

# Addressing Harassment in the Workplace and Academic Environment



# Federal law says that Illegal Harassment in the Workplace is Prohibited By:

- *Title VII of the Civil Rights Act of 1964, as amended.*
- *The Age Discrimination in Employment Act, as amended.*
- *The Americans with Disabilities Act of 1990.*
- *Section 503 & 504 of the Rehab Act of 1973.*
- *The FMLA.*
- *The Vietnam Veterans Act of 1974.*
- *Title IX of the Education Amendments Act of 1972.*

# Preventing Illegal Harassment at Work and on Campus

Harassment against persons  
because of their protected  
class:

- Race
- Color
- Age
- Sex
- Religion
- National Origin
- Disability
- Veteran Status
- Sexual Orientation

**IS ILLEGAL!**



# What is Illegal Harassment?

- Any unwanted, uninvited or unwelcome words or actions which impact persons based upon their protected class status in the workplace or on campus, may be considered illegal harassment based upon its **frequency, severity, impact or pervasiveness.**
- Illegal harassment in the workplace or on campus can come from faculty members, fellow students, staff members, a supervisor, a co-worker, a customer or a supplier.

# Illegal harassment can take many forms:

## Verbal:

- threats, insults or slurs
- offensive or suggestive comments (sexual)
- messages with sexual, racial, ethnic, religious, and other offensive content which impact persons because of their protected class status
- pressure for dates (sexual)
- offensive jokes or teasing because of one's protected class status
- whistles or catcalls.

It can also be:

# Illegal harassment can take many forms:

## Nonverbal:

- suggestive sexual gestures or looks (winks, licking lips, etc.) [sexual]
- staring or leering (sexual)
- displaying posters, photos, or drawings of an offensive nature which impact persons because of their protected class status.

# Illegal harassment can take many forms:

## Physical:

- assault
- battery
- cornering or trapping
- pinching, grabbing, or patting (sexual)
- touching, hugging, or kissing (sexual)

# Focus on Sexual Harassment



# Sexual Harassment:

## *A Real Issue in the Workplace and Academic Arena*

### INTRODUCTION

- College and University campuses are not exempt and have also been hit hard in the pocketbook as it relates to issues of sexual harassment. College presidents and other high ranking officials, both tenured faculty and non-tenured administrators, have lost their jobs and their careers in higher education because of sexual harassment allegations over the past five years.

## **Sexual Harassment:**

### *A Real Issue in the Workplace and Academic Arena, continued*

- With the passage of the 1991 Civil Rights Act victims of alleged sexual harassment are now in the position of recouping not only actual damages, but also punitive and compensatory damages up to \$300,000.00, as well as attorney fees. Additionally, under the 1991 Civil Rights Act, victims can now obtain jury trials where judgments against employers are far more likely.

## **Sexual Harassment:**

### *A Real Issue in the Workplace and Academic Arena, continued*

- In 2001, ten years after the passage of the 1991 Civil Rights Act, the EEOC received over 15,000 complaints (15,475) of sexual harassment and recouped approximately seven times the monetary benefits (53.0 million) that were recouped in 1990. Over the past three years alone, the monetary benefits recouped for victims of sexual harassment totaled \$134 million in this country and this does not include the millions of dollars awarded by State and Federal courts after lawsuits were filed.

## **Sexual Harassment:**

### *A Real Issue in the Workplace and Academic Arena, continued*

- In 2005 alone, 12,679 complaints were filed by both men and women with the EEOC. In fact, last year approximately 15% of the sexual harassment complaints filed were filed by men (2006-15.4%).
- Sexual harassment is common on campus, according to a national online survey by the American Association of University Women concluded in January 2006, with 62 percent of college students saying they had received a comment or gesture they found inappropriate.

## **Sexual Harassment:**

*A Real Issue in the Workplace and Academic  
Arena, continued*

- Remember, you are the front line of defense when it comes to protecting your institution with regard to “ Preventing Sexual Harassment on Campus,” whether you are a faculty member, staff employee or student.

# **SEXUAL HARASSMENT IS AGAINST THE LAW (FAST FACTS)**

- Sexual harassment in the workplace is a violation of Title VII of the Civil Rights Act of 1964 and the South Carolina Human Affairs Law.
- Sexual harassment within the educational environment is a violation of federal law, i.e., Title VII (Faculty/Staff) and Title IX (students), state law and USC Policy, EOP 1.02 and EOP 1.03.

# WHAT IS SEXUAL HARASSMENT?

## *Employment Perspective:*

- **Sexual harassment is a form of employment misconduct. Sexual harassment is defined as any unwelcome, one-sided, sexual advancement; requests for sexual favors; and other, verbal or physical conduct of a sexual nature that comes from supervisors, bosses, co-workers, clients or other individuals in the workplace.**

# WHAT IS SEXUAL HARASSMENT?

## *Educational Perspective:*

- Sexual harassment is unwelcomed, one-sided requests for sexual favors; and other verbal or physical conduct of a sexual nature that comes from faculty, staff, students, or other individuals in the educational arena.

# Definition of Sexual Harassment

- **Sexual harassment is unwanted sexual or gender based behavior that occurs when one person has formal or informal power over the other.**

*There are three elements to sexual harassment:*

- **The behavior is unwanted or unwelcome.**
- **The behavior is sexual or related to the gender of the person.**
- **The behavior occurs in the context of a relationship where one person has more formal power than the other (such as a supervisor over an employee or a faculty member over a student) or more informal power (such as one peer over another).**

# **TYPES OF SEXUAL HARASSMENT**

Federal law recognizes essentially **two** types of sexual harassment:

- 1. "quid pro quo" and**
- 2. "hostile and offensive work environment."**

# TYPES OF SEXUAL HARASSMENT, CONTINUED

- **Quid pro quo** harassment occurs when the harasser conditions the granting of a job benefit or the avoidance of a job detriment upon receipt of some sexual favor from another employee. Quid pro quo harassment is the most blatant, most recognizable, and most obvious form of sex harassment.

# TYPES OF SEXUAL HARASSMENT, CONTINUED

- **Hostile and offensive work environment** looks at the offensive workplace behaviors that create an abusive employment setting. While the offensive conduct could be essentially the same as in quid pro quo harassment, hostile work environment focuses upon the impact of the conduct on another employee's work environment.

# Colleges and Universities are not immune to Sexual Harassment

## Recent cases in Academia:

- **North Carolina State University paid \$300,000 to two research assistants who were among ten women a professor harassed over the course of a decade. When the accusations were made in 1997, NC State allowed the professor to resign with a positive recommendation letter.**

# Colleges and Universities are not immune to Sexual Harassment

- Former University of Georgia journalism dean violated the school's sexual harassment policy. He allegedly violated the school's policy when he told a female employee that the dress she was wearing showed off her assets and commented on the color of her eyes. He has been allowed to stay on the journalism faculty as a tenured professor.

# Colleges and Universities are not immune to Sexual Harassment

- The university of Georgia also demoted a top official who was accused of sharing a hotel suite with a female graduate student. The former associate provost for institutional diversity shared a hotel suite with the student on a two-night trip they took to Washington in April of 2005. He was the third high-profile UGA employee to be investigated and disciplined for sexual harassment during the year.
- A Baylor student who lost his scholarship was ordered to pay \$77,000 for sending more than 1,000 lewd e-mails to University officials and their families. He was also ordered to stop sending emails to these officials.

# Colleges and Universities are not immune to Sexual Harassment

- A former Boston Herald columnist was fired from his job in journalism at Boston University after posting a note on an Internet site that said a female student was “incredibly hot.” The chairman of Boston University’s journalism department said that the posting violated the trust essential to the student-teacher relationship.

# Colleges and Universities are not immune to Sexual Harassment, continued

- In 1998, a Hall of Fame soccer coach at UNC-Chapel Hill was cited for sexual harassment by a former player, UNC-Chapel Hill settled for \$70,000. Later in 1998 the captain of the soccer team filed suit. In April 2007 the 4<sup>th</sup> Circuit Court ruled in her favor that her case should go to a jury for a decision.

# Quid Pro Quo vs. Hostile Environment

## QUID PRO QUO

- When something (a grade, a job, or a letter of recommendation) is given or withheld on the basis of an individual's response to a request for sexual favors; i.e., "If you don't sleep with me, you'll fail my class."
- One instance is enough to prove sexual harassment.

# Quid Pro Quo vs. Hostile Environment

- An institution is liable for workplace harassment if a supervisor, teacher or professor with authority to hire or fire an employee subjects that employee to a significant change in employment status due to acceptance or rejection of sexual advances.
- An institution is liable for employee-student harassment if an official with authority to address the alleged discrimination knew of it, failed to respond to it and acted with deliberate indifference.

# Quid Pro Quo vs. Hostile Environment

## HOSTILE ENVIRONMENT

- An atmosphere that interferes with a student's ability to learn or participate in the school setting or an employee's ability to work.
- The behavior is unwelcome, based on sex or gender, and is severe or pervasive enough to create a hostile or abusive environment that alters a term, condition or privilege of employment or education.

## HOSTILE ENVIRONMENT, CONTINUED

- For peer harassment, a school may be held liable if it knew or should have known of the harassment and failed to take prompt and effective remedial action.
- The less severe the conduct, the more it has to be repeated to qualify as sexual harassment.

## HOSTILE ENVIRONMENT, CONTINUED

- An institution is liable for employee-student harassment only if an official with authority to address the alleged discrimination knew of it, failed to respond to it and acted with deliberate indifference.

# SEXUAL HARASSMENT PROGRESSION

## NON-PHYSICAL

- Pressure for Dates
- Sexual Jokes
- Teasing
- Remarks
- Questions
- Suggestive Looks/Gestures

# SEXUAL HARASSMENT PROGRESSION

## PHYSICAL/ NON-PHYSICAL INTIMIDATION

- Sexual Favors
  - Touching
  - Blocking of
  - Cornering
- Pinching
  - Phone Calls
  - Sending Materials
  - a Sexual Nature

## PHYSICAL/ BODILY HARM/ VIOLENCE

- Sexual Assault
- Actual or Attempted Rape

# Are gender harassment and sexual harassment the same?

- There are forms of harassment that are gender-based but are non-sexual in nature. Gender-based harassment is harassment that would not have occurred but for the sex of the victim. It lacks sexually explicit content but is directed at one sex and motivated by animus against that sex, whether female or male.
- **Example:** *A comment like “You’re a woman, what do you know?” or “this is a male oriented discipline and women should not take this course” may amount to gender-based harassment even though it does not carry a sexual connotation.*

# Is the University Liable for Harassment?

- Federal and many state laws make employers, including educational institutions, liable for sexual harassment. Liability depends on who is doing and receiving the harassment.

# Is the University Liable for Harassment?

- **Harassment of a school employee by a co-worker. Harassment of a student by a fellow student.** Institutions are responsible when co-workers harass each other and, in some cases, when students harass each other, if school officials knew or should have known of the harassment and did nothing to stop it. If harassment is *reported* to a faculty member or manager, or the faculty member or manager learns about it, or if it was so obvious that the manager or faculty member should have known about it, the institution may be liable if it does nothing.

# Is the University Liable for Harassment, continued

- **Harassment of a student or employee by a supervisor or faculty member.** Employers are responsible if the harassing supervisor or faculty member takes a tangible employment action against the harassed employee or student.
- **Institution must take action if an employee or student makes a formal complaint or informal complaint is made.** An institution must address the alleged discrimination and respond to it, and not show deliberate indifference.

**POSITIVE STEPS THAT  
FACULTY, MANAGEMENT,  
AND STAFF CAN TAKE TO  
PREVENT SEXUAL  
HARASSMENT IN THE  
WORKPLACE AND ACADEMIC  
ENVIRONMENT AT USC:**

- Document all actions and incidents of alleged sexual misconduct and harassment.
- Follow USC's strong policy prohibiting sexual harassment and disseminate the policy to all employees, including faculty, staff, and students.
- Ensure that all faculty, managers, and supervisors are trained on the prevention of sexual harassment.

- Ensure that all faculty, managers, and staff are aware of the internal mechanism for employee and student complaints and instruct employees and students how to use the internal process.
- Always take complaints seriously and investigate promptly and consult the EOP Office, Office of General Counsel or Human Resources immediately when an allegation of harassment is made.

- Enforce the zero tolerance policy as it relates to sexual harassment in the work and academic environment.
- Document any formal/informal complaints.
- Be fair to all parties and respect confidentiality of all parties.
- Set a **GOOD EXAMPLE!**

- Remember that both men and women can be harassed by other men or other women. Same sex harassment is illegal.
- Remember, there is no such thing as an off-the-record complaint when an allegation of harassment is brought to the attention of a faculty member or member of management. It must be reported to the EOP Office, Office of General Counsel, or Human Resources.



- Please refer to the EOP web site, <http://www.sc.edu/eop> for information regarding the University's Sexual Harassment Policy. [EOP 1.02 Sexual Harassment] and Harassment Policy [EOP 1.03]