

Harassment Law: Common Questions

Linda F. Willing
RealWorld Training & Consulting
www.rwtraining.com

What laws make harassment illegal?

Harassment is a form of illegal discrimination, which is a violation of Title VII of the 1964 Civil Rights Act, the Civil Rights Act of 1991, and Title IX of the 1972 Education Amendments.

Who enforces anti-harassment law?

The Equal Employment Opportunities Commission (EEOC) is responsible for enforcing Title VII of the 1964 Civil Rights Act. In addition, most states have agencies that enforce state laws related to civil rights violations.

Can employers be held liable for harassment by peers?

It depends. If supervisors knew of the harassment and failed to stop it, then the answer is probably yes. If employers failed to prevent workplace harassment through education and policy enforcement, then they may be held liable. See Faragher v. Boca Raton.

Are unions covered by anti-harassment law?

Yes, unions are legally accountable for harassment and discrimination under Title VII.

Isn't harassment a matter of perception— if you call it harassment, then it is?

Not necessarily. The courts use a “reasonable person” standard to assess whether cases meet the standard of illegal harassment. In addition, the 9th Circuit Court of Appeals has adopted a “reasonable woman” standard that acknowledges that women may perceive harassment differently from men. See Ellison v. Brady, 1991.

If someone is being harassed, are they required to report it to their supervisor?

Reporting standards vary. The law recognizes that in many cases, it is the supervisor who is performing or enabling the harassment. Alternate routes should exist for reporting that do not require strict adherence to the chain of command.

Why does the law change so much?

Harassment law is relatively new law (the first official guidelines on sexual harassment were issued in 1980, and the concept of “hostile environment” was created in 1986.) Subsequent changes in the law have served to clarify the definition of harassment and the remedies that apply.

Harassment law has ruined the workplace. We can't have fun anymore for fear of being accused of harassing someone.

This is a common concern, but it is largely unfounded. The courts have been consistent in saying that enforcement of harassment law does not intend to impose a specific code of civility on the workplace. Illegal harassment is more than just transient offensive behavior– it unreasonably interferes with an employee's work performance and conditions of employment. In Faragher v. Boca Raton, the Supreme Court stated, “simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment.”

Harassment or not?

Mutual respect	Disrespect
Boundaries defined	Not defined
Care for other	Little or none
Professional	Inappropriate
Behavior would continue in presence of family, supervisors	Behavior would not continue