

Chapter 17

SEXUAL HARASSMENT IN THE WORKPLACE

I. INTRODUCTION

The law protecting employees from sexual harassment has expanded over the last two decades. Twenty years ago, the problem of unwanted sexual attention at the workplace had no name and little visibility. Corporations and government agencies were not expected to be responsible for what was considered personality conflicts and office etiquette matters. But with the 1970s and 1980s came the emergence of lawsuits before the court demanding equity and fair treatment and respect in the workplace. Not until 1977 did a federal court uphold a sexual harassment charge. The U.S. Supreme Court did not rule favorably on a sexual harassment case until 1986. But emerging from those court cases, and the outrage of people in the workforce, are recognized protections of employees' rights to be treated fairly and respectfully in the workplace. The protections include, among others, the right to be free from undesired physical contact, inappropriate sexual innuendos and degrading gender-based comments.

The leaders of federal agencies are just now starting to recognize and better understand the effects of sexual harassment on the dignity and respect of employees and the adverse effect on the workplace. NTEU continues to be in the forefront of efforts to educate the leadership of employers of federal workers. In championing the fight against sexual harassment, each local chapter needs to be progressive in their efforts to protect members and potential members against discriminatory treatment. By ensuring that the union leaders are trained on the grievance procedures for fighting sexual harassment, your chapter can be effective in combating and eliminating sexual harassment in your work environment.

The intent of this chapter is to enable union leaders to aggressively fight sexual harassment in the workplace and to effectively assist employees who may be victims of sexually harassing behavior. With these goals in mind, this chapter is broken into seven distinct sections. Section II discusses some of the legal definitions commonly encountered in processing sexual harassment claims. Section III provides a broad legal framework that can serve as a useful guide in determining whether, and what kind, of harassment has occurred. Section IV identifies the damaging effects sexual harassment has on both the individual harassed as well as the workplace as a whole. Section V explains how a union official can file a sexual harassment grievance, and Section VI highlights some of the remedies that can be sought in a sexual harassment claim. Finally, Section VII contains six different factual scenarios that will enable users to test their knowledge and grasp of the subject matter.

II. EFFECTS OF SEXUAL HARASSMENT

Sexual harassment can have serious psychological, physical, and economic effects for victims. Victims can experience a wide range of emotional reactions from self-doubt and self-blame to depression. The psychological distress resulting from sexual harassment can lead to physical illness, deteriorated performance, lost work time, and unexpected expenses.

Many people who experience sexual harassment are bewildered and confused at first. It is hard for them to believe that someone in a position of authority or trust would treat them so badly. They feel demeaned and devalued. They are humiliated and embarrassed.

The experience of being harassed can make a job intolerable. Many victims feel they have to leave the job that they loved because they are unable to enjoy it anymore.

The psychological stress often takes a toll on physical health. Some victims experience physical symptoms including headaches, backaches, nausea, fatigue, and sleep and eating disorders.

Many victims suffer economically as well. They lose or leave their jobs and settle for lower paying ones. They may incur attorney, doctor, and counseling fees.

Family members suffer right along with the harassment victim, experiencing emotional distress as well as financial losses.

The effects on the organization include losses due to absenteeism, lower productivity and employee turnover.

III. DEFINITIONS

The following are definitions of the essential terms in sexual harassment grievance procedures and litigation.

Sexual Harassment- Sexual harassment is defined by regulation as “unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature . . .” (29 C.F.R. 1604.11). Title VII of the Civil Rights Act of 1964 makes it illegal to discriminate against employees on the basis of race, color, religion, **sex**, or national origin. The law gives every employee the right to work in an environment free of intimidation, insult, or ridicule based on race, religion, or sex. Sexual harassment is a form of discrimination based on sex. Thus, sexual harassment is a violation of Title VII of the Civil Rights Act of 1964. (42 U.S.C. 2000e-2(a)(1)).

A more functional definition of sexual harassment is “to harass someone is to bother him or her. Sexual harassment is bothering someone in a sexual way. The harasser offers sexual attention to

someone who does not ask for it or does not welcome it.” (Bravo and Cassedy, The 9 to 5 Guide to Combating Sexual Harassment, 1992)

Quid Pro Quo- is a type of sexual harassment. *Quid pro quo* is a Latin word which means “something for something” or “this for that.” In other words, you scratch my back and I’ll scratch yours. In terms of sexual harassment, *Quid pro quo* means you do something sexual for me and I will provide some tangible job benefit to you. In this type of sexual harassment, a supervisor makes unwelcome sexual advances and either states or implies that the employee must submit if the employee wants to keep their job, or receive a raise, promotions, or job assignment.

The legal definition - [submission to such conduct (unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature) is made either explicitly or implicitly a term or condition of an individual’s employment,] (29 C.F. R. 1604.11(a)(1)

or

[Submission to or rejection of such conduct (unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature) by an individual is used as the basis for employment decisions affecting such individuals.] (29 C.F.R. 1604.11(a)(2).

Hostile Environment- is another type of sexual harassment. This occurs when a supervisor or coworker harasses an employee solely because of his or her gender to the point that the conduct makes it more difficult for the employee to perform his or her job or that the conduct creates an intimidating, hostile, or offensive working environment which is severe and persistent. An employee does not have to be fired, demoted, or denied a raise or promotion to be harmed. Even if no threat is involved, unwelcome sexual conduct can have the effect of “poisoning” the victims work environment. Sexually explicit jokes, pinups, graffiti, vulgar statements, abusive language, innuendoes, and overt sexual conduct can create a hostile environment. (9 to 5 Guide, p. 25.)

The legal definition - “conduct [which] has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.” (29 C.F.R. 1604.11(a)(3).)

EEOC- In 1972, Congress passed the Equal Employment Opportunity Act, which established and gave enforcement powers to the Equal Employment Opportunity Commission (EEOC). The EEOC enforces and has developed guidelines for interpreting Title VII. While, the EEOC is headquartered in Washington, D.C., there are several regional offices across the country.

Prima Facie- *Prima facie* is a Latin legal term which means presumed to be true unless disproved by some evidence to the contrary. A *prima facie* case consists of sufficient evidence in the case that would reasonably allow conclusion in favor of the case presenter, unless the defendant can produce evidence to rebut the case.

The legal definition - “a fact presumed to be true unless disproved by some evidence to the contrary.” (Black’s Law Dictionary, Abridged 5th Ed., 1983.)

Prima Facie case - “Such as will prevail until contradicted and overcome by other evidence. A case which has proceeded upon sufficient proof to that stage where it will support a finding if evidence to the contrary is disregarded.” (Black’s Law Dictionary, Abridged 5th Ed., 1983.)

Preponderance of the Evidence- The word “preponderance” means outweighing or something more than weight. There is generally a weight of evidence in a case of contesting facts. The “preponderance of the evidence” standard is a burden of evidence one must meet to win some cases. It is the lowest burden of evidence standard recognized by courts. It is commonly understood as the 51% standard (more likely than not). If at the conclusion of a case, the facts presented are more likely than not to be credible or convincing, the burden of proof has been met and the case is won. As a contrast, the highest burden of evidence, generally attached to criminal cases, is the famous “beyond a reasonable doubt” standard. The burden is much higher in that there must be no doubt in a reasonable fact finder’s mind that the facts presented are credible or convincing.

The legal definition - “Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. With respect to burden of proof in civil actions, means greater weight of evidence, or evidence which is more credible and convincing to the mind.” (Black’s Law Dictionary, Abridged 5th Ed., 1983)

Strict Liability- is a concept applied to cases where the intent of the responsible person has no impact on their liability. Whether the responsible party intended to commit the act or cause the outcome or not, they are still held responsible for the results.

IV. THE LEGAL FRAMEWORK

There are two types of Sexual Harassment which can arise in the workplace:

Quid Pro Quo

Hostile Environment

A. QUID PRO QUO SEXUAL HARASSMENT

Quid pro quo harassment generally involves a superior requesting sexual favors from a subordinate in return for job benefits or the avoidance of a job detriment. Federal regulations define *quid pro quo* harassment as sexual demands which are “made either explicitly or implicitly a term or condition of an individual’s environment.” (29 C.F.R. 1604.11(a)(1).)

To make a *prima facie showing* in a *quid pro quo* sexual harassment case, the complainant must prove the following elements by a preponderance of the evidence:

- a) he or she belongs to a statutorily protected group;
- b) he or she was subjected to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature which was not solicited, desired or invited;
- c) his or her reaction to harassment complained of affected tangible aspects of the employee's compensation, terms, conditions, or privileges of employment;

(NOTE: There does not have to be any actual economic loss for a suit to be maintained. (Karibian v. Columbia University, 14 F.3d 773 (2nd Cir. 1994).)

- d) the harassment complained of was based on sex (but for the complainant's sex, he or she would not have been the object of the harassment).

In meeting all of the required elements of the *prima facie case*, the following outline will be useful as a guide to determine whether the complainant will be able to introduce sufficient evidence to prevail.

Element One: Membership in a Protected Class

The first element of the *prima facie case*, membership in a protected class, usually will not be in dispute. All that is required is a simple stipulation of the complainant’s gender.

Element Two: Unwelcome Sexual Advance

The second element of the *prima facie* case involves proof that an unwelcome sexual advance occurred. There are two prongs to this element:

- (1) That a sexual advance occurred; and
- (2) That the sexual advance was unwelcome

Whether conduct is of a sexual nature is judged by an objective standard and the complainant has the burden of showing that the conduct in question was sexual in nature. In many cases, the second prong of this element will be more difficult to prove because the supervisor may contend that the advance was invited by the subordinate. Because consensual relationships do not violate Title VII, the complainant will have to prove that the advance was unwelcome. The subordinate may demonstrate unwelcomeness by the following reactions:

- (1) The strongest evidence of unwelcomeness is a contemporaneous and outright rejection of the sexual advance;
 - a) the complainant need not confront the harasser to show that the conduct was unwelcome
 - b) evidence that the complainant demonstrated resistance is enough to establish unwelcomeness
- (2) Where the subordinate initially consents to a relationship but then later rejects the advances of the superior, the complainant must clearly notify the harasser that his conduct is no longer welcome in order to show unwelcomeness;
- (3) Courts have held that voluntary submission to sexual conduct does not mean that the conduct was welcome;
- (4) Courts have also held that a subordinate's failure to protest is not itself evidence of welcomeness;
- (5) Where an employee lodges a complaint promptly after the harassment, this is evidence of unwelcomeness;
- (6) Where the subordinate attempts to use the in-house grievance procedure, the employee will be able to show that the conduct was unwelcome;
- (7) If the employee has sought a transfer, this will be evidence that the harassment was unwelcome;

Element Three: Adverse Employment Action

In the classic *quid pro quo* case, the complainant must prove that after a rejection of sexual advances, she suffered a detriment to some tangible aspect of her terms, conditions or privileges of employment. A tangible detriment may include termination, denial of promotion or pay increase, denial of training, or failure to rehire after a layoff. Additionally, where an employee has submitted to sexual conduct because of coercion from a superior, the complainant

need not show that any adverse action was taken. In this case, it would be sufficient to show that the threat of a job detriment coerced the employee into submitting to the sexual advances of the superior.

Element Four: Causal Connection

Element four contains three prongs:

- (1) because of the complainant's sex, she was subjected to a sexual advance.
- (2) that because of her rejection of the sexual advance, she was subjected to (or avoided) a tangible job detriment.
- (3) that the alleged harasser made, or substantially affected, the decision that caused the job detriment.

The critical part of this element is the requirement that the complainant introduce evidence showing that there is a link between the harassment and the adverse employment action. In the classic *quid pro quo* case, the rejection of a sexual advance leads promptly to economic retaliation. The closer in time the rejection occurs with the job detriment, the more likely a "trier" of fact will find a causal connection. Establishing the causal connection is vital because the employer will usually argue that the adverse employment action, e.g., termination, was the result of poor performance, rather than the rejection of sexual advances.

Employer Responsibility

In cases of *quid pro quo* harassment, the employer will always be held liable for the harassment by its superiors. However, *quid pro quo* harassment can only be committed by someone who has the power to grant or deny the job benefit in question. Typically, employer liability is not in dispute in *quid pro quo* cases. Therefore, where the grievance consists of allegations of *quid pro quo* harassment, the grievance should be brought against both the supervisor and the employer.

B. HOSTILE ENVIRONMENT SEXUAL HARASSMENT

Harassing conduct can be so severe and pervasive that it alters an employee's working conditions and thus violates Title VII even when no tangible job detriment has occurred. When harassment of a sexual nature has resulted in an alteration of working conditions, hostile work environment harassment has occurred. Although the two types of sexual harassment may overlap in some situations, hostile work environment harassment differs from *quid pro quo* harassment in many important respects. First, hostile work environment harassment may result from the actions of coworkers or even nonemployees. Second, hostile work environment harassment is not limited to sexual advances, it may also involve nonsexual behavior directed at an employee because of his or her gender, or it may involve sexual activity not directed at any

specific individual. Third, whereas quid pro quo harassment usually requires proof of an adverse job action, hostile work environment simply requires a showing of change in working conditions. Finally, in hostile work environment cases, the employer is not automatically liable for the actions of employees.

To make a **prima facie showing** in a hostile work environment sexual harassment case, the complainant must prove the following elements by a preponderance of the evidence:

- 1) he or she belongs to a statutorily protected group;
- 2) he or she was subjected to unwelcome verbal or physical conduct of a sexual or sex-based nature;
- 3) the harassment has created an intimidating, hostile, or offensive work environment; which has affected a term or condition of employment;
- 4) the harassment complained of was based on sex (but for the complainant's sex, he or she would not have been the object of the harassment.);
- 5) the employer knew or should have known of the harassment and failed to take prompt corrective action.

In meeting all of the required elements of the prima facie case, the following outline will be useful as a guide to determine whether the complainant will be able to introduce sufficient evidence to prevail.

Element One: Membership in a Statutorily Protected Group

As was the case in quid pro quo harassment, this element is typically easy to satisfy because there is no dispute as to the complainant's gender. Both men and women can bring actions for hostile work environment claims.

Element Two: Unwelcome Conduct of a Sex-based Nature

In order to satisfy this element, the complainant must prove the following two prongs:

- (1) that the conduct in question was of a sexual or sex-based nature; and
- (2) that the conduct in question was unwelcome

The complainant may show that the conduct was of a sexual nature by introducing evidence that a sexual advance occurred, that gender-baiting, teasing or hazing took place, or that the workplace was sexually charged. The complainant must also demonstrate that the conduct at

issue was unwelcome. As was the case in quid pro quo cases, unwelcomeness can be demonstrated the following ways:

- (1) The strongest evidence of unwelcomeness is a contemporaneous and outright rejection of the sexual advance or conduct;
 - a) the complainant need not confront the harasser to show that the conduct was unwelcome
 - b) evidence that the complainant demonstrated resistance is enough to establish unwelcomeness
- (2) Courts have also held that an employee's failure to protest is not itself evidence of welcomeness;
- (3) Where a complainant lodges a complaint promptly after the harassment, this is evidence of unwelcomeness;
- (4) Where the employee attempts to use the in-house grievance procedure, the employee will be able to show that the conduct was unwelcome;
- (5) If the employee has sought a transfer, this will be evidence that the harassment was unwelcome;
- (6) However, where the employee initiates sexually oriented conversations, it may be difficult to prove unwelcomeness. Similarly, where the complainant regularly uses foul and crude language and participates in sexual horseplay, a sexually charged workplace may not be found unwelcome.

Element Three: Affecting a Term or Condition of Employment

In order to satisfy this element, the complainant needs to prove one of two prongs:

- (1) that the conduct was severe enough to alter conditions of employment; or
- (2) that the conduct was pervasive enough to be more than merely accidental or an isolated event

In assessing the hostility of an environment, the courts look to the "totality of circumstances" surrounding the alleged sexual harassment. The standard to use when making this determination is a "reasonable person" standard (would a reasonable person perceive this conduct as intimidating, hostile, or offensive? Harris v. Forklift Systems, Inc., 114 S.Ct. 367 (1993).) However, some courts require the use of the "reasonable woman" standard. (Ellison v. Brandy, 924 F.2d 872 (9th Cir. 1991))

Some of the factors determining whether harassment is severe or pervasive include:

- (A) physical conduct - physical incidents may constitute actionable harassment even if they occur only once

B) frequency of discriminatory conduct - a hostile work environment claim without a severe incident will require a showing of multiple incidences of offensive conduct

C) hostility of conduct - the more hostile the activity, the less pervasive it needs to be to be actionable

D) whether the harasser is a supervisor - the supervisor's authority to create a hostile environment is enhanced by his or her degree of authority

E) whether others engaged in harassment - if the complainant is harassed by multiple employees, the harassment will tend to be more pervasive

F) harassment directed at others - if hostile conduct is directed at members of the complainant's group (gender), it may reveal the existence of a hostile work environment

G) whether the harassment unreasonably interfered with an employee's work performance.

Element Four: Causal Connection

Generally, this element is not difficult to prove because evidence of sexual advances or conduct tends to show an intent to discriminate on the basis of the complainant's sex. However, in cases of nonsexual hazing based on gender, the alleged harasser may contend that the hazing was based on the complainant's personality rather than his or her gender. Additionally, where the conduct complained of is equally offensive to men and women, it may be difficult to prove that the conduct was sex-based. Despite these rare cases, the complainant will ordinarily not have a difficult time demonstrating that the conduct at issue was motivated by an intent to discriminate against the complainant on the basis of gender.

Element Five: Employer Responsibility

In a hostile environment sexual harassment suit, the employer is not strictly liable for the alleged harasser's (either an employee or a supervisor) conduct. The employer **is** liable when:

A) Employer knew or should have known that condition was occurring; and

B) Employer did not take immediate corrective action. (If employer takes immediate action to stop harassment, employer will not be held liable under Title VII. What exactly is "immediate and appropriate" action depends upon the circumstances of each situation.)

Also Note the Following With Respect to Hostile Environment Sexual Harassment

When a grievance is filed under a hostile environment sexual harassment cause of action, an agency's defenses may include (one is usually enough to act as a defense):

- 1) the acts or conduct complained of did not occur
- 2) the acts or conduct complained of were not "unsolicited, undesired or uninvited"
- 3) the alleged harassment was not "sufficiently severe or pervasive" to alter conditions of the victim's employment and create an abusive working environment
- 4) "immediate and appropriate" corrective action was taken as soon as the employer was put on notice
- 5) there is no basis for imputing liability to the employer under agency principals.

In order for a hostile work environment claim to be actionable, there need not be any allegation that sex was actually involved. When sexual intercourse or other sexual contact is involved, a harassment claim may be easier to prove, but that does not mean that evidence of sexual activity is necessary to bring a hostile work environment claim. A hostile work environment claim may be brought in circumstances where pinups, explicit jokes, lewd and abusive language, demeaning comments, sexual innuendo, graffiti, as well as sexual actions and touching is present.

C. SUB-ISSUES & OTHER THINGS TO KNOW

Under both quid pro quo & hostile environment sexual harassment, there are subissues which could result in a sexual harassment claim:

Harassment by Nonemployees (29 C.F.R. 1604.11(e))- An employer can be held liable or responsible for the harassing behavior of nonemployees of the agency, such as customers, vendors, and contractors, if the employer has control or could have control over the nonemployees' actions.

Employers who:

- 1) knew or should have known of the conduct, and
- 2) failed to take immediate and appropriate corrective action, and
- 3) had control or responsibility over the non-employees

could be held liable for actions of non-employees.

Sexual Favoritism (29 C.F.R 1604.11(g))- In this type of harassment, a supervisor rewards only those employees who submit to sexual demands. Employment opportunities or benefits are granted because of an employee's submission to the employer's sexual advances or requests for sexual favors. The other employees, those who are denied raises or promotions, can claim that they are penalized by the sexual attention directed at the favored co-worker. The employer may be held liable for unlawful sex discrimination against the other employees who were qualified for, but denied employment opportunities or benefits.

Indirect Harassment- An employee who witnessed sexual harassment on the job, but was not a victim, may be able to claim sexual harassment. (The Labor Institute, Sexual Harassment at Work - A Training Guide for Working People 21 (1994).)

Harassment of Men- Sexual harassment is actionable both when the male is the aggressor and when the female is the aggressor. Sexual Harassment is not just a violation against the rights of females. Though less common than harassment of women by men, sexual harassment of men by women is also illegal harassment.

Same Sex Harassment- The law also covers situations where employees are subject to unwelcome sexual attention from someone of the same sex. At this time, however, homosexuals who are intimidated or insulted because of their sexual orientation are not protected by federal law. The EEOC does not consider such intimidation or insults based on sexual orientation to be sex discrimination under Title VII. However, a number of state and local statutes do protect homosexuals for discrimination. Consult with your national field representative for more information on discrimination charges based on sexual orientation.

V. HOW TO GRIEVE A SEXUAL HARASSMENT CLAIM

A sexual harassment discrimination charge can be either grieved or complained of under:

- 1) a collective bargaining agreement; or
The election of this method occurs at such time that an employee timely files a grievance in writing pursuant to the collective bargaining agreement.
- 2) under 29 C.F.R. 1614 (This section provides authority to file a complaint of sexual harassment under Title VII to the EEO office of the agency).

The election of either method occurs at such time that an employee timely files a complaint under 29 C.F.R. 1614.106 **Note, however, only one of the above methods can be elected and the use of one forecloses the possibility of using the other at a later date on the same matter.**

If an employee elects to file a grievance under the collective bargaining agreement or under the statute, the agency must conduct an investigation of the allegation of sexual harassment, which includes:

- 1) Notifying the grievant that an investigation will be conducted.
- 2) Disciplining the offender if harassment is found.
- 3) Notifying the grievant that disciplinary action was taken.
(Marilyn Teplitz, Sexual Harassment: Effective Agency Policies for Preventing and Overcoming It - Investigating Allegations of Sexual Harassment, Session 7, Handout 1, 10 (1994))

VI. REMEDIES

A number of remedies are available to the complainant and the agency in compensating the individual for the harm suffered as well as ridding the workplace of such harassment. Under 29 C.F.R. 1613.271(a), if the agency finds that an employee or an applicant has been discriminated against, the agency will provide full relief, including:

- 1) Notification to all employees of the agency of their right to be free of sexual harassment and be assured that sexual harassment will not recur. An agency must give specific assurances that the employee no longer will be subjected to sexual harassment by the supervisor. The following options are available to the agency to ensure that the employee's workplace is free from sexual harassment:
 - A) area transfer;
 - B) reassignment under a different supervisor; or
 - C) reassigning the supervisor to another area or station.
- 2) Commitment that corrective action will be taken (including the discipline of the harasser), or measures adopted, to ensure that violations of the law will not reoccur;
- 3) An unconditional offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position;

4) Payment to each identified victim of discrimination on a make-whole basis for any loss of earnings the person may have suffered as a result of the discrimination;

5) Commitment that the agency will cease from engaging in the specific unlawful employment practice found in the case.

Under 29 C.F.R. 1613.271(c), an employee is also entitled to one or more of the following, but the remedy need not be limited to these actions:

1) Retroactive promotion with back pay;

* Unless the record contains clear and convincing evidence that the employee would not have been promoted even absent the discrimination.

* The back pay liability may not accrue from a date earlier than two years prior to the date the discrimination was filed, but, in any event, not to exceed the date the employee would have been promoted.

2) Cancellation of an unwarranted personnel action and restoration of the employee;

3) The expunging from the agency's records of any reference to or any record of an unwarranted disciplinary action;

4) The full opportunity to participate in an employee benefit denied;

5) Attorneys' fees.

An agency can avoid liability for hostile environment sexual harassment where it takes prompt and effective remedial action after learning of the alleged harassment. This includes:

1) stopping the offender from making sexual comments;

2) providing the offender with a copy of the agency's regulations on sexual harassment;

3) discussing those regulations with him;

4) scheduling immediate training for its managers and supervisors;

5) preventing the offender from being in the same room alone with the victim; and

6) removing hi/her from having any role in personnel actions affecting the victim until the allegations are resolved.

VII. TEST YOUR KNOWLEDGE WITH THE FOLLOWING SCENARIOS

The following scenarios are provided to give you a chance to assess how well you understood this chapter. Read the facts of each scenario and then try to develop an answer before you read the answer we have provided.

Scenario 1- Justine works in a predominantly male department. She has tried to fit in, even laughing on occasion at the frequent sexual jokes. The truth is, though, that she gets more irritated by the jokes each day. Franklin, one of Justine's coworker, has told coworkers that he has the "hots" for Justine and is willing to do anything to get a date with her. One day, Sarah, another of Justine's coworkers, overheard their supervisor talking to Franklin in the hallway. The supervisor is overheard saying, "If you get her to go to bed with you, I'll take you to dinner. Good luck." They both chuckled and went their separate ways.

Answer- The supervisor is out of line. The supervisor is responsible for keeping the workplace free of harassment. Instead, he is giving Franklin an incentive to make sexual advances to a coworker. Justine is working in a sexually harassing environment within constant jokes and being treated as a sexual challenge or conquest. Under the circumstances, it is unlikely that Justine would welcome a sexual approach from Franklin. Note that the law does not require Justine to speak up, but it requires the manager or agency to speak up on her behalf and protect her. The conversation may constitute sexual harassment not only for Justine but also Sarah, who became a victim of indirect sexual harassment when she overheard the conversation. Sarah may also be working in a sexually harassing environment. While the supervisor and Franklin may not have meant their conversation to be heard, it is enough that Sarah did hear the conversation and was offended by it.

As Justine's representative, the union leader should file a hostile work environment charge against both the supervisor and the agency. Sarah's representative should also file a hostile work environment charge. The remedies that both Justine and Sarah would be demanding may include making the offenders stop the behavior, training for everyone in the department, personnel action against the supervisor, and maybe even a transfer of the supervisor to another functional area.

Scenario 2- Freda has been working for Bruce for three years. He believes they have a good working relationship. Freda has never complained to Bruce about anything and appears to be happy in her job. Bruce regularly compliments Freda on her clothing. Typically, he will make a remark like, "You sure look good today." Last week, Freda was having a bad day and told Bruce she was "sick and tired of being treated like a sex object." Bruce was stunned.

Answer- Although there is not really enough information to come to any conclusion in this case, remember that Bruce is Freda's supervisor. Freda is complaining about behavior that may be sexual harassment. At the minimum, Bruce should sit down with Freda and her NTEU representative and discuss the situation and their relationship. If Bruce is unresponsive to Freda's concerns, the agency could be held liable for Bruce's actions.

Scenario 3- Theresa tells Andrew, her subordinate, that she needs him to escort her to a party. She says she's selecting him because he's the most handsome guy on her staff. Andrew says he's busy. Theresa responds that she expects people on her staff to be team players.

Answer- A reasonable employee may worry about what the supervisor means by such a request, particularly when it is coupled with remarks about personal appearance and her expectations. It is objectionable that Andrew's, and his co-workers', jobs are tied to their willingness to make a social appearance with the supervisor outside of work. The threat of the supervisor may make the request actionable as sexual harassment. The agency would be responsible for prohibiting the supervisor's conduct.

Scenario 4- Darlene invites her coworker Dan for a date. They begin a relationship that lasts several months. Then Darlene decides she is no longer interested and breaks up with Dan. He wants the relationship to continue. During the workday, he frequently calls her on the interoffice phone and stops by her desk to talk. Darlene tries to brush him off, but with no success. She asks her supervisor to intervene. The supervisor says he does not get involved in personal matters.

Answer- The agency has an obligation to ensure that the work environment is free from harassment. If Darlene finds herself less able to do her job or is uncomfortable at work because of Dan, the supervisor has the responsibility to step in and stop Dan's behavior. By refusing to help Darlene, the supervisor is contributing to a hostile work environment.

Scenario 5- Janet is wearing a low cut blouse at work. John, her coworker, says, "Now that I can see it, you gotta let me have some." Janet tells him to buzz off. All day, despite Janet's objections, John continues to make similar remarks. When Janet calls her supervisor over to complain, John says, "Hey, can you blame me?"

Answer- The agency has a right to expect appropriate clothing be worn to the job. If Janet's outfit is inappropriate, the supervisor should tell her so. But Janet's outfit does not give John license to say or do whatever he likes. The supervisor still has an obligation to protect Janet from unwanted sexual attention, a hostile work environment.

Scenario 6- Someone posts a Hustler magazine centerfold in the employee men's room. No women use this room.

Answer- As a judge ruled in a 1991 Florida case involving nude posters at a shipyard, the presence of such pictures, even if they are not intended to offend women, sexualizes the work environment to the detriment of all employees. Additionally, consider that men who use that restroom may also be offended by its presence, creating a hostile environment for those employees. The agency is responsible for removing the picture and ensuring that no more pictures are posted in the future.