges and removal from the building. The length of the suspension of library privileges and/or eviction from the library premises shall depend on the nature and seriousness of the offense that required removal, the extent of the disruption caused, any history or prior infractions of this policy or other library policies, and any other relevant circumstances.

**“Real” County Public Library Behavioral Rules**

If your conduct or activities violate these rules, you will be asked to change your disruptive behavior. Failure to do so may result in the loss of Library privileges, up to and including removal from Library premises and contacting police. The library defines "disruptive behavior" as any act that interferes with library service or with someone else's use of the library.

Disruptive behavior includes, but is not limited to:

* Abusive, threatening, or harassing behavior in any form
* Sexual behavior
* Refusing to follow the directions of Library staff

Banning and Ban Appeal Procedure:

After staff determine that a person has engaged in severe or repeat misconduct and staff has determined that the individual involved should be banned:

Staff will issue, or cause to be issued, a written ban notice to the individual involved notifying the individual that they are banned from all “Real” County Public Library locations. The letter shall indicate the reason for the ban, the time period of the ban, and the process for appealing the ban.

Individuals banned for more than 30 days need to meet with the Building Services and Security Manager and/or their designee to review Library behavior rules before being allowed to resume Library services.

1. **Scenarios**

**Scenario 1**

Are these unpleasant/uncomfortable encounters or actionable?

1. A male staff member asks a female staff member while on vacation to send him pictures of herself "in a bathing suit . . . or not."
2. A male staff person tells a female staff person to take off her mask as he wants/likes to see her "pretty face."

**Scenario 2**

1. Male co-worker says of female co-worker “She will do anything for $10” then becomes more explicit about what anything might include. Library director and other co-workers laugh and joke about it for the next 5 minutes.
2. Male co-worker says to male employee “Who did you sleep with to get this job?” using cruder language.

**Scenario 3**

A patron frequently goes beyond the limits of what is acceptable conversation or attempts at humor. He wants to elicit a reaction. Examples:

1. Patron once referred to wanting to cut off Hilary Clinton's head.
2. He refers to women he works with as “b---es and wh--res.”
3. Patron did a Bill Clinton impression while talking about sexual acts and using an inappropriate hand gesture.

**Scenario 4**

A staff member finds herself trapped in the shelves with a patron who is being inappropriate. How can she extricate herself when the patron is being creepy under the guise of asking where books are located. Helpful talking points when customer service is being used against you.

**Scenario 5**

Patron uses terms like sweetie, honey, sweetheart, or other pet names

1. How to react anytime pet names are used to refer to an employee
2. How to react when they are used more annoyingly with repeated use and continued unwillingness to use actual name

Note: *Unless there are additional facts that are not included here, many of these appear to be isolated incidents. Some resemble certain facts in the cases described above, but probably lack the pervasive pattern of behavior required to find a hostile work environment.*

**Additional Discussion Exercises**

Goal: To identify specific behaviors that violate the patron behavior policy and implement the policy in the way it was intended.

Supervisors or more experienced staff may want to help staff identify ways employees can handle these types of situations:

* Putting an end to long conversations with patrons
* Dealing with patrons who corner employees
* Patrons that don’t “take a hint” that they are having a one-sided conversation (Note: Be sensitive to possibility of a disability involving impaired social skills)
* Unwanted attention is constant, with it being clear there is no "actual need" by the patron
* Patrons that only solicit help from female employees, even after a male employee's initial offer was declined
* Patron asks personal questions about marriage, kids, dating
* Leering/staring