



# SEXUAL HARASSMENT PREVENTION IN THE WORKPLACE

---

## STATE AGENCY TRAIN-THE-TRAINER COURSE WORKBOOK

Maryland Commission on Civil Rights

© 2021 STATE OF MARYLAND COMMISSION ON CIVIL RIGHTS

MATERIALS ARE CREATED FOR TRAINING PURPOSES ONLY, DO NOT CONSTITUTE LEGAL GUIDANCE, AND SHALL NOT BE REPRODUCED, COPIED OR OTHERWISE DUPLICATED WITHOUT THE EXPRESSED WRITTEN PERMISSION OF THE MARYLAND COMMISSION ON CIVIL RIGHTS

# MARYLAND COMMISSION ON CIVIL RIGHTS SEXUAL HARASSMENT PREVENTION IN THE WORKPLACE STATE AGENCY TRAIN THE TRAINER COURSE WORKBOOK

© 2021 Maryland Commission on Civil Rights

This workbook is meant to be a tool to assist you as we move through the training course. This information does not constitute legal advice.

# Part I: REFRESHER

## Types of Sexual Harassment

1. SOURCE OF LAW: Federal and State Law
  - **Title VII** of the Civil Rights Act of \_\_\_\_\_ (as amended)
  - **Title 20**, \_\_\_\_\_ Article, Annotated Code of Maryland
  
2. *What is Sexual Harassment?*
  - \_\_\_\_\_ **Sexual Advances**
  - **Requests for Sexual Favors**
  - **Other \_\_\_\_\_ or \_\_\_\_\_ Conduct of a Sexual Nature** that interferes with an employee's job performance or duties
  
3. **TWO FORMS OF SEXUAL HARASSMENT**
  - a. **Quid Pro \_\_\_\_\_**
    - **Submission is made \_\_\_\_\_ or implicitly a term or condition of employment.**
      - "This for \_\_\_\_\_"
      - **Instigated by a person with supervisory authority over another.**
    - **Submission or \_\_\_\_\_ of conduct used as basis for employment decisions affecting the employee.**
  
  - b. \_\_\_\_\_ Environment
    - **Conduct has the purpose or effect of \_\_\_\_\_ with work performance.**
    - **Creating an intimidating, hostile or offensive \_\_\_\_\_ environment.**
    - **Sufficiently severe or \_\_\_\_\_.**
  
4. **Sufficiently Severe or Pervasive Test:**
  - **Conduct is both \_\_\_\_\_ and **objectively** abusive.**
    - Subjective is: \_\_\_\_\_
    - Objective is: \_\_\_\_\_
  - **No mathematically precise test.**
  - **No proof of \_\_\_\_\_ is necessary.**
  - **Single incident may be sufficient.**
  - **Question of \_\_\_\_\_**

## Applicable Laws & Related Cases

1. \_\_\_\_\_ vs. \_\_\_\_\_ (1998)  
is a US labor law case of the United States Supreme Court in which the Court identified the circumstances under which an employer may be held liable under Title VII of the Civil Rights Act of 1964 for the acts of a supervisory employee whose sexual harassment of subordinates has created a hostile work environment amounting to employment discrimination. The court held that “an employer is **vicariously liable** for actionable discrimination caused by a supervisor, but subject to an affirmative defense looking to the reasonableness of the employer’s conduct as well as that of a plaintiff victim.
  
2. \_\_\_\_\_ vs. \_\_\_\_\_ (1998)  
is a landmark employment law case of the United States Supreme Court holding that **employers are liable if supervisors create a hostile work environment for employees**. Ellerth also introduced a two-part affirmative defense allowing employers to avoid sex discrimination liability if they follow best practices. In the case, a supervisor is defined by the ability to take a Tangible Employment Action. A Tangible Employment Action makes the company vicariously liable because the agency relationship was used to take the action. In alleged sex discrimination cases without a Tangible Employment Action, employers may prove that:
  1. the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and that:
  2. the employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise.
  
3. **Vicarious Liability:** Arises from the relationship between \_\_\_\_\_ (i.e., supervisor and employer) rather than from \_\_\_\_\_. It means responsibility is imposed on one party (i.e., the employer) because of actions committed by another (i.e., the supervisor).
  
4. By law, A supervisor has:
  - **Power to \_\_\_\_\_ and fire.**
  - **Significant \_\_\_\_\_ (need not have ultimate authority).**
  - **Supervisor need not be \_\_\_\_\_ as such.**
  - **Authority to affect the terms and conditions of employment.**
  - **Impact of *Vance v. Ball State University (2013)***
  
5. Tangible Employment Action is defined by the EEOC as:  
A \_\_\_\_\_ change in \_\_\_\_\_ status. Examples include hiring, firing, promotion, demotion, undesirable reassignment, a decision causing a significant change in benefits, compensation decisions, and work assignment.
  - **Employee need not show \_\_\_\_\_ harm.**

- \_\_\_\_\_ is a tangible employment action, even if \_\_\_\_\_ unaffected
  - Assignment of extra work is \_\_\_\_\_ a “tangible employment action”; and
  - Date of “tangible employment action” is not \_\_\_\_\_.
6. **Chapter 0222/HB679- workplace harassment-prohibitions, liability, enforcement, and prevention training**  
**2019 General Assembly Session:**
- a. Includes “**independent \_\_\_\_\_**” as an employee as defined in **SGA, §20-601(1)(ii)**
  - b. Adds “an individual chosen by an **elected \_\_\_\_\_** to be on the **officer’s personal staff** as a protected employee by **deleting SGA, §20-601(2)(ii)**
  - c. Defines an **employer for purposes of ‘harassment’ claims ONLY** as having \_\_\_\_\_ **or more employees** for each working day in each of 20 or more weeks...
7. **Chapter 0222/HB679- workplace harassment-prohibitions, liability, enforcement, and prevention training**  
**Defines “ \_\_\_\_\_ ” SGA §20-601(H):**
- a. “ \_\_\_\_\_ ” **INCLUDES HARASSMENT BASED ON RACE, COLOR, RELIGION, ANCESTRY OR NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY, AND RETAINS ITS JUDICIALLY DETERMINED MEANING, EXCEPT TO THE EXTENT IT IS EXPRESSLY OR IMPLIEDLY CHANGED IN THIS SUBTITLE.**
8. **Chapter 0222/HB679- workplace harassment-prohibitions, liability, enforcement, and prevention training**
- Expands the Definition for “ \_\_\_\_\_ ”, **SGA, §20-611**
  - Employer is \_\_\_\_\_ for:
    - Acts or omissions toward an employee or \_\_\_\_\_ committed by an individual who”
      - Undertakes or recommends “tangible employment actions” ...including hiring, firing, promoting, demoting and reassigning; or
      - Directs, supervises, or \_\_\_\_\_ the work activities of the employee; or
      - If the negligence of the employer led to the harassment or continuation of harassment.
  - Statute of Limitation Changed, **SGA, §20-1004 I(2)(i):**
    - **MCCR Harassment Complaint filing** changed from 6 months to 2 years \_\_\_\_\_ the date on which the alleged harassment occurred.
    - **Harassment Civil Action (Court) filing** changed from 2 \_\_\_\_\_ to 3 \_\_\_\_\_ after the alleged harassment occurred.

# Employer Liability & Defenses

1. AFFIRMATIVE DEFENSE: a fact or set of facts other than those alleged by the \_\_\_\_\_, if proven by the Employer, \_\_\_\_\_ or \_\_\_\_\_ the legal consequences of the Employer's conduct.
  - \_\_\_\_\_ "tangible employment action".
  - Employer exercised " \_\_\_\_\_ " to prevent and correct promptly any sexually harassing behavior; and
  - Employee " \_\_\_\_\_ " to take advantage of any preventive or corrective opportunities provided by the employer to avoid harm.
  
2. AFFIRMATIVE DEFENSE "**Reasonable Care**"
  - Adequacy of Employer's \_\_\_\_\_ **Efforts**.
  - Adequacy of Employer's **Complaint** \_\_\_\_\_.
  - Adequacy of Employer's \_\_\_\_\_ **of Prevention Program**; and
  - Adequacy of Employer's **Response to** \_\_\_\_\_ **of Harassment**.
  
3. AFFIRMATIVE DEFENSE "**Reasonableness of Employee**"
  - **Notice to proper party.**
  - **A delay or failure to report.**
  - **Avoiding the harm.**
  
4. **Co-Worker to Co-Worker Sexual Harassment**  
Employer liability for harassment by co-workers:
  - No vicarious liability.
  - \_\_\_\_\_ is required; or  
"Knew or should have known"
  
5. **Employers May Still be Liable for Damages Even:**
  - If the victim never \_\_\_\_\_ to the company
  - If the investigating \_\_\_\_\_ or \_\_\_\_\_ did not pursue it because the victim requests confidentiality
  - If the victim \_\_\_\_\_ that their own opportunities are impeded by the manager's harassment of, or consensual relationship with another employee
  
6. ACTIONABLE RETALIATION: **Prima Facie Case**
  - **Employee engaged in \_\_\_\_\_ under State Gov. Art. Title 20.**
  - \_\_\_\_\_ **was taken; and**
  - \_\_\_\_\_ **between the protected activity engaged in by the employee and the subsequent action taken by the employer.**
  
7. OTHER ISSUES **Decided by the Supreme Court**
  - Title VII/Title 20 protections extended to \_\_\_\_\_ **employees.**

- **Individual supervisors** are not \_\_\_\_\_ liable.
- Harassment by **non-employees** ( \_\_\_\_\_ parties) is actionable

Any questions? Write them here:

---



---



---



---



---



---



---



---



---



---

**FORMS OF SEXUAL HARASSMENT**  
*Quid Pro Quo Harassment*

- Submission is made **explicitly** or **implicitly** a term or condition of employment.
  - **"This for That"**
  - Instigated by a person with supervisory authority over another
- **Submission** or **rejection** of conduct used as basis for employment decisions affecting the employee.

**FORMS OF SEXUAL HARASSMENT**  
*Hostile Work Environment Harassment*

- Conduct has the purpose or effect of **unreasonably interfering** with work performance.
- Creating an intimidating, hostile or offensive work environment.
- Sufficiently **severe** or **pervasive**.



**Hostile Environment Harassment Continued**  
**Sufficiently Severe or Pervasive Test:**

- Conduct is both **subjectively** and **objectively** abusive.
- No mathematically precise test.
- No proof of psychological injury is necessary.
- Single incident may be sufficient.
- Question of fact.



**Examples of Physical Sexual Harassment**

- Touching, grabbing, & pinching
- Being cornered
- Sending sexually-explicit emails, pictures or notes
- Sabotaging a person's work
- Making suggestive gestures or facial expressions
- Viewing pornographic materials
- Removing clothing
- Sexual assault

**Examples of Verbal Sexual Harassment**

- Making suggestive or sexual remarks, jokes, or noises
- Using demeaning or inappropriate terms such as "babe"
- Spreading sexual or suggestive rumors
- Making a sexual proposition
- Using crude or offensive language

 **Who Is a "Supervisor"?**  
As Defined by Case Law

- Power to hire and fire.
- Significant control (need not have ultimate authority).
- Supervisor need not be designated as such.
- Authority to affect the terms and conditions of employment.
- Impact of *Vance v. Ball State University (2013)*



## Vicarious Liability

- Arises from the relationship between parties (i.e. supervisor and employer) rather than from fault. It means responsibility is imposed on one party (i.e. the employer) because of actions committed by another (i.e. the supervisor).

7

## Tangible Employment Action

- A significant change in employment status. Examples include hiring, firing, promotion, demotion, undesirable reassignment, a decision causing a significant change in benefits, compensation decisions, and work assignment.

8

## Faragher v. City of Boca Raton (1998)

- United States Supreme Court identified the circumstances under which an employer may be held liable under Title VII of the Civil Rights Act of 1964 for the acts of a supervisory employee whose sexual harassment of subordinates has created a hostile work environment
- An employer is **vicariously liable** for actionable discrimination caused by a supervisor, but subject to an affirmative defense looking to the reasonableness of the employer's conduct as well as that of a plaintiff victim."

36

## Burlington Industries, Inc. v. Ellerth (1998)

- **Employers are liable if supervisors create a hostile work environment for employees**
- Introduced a two-part affirmative defense allowing employers to avoid sex discrimination liability if they follow best practices.
- A supervisor is defined by the ability to take a Tangible Employment Action.

37

### SGA, §20-601(C)

WORKPLACE HARASSMENT-PROHIBITIONS, LIABILITY, ENFORCEMENT, AND PREVENTION TRAINING

- **2019 General Assembly Session:**
  - Includes **"independent contractor"** as an employee as defined in **SGA, §20-601(c)(1)(ii)**
  - Adds "an individual chosen by an **elected officer** to be on the **officer's personal staff** as a protected employee by **deleting SGA, §20-601(c)(2)(ii)**
  - Defines an **employer for purposes of 'harassment' claims ONLY** as having **one or more employees** for each working day in each of 20 or more weeks...

### SGA §20-601(H)

WORKPLACE HARASSMENT-PROHIBITIONS, LIABILITY, ENFORCEMENT, AND PREVENTION TRAINING

- Defines **"Harassment"**
  - **"HARASSMENT"** INCLUDES HARASSMENT BASED ON RACE, COLOR, RELIGION, ANCESTRY OR NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY, AND RETAINS ITS JUDICIALLY DETERMINED MEANING, EXCEPT TO THE EXTENT IT IS EXPRESSLY OR IMPLIEDLY CHANGED IN THIS SUBTITLE.

### SGA, §20-611

WORKPLACE HARASSMENT-PROHIBITIONS, LIABILITY, ENFORCEMENT, AND PREVENTION TRAINING

- **Expands the Definition for "Supervisor"**
- **Employer is liable for:**
  - **Acts or omissions** toward an employee or applicant committed by an individual who
    - **Undertakes or recommends** "tangible employment actions"...including hiring, firing, promoting, demoting and reassigning; or
    - **Directs, supervises, or evaluates** the work activities of the employee; or
    - If the **negligence of the employer** led to the harassment or continuation of harassment.

### SGA, §20-1004 (C)(2)(I)

WORKPLACE HARASSMENT-PROHIBITIONS, LIABILITY, ENFORCEMENT, AND PREVENTION TRAINING

- **Statute of Limitation Changed**
  - MCCR **Harassment Complaint filing** changed from **6 months to 2 years** after the date on which the alleged harassment occurred.
  - Harassment **Civil Action (Court) filing** changed from **2 years to 3 years** after the alleged harassment occurred.

Activity 1: Case Scenarios

Read each scenario and answer the following questions:

Who are the Complainants?

What are the possible Protected Classes under which the Complainant could file?

Who is/are the Respondent(s)?

What type of Harassment is being alleged? Physical, verbal, or both?

What theory of harassment could be used? Quid Pro Quo, Hostile Work Environment, or Both?

Could there be any Employer Liability?

Could vicarious liability apply here?

Could anyone else have standing to file?

Is there any potential retaliation?

1. A male customer service employee, working in Mediacom’s Valdosta, Ga. Facility, made sexual advances towards female customer service representatives. Crystal Vinson and Breanna Caldwell, two female customer service employees reported to the company that the male employee harassed them. On one occasion, the male employee exposed his genitalia to Ms. Vinson in the workplace. Despite their complaints, the company failed to take prompt, remedial action to stop the conduct.

---

---

---

---

---

---

---

2. From at least September 2016 through June 2017, a male assistant manager of Daisy Dukes’ in Chesterfield, VA made sexual comments and engaged in inappropriate touching. The manager groped Michelle Henard and other female employees, slapping and grabbing their buttocks, and propositioned them for sex. Daisy Dukes reduced Henard’s hours after she complained about the behavior, and Henard quit her job because of the reduction in hours and due to Daisy Dukes’ failure to stop the conduct. Other employees were treated the same way by the manager and they also quit due to Daisy Dukes’ inaction.

---

---

---

---

---

---

---



3. A male employee made lewd sexual comments and sexual advances to two female store clerks, Cynthia Thompson and Megan Baker, at the Piggly Wiggly store in Hogansville, Ga. Thompson and Baker reported the conduct to the store manager on multiple occasions, but the company failed to take any action to stop the behavior. Instead, the company cut Baker's hours after she complained, and later fired both Thompson and Baker after they filed a written complaint detailing the issues.

---

---

---

---

---

4. Rebecca Flores was made uncomfortable by the conduct of her female supervisor at The Hampton at Salmon Creek, a Koelsch assisted care facility in Vancouver, Wash. This included comments about Flores's clothing and appearance; a request to be friends on Facebook; repeatedly asking for foot massages; and discussions of the supervisor's interest in extramarital affairs and sexual bondage. In particular, Flores was disturbed by an incident where her supervisor stood close behind her and expressed a desire to rub her buttocks. When Flores reported the unwelcome behavior to upper management, Koelsch failed to investigate properly and quickly sided with the supervisor, which emboldened the woman to continue harassing Flores with sexually charged comments and unwanted touching.

---

---

---

---

---

5. A plant manager used racial slurs, called foreign-born employees "terrorists," and told the only black employee that her husband should work in a cotton field with a rope around his neck. He then told her to drink Kool-Aid to calm down and fired her for complaining about his racist statements. He also complained that he was "sick" of immigrants stealing American jobs and not speaking English, forbade employees from speaking other languages, and urged immigrant employees to leave America. The plant manager was similarly abusive toward women: he loudly called women "bitches," complained about their "PMS'ing," and said that women could not perform a "man's job." He told a woman she would have to "come over here and sexually harass me" to be sent home early; made other unwanted sexual advances; said a woman was too "fat and disgusting" to have sex with her husband; and commented on female employees' "buns" and "curves." The company owner, rather than putting a stop to this, behaved similarly; he called female employees "dumb women," complained that "these women can't do anything," and told a woman she would not be getting a raise because of her sex.

---

---

---

---

---

---

---

6. Employees at Riddle Painting frequently used the N-word and one employee in particular repeatedly called a black employee the N-word. Male employees at Riddle Painting used sexually derogatory language and repeatedly inappropriately touched other male employees' legs, buttocks and genitals. At least one employee complained about the behavior, but Riddle Painting failed to take any actions to stop or remedy the abuse. This behavior made working conditions so difficult that an employee was forced to resign.

---

---

---

---

---

7. David Shelley, company owner, repeatedly made sexually charged comments to a male employee and engaged in unwelcome physical contact with the employee. After repeatedly objecting to this conduct, the employee reported it to the sheriff. Mr. Shelley found out about it and, four days after the employee's complaint, retaliated against the employee by firing him.

---

---

---

---

---

8. A male supervisor engaged in unwelcome touching of the employees and sexually assaulted one employee on two occasions. That same supervisor made racially and sexually offensive comments, including joking about the supposed sexual preferences of African American men and referring to one of them as "boy." Another supervisor used a racial slur to refer to African American employees and commented on the skin color of workers.

---

---

---

---

---

## Activity 2: The History of Sexual Harassment

Read the following article:

A Short History of Sexual Harassment by REVA B. SIEGEL

- Please, use the internet as a tool to research terms, cases, and ideas you need assistance with.
- While we will be analyzing this article on Day 1, if you are unable to finish there will be additional time to ask questions on Day 2.
- There is no expectation that you get the answers “right.” The goal is to make your best attempt to answer the questions, work with a group to compare responses, and then return to instructor led learning.
- Each question begins with the relevant quote from the article. These quotes are also highlighted throughout the reading.
- You may skim the reading and look to credible (peer reviewed, accredited, research based) internet sources for additional information if this suits you best. Please be prepared to share sources.

The following **key terms** are found throughout the reading.

**Misogyny:** dislike of, contempt for, or ingrained prejudice against women.

**Patriarchy:** a system of society or government in which men hold the power and women are largely excluded from it.

**Misogynoir:** the specific hatred, dislike, distrust, and prejudice directed toward Black women.

**Intersectionality:** the way in which individual identities and personal characteristics cross and overlap and create unique experiences, privileges, and modes of oppression.

**Semiotic:** relating to signs and symbols.

**Recourse:** a source of help in a difficult situation.

**Tort:** a civil wrong that causes a claimant to suffer loss or harm, resulting in legal liability for the person who commits the tortious act. It can include intentional infliction of emotional distress, negligence, financial losses, injuries, invasion of privacy, and many other things.

**Chattel slavery:** a system of enslavement in which the enslaved individual is legally rendered the personal property (chattel) of the slave owner, is owned forever and whose children and children’s children are automatically enslaved.

**Sexual coercion:** unwanted sexual activity that happens when a person is pressured, tricked, threatened, or forced in a nonphysical way.

**Social order:** the way the various components of society work together to maintain the status quo.

**Social structure:** the social relationships and the social and physical characteristics of communities to which individuals belong

**Social Meaning:** describes the processes through which society ascribes significance to social actions, positions, and situations.

**Political economy:** the study of production and trade and their relations with law, custom and government; and with the distribution of national income and wealth.

**Privilege:** any advantage that is unearned, exclusive, and socially conferred.

**Engender:** cause or give rise to (a feeling, situation, or condition).

Gender stratification: the social ranking, where men typically inhabit higher statuses than women.

**Racial stratification:** the social ranking, wherein people structurally positioned or identified as White typically inhabit higher statuses than people who are structurally positioned or identified as Black or non-white.

**Racism:** a system in which one race maintains supremacy over another race through a set of attitudes, behaviors, social structures, and institutional power. Racism is a “system of structured dis-equality where the goods, services, rewards, privileges, and benefits of the society are available to individuals according to their presumed membership in” particular racial groups

**Homophobia:** encompasses a range of negative attitudes and feelings toward homosexuality or people who are identified or perceived as being lesbian, gay, bisexual or transgender. It has been defined as contempt, prejudice, aversion, hatred or antipathy, may be based on irrational fear and ignorance

**Xenophobia:** dislike of or prejudice against people from other countries.

**Questions:**

Page 1:

1. “Considering sexual harassment in historical perspective allows us to ask some fundamental questions about the nature of the practice, the terms in which it has been contested, and the rules and rhetorics by which law constrains-or enables-the conduct in question.”

Why is history important?

---

---

---

---

---

---

The author suggests that laws meant to combat sexual harassment might in some ways “enable” sexual harassment. What might this mean?

---

---

---

---

---

---

Page 2:

2. “When law recognizes the harms inflicted by social practices, it is intervening in the social world it is describing, both enabling and constraining challenges to the social order of which the practices are a part”

How does the author indicate that sexual harassment was a part of the social order?

---

---

---

---

---

---

How might laws against sexual harassment challenge the social order?

---

---

---

---

---

---

3. "For example, sexual coercion was an entrenched feature of chattel slavery endured by African-American women without protection of law. While there were crucial differences in the situation of free women employed in domestic service, they, too, commonly faced sexual advances by men of the households in which they worked."

The author indicates that both free and enslaved women were subjected to sexual coercion. Is the author indicating that race was a factor in the differential treatment? If so, how?

---

---

---

---

---

---

Page 3

4. "To be sure, Americans often blamed women's sexual predicament on women themselves; both slaves and domestic servants were often judged responsible for their own "downfall" because they were promiscuous by nature. Yet an equally powerful line of public commentary condemned men for sexually abusing the women who worked for them."

Is the author describing a stereotype here? If so, what stereotype?

---

---

---

---

- 
- 
5. “Along similar lines, Upton Sinclair’s 1905 expose, *The Jungle*/ dramatized the predicament of women in the meat-packing industry by comparing the forms of sexual coercion practiced in “wage slavery” and chattel slavery:

‘Here was a population, low-class and mostly foreign, hanging always on the verge of starvation, and dependent for its opportunities of life upon the whim of men every bit as brutal and unscrupulous as the old-time slave drivers; under such circumstances immorality was exactly as inevitable, and as prevalent, as it was under the system of chattel slavery. Things that were quite unspeakable went on there in the packing houses all the time, and were taken for granted by everybody; only they did not show, as in the old slavery times, because there was no difference in color between the master and slave.’

How does this excerpt broaden our understanding of the relationship between national origin and sexual coercion?

---

---

---

---

---

---

Page 4

6. “As public commentators such as Campbell and Sinclair and the abolitionists before them well appreciated, the American legal system offered women scant protection from sexual coercion at work. Rape was, of course, punishable by law; but the criminal law did not protect slaves from rape, and it defined the elements of rape so restrictively that most free women sexually coerced at work would have little reason to expect the state to sanction the men who took advantage of them. In short, the law assumed that women in fact wanted the sexual advances and assaults that they claimed injured them. Unless women could show that they had performed an elaborate ritual of resistance, perfect compliance with the legally specified terms of which was necessary to overcome the overwhelming presumption that women latently desired whatever was sexually done to them, they could expect little recourse from the criminal law. Rape law’s protection was further vitiated by the fact that prosecutors and judges relied on all kinds of race- and class-based assumptions about the “promiscuous” natures of the women in domestic service and other forms of market labor as they reasoned about utmost resistance.”

*The Center for Equal Employment Equity at the University of Massachusetts, Amherst has found that about 5 million employees are sexually harassed at work every year and that the overwhelming majority (99.8%) of people who experience sexual harassment at work never file formal charges. Additionally, of those who file formal charges, very few—the study estimates less than 1,500 per year—go to court. Further, researchers found that*

- *Most employers react punitively toward people who file formal sexual harassment charges*
- *68% of sexual harassment charges include an allegation of employer retaliation, this rate is highest for Black women.*
- *64% of sexual harassment charges are associated with job loss, and this rate is highest for White women and White men.<sup>1</sup>*

The author has made the case that the history of sexual harassment informs social practices today. How might the excerpt above as well as the study on employment equity from The Center for Equal Employment Equity at the University of Massachusetts, Amherst help us to understand current impediments to reporting?

---

---

---

---

---

---

Page 5

7. "At common law, sexual assault gave rise to an action for damages insofar as it inflicted an injury on a man's property interest in the woman who was assaulted; thus, a master might have a claim in trespass against a man who raped his slave, or a father might bring a seduction action against an employer who impregnated or otherwise defiled his daughter."

At the start of this assignment, you were provided with the definitions of patriarchy and misogyny. How does this quote illuminate the way these systems of power operate?

---

---

---

---

---

---

8. "On this account, restrictions on women's labor market participation ("crowding") and the systematic depression of their wages left women as a class dependent on men for economic support, and it was in this condition of "pecuniary dependence" that men could extract their sexual compliance, in and out of marriage."

---

<sup>1</sup> <https://www.umass.edu/employmentequity/employers-responses-sexual-harassment#:~:text=Most%20employers%20react%20punitively%20toward,is%20highest%20for%20Black%20women.>



Here, the author illuminates the role of class in the history of sexual harassment. How can we connect this to the “vicarious liability” of supervisors?

---

---

---

---

---

---

9. “The woman’s rights movement had begun to analyze the political economy of heterosexuality ...[the woman’s rights movement] was centrally preoccupied with the failure of rape law to protect women from sexual predation...”

How might these excerpts assist us with understanding social conceptions of the relationship between sexual orientation and sexual harassment?

---

---

---

---

---

---

Page 8

10. Who does the author indicate as having coined the term “sexual harassment?”

---

---

---

---

---

---

11. “As MacKinnon wrote in 1979: “Sexual harassment perpetuates the interlocked structure by which women have been kept sexually in thrall to men and at the bottom of the labor market. Two forces of American society converge: men’s control over women’s sexuality and capital’s control over employees’ work lives.”

How does the excerpt above help us to understand the historical and systemic differences between the subjection of men and women to sexual harassment?

---

---

---

---

---

---

Page 11

12. "Note how, on this conception of discrimination, the harm of sexual harassment no longer involves interaction of social structure and social meaning, but instead reduces to an inquiry into the criteria by which an employer sorts employees."

How might the law's emphasis on equality (equal treatment) versus equity (reparative considerations) be positive? Negative?

---

---

---

---

---

---

Page 12

13. What is the significance of Barnes v. Costle (1977)?

---

---

---

---

---

---

Page 14

14. What are "sex plus" policies and how did they exclude certain groups from legal protection? How does this assist us in understanding intersectionality?

---

---

---

---

---

---

15. “In short, judgments about whether practices discriminate “on the basis” of sex or race may depend on evolving social intuitions about whether a practice unjustly perpetuates a status regime, rather than formal characteristics of the practice itself, as antidiscrimination discourse leads us to believe.”

How does this help us to understand the importance of history as it relates to sexual harassment as opposed to an exclusive focus on blanket equality?

---

---

---

---

---

---

16. “Antidiscrimination law explains how sexual harassment is sex discrimination in terms that are fundamentally uninterested in the social circumstances of the harasser’s target (for example, her position in an employment hierarchy, her other economic alternatives if she does not stay employed at this job). It also excludes from the formal account of why harassment is discrimination “on the basis of sex” the particulars of what the harasser does to his targets once he selects her.”

Put this in your own words.

---

---

---

---

---

---

17. “What is more, as antidiscrimination law begins to recognize sexual harassment as sex discrimination, it treats the sexual coercion in sexual harassment as a harm so obvious as not to need explanation or account. But this very failure to explain “the obvious” means that antidiscrimination law rather unselfconsciously incorporates a gender-conventional understanding of why harassment harms women (it is a form of socially inappropriate conduct, “not a nice way to treat a lady”).”

How does this help us to understand the role of stereotypes when considering sexual harassment?

---

---

---

---

---

---

---

How might this be harmful to groups generally considered (in media and society) to be less/undesirable?

---

---

---

---

---

---

---

What groups could be impacted by this?

---

---

---

---

---

---

---

Page 19

18. "There was a quite varied repertoire of tactics that men in different occupational positions used to frustrate women's efforts to participate in forms of work that were traditionally gendered male."

How does this help us to understand that being in a position of authority does not shield one from sexual harassment?

---

---

---

---

---

---

---

How might this also help us to understand that even when two employees are in the same role with the same occupational authority, systems of power such as misogyny and patriarchy may still have an impact on vulnerability to sexual harassment?

---

---

---

---

---

---

How can we use this logic as a starting point to consider the role of other systems of power that may render employees vulnerable to sexual harassment despite having the same level of authority? Racism? Homophobia? Xenophobia?

---

---

---

---

---

---

Page 20

19. “Barbara Reskin and Heidi Hartmann add: “When work groups are integrated, gender becomes salient for the male occupants, who may subject the women to remarks calculated to put them in their place by emphasizing their deviant gender status.”

What examples are given in the text to describe how women are put “in their place?”

Pages 20-26

20. Summarize key points and takeaways from the following cases:

Meritor Savings Bank v. Vinson (1986)

---

---

---

---

---

---

Harris v. Forklift Systems (1993)

---

---

---

---

---

---

Oncale v. Sundowner Offshore Services (1997)

---

---

---

---

---

---

### Activity 3: Layered identities

Please provide responses to the following questions. You are not required to share. When in breakout rooms, please, no triggering stories

1. How do you identify (your protected classes)? (i.e. Asian, Woman, Christian, over 40, Married)

---

---

---

---

---

---

2. Select two of your protected classes, identity one and identity two. (i.e., Woman over 40)

---

---

---

---

---

---

3. What factors may make people in identity group one (i.e., woman) less likely to report sexual harassment?

---

---

---

---

---

---

4. Identity two (i.e., over 40)?

---

---

---

---

---

---

5. How about people from both identity groups (i.e., Woman over 40)?

---

---

---

---



---

---

6. Let's take a layered approach. How could this serve as a point of education for your training class?

---

---

---

---

---

---

7. How can we make this a learning point without mentioning or targeting a specific group?

---

---

---

---

---

---

## Activity 4: INSTITUTIONAL CHALLENGES

Please respond to the following questions individually and then share and discuss strategies with your group:

1. What are some challenges that are specific to your institution?

---

---

---

---

---

---

2. What systems of power could be at work in your institution and how are they operating (either institutional hierarchies or systems of power referenced Day 1)?

---

---

---

---

---

---

- *When teaching this course, remember you aren't using your HR hat and you aren't giving legal advice, you are making participants aware of their rights and responsibilities, how to recognize and avoid sexual harassment, and forms of recourse available if they feel they have been victimized.*

**3. With this in mind, how might you craft a lesson or activity that meets these goals but also addresses institutional barriers without being accusatory or ostracizing? Please provide an example.**

---

---

---

---

---

---

## Activity 5: TRAINING TECHNIQUES

With your group, create a virtual training agenda and curriculum (complete with activity ideas and breaks) that includes the following:

- Information on **State and Federal law** on the prohibition of sexual harassment
- **Best practices** in prevention and correction of sexual harassment, abusive conduct and retaliation
- **Remedies and procedures** available to victims.
- **Properly responding** to complaints of sexual harassment and preventing further abuse and retaliation; and
- How to **create and maintain a workplace culture** in which sexual harassment is not tolerated.
- **Special Topics** (At least two): Identity, Institution, History



**Maryland Commission on Civil Rights  
6 St. Paul Street, Suite 900, Baltimore, MD 21202**

**Phone: 410.767.8600**

**Toll-free: 1.800.637.6247**

**Maryland Relay: 7-1-1**

**Fax: 410.333.1841**

**E-mail: [mccr@maryland.gov](mailto:mccr@maryland.gov)**

**Website: <http://mccr.maryland.gov>**

**Follow us on Facebook, Twitter, and Instagram: @MDCivilRights**

**Kara Hunt, Director of Education & Outreach  
410-767-7656 [kara.hunt1@maryland.gov](mailto:kara.hunt1@maryland.gov)**