



# FACULTY ASSISTANCE PROGRAM

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## *It isn't really harassment...or is it? What to do when someone crosses the line*

Like a boat captain who looks for channel markers to avoid hazardous waters and stay on course, you can navigate the dangers of workplace harassment by understanding the laws that apply.

“Many sexual harassment cases involve jokes or flirting in the workplace,” says Vianei Lopez Braun, a labor and employment partner at Houston law firm Buck Keenan LLP. “In some cases, the alleged harasser may not realize that the conduct is unwelcome.”

Braun says she recently handled a case involving a doctor who often used text messages to communicate with his staff. “When a young nurse joined the staff, the doctor would text her about why she was still single, what she was doing with her boyfriend, and how the male patients thought she was ‘hot.’ The nurse usually replied ‘LOL’ and did not tell the doctor to stop. He was shocked when she filed a sexual harassment charge. The doctor said he was just joking, but the nurse was very uncomfortable and eventually pursued



legal action.”

### Understanding the laws

Sexual harassment is prohibited throughout the U.S. under Title VII of the Civil Rights Act of 1964. “This is the law that prohibits employment discrimination on the basis of sex, race, color, national origin, and religion,” says Braun. “Workplace harassment is unlawful if it is based on sex or any of the other protected categories, which include age, under the Age Discrimination in Employment Act; and disability, under the Americans with Disabilities Act.”

“Although not expressly mentioned in Title VII, the Supreme Court has long recognized sexual harassment as a form of discrimination,”<sup>1</sup> notes Nathan Paulich, an associate at Tampa law firm Thompson, Sizemore, Gonzalez & Hearing, P.A.

“Harassment does not have to be of a sexual nature, however, and can include

offensive remarks about a person’s sex,” the U.S. Equal Employment Opportunity Commission (EEOC) states on its website. “For example, it is illegal to harass a woman by making offensive comments about women in general.”

The EEOC further explains:

- Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.
- Although the law doesn’t prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

- The harasser can be the victim’s supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Many cases turn on

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- U.S. Equal Employment Opportunity Commission



## *What constitutes sexual harassment in the workplace?*

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- Vianei Lopez Braun  
Partner  
Buck Keenan LLP



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whether the conduct was ‘severe or pervasive,’ says Paulich. “Courts generally consider four factors: the frequency of the conduct; the severity of the conduct; whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and whether the conduct unreasonably interferes with the employee’s job performance.<sup>2</sup> A general rule of thumb is the more severe the conduct, the less frequently it has to occur to qualify as harassment.”

“Title VII, however, is not a federal civility code, Paulich adds. “The Supreme Court has explained that simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment.”<sup>3</sup>

### **Respect and caution**

“Everyone likes to joke around from time to time, but in the workplace, only tell jokes that you would not hesitate to repeat to your mother,” Braun advises. “Remember that texts and

emails can be kept and forwarded, so before pressing ‘send,’ imagine the text or email being forwarded to your boss, to the board of trustees, or to the newspaper.”

“In other words, be professional and respectful, and also be cautious,” she says. “Be especially cautious with students and with employees who report to you.”

### **Where to turn**

When you believe that someone in the workplace is repeatedly crossing the line—whether the conduct is aimed at you or others—your first resource is your free, confidential Faculty Assistance Program.

FAP professionals can help in a number of ways and are qualified to guide you to a resolution of the specific situation.

#### **Footnotes**

- 1 Harris v. Forklift Sys. Inc., 510 U.S. 17, 21 (1993).
- 2 Mendoza v. Borden, Inc., 195 F.3d 1238, 1246 (11th Cir. 1999).
- 3 Faragher v. City of Boca Raton, 524 U.S. 775, 118 S.Ct. 2275, 2283 (1998).

#### **Additional resources**

- USF Sexual Harassment Awareness Training Program:  
<http://usfweb2.usf.edu/ea/sexualharassment.asp>
- U.S. Equal Employment Opportunity Commission (EEOC) [www.eeoc.gov](http://www.eeoc.gov)
- “Optimizing the Learning Environment: Exploring the Issue of Medical Student Mistreatment”  
<http://www.ama-assn.org/resources/doc/medical-schools/medical-student-mistreatment-presentation.pdf>

### *Avoiding Harassment Situations: A Checklist*

“In order to avoid expensive litigation, potential liability and embarrassment associated with defending against harassment suits, use common sense in determining what conduct is appropriate for the workplace,” says Paulich. Examples of behaviors that should be eliminated include:

- Physical touching, e.g., touching an employee’s breast, buttock or private areas, or intentionally causing physical contact with another employee
- Demands or requests for sexual favors
- Making sexual advances
- Discussing sexual activities and/or fantasies with employees
- Asking an employee about his or her sex life
- Discussing or commenting on physical attributes of employees
- Discussing controversial sex topics
- Discussing or bragging about sexual prowess or experiences
- Making facial or hand gestures that mimic sexual conduct
- Lewd or vulgar jokes
- Emailing coworkers potentially offensive emails
- Making stereotypical comments
- Making sexual innuendos
- Stalking employees outside the workplace

“It is important to know your audience (including any bystanders) and to think before you act,” Paulich says. “If the conduct or comment is something you would be comfortable later explaining to a judge or jury, your spouse or your mom, then you should be okay.”