



## **SEXUAL HARASSMENT AT WORK: YOUR LEGAL RIGHTS IN PENNSYLVANIA**

### **Disclaimer**

The Women's Law Project provides this information for informational purposes only and not for the purpose of providing legal advice. If you believe you may have been sexually harassed, you should contact an attorney to obtain advice with respect to the facts and circumstances of your particular situation. Use of and access to this information do not create an attorney-client relationship between the Women's Law Project and the reader.

### **Overview**

If a person is sexually harassed, their rights will depend on where the harassment occurred and what laws apply. This summary will address sexual harassment that is related to work. There are other summaries for sexual harassment that occurs at school or on the street.

Behavior that meets the definition of sexual harassment is against the law. It violates civil laws that apply to the workplace and it could also violate criminal laws. For example, a sexual assault committed by a co-worker that an employer has ignored violates Title VII of the Civil Rights Act of 1964, and sexual assault is also a crime.

There are many differences between civil and criminal laws. How a person reports the sexual harassment, the enforcement, and the remedies (how the harassment gets addressed) are different. It is important to note that if the harassment violates both civil and criminal laws, as in the case of sexual assault, the victim does not have to report the violation to police in order to obtain civil remedies.

Part I below is a Q & A regarding sexual harassment in the workplace.

Part II describes criminal laws in Pennsylvania that may apply to sexual harassment and the consequences of being found guilty of a criminal offense.

## **PART I**

### **WORKPLACE HARASSMENT**

#### **What is sexual harassment?**

- Sexual harassment is unwelcome advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, such as lewd comments, touching or sexual penetration.

- It can also be conduct that is not sexual in nature but is based on one's sex, such as physical aggression, intimidation, and hostility or unequal treatment based on sex. Examples of such conduct include repeated physical aggression or verbal abuse.

### **What is unlawful sexual harassment in the workplace?**

Not all sexually harassing conduct we may consider offensive and inappropriate in the workplace is considered to violate current laws. The courts and agencies who enforce these laws generally find sexual harassment to violate the law when:

- submission to sexual activity is made a term or condition of employment (*quid pro quo*) and/or
- the sexual harassment is so frequent and offensive that it creates a hostile or offensive work environment (*hostile environment*).

The law also prohibits sexual harassment that may occur while an employee is working off the worksite.

This protection also extends to sexual harassment not only by a coworker or manager but also by a client or customer if the employer is aware of it and does not take steps to protect the employee.

### **When is an employer legally responsible for sexual harassment?**

1. An employer is liable for sexual harassment by a supervisor when the harassment:
  - results in a negative "tangible" employment action (e.g., termination, failure to promote or hire)
    - For example, Jane Doe is denied a promotion after refusing to have sexual relations with her supervisor.
  - or
  - creates a hostile environment that the employer failed to prevent or correct and the employee tried to take advantage of any preventive or corrective opportunities provided by the employer (such as by reporting sexual harassment in the workplace)
    - For example, Jane Doe is being sexually harassed by her boss. He is constantly asking her personal questions about her sex life, telling dirty jokes, touching her back, arms, sometimes her leg. Jane files a complaint with the company human resources department, which gives the boss a warning. The boss continues to harass her. When she informs human resources and requests a transfer to work in a different department, they give the boss another warning but decline her transfer request.

Simple teasing, offhand comments, or isolated incidents that are not objectively serious might not be found by a court to violate the law.

2. An employer is also responsible for harassment by non-supervisory employees or non-employees over whom it has control if it knew or should have known of the harassment and failed to take prompt and corrective action.

## What can you do to help protect yourself when you first experience sexual harassment?

If you believe someone is sexually harassing you, it is recommended that you:

- Keep a written record of the sexual harassment with dates, places, and details of who did or said what and who witnessed it.
- Keep any written or oral communications (texts, emails, note, letters, voicemails (transcribe them with dates) and any objects, clothing, bedding or any other objects that might be evidence.
- [If you were sexually assaulted, you may want to have a rape kit done](#), which must generally be done within 72 hours to successfully find biological evidence. Depending on where you live, you may have a kit done in a hospital. In Philadelphia, the rape kit is completed at the Philadelphia Sexual Assault Response Center. *You do not have to report to police to get a rape kit done.*
- If you think you were drugged or were too intoxicated to consent, you can be tested for intoxicants as well. Substances leave your body within 12-72 hours, so you will want to get tested as soon as possible.
- Take care of yourself by seeking support from trusted friends, family or co-workers. You may want to talk to someone who will keep your conversation confidential. Communications can be privileged or simply confidential. [Privileged communications have greater protection than confidential ones](#). Pennsylvania law makes communications between lawyers and clients, physicians and patients, and sexual or domestic violence counselors and clients privileged.
- Be aware of any requirements or time limits you have for reporting what happened to an employer, school or the police.
- Educate yourself about your employer's policies and procedures about sexual harassment. Does the employer provide a complaint procedure for sexual harassment? To hold your employer responsible for sexual harassment, the employer must know about it and have an opportunity to remedy the harassment. Consider what you want to achieve and file a complaint.
  - However, if your employer's harassment policies and procedures are unreasonable, it is reasonable not to use them. For example, if the policy requires reporting the harassment to your immediate supervisor and the immediate supervisor is the harasser, you are not expected to file a complaint with that person. Also, if your employer does not respond within a reasonable time to your complaint, you are not required to wait before taking other action.
- You may want to discuss the situation with a lawyer.

### **What laws prohibit workplace sexual harassment?**

Work-related sexual harassment is covered by city, state and federal laws which may have similarities and differences. Whether you could file a lawsuit in court depends on the facts and the laws. It also may depend on whether you are an “employee” or “independent contractor” under the law.

### **What laws apply to Pennsylvania employers?**

**Federal Law:** Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating on the basis of sex in employment. It applies across the United States.

- Title VII protects employees. It does not protect independent contractors. Under a U.S. Supreme Court decision, a court will assess the circumstances of each case to determine if the employer exerts sufficient control over the individual’s work to support an employer-employee relationship.
- Title VII only protects employees of employers with 15 or more employees.
- To pursue a sexual harassment claim under Title VII, before you can file a lawsuit, you must:
  - Report the sexual harassment to your employer.
  - If the employer does not take steps to stop the harassment or takes inappropriate steps and you want to pursue a legal complaint against the employer, you must first file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) or a state or local anti-discrimination agency with authority to address sex discrimination. A charge must be filed within 180 days of the last act of discrimination. This time limit is extended to 300 days if the discrimination alleged is also covered by a state or local anti-discrimination law.  
<https://www.eeoc.gov/employees/charge.cfm>
- Under Title VII, the remedies available may include stopping the sexual harassment, monetary damages for out of pocket expenses, emotional harm, and lost pay as well as punitive damages and attorneys’ fees and costs.

**Pennsylvania Law:** The Pennsylvania Human Relations Act (PHRA) is an anti-discrimination law that also prohibits sexual harassment in the workplace. While the PHRA is similar to Title VII in both content and how courts interpret it, the PHRA differs in important ways:

- The PHRA protects employees whose employers have 4 or more employees. This includes protection for independent contractors which it defines as including “any person who is subject to the provisions governing any of the professions and occupations regulated by State licensing laws enforced by the Bureau of Professional and Occupational Affairs in the Department of State.

- You must file a charge of discrimination within 180 days of the act of sexual harassment.
- The potential remedies available include an order to cease and desist the unlawful practices, award of back pay, out of pocket expenses, attorneys' fees and costs.
- If you wish to file a complaint alleging a violation of the PHRA, you must file it with the Pennsylvania Human Relations Commission. See <http://www.phrc.pa.gov/File-A-Complaint/Pages/About-Filing-A-Complaint.aspx>

**Local Human Relations Laws:** Some cities have ordinances that prohibit sex discrimination, including sexual harassment. Philadelphia, Pittsburgh, Harrisburg and many smaller cities and towns in Pennsylvania have laws that protect against sexual harassment that occurs in their geographic area.

- The number of employees an employer must have to come under the particular local law varies from 1 to 4.
- These laws generally apply to businesses operating in the particular city or county.
- Check the local law to find out the time limit for filing complaints and the remedies available.
- The commissions for Pennsylvania's two largest cities can be found at these links:
  - Philadelphia: <http://www.phila.gov/humanrelations/pages/default.aspx>
  - Pittsburgh: <http://pittsburghpa.gov/chr/chr-information/contact-us.html>

In addition, to the extent you need to be protected from contact or harassment by the person who harassed you, you may seek protection from a court order by filing a petition to obtain a [Protection from Abuse Order](#) or a [Sexual Violence Order in Pennsylvania](#).

**Do these laws prohibit sexual harassment on the basis of sexual orientation and gender identity?**

- The extent to which laws prohibit sexual harassment based on sexual orientation and gender identity has been evolving and continues to be litigated. A request to rule on this question is pending before the U.S. Supreme Court.
- Title VII and the PHRA do not list sexual orientation or gender identity as protected statuses. While the EEOC interprets sex discrimination under Title VII to protect LGBT workers from sexual harassment, court rulings have varied, sometimes limiting Title VII to prohibit discrimination based on LGBTQ individuals when the treatment is based on not conforming to sexual stereotypes. The Pennsylvania Human Relations Commission, which enforces the PHRA, interprets sex discrimination in this way.
- The Philadelphia Fair Practices Ordinance, Pittsburgh Fair Practices ordinance and 42 other local anti-discrimination ordinances specifically prohibit discrimination based on

sexual orientation and/or gender identify. See <http://www.equalitypa.org/municipalities-with-nondiscrimination-ordinances/>

**Do these laws prohibit sexual harassment against individuals who work in someone's home?**

- Title VII's fifteen employee threshold means it does not generally apply to individuals who work in someone's home.
- The PHRA does not protect individuals employed in domestic service residing in the personal residence of the employer.
- Philadelphia's Fair Practices Ordinance protects domestic workers from sexual harassment.

**What protection from harassment exists for independent contractors?**

- If the harassment violates the criminal law, an independent contractor can make a complaint to the police against the person who harassed them. The Pennsylvania Crimes Code provisions that apply to sexual harassment may include crimes relating to sex acts, harassment, and assault.
- Lawsuits for personal injury such as civil assault may be available to recover damages. It is best to consult an attorney to discuss options for civil lawsuits.

**Do these laws protect from retaliation for reporting sexual harassment?**

Yes.

**For additional information see**

- [Sexual Harassment in the Workplace](#)
- [Frequently Asked Questions About Sexual Harassment in the Workplace](#)

**PART II**

**PENNSYLVANIA CRIMINAL JUSTICE SYSTEM REMEDIES**

The conduct that is labeled sexual harassment may also be a crime under the Pennsylvania Crimes Code and be punishable by imprisonment.

If you wish to pursue criminal remedies, you must report to the police.

The police will investigate and determine whether a crime has occurred and an arrest can be made.

The District Attorney will then decide whether to prosecute.

In Pennsylvania, potential crimes include

- Felony sexual penetration crimes punishable by imprisonment for up to 20 years for a felony of the first degree and up to 10 years for a felony of the second degree:

[§ 3121. Rape](#)

[§ 3122.1. Statutory sexual assault](#)

[§ 3123. Involuntary deviate sexual intercourse](#)

[§ 3124.1. Sexual assault](#)

[§ 3125. Aggravated indecent assault](#)

- Misdemeanor sexual contact and other sex crimes punishable for two to five years, depending on whether the crime is graded as a first or second degree crime:

[§ 3126. Indecent assault](#)

[§ 3127. Indecent exposure](#)

[§ 3131. Unlawful dissemination of intimate image.](#)

In addition, sexual harassment may include the following crimes:

[§ 2709. Harassment.](#) A summary offense punishable up to 90 days.

[§ 2709.1. Stalking.](#) A misdemeanor of the first degree punishable up to five years for a first offense and a felony of the third degree punishable for up to seven years if a second or subsequent offense.

[§ 5503. Disorderly Conduct.](#) A misdemeanor of the third degree punishable up to one year or a summary offense punishable up to 90 days.

[§ 5901. Lewdness.](#) A misdemeanor of the third degree punishable for up to one year.