

"Hey, Baby!"

That Was Then And This Is Now

**Sexual Harassment
in the 90's**

Presentation to Glendale Community College Faculty/Department Chairs

**By
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"Hey, Baby! " . . . That Was Then And This Is Now . . .

Sexual Harassment in the 90's

1. SEXUAL HARASSMENT IS . . .

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

2. SEXUAL HARASSMENT IS ILLEGAL WHEN . . .

- Submission to such conduct is made either explicitly or implicitly, a term or condition of an individual's employment or academic advancement;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions affecting an individual, or;
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or offensive working or academic environment.

3. TWO CATEGORIES OF SEXUAL HARASSMENT

- Quid Pro Quo - "something for something" . . .

Submission to sexual conduct is made a condition of employment or educational benefits.

- Hostile Environment - "conditions of work" harassment . . .

Unwelcome and pervasive continuous harassment which creates an intimidating, hostile, or offensive environment in which one has to work or learn.

4. CONDUCT THAT CONTRIBUTES TO A HOSTILE ENVIRONMENT

- Sexually explicit or suggestive jokes, comments, or innuendoes in the academic or work environment;
- Sexually explicit cartoons, magazines, pictures, or posters;
- Commentary about an individual's body (or body parts);
- Leering, "kissing" sounds, licking lips;
- "Elevator" eyes;
- Asking about sexual fantasies, preferences, or history;
- Turning work/academic discussions to sexual topics;
- Invading a person's body space (getting closer than appropriate);
- Making sexual gestures with hands or body movements;
- Sexually explicit computer games/software;
- Continuing to express sexual interest in a person after being informed that the interest is unwelcome;

5. SEXUAL HARASSMENT CROSSES GENDER LINES

Male ➡ Female

Male ➡ Male

Female ➡ Male

Female ➡ Female

6. BEHAVIOR SHOULD BE UNWELCOME

- The person on the "receiving" end of the comment determines if it is welcome or unwelcome.
- Whether comments/behavior are welcome or not can be determined by a person's verbal and nonverbal response (i.e. drawing away from the alleged harasser, walking out of a class, etc.)
- Unwelcome vs. voluntary

7. THIRD PARTIES

Third parties (who are not part of the sexual banter/comments) have a right to file charges of sexual harassment IF the sexual banter/comments impacts their ability to perform their job (or learn) and/or creates a hostile, offensive, or intimidating work (or academic) environment.

Third parties who believe that the relationship between their supervisor and a co-worker (or alternatively a faculty member and a student) has affected that employee's/student's right to receive fair treatment in receiving a promotion, grade, etc., etc., also have standing to file a sexual harassment complaint.

8. CONSENSUAL RELATIONSHIPS

- An amorous relationship that might be appropriate in other circumstances may be inappropriate if one of the individuals in the relationship has a professional responsibility toward, or is in a position of authority with respect to, the other such as in the context of instruction, counseling, advisement, or supervision. An element of power is often present in such a context and it is incumbent upon those in authority not to abuse that power. Instructors, counselors and advisors should avoid sexual relationships with students.
- Once a consensual relationship ends, if one party continues to "pursue" the other individual and makes unwelcome sexual comments or overtures, this would also constitute unlawful sexual harassment.
- Dating relationships between a faculty member and a current student in his/her class is strongly discouraged.

9. RECENT LEGAL DEVELOPMENTS

A. 1991

1. Reasonable Woman Standard

In *Ellison v. Brady*, the Ninth Circuit Court of Appeals held that the standard to be applied in determining whether conduct/comments were unwelcome was that of a "reasonable woman" (i.e. would a reasonable woman find those comments to be unwelcome or sexually harassing). This is a departure from the traditional legal standard of a "reasonable man" or "reasonable person" standard. In *Ellison*, the Court clearly recognizes that women and men respond to and interpret comments and actions differently.

Examples of "Reasonable Woman" Standard

2. 1991 Civil Rights Act

Provides for compensatory and punitive damages for sexual harassment (employment) cases. Prior to the enactment of this Act, under Federal law, individuals had no recourse for punitive damages. Thus, the potential awards in sexual harassment cases are considerably greater under the 1991 Civil Rights Act.

B. 1992

• Sexual Harassment of Students prohibited under Title IX

In *Franklin vs. Gwinnett County Schools*, the U.S. Supreme Court held that students who are sexually harassed can sue for monetary damages under Title IX (i.e. a student claimant under Title IX is not limited to compensatory damages such as back pay and prospective relief).

Franklin, a high school student, was subject to continual sexual harassment by a sports coach and teacher. The teacher engaged in sexually-oriented conversations where he asked Franklin about her sex life with her boyfriend and whether she would ever have sex with an older man. The teacher forcibly kissed Franklin on the mouth in the school parking lot and repeatedly called her at home to ask if she would meet him socially. The teacher (on 3 separate occasions) interrupted a class, requested that the teacher excuse Franklin, and took her to a private office where he subjected her to coercive sexual intercourse.

The complaint further alleged that although the school was aware of and investigated the teacher's sexual harassment of Franklin and other students, they took no action to halt it and discouraged Franklin from pressing charges against the teacher.

C. 1993

Harris vs. Forklift Inc. (U.S. Supreme Court, October 1993--decision pending)

- *Are psychological damages necessary to prove a hostile environment?*

Teresa Harris was employed as the Rental Manager for Forklift Inc. from April 1985 to October 1987. Harris was subject to a continuing pattern of sex based derogatory conduct/commentary by Charles Hardy, President; including the following:

"You're a woman--what do you know?"

"You're a dumb ass woman."

"We need a man as the Rental Manager."

"Let's go to the Holiday Inn to negotiate your raise."

Hardy asked Harris and other female employees to retrieve coins from his front pants pocket.

Hardy threw objects on the ground in front of Harris and other female employees and asked them to pick the object up, thereafter making comments about the female's attire.

Hardy commented with sexual innuendo about clothing worn by Harris and other female employees.

August 1987--Harris was experiencing anxiety, cried frequently, didn't want to go to work, and began drinking heavily; all allegedly as a result of Hardy's behavior. Harris complained to Hardy about his comments, told him that they offended her and that she was going to resign. Hardy apologized and told Harris the comments were just jokes. Hardy promised that his offensive behavior would cease.

September 1987--Hardy made a remark to Harris suggesting that she promised sexual favors to a customer in order to secure an account: Hardy asked Harris, in front of other employees, "What did you do, promise the guy at ASI some 'bugger' Saturday night?"

On the issue of hostile environment, the court held that a reasonable woman manager under like circumstances would have been offended by Hardy, but his conduct would not have risen to the level of interfering with that person's work performance.

10. HOW TO RECOGNIZE SUBTLE SEXUAL HARASSMENT

- Identify the people involved in the interaction.
- Determine their relationship.
- Objectively describe the behavior.
- Determine if the behavior was welcome.
- Is the unwelcome behavior sexual or sex-based?

11. MANAGEMENT/ADMINISTRATION RESPONSIBILITIES

(Department Chairs are considered "management" employees by the courts and external agencies.)

- A. Treat complaint seriously.
- B. Contact resource person. **
- C. Focus on behavior/facts (avoid "Yes, but . . ." statements).
- D. Take appropriate corrective action.
- E. Monitor workplace/academic environment:
 - Equal participation
 - Comments
 - Jokes/comments
 - Graphics/posters

12. MANAGEMENT'S LIABILITY

- A. Management is responsible for resolving sexual harassment situations where it knew or should have known about the conduct.
- B. A manager can be personally liable if he/she does not take appropriate corrective action to resolve the situation.
- C. Federal and state law; criminal and civil actions; community property laws.

13. THE DEPARTMENT CHAIR'S ROLE

- A. Get the facts, take notes.
- B. Who, what, where, when, and witnesses.
- C. Inform student of sexual harassment policy.
 - Confidentiality.
 - Issue is serious.
 - School will investigate and respond.
 - Retaliation prohibited.
 - False complaint is prohibited.
- D. Encourage student to talk to Dean of Students and/or the offending faculty member.
- E. Follow up with student in one week.
- F. If student hasn't talked to the Dean, department chair should review information with Dean.
- G. Dean will confer with District Legal/EEO.

14. SEXUAL HARASSMENT MYTHS

- Just saying "NO" should make it stop.
- Harassment will stop if it is ignored.
- If women watched the way they dressed, there would not be a problem with sexual harassment.
- Sexual harassment is no big deal -- it is the natural way men and women express affection and friendship with each other.
- Sexual harassment is less likely to affect professional women compared to other women.
- Sexual harassment is harmless. Women who object have no sense of humor or don't know how to accept a compliment. Sexual harassment policies will negatively affect a professor's friendly relationship with women students.
- Nice guys could not possibly be harassers.

15. CONTRIBUTING FACTORS TO SEXUAL HARASSMENT

- Social norms encourage it.
- Lack of clear communication.
- Sexual stereotyping.
- "Boys will be boys" attitudes.
- Lack of sexual harassment policy, procedure and training.
- Lack of follow through.
- No consequences to harasser.
- The victim doesn't report it.

16. WHY VICTIMS DO NOT REPORT SEXUAL HARASSMENT

- Do not believe anything would happen.
- Afraid they would be blamed.
- Concern for the harasser.
- Fear of retaliation.
- Fear of loss of privacy.

17. WHAT INDIVIDUALS MAY FEEL WHEN THEY ARE HARASSED

- Intimidated
- Anxious
- Uncomfortable
- Angry
- Ashamed
- Helpless

18. WHAT TO DO IF YOU ARE HARASSED

- A. Ask the harasser to stop the behavior.
- Verbal
 - Letter
- B. Document the comments and behaviors.
- C. File an internal complaint.
- Supervisor/management
 - EEO Office
- D. File an external complaint.

19. ANALYZE YOUR OWN BEHAVIOR FOR SEXUAL HARASSMENT

- A. Questions to Ask Yourself
1. Would I want someone to make those same statements to my spouse/mate?
 2. Would I want my spouse to know about my comments?
 3. Would I be embarrassed to have my comments printed in the newspaper?

20. CONCLUSION

Remember . . . most people do not like being touched, hugged, told sexual jokes, or subjected to sexual comments with whom they have only a typical work or academic relationship.

NOTES