



IS THIS SEXUAL HARASSMENT?

**The
Library
Edition**



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DISCLAIMER

The purpose of this webinar is to provide general information rather than legal advice. The information provided here is not provided in the course of and does not create or constitute an attorney-client relationship. For legal advice specific to your situation, please contact your library attorney.

The information provided here is current as of today (June 24, 2021) but subject to change at any time. My remarks are specific to Indiana and while I have looked at federal law, I have not reviewed any other state or jurisdiction's statutes in preparing this webinar.

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OUTLINE

- State & Federal Law
 - Title VII & EEOC
 - Indiana Code & ICRC
- Cases
- Other things to consider, legal & non-legal
- So, is this sexual harassment? Discuss library scenarios and what to do if a situation isn't actionable
- Q & A

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BRIEF BACKGROUND

- Sexual harassment is a form of sex discrimination and violates Title VII of the Civil Rights Act of 1964.
- Sexual harassment is prohibited under state and federal law. It may also be prohibited under a local (city or county) ordinance.
- Engaging in workplace harassment is prohibited and can subject an employee to disciplinary action up to and including dismissal.

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FEDERAL LAW TITLE VII

Civil
Rights
Act of
1964



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TITLE VII – FED'L CIVIL RIGHTS ACT

- Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, **sex** and national origin.
- Created the Equal Employment Opportunity Commission (EEOC) to enforce the Act.
- Applies to employer with 15 or more employees

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TITLE VII REQUIREMENTS

It shall be an **unlawful employment practice** for an employer to:

- (1) . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, **sex**, or national origin; or
- (2) . . . deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, **sex**, or national origin.

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IT IS ILLEGAL TO HARASS AN EMPLOYEE

- Because of race, color, religion, sex (**including gender identity, sexual orientation, and pregnancy**), national origin, age (40 or older), disability or genetic information.
- Because they have complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.
- Sexual harassment is also unlawful

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TERMS/CONCEPTS/DEFINITIONS

- Protected classes
- Workplace harassment
- Sexual harassment
- Quid pro quo
- Hostile workplace

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WORKPLACE HARASSMENT

- Harassment can take the form of slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct.
- The law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious.
- Harassment is illegal if it is **so frequent or severe that it creates a hostile or offensive work environment or if it results in an adverse employment decision** (such as the victim being fired or demoted).
- Harassment outside of the workplace may also be illegal if there is a link with the workplace. For example, if a supervisor harasses an employee while driving the employee to a meeting.

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SEXUAL HARASSMENT (FED)

- Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.
- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly:
 - affects an individual's employment;
 - unreasonably interferes with individual's work performance; or
 - creates an intimidating, hostile or offensive work environment.

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SEXUAL HARASSMENT (STATE)

Sexual harassment is "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- 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."

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CONCEPTS RELATED TO HARASSMENT

- Quid pro quo
 - Means “this for that”
 - There is an exchange
- Hostile work-place environment
 - Usually looking for a pattern of behavior
 - Unlikely to find if its an isolated incident

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THE HARASSER AND THE HARASSED

Who might be the target of harassment?
A person of any sex.

Who might be the harasser?
A co-worker, supervisor, or
non-employee such as a client or customer (i.e.
a Patron)

Harassment can be between members of the same
or different sexes.

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IF YOU EXPERIENCE AN INCIDENT

- Be clear that the attention is unwelcome and unwanted
- Record the dates, times, and other witnesses
- Put the details in writing while they are fresh in your mind, who said what to whom
- Prepare the information even if you aren't sure you want to file a complaint

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INDIANA CIVIL RIGHTS LAW

- IC 22-9 Creates Indiana Civil Rights Committee (ICRC)
- Focuses on equal opportunity for education, employment, access to public conveniences, accommodations and housing.
- To eliminate segregation or separation based solely on race, religion, color, sex, disability, national origin, or ancestry.
- To protect employers from unfounded charges of discrimination.
- Employer – the state or any political subdivision thereof and any person employing 6 or more persons

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UNIQUE TO INDIANA

To have claims decided in a civil action
“both respondent and complainant must
agree in writing to have the claims
decided in a court of law.” IC 22-9-1-6

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BYSTANDERS

Sexual harassment can affect bystanders too.

- A bystander may be the one to report an incident.
- See something, say something
- If you see an incident record the dates, times, and other witnesses
- Put it in writing

Other bystander interventions might include “the 3 Ds”

- Direct – “Can I help you?”
- Distract – create a diversion to interrupt the activity “Could you come discuss this report with me?”
- Delegate – ask someone else to help (manager, supervisor, or co-worker)

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RISKY BEHAVIOR & SOCIAL MEDIA

Harassment does not always involve spoken words or physical touch. It also happens over social media. Risky behavior can include posting inappropriate or offensive videos, emails, texts, gestures, or pictures. Don't engage in risky behavior because a coworker might misunderstand or be affected.

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LAUGHS AND NOSTALGIA



Debbie Bankhead Bowman ·

Jun 14 · 🌐

Hahaha 😜🕊️🌟🌟🌟

**Dance like no one is
watching but text, post
and email like it will be
read in court one day.
– Your Lawyer**

– Gohar Abelian@herincrediblemindset

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DUTY OF MANAGERS & SUPERVISORS

- Create and model a culture of civility within the workplace.
- Ensure EEs know what policies in place to prevent workplace harassment, what procedures to follow, what their responsibilities are, and the range of reporting options they have.
- Emphasize that risky behavior is not tolerated.
- Implement appropriate disciplinary actions where necessary.

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PREVENTING & ADDRESSING HARASSMENT

Report by EEOC's Select Task Force on the Study of Harassment in the Workplace identified five core principles that have generally proven effective:

- Committed and engaged leadership;
- Consistent and demonstrated accountability;
- Strong and comprehensive harassment policies;
- Trusted and accessible complaint procedures; and
- Regular, interactive training tailored to the audience and the organization.

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POLICY EXAMPLES

Resource handout links to:

- State of Indiana's Workplace Harassment Prevention Policy
- Indiana State Library's Patron Behavior Policy
- Other policies can be found on ISL Website

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POLICY PROVISIONS TO CONSIDER

- Describe purpose of policy
- Explain what activities are prohibited
- How to report – a clear process for how to make a complaint
- To whom employee can report –must have options
- Set graduated responses
- Protection against retaliation

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SO, IS THIS SEXUAL HARASSMENT?

How to do the analysis




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**YOU ARE ENTITLED TO A WORKPLACE
FREE OF SEXUAL HARASSMENT.**

- That doesn't guarantee a jerk free workplace.
- You will have unpleasant interactions because you deal with the public.
- Unpleasant encounters do not always constitute harassment.

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Finding the line between annoying behavior and actionable behavior?

- Cases are fact specific.
- Context matters.
- Tone of voice, body language, nature of eye contact can make a difference to the analysis.
- Need to focus on the behavior and identify specifically how it violates the law or policy.
- Finding a hostile workplace usually involves sustained pattern of behavior.

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IS IT ACTIONABLE ?

STEP 1. Was it an unwanted sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature? IF YES, GO TO STEP 2.

STEP 2. Is one of the following true:

- Is it (explicitly or implicitly) a term or condition of my job?
- Will my response (submitting or rejecting) be used as the basis for a decision affecting my employment?
- Does it unreasonably interfere with my work performance?
- Was it so frequent or severe that it creates an intimidating, hostile, or offensive work environment? (Generally, not an isolated incident unless it is a very severe incident.)

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WHAT CAN I DO IF THE BEHAVIOR IS NOT ACTIONABLE?

If perpetrator is a co-worker or supervisor – Does the behavior violate the library's sexual harassment policy? Or that of the county or city?

If perpetrator is a patron - Does the behavior violate the library's code of conduct or any other written policy of the library?

If so, cite specific provision and warn the person of the next step under the policy if the behavior continues.

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SETTING A BOUNDARY

- Drop your voice to make it sound deeper.
- End your sentences with a “.” not a “?”
- Practice what to say. Role playing is good practice.
- Write it down on a notecard and carry it in your pocket or post it on your bathroom mirror at home until you know these phrases.

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HELPFUL PHRASES

- “That comment/behavior is inappropriate.”
- “Your comment/behavior makes me uncomfortable.”
- “I am happy to answer questions about the library, but I will not answer questions about my personal life.”
- “Calling me sweetheart/honey/baby is demeaning to me as a professional. Please do not call me that again.”

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MORE HELPFUL PHRASES

- “My marital status/appearance/personal life has no bearing on my ability to assist you in the library.”
- “If this behavior continues, I will have someone else finish assisting you.”
- “If this behavior continues, I will ask you to leave the library.”

* From <https://americanlibrariesmagazine.org/2017/11/01/stop-sexual-harassment-your-library/>

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SCENARIO 1

Are these unpleasant/uncomfortable encounters or actionable?

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

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SCENARIO 2

- 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.
- Male co-worker says to male employee "Who did you sleep with to get this job?" using cruder language.

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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:

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

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TIME FOR QUESTIONS

What Questions
Do You Have
About Sexual
Harassment

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HOW TO
CONTACT
ME

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