



## Sexual Harassment Policies and Training in State Legislatures

BY JONATHAN GRIFFIN

Sexual harassment is recognized as a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to private employers with 15 or more employees, state and local governments, employment agencies and certain labor organizations, as well as certain federal government employees.

Although Title VII does not mention or define “sexual harassment,” federal regulations and guidelines for the Equal Employment Opportunity Commission (EEOC), as well as courts, have defined two types of behavior that may qualify as sexual harassment: “quid pro quo” harassment and “hostile environment” harassment.

- “Quid pro quo” is a Latin phrase that translates (roughly) to “this for that.” “Quid pro quo” harassment typically occurs when an employee is fired or demoted due to a refusal to engage in unwelcome sexual activity with a supervisor.

- “Hostile environment” harassment typically occurs when an employee is subjected to sufficiently severe or pervasive sexually offensive behavior that it alters the conditions of the person’s employment and creates a hostile or abusive working environment. This behavior can include off-color jokes, discussing sexual activities, touching, leering, posting sexually explicit pictures, or other unwelcome conduct based on sex. A single isolated incident typically does not create a hostile environment unless it is sufficiently severe.

Sexual harassment lawsuits may include both “quid pro quo” and “hostile environment” charges. The categories are distinct but claims under Title VII can interweave the two. For example, a supervisor could engage in pervasively sexual behavior and reward employees who also participate in the behavior with promotions, creating the potential for both quid pro quo and hostile environment lawsuits.

### Did You Know?

- Sexual harassment is a violation of The Civil Rights Act of 1964.
- Most states do not require employers to conduct sexual harassment training.
- Most sexual harassment training for state legislators occurs at their orientation.

According to the EEOC, sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim, as well as the harasser, may be a woman or a man. The victim does not have to be of the opposite sex from the harasser.
- The harasser may be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker or a non-employee, such as a vendor or customer.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

## State Legislative Policies

Although [federal regulations](#) do not require an employer to implement a specific sexual harassment policy, the regulations state that employers "should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned." [The EEOC advises](#) that an "effective preventive program should include an explicit policy against sexual harassment that is clearly and regularly communicated to employees and effectively implemented."

In October 2016, NCSL conducted a survey of state legislative human resources offices (the HR Survey). Forty-nine offices in 44 states responded to the survey and 37 offices reported "having formal, written personnel policy or guidance for legislative employees" on sexual harassment.

For example, Colorado's state legislature has created [its own policy](#). The policy states: "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment 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 the 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."

It also gives examples of impermissible conduct and instructions on how to submit a complaint, and to whom. It explicitly states that the policy applies to "all legislative employees who are not subject to the state personnel system, each member of the General Assembly, and third parties."

## State Legislative Training

Training employees on sexual harassment in the workplace is not mandated under Title VII, but again is encouraged as part of an employer's efforts to prevent unlawful harassment at their work sites. Many state legislatures conduct such training for their staff and members. Sexual harassment training is usually done in a live, classroom setting for both staff and legislators. Most legislator training on sexual harassment occurs at their orientation program and roughly half the states that offer such training have separate programs for their upper and lower chambers.

California is one of the few states that mandates sexual harassment training by statute. Under [Section 12950.1 of the California Government Code](#), all supervisory employees of the state must undergo two hours of "classroom or other effective interactive training" every two years. Employers also must pass out an [informational brochure](#) and develop a written sexual harassment policy that meets the requirements of [Title 2 of the California Code of Regulations](#). The [California Assembly](#) has taken this a step further and required that "[e]very employee shall, within the first six months of every legislative session, take a course on sexual harassment prevention." Legislators (and staff) who have complaints filed against them must answer to the Assembly's bipartisan Subcommittee on Harassment, Discrimination, and Retaliation Prevention and Response, operated under the Committee on Rules. Sexual harassment training is mandatory for members of the Assembly and Senate as well as legislative staff.

The Washington state Senate's "Respectful Workplace Policy" was created to "provide and maintain a work environment free from discrimination and harassment." To achieve these goals, the Senate created a written policy that provides confidentiality for the parties involved (to the extent possible) and creates rules regarding investigations. The policy also lists requirements for training. It states that "[a]ll Senators and staff must complete training sessions, signing an acknowledgement that they have read the policy and will comply with its provisions, and will be supplied with a copy of the policy."

## Additional Resources

Sexual harassment policies for the [Alabama House](#), [New York Assembly](#) and [Tennessee General Assembly](#).

Equal Employment Opportunity Commission, [Facts About Sexual Harassment](#).

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