Sexual Harassment

UNC Pembroke

2013
Objectives

• Promote the understanding that sexual harassment of any type is a form of discrimination and is prohibited at UNCP.

• Promote the understanding that UNCP does not tolerate sexual harassment, and does not tolerate retaliation against persons who report it.

• Discuss the behaviors that may be considered sexual harassment.
Objectives

• Go over the history in the law of sexual harassment.

• Identify all the costs of sexual harassment.

• Explain UNC Pembroke’s process for filing and responding to claims of sexual harassment.
Legal Background

- Title VII of the Civil Rights Act of 1964 – EEOC
- Important Supreme Court Decisions
- State Personnel Act
Title VII and Sexual Harassment

- Where does sexual harassment appear in the law?
- Development of the concept of sexual harassment through court decisions.
- EEOC is the federal agency that enforces the provisions of Title VII.
Important Supreme Court Decisions

- *Faragher v. City of Boca Raton* 1998
- *Burlington Industries, Inc. v. Ellerth* 1998
State Personnel Act

- Where is sexual harassment in the State Personnel Act?
- “Unlawful workplace harassment” - NCGS 126-34.1 (a) (10)
- Foundation of how UNCP responds to complaints of sexual harassment
University’s Obligations From These Cases

To protect all employees and comply with the law, UNCP must:

1. Have a policy that prohibits sexual harassment ✓
2. Make that policy available to all employees ✓
3. Provide training in the use of that policy ✓
4. Provide an alternative to going to the alleged harasser with the complaint ✓
What Is Sexual Harassment?

- Unwelcome sexual advances,
- requests for sexual favors,
- displays of sexually explicit or suggestive materials, or
- other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive work environment.

ALL forms of sexual harassment are illegal and prohibited.
Is This Sexual Harassment?

- A female supervisor makes frequent comments about a male employee’s physique
- A male supervisor makes frequent comments about a male employee’s physique
- An employee posts a swimsuit calendar in his work area
Is This Sexual Harassment?

- Consensual relationships

[But, this could be a potential problem]

- Inviting a co-worker out

[No means No]

- Sending/receiving off-color jokes

- Wearing clothing, that while provocative, is within the dress code of the organization (if one exists)
Who May Commit Sexual Harassment?

- Someone in a position of supervisory or managerial authority
- Co-workers
- Third parties, such as outside vendors, customers or salespeople
Types of Sexual Harassment

- Quid Pro Quo
- Hostile Work Environment
Quid Pro Quo sexual harassment occurs when:

Employment decisions or expectations - hiring decisions, promotions, salary increases, work assignments or performance evaluations - are based on an employee’s willingness to grant or deny sexual favors.
Hostile Work Environment sexual harassment occurs when verbal or non-verbal behavior in the workplace:

- Focuses on the sexuality of another person or occurs because of the person’s gender; and
- Is unwanted or unwelcomed; and
- Is severe or pervasive enough to affect the person’s work environment.
Automatic Legal Liability

• Quid Pro Quo - Tangible employment action occurs

• Hostile Work Environment - Supervisor’s actions create a hostile work environment and a tangible employment action occurs
“Tangible Employment Action”

- Discharge
- Demotion
- Pay cuts
- Withholding a raise or a promotion
- Job reassignment with significantly different duties, or
- Creating work conditions that are so intolerable that the employee is forced to resign.
People Harass Other People To:

• Express dominance or power;
• Control someone organizationally or socially;
• Attempt to seek peer approval;
• Use as a bullying tactic.
Who Are Harassers?

Anyone can harass, just as anyone can be the target of harassment regardless of sex, sexual preference, age, or professional position.
Who's Affected By Sexual Harassment?

- The victim
- By-standers/witnesses
- Co-workers
- UNCP
Cost To The Organization

- The need for employees to be “off the job”
- Investigation of the sexual harassment complaint
- Depositions and other forms of pre-trial discovery
- Trial
- Low productivity due to distraction
- Negative impact on other managers, employees, and witnesses
- Adverse public relations for the organization
Cash Costs to the Organization

- According to the U.S. Equal Employment Opportunity Commission (EEOC), in the past 10 years, the average jury verdict in a case of sexual harassment was $250,000, not including legal fees, court costs and punitive damages, making it the most expensive harassment complaint.

- In Fiscal Year 2009, EEOC received 12,696 charges of sexual harassment. EEOC resolved 11,948 sexual harassment charges in FY 2009 and recovered $51.5 million in monetary benefits.
More Costs

• **11 Sexual Harassment Settlements Cost NY State $5 Million** – New York State paid out at least $5 million to settle sexual harassment cases from 2008 to 2010, according to newly released records provided by the New York attorney general’s office.

• EEOC announced the settlement of a sexual harassment lawsuit against Lowe’s Home Improvement Warehouse, Inc. for **$1.72 million** on behalf of three employees who were subjected to a pervasive sexually hostile work environment and retaliated against for complaining about it.

The former employees, two young men and one woman, were subjected to widespread and repeated sexual harassment by male and female managers and coworkers at a Lowe’s store in Longview, Wash. The sexually hostile workplace, which lasted for more than six months, included physical and verbal abuse which culminated in one instance of sexual assault.
And Yet More Costs . . .

- Sexual harassment cost the Federal Government an estimated $327 million during the 2-year period April 1992 to April 1994, but the overall ill effects of sexual harassment have decreased significantly. *This amount includes the cost of sick leave, job turnover, and productivity losses.*

- A lawsuit filed by a disgruntled Nevada restaurant worker by the EEOC has resulted in a settlement totaling $155,000. The EEOC lawsuit alleged the workers were subjected to aggressive physical and verbal sexual harassment on the part of a male co-worker who later became their supervisor.
UNCP develops, communicates, and enforces a policy that:

- Provides a clear statement of the University’s position against sexual harassment

- Promotes compliance and prevention by defining responsibilities

- Protects employee rights and fosters respect for all parties
Preventing Sexual Harassment - Your Responsibility

- Know and comply with University policy
- Address incidents of sexual harassment immediately
- Cooperate with investigations
1. The complaint may be filed in writing either with the immediate supervisor or with Human Resources.

2. UNCP has 60 days to investigate the complaint and to attempt to resolve it.

3. The usual process for attempting to resolve a complaint will involve an investigation by Human Resources.
UNCP Process for Handling Sexual Harassment Complaints

4. All persons with relevant information will be interviewed.

5. UNCP (through Human Resources) will attempt to resolve the complaint.

6. Appropriate action will be taken, including discipline if warranted.

7. UNCP will make every effort to have a resolution of the complaint within 60 days of its filing.
8. If UNCP does not provide a response or proposed resolution to the complainant with 60 days, then the complainant may file the complaint with the Office of Administrative Hearings.

9. At OAH, the complainant will be afforded a full hearing on her/his complaint, with a final decision that is binding on both parties.

Retaliation by anyone in this process is strictly prohibited and will be dealt with appropriately.
What You Know Now About Sexual Harassment:

- Title VII, the courts, and EEOC are legal entities that deal with sexual harassment.

- Sexual harassment involves more than physical conduct; it can be verbal or visual, or can be an overall hostile environment.

- Cases of sexual harassment affect many people in the workplace, including co-workers, bystanders, and witnesses.

- Both employers and employees have responsibilities for preventing harassment in the workplace.
QUESTIONS