


Sexual harassment. Am I a victim, and what can I do about it?

Learn what constitutes sexual harassment, what you should do to stop it, how to report it, and how to protect your rights in the event of backlash in the workplace.

**Tuckner, Sipser
Weinstock & Sipser**
womens' rights in the workplace LLP



**What is
workplace
sexual
harassment?**



Sexual harassment can include unwanted sexual advances, requests for sexual favors, and verbal, physical, or visual harassment in the workplace. Sexual harassment is a form of sex (or gender) discrimination, just as pregnancy discrimination and gender pay disparity is a form of sex discrimination, too. Sexual harassment can not only be perpetrated by a coworker or supervisor, it also extends to non-employees such as customers or clients associated with your workplace.

What are the forms of workplace sexual harassment?

Generally, sexual harassment can take two forms:

1.

Quid pro quo harassment.


Occurs when an employment benefit is conditioned, expressly or implicitly, on the submission to an unwelcome sexual advance.

2.

Hostile environment harassment.


Occurs when a victim's work environment is made severely hostile or abusive as a result of the sexist statements or actions that degrades the terms or conditions of the victim's employment.

Most of the time, attempting to categorize your harassment into these legal categories isn't too important to worry about—you'll know when you're being sexually harassed at work, just like you know when you're being sexually harassed on the street, the Internet, or in any other public or private space.



A woman with short blonde hair, wearing a light-colored blazer, is looking down with a serious, slightly distressed expression. She is in an office environment with other people blurred in the background. The entire image has a pinkish-red tint.

**What
Should I Do
if I'm Being
Sexually
Harassed
at Work?**



Often, sexual harassment in the workplace is not corrected or punished because victims may feel uncomfortable or intimidated when confronting their harasser. Victims of sexual harassment also often do not report the harassment for fear that they may be retaliated against by the perpetrator, friends or protectors at work.

When facing these difficult challenges, employees should know **how** to recognize sexual harassment, and **when** to take action. You should also know what to expect of your employer when filing a complaint, and **how to properly file a complaint** with your company.

Every instance of sexual harassment in the workplace is unique, and the right approach will depend on your particular situation dealing with unwelcome sexual attention at work. Consider the following information to help you decide how to respond when faced with sexual harassment at work.


Should I confront sexual harassers?

It is common and unavoidable that a certain amount of joking, playful banter and socializing will occur in any given American workplace. Yet, when someone makes an off-color comment or behaves in a way that makes you feel uncomfortable, you should clearly state that such behavior is unacceptable to you and request for it to stop. This is particularly the case when the act or comment is directed toward you.

One legal requirement for the classification of sexual harassment is for the behavior to be ***“unwelcome,”*** so rather than ignore the behavior, you should **immediately communicate to the harasser** that his or her conduct is unwelcome and non-consensual.


Sometimes, simply saying, ***“You’re making me uncomfortable, please stop”*** will be enough to get your message across to someone who may not realize that the conduct is offensive. You can also threaten to report the offender. If your harasser sees that you are treating the situation seriously, he or she may, too. But if the harasser becomes belligerent or continues the offensive sexualized behavior, you will have to take further action within the workplace by escalating the complaint to company management.

In addition, please also consider contacting our firm. We represent clients in workplace sexual harassment matters in seeking to stop wrongful and illegal conduct from occurring at the early stages, as well as representing employees in later-stage litigation in seeking compensation and damages for the more extreme cases of sexual harassment.



A woman with long dark hair is looking down with a sad expression. The image is overlaid with a semi-transparent pink rectangle. Inside the rectangle, the text "Should I file a complaint with the company if I'm being sexually harassed?" is written in white, bold, sans-serif font.

**Should I file
a complaint
with the company
if I'm being
sexually
harassed?**



On your home computer or other personal device, document the details of the harassment, including the date and location where it occurred, and the names of any witnesses, if any. As others will read your written account of the reported harassment, be as accurate and objective as possible, and store your record of the incident where you can securely save and access it.


If you don't have access to a computer, keeping a written and dated journal in a classic Composition notebook is helpful and protective, as the pages are glued together sequentially, so it will be clear that you've kept a contemporaneous journal of the sexual harassing behavior and abuse.

Gather your work records.

Some companies may try to defend themselves against your claim by attacking your job performance. As an active form of defense for any issues that may arise, you should gather copies of your personnel file, performance reviews and/or other letters documenting the quality of your work in order to keep evidence of your job performance. If your company policy does not allow you to make copies of your personnel file, you should take notes of its contents, if at all possible, and/or copy and save your prior good performance evaluations.

As soon as you feel that you are being harassed, and feel unable to stop the harassment in its tracks by opposing the conduct directly to the harasser, report the behavior to your supervisor, human resources or any other high-level manager or corporate principal.


This is important because your employer is required to know about the conduct before they can be held legally responsible for dealing with the harassing behavior of a coworker, client or customer.



A woman wearing a dark hijab is shown from the chest up. Her eyes are closed, and she has a somber expression. A hand is visible, resting gently on her right shoulder, suggesting support or comfort. The entire image is overlaid with a semi-transparent pink filter.

What should be reported in a sexual harassment complaint?

**And how should
the complaint
be delivered?**



It is best to inform management in writing by formal letter detailing the events that took place, and ask for a meeting to discuss the harassment in person. However, if you only report the harassment verbally, your complaint should still trigger your employer's duty to investigate the complaint. By putting the complaint in writing and sending it in a provable way—such as through the company's email server or by FedEx, UPS, or USPS Priority Mail—you'll have proof of your company's receipt of the complaint if they later deny it was made, or show signs of retaliatory backlash after the date of the complaint.


If, or when you report the unwelcome objectifying or hostile behavior to Human Resources (HR), or to anyone above you in management, be sure to keep a copy for your records of anything that you provide to your employer. If you are asked to sign a statement of your complaint on proprietary company forms, make sure you request a copy of the form for your records. If your employer refuses to provide a copy, inform them that you are going to take a photograph of it and do so.

When should a sexual harassment complaint be made?

It is important that you report the incident immediately, otherwise the behavior may continue. If there are witnesses to the harassment, you may want to get their statement in writing, or, if you work in a one-party jurisdiction for recording purposes such as New York, you could record and capture the harasser, or a witness to the harassment on a digital recording, and such statement may be powerful evidence of the sexual harassment.


Also, it may strengthen your own case and position if you have spoken with other victims of the harasser, and they may have also filed claims against him/her in the past. There is strength in numbers when it comes to holding an harasser and company accountable.

If your complaint to either your supervisor or Human Resources (HR) did not result in appropriate corrective action to stop the sexual harassment, you should report your claim directly to senior management to address the complaint. When doing so, the best practice is to again present your complaint by formal writing and include any evidence and documentation concerning the harassing or discriminatory incidents, acts or statements.



A woman with dark curly hair and glasses is shown in profile, covering her face with her hand in a gesture of distress or frustration. She is wearing a light-colored long-sleeved shirt. In the background, a man is blurred, looking towards the camera. The entire image has a pinkish-red tint.

**How
employers
should handle
your sexual
harassment
complaint.**



Your employer is obligated to address all harassment complaints promptly, professionally and effectively, as federal and state law requires. The following are the steps you should expect your employer to take when handling your sexual harassment complaint:

- Distribute a written anti-harassment policy

New York law requires employers to post a written anti-harassment policy that expressly prohibits sexual harassment and assure that the employer will conduct a fair investigation into any sexual harassment complaint. All employers must investigate your sexual harassment complaint in a timely manner and the company must maintain confidentiality wherever possible. If it is determined that prohibited unwelcome sexual harassment has occurred, the employer must take appropriate and immediate corrective action to resolve the harassment issue that's making you uncomfortable in the workplace.

- Prompt investigation.

It's worth repeating that your company must take prompt action to investigate your complaint. The investigation should be unbiased and professional in order to properly determine whether your complaint is credible. Employers should immediately take your sexual harassment complaint seriously, as they are all required to provide "equal opportunity" workplaces and cannot condone differential treatment based on sex, or any other protected status such as race, color, age, disability, etc.


The best way to prevent allegations of '**investigation bias**' is for the company to hire a neutral third party to conduct the investigation, which should include interviews with the person filing the complaint, the accused harasser, and any witnesses of the harassment. Often, the employer's HR department will conduct the investigation itself, so expect that this will likely be the course taken.


Your company must also take action to prevent the sexual harassment from reoccurring. This can include taking administrative action to discipline and/or terminate the employment of the harasser if the claims are found to be substantiated.

- Employer documentation of sexual harassment claims.


When an employee reports sexual harassment at work, the employer must keep written records of the complaint. If they fail to do so, this signals that the employer does not take workplace sexual harassment seriously and/or does not intend to investigate the claim.

If you reported sexual harassment at work, ask your employer for copies of their documentation. Any time you sign or submit any paperwork to your employer, be sure to keep or request a copy, and most importantly, document the investigation yourself so you will have your own "paper trail."





**Is a company
liable if I'm
harassed by
a customer
or client?**



In addition to your company being liable if you are harassed by a co-worker or manager, your employer may be liable if a customer or client sexually harasses you and your company knew of the harassment, or should have known about the harassment and failed to take remedial action. Regardless of the importance of the customer or client, when you report the sexual harassment the company **must take the same form of corrective action** as if the harasser were an internal company coworker or supervisor.

What should I do if the company does not investigate my sexual harassment claim?


Under New York law, employers are liable if a coworker or supervisor sexually harasses an employee. Your employer is also liable if it is aware of, or should have been aware of the harassment committed but does not take corrective action.

If you are still being sexually harassed, you should request confirmation that your employer has investigated your complaint. If they have not undertaken an investigation, formally ask them to do so in writing. Also provide the company with information regarding any new sexual harassment that has occurred since the date of the original complaint, and **make it clear** that you expect the company to investigate your protected complaint.

What should I do if the company fails to take corrective action for my sexual harassment complaint?

If the investigation has been completed and no corrective action has been taken with regard to the harasser, follow up in writing to inquire about their failure to resolve your complaint as perhaps there was insufficient evidence to determine that the person had in fact harassed you.

You may also ask whether any other employees were interviewed, or if the company is willing to disclose information revealed in their investigation. Some companies maintain that disciplinary matters are always confidential, and will indicate that they are unable to offer any information about the investigation. If you are still being harassed, continue to document it in writing to your company, although at this point, you may consider consulting an attorney to determine whether you have a legal claim to pursue.





**What can
I do if my
employer
retaliates
against me
for filing a
sexual
harassment
complaint?**




Like sexual harassment, **workplace retaliation is against the law.**

Retaliation occurs when your employer behaves negatively toward you after filing a complaint for discrimination or harassment, which is a legally protected activity. Retaliation can take the form of wrongful termination, an involuntary transfer to another department, demotion, job reassignment, salary reduction or other any other type of adverse job action.

If you have made a sexual harassment complaint and believe that your employer is retaliating, the first step would be to address your concerns with your direct supervisor or to Human Resources (HR). It may be discovered that your employer's reasons for such actions are fair or reasonable. Yet, if your employer does not provide a legitimate explanation, voice your concern — in writing — that you believe you are being retaliated against for filing your protected sexual harassment complaint.

If your employer refuses to investigate your complaint, or take appropriate action to correct the problem, we would invite you to contact our firm to discuss your options in moving forward to resolve your sexual harassment complaint. One option may be to file a discrimination claim with the Equal Employment Opportunity Commission (EEOC), or directly in the appropriate state court. Before filing a discrimination claim, there may be other important actions that should be taken first in order to better protect your claim of sexual harassment – we can discuss these matters once we learn about your case.



Unsure of the next move?

At *Tuckner Sipser*, we offer expert, compassionate legal analysis of your sexual harassment claims. We will guide you and champion your cause when you're ready to stand up and fight for your right to be equal and to be compensated for any harms and losses.

Please contact us at

(212) 766-9100

**to schedule a confidential
consultation.**

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