Employment Practices Litigation:
Lessons for Nonprofit Employers

A Risk Management Webinar

September 6, 2006
2:00-3:00 pm, EST

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Generous funding to support this Web Seminar was provided by the
Public Entity Risk Institute. For more information, visit www.riskinstitute.org.
SAMPLE*

Termination Agreement and Release in Full

Whereas EMPLOYEE X, (hereinafter “the Employee”) has been employed as the POSITION at the NAME OF NONPROFIT (hereinafter “NAME OF NONPROFIT” or “the Employer”); and

Whereas the Employee and the Employer wish to agree upon the terms and conditions of the Employee’s separation from the Employer by entering into this Termination Agreement and Release in Full; and

Whereas the Employee and the Employer agree that the Employee’s last day of employment shall be DATE.

Thus, in consideration of the mutual covenants and promises contained in this Termination Agreement and Release in Full (hereinafter “the Agreement”), the Employee and the Employer agree as follows:

   (a) In exchange for the promises made herein by NAME OF NONPROFIT, Employee forever and irrevocably releases and discharges NAME OF NONPROFIT and its current or former subsidiaries, divisions, affiliates and other related entities, predecessors, successors, directors, officers, Board members, assigns, agents, employees, insurers, attorneys, representatives (collectively, “the Releasees”) from any and all claims, debts, suits, charges, contracts, liabilities, damages, actions or causes of action of any nature or from whatever source that he/she may have had against the Releasees prior to the effective date of this Agreement, for, upon or by reason of any matter, whether known or unknown, suspected or concealed, and whether or not currently asserted, including but not limited to any claims that the Releasees:
      • violated public policy or common law (including but not limited to claims for personal injury, invasion of privacy, wrongful discharge, negligent hiring, retention, or supervision, misrepresentation, defamation, intentional or negligent infliction of emotional distress, intentional interference with contract, negligence, detrimental reliance, promissory estoppel or loss of consortium); or
      • discriminated against Employee on the basis of his/her age in violation of the Age Discrimination in Employment Act or his/her race, sex, disability or any other basis in violation of Americans with Disabilities Act, the Rehabilitation Act, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, and the Civil Rights Act of 1991, 42 U.S.C. § 1981, or any other local, state, or federal law or constitution, regulation, ordinance or executive order.
   (b) It is the specific intent and purpose of Employee to release and discharge the Releasees from any and all claims and causes of action of any kind or nature whatsoever, whether known or unknown, whether specifically mentioned herein or not, which may exist or might be claimed to exist at or prior to the date hereof. It is agreed and understood by the parties that this release is a GENERAL RELEASE to be construed in the broadest possible manner consistent with applicable law. Excluded from this General
Release is any claim or right that cannot be waived by law, including any right to accrued vacation.

2. **Covenant Not To Sue.** A “covenant not to sue” is a legal term that means a person promises not to file a lawsuit or other legal proceeding. It is different from the General Release of claims contained in the preceding paragraph. Besides waiving and releasing the claims covered by the preceding paragraph, Employee promises never to file or prosecute any legal claim of any kind against any of the Releasees in any federal, state or municipal court, asserting any claims that are released by this Agreement. Excluded from this covenant not to sue is the right to file charges with, or participate in an investigation conducted by, any agency that expressly prohibits waiver of such rights. Employee is waiving, however, any right to monetary recovery, including but not limited to compensatory or punitive damages, attorneys’ fees or costs, or right to reinstatement should such an agency, or any other person, entity or group, pursue any claim on his/her behalf. Employee represents that, as of the date he/she signs this Agreement, he/she has not filed or caused to be filed any claims against any of the Releasees. If Employee files or prosecutes a claim in violation of this covenant not to sue, Employee shall be liable to NAME OF NONPROFIT for reasonable attorneys’ fees and other litigation costs incurred in defending against such a claim.

3. The Employee also acknowledges and agrees that during his/her period of employment with the Employer, he/she has been provided access to confidential information about the Employer, including, but not limited to information about board members, employees, volunteers, clients, financial matters, contractual matters and other issues. The Employee agrees not to divulge any such confidential information to any third party. The Employee acknowledges that if he/she breaches this promise of confidentiality, he/she will be liable to the Employer for any damages that may result directly or indirectly from such a breach, including, without limitation, attorney’s fees.

4. The Employee further agrees to refrain from disparaging the Employer and acknowledges that if he/she breaches this promise not to disparage, he/she will be liable to the Employer for any damages that may result directly or indirectly from such a breach, including, without limitation, attorney’s fees.

5. The Employee agrees to account for all of the Employer’s property and documents that he/she may have possessed during the term of employment and the Employee represents and promises that he/she will return all such documents and property to the Employer on or before DATE. The Employee understands that if the Employer subsequently discovers that the former Employee has stolen or damaged any property (including electronic assets) belonging to the Employer or any of its employees, or if the Employee has failed to return such items, the Employee will be liable to the Employer for any damages that may result directly or indirectly from such a breach, including, without limitation, attorney’s fees.

6. As consideration for the Employee’s agreement to the terms and conditions of this Agreement, the Employer will pay the Employee severance pay of a sum equal to X month’s salary in the gross amount of AMOUNT ($X amount). The amount paid shall be subject to applicable federal and state tax withholding and statutory deductions. An
additional sum equal to the value of the Employee’s accrued vacation leave as of DATE will also be paid. No other benefits shall be paid or provided. The Employer acknowledges that this consideration is greater than any severance or other payments to which the Employee would be entitled without executing this Agreement.

7. The Employee agrees that the terms and conditions of this Agreement shall remain strictly confidential, and he/she further agrees not to disclose to any third party, other than his/her legal counsel or immediate family members, the terms and conditions of this Agreement, except as may be required by law. The Employee understands that if there is a breach of the confidentiality provisions of this Agreement the Employee will be liable to the Employer for any damages that may result, directly or indirectly, from such breach, including, without limitation, attorney’s fees.

8. Nothing contained in this Agreement, or the fact of its submission to the Employee, shall be construed as an admission of any liability or wrongdoing on the part of the Employer.

9. The Employee acknowledges that he/she has entered into this Agreement freely, knowingly, and voluntarily. The Employee agrees and acknowledges that he/she has read this Agreement carefully and fully understands all of its provisions. The Employee is hereby advising the Employee to consult with legal counsel with respect to this Agreement before executing it. Employee acknowledges that he/she is hereby advised that he/she has up to 21 days from the date this Agreement was provided to him/her in which to decide whether to sign the Agreement and that the Employee’s signature on this Agreement constitutes an express waiver of the 21-day period if signed before that period expires. Any changes made to this Agreement during the 21 days in which Employee may consider it, whether material or not, will not restart the running of the 21-day period. After signing the Agreement, Employee may revoke his/her signature for up to and including seven (7) days. Employee agrees that in order for this revocation to be effective, it must be delivered in writing to NAME OF PERSON AT NONPROFIT within seven (7) days after signing the Agreement. This Agreement will not become effective unless and until the seven-day period expires without Employee revoking his/her signature.

10. This Agreement constitutes the entire agreement between the parties with respect to all the matters discussed herein and supercedes all prior contemporaneous discussions, communications or agreements, expressed or implied, written or oral, by or between the parties.

11. This Agreement shall be construed and enforced in accordance with the laws of STATE.

____________________________  ________________________
Employer Signature & Date    Employee Signature & Date

*This SAMPLE is provided by the Nonprofit Risk Management Center. This SAMPLE should not be used without first consulting an employment attorney licensed in the jurisdiction where the nonprofit employer is located. This SAMPLE is provided as risk management advice only, and should not be construed as legal advice. For more information on employment risks and strategies, call (202) 785-3891 or visit www.nonprofitrisk.org.
When You Are Sued

Question: What’s something that no one wants to get, but if you have it, you don’t want to lose?

Answer: A lawsuit.

Although the words “Sue me!” have been uttered in anger by countless nonprofit managers since the dawn of charitable organizations, with rare exception, no CEO truly relishes the prospect of facing an opponent in a court of law. Even organizations with comprehensive insurance coverage that imposes a duty to defend the nonprofit on the insurance company, understand that defending a lawsuit is a potentially time-consuming, distracting and costly activity that takes resources away from the organization’s community-serving mission. It’s not surprising therefore, that many aspects of risk management focus on avoiding conduct that could trigger a lawsuit. For example, treating employees fairly and providing a forum for the redress of grievances may substantially reduce the risk of a suit alleging a discriminatory promotions policy.

Despite the widespread view among many managers that lawsuits against nonprofits are commonplace, the truth is that nonprofits are rarely sued, and most organizations operate without ever facing an opponent in court. The odds of being sued increase with organizational growth, evidenced by the number of staff on the nonprofit’s payroll, the purchase of buildings in which to operate, and the negotiation of complex agreements with partner organizations and service providers.

The possibility of facing a suit is a risk that organizations should ignore at great peril. It’s essential to spend some time in advance of the risk materializing to reflect on how the organization will respond to ensure that the nonprofit’s mission survives a legal challenge.

Who Can Sue a Nonprofit?

The privilege of filing a civil lawsuit against someone is founded on the principle that citizens have obligations and duties to one another. Failure to fulfill these obligations, or breach of a duty resulting in injury or damage to another, gives the injured or damaged person the right to seek recovery.

There are two sides to everything and lawsuits are no exception. The person bringing the lawsuit is called the plaintiff. There can be one or many plaintiffs in any lawsuit, but they all will be listed in the lawsuit.

The person(s) and/or organization(s) being sued are the defendant(s). In addition to naming specific people or organizations, the lawsuit will also name Doe or Roe defendants. These are
people or organizations that are unknown to the plaintiff at the time the suit was filed, but who the plaintiff may want to bring into the suit later.

For example, a plaintiff may slip and fall at a special event sponsored by a nonprofit. The injured person sues the nonprofit and several Does or Roes. In the course of the lawsuit, it’s discovered that the reason the person fell was because Acme Janitorial used the wrong kind of wax on the floor. If there were no Does, the plaintiff couldn’t add Acme Janitorial to the list of defendants. In legal parlance, the plaintiff(s) and the defendant(s) are the parties to the suit.

When Can a Lawsuit Be Filed?

In civil (noncriminal) matters, a statute of limitations establishes a time limit for suing, based on the date when the injury occurred or was discovered or when the alleged breach of contract occurred. The purpose of these statutes is to require the timely pursuit of claims, ensure that claims will be resolved while evidence is reasonably available, and prevent surprises. Every state has adopted laws that establish statutes of limitations for various causes of action, such as personal injury, malpractice, property damage, breach of contract, defamation, wrongful termination and others. For example, in some states, persons claiming bodily injury must file within one year from the date of the incident or lose the right to pursue their claim. Other states have a two-, three-, four- or even five-year statute of limitation on personal injury claims. In Maine and North Dakota, the statute of limitations is six years. The statute of limitations for breach of contract claims in Nevada is six years, but in California the statute provides four years in which to commence a breach of contract claim.

In certain circumstances, special rules about statutes of limitation apply. For example, in most states, minors (children under the age of 18) enjoy additional protection under the law. They may bring a suit within the allowed period of limitation (one, two or more years) after reaching the age of 18. In some states, that right exists even if a lawsuit was filed on the minor’s behalf years earlier.

Another example of special circumstances is when courts, due to the nature of the injury, waive statutes of limitations and allow damage suits to be filed many years after the incident giving rise to harm has occurred. Litigation surrounding asbestos-related harm is an example. The health hazards of asbestos weren’t discovered until years after exposure, and the courts have considered this special circumstance in allowing claims to be filed against manufacturers of products containing asbestos.

In addition to the reasons noted previously, statutes of limitation are a potential tool for a defendant as the failure to file a timely suit may be the basis of an effective motion to dismiss, which ends the litigation. A nonprofit’s attorney will advise about whether this is applicable in the matter at hand.

Where Will the Lawsuit Be Filed?

Every state in the nation has an established structure for its courts, and there’s also a system of federal courts that hear civil cases. The jurisdiction—or authority of a court to hear a
particular case—depends both on the subject matter of the case and/or the dollar amount in dispute. It’s not unusual for several different courts to have jurisdiction to consider a lawsuit.

**Federal Courts**

A nonprofit may face a suit that has been filed in federal court. Cases alleging violation of federal statutes, such as the Americans with Disabilities Act (ADA), or Title VII of the Civil Rights Act, are often filed in federal court. Cases involving out-of-state parties where the disputed sum exceeds $75,000 are also candidates for federal court. In some cases, litigation initially filed in federal court is transferred or removed to state court. The reverse can also occur; a claim initially filed in state court may be removed to federal court.

**How Will You Know a Lawsuit Has Been Filed?**

Generally you won’t know that a lawsuit has been filed against you or your nonprofit until you are served, an informal term referring to service of process. Sometimes lawsuits are filed with a court to meet the deadlines imposed by the statute of limitations discussed earlier, but not immediately served. You may be served with a lawsuit when a process server shows up on your doorstep, when you receive a large package of unfamiliar documents in the mail, or as you are standing behind a podium preparing to deliver remarks at a public event.

As a practical matter, it’s useless to try to avoid being served with a lawsuit. If you or your organization has been named in a lawsuit, you or your organization will eventually be served. It does nothing but antagonize the parties when you try to avoid service or assume that service hasn’t been completed simply because you didn’t touch the papers left on the desk, or because you received the papers via the mail. By avoiding service, you also lose control over how the summons and complaint are served. It’s far better to accept service in your office than face the potential embarrassment of being served in public. Again, consultation with an attorney regarding service may be appropriate.

Keep in mind that service by mail is recognized by the courts, and the clock starts running five days after the date those papers were mailed to you. If the papers are left on your doorstep and not given to anyone in person, service is probably still valid, and the clock has begun ticking.

**What Steps Should You Take After Being Served?**

When a nonprofit is served with papers indicating it’s a defendant in a lawsuit, the following steps should be taken:

- Make a note of how and when you were served with a summons and/or a complaint. A summons must usually be answered in 30 days or less depending on where it’s received and by whom. Don’t dodge service; it accomplishes nothing and can create difficulties between the parties.

- Notify your insurance broker/agent and insurer(s) immediately. Send a complete copy of the lawsuit to your insurance broker/agent, and call to let the person know it’s in the mail. No matter how upset you are that a lawsuit was filed, ignoring it won’t make it go away. Ignoring it can jeopardize your insurance coverage and
even cause you to lose the case by default. It’s absolutely critical that the response be handled correctly.

- **Don’t alter your records.** Look at your incident report to see what happened, but don’t make any changes, additions, or deletions to any documents. Don’t dispose of any documents you think may be harmful. Chances are someone knows that piece of paper exists and has a copy. You will only look foolish to the other side and dishonest to the court.

- **Don’t talk about the case except with your insurer or the defense attorney hired to represent you and/or your organization.** Never, never call the plaintiffs or plaintiffs’ counsel to discuss the case. Whatever happened to cause the lawsuit won’t be resolved by you at this point. Beware of discussing the lawsuit with co-workers. There have been many cases where a disgruntled employee has given information on a lawsuit to the other side that has proved to be very detrimental. Additionally, you may be jeopardizing legal privileges by talking with those who don’t have a legitimate reason to know about the details of the suit or your analysis of your position.

- **Cooperate in obtaining all of the documents, records, or other information when requested by your lawyer.** Speedy cooperation is essential. Be sure the originals are in a safe place and send the records exactly as they have been maintained. Don’t destroy any relevant documents, records or other information.

- **Don’t overstate or understate the facts when you talk to your insurer or your defense attorney.** It’s likely that your insurer and your defense attorney will require an in-depth discussion concerning the accident or incident. It does no good to shade the facts one way or the other. In the end, the truth will come out. The one thing all defense attorneys hate is surprise. Armed with the truth, your attorney can better build a defense and possibly reduce the impact of even the worst of facts. Don’t make an assumption about the importance of any fact; leave that up to your lawyer who has a different perspective and understanding of the law. The worst possible case is for an attorney to be surprised on the eve of trial with a fact that changes the entire complexion of the lawsuit.

- **Don’t let politics or emotions prevail over good sense.** Your first reaction may be to want to disclose the real facts to the public to absolve your organization of wrongdoing. Don’t do it. When an organization does this, it can be very damaging and make it harder for your attorney to help you or to properly handle the claim.

- **Resolve to do this right.** This lawsuit will likely be a part of your life for a while. Resolve to take it seriously, but don’t let it consume your life. Sometimes the steps in the lawsuit process will seem cumbersome, repetitive, and unnecessary. Despite the hassle, provide accurate, thorough information to the insurance adjuster and your attorney. In the long run, this type of cooperation can make or break your ability to survive a lawsuit. You can survive a lawsuit. How? Keep your cool. Take advantage of available expert help. Respect deadlines. Stay organized. Don’t let the process consume your life. Most important, remember that the mission of your nonprofit—not the lawsuit—is what truly matters.
**Follow-up Reading: Litigation Trends**


**Sex harassment prevention classes may be paying off**

**Publication Date:** 09/04/2006  
**Source:** San Francisco Chronicle

Fifteen years ago this October, Anita Hill's testimony at the 1991 confirmation hearings of Supreme Court Justice Clarence Thomas made sexual harassment a household term. Hill's testimony that Thomas had made inappropriate sexual advances in the workplace triggered a nationwide trend toward sexual harassment prevention training.

That year, Congress also amended the Civil Rights Act to provide for damages in employment discrimination cases. This gave employers additional incentive to provide training, as did two 1998 Supreme Court rulings that showed companies could reduce their risk of liability by providing a clear system for employee complaints.

Today, millions of Americans have completed courses in the do's and don'ts of workplace behavior. And in California, the training -- which now also addresses discrimination based on age, disability, race, religion and national origin -- has been required for all supervisors since 2005.

Though it may be too soon to gauge the absolute success of the training, experts say it is one reason that sexual harassment claims have declined in every type of workplace, according to the U.S. Equal Employment Opportunity Commission, which has collected that data since 1991. The most claims, 15,889, were filed in fiscal year 1997. By 2005, claims had dropped to 12,679.

In addition to the training, another reason for the decline is the heightened awareness of the cost of sexual harassment cases.

"The increase in sexual harassment training since 1991 has benefited both employees and employers," said Wendy Bliss of the Society for Human Resource Management, a national professional association. "Employees have gained awareness of how sexual communications and behaviors on the job, even if intended as harmless fun, can be offensive to co-workers."

Even in California's agricultural sector, where women have traditionally been more vulnerable to sexual harassment and retaliation because so many don't speak English and are undocumented, claims have dropped 51 percent since 1997, according to the state's Department of Fair Employment and Housing.

But some experts are only cautiously optimistic about the recent data showing a drop in claims. "The statistics might be a hopeful indication that things have improved," said Professor Susan Bisom-Rapp, director of the Center for Law and Social Justice at Thomas Jefferson School of Law in San Diego. "Nonetheless, we need to look further before deciding that substantive change on the ground accounts for the statistical declines that we
Still, many experts are convinced that training has been the driver, helping both employers and employees understand what kinds of behavior are illegal, and why.

For example, "it has been helpful to explain to men why certain practices are hostile, unfair or interfere with a woman's ability to do her job," said Cliff Palefsky, a San Francisco employment attorney active in such cases.

"In the Bay Area, companies are now taking their obligation to investigate and discipline perpetrators much more seriously than in the past," Palefsky said.

One motivation is that employers know the cost of ineffective training can be exorbitant. In 1994, the average harassment jury award was $141,000. Today, it's $1 million, according to a recent report by the Insurance Coverage Litigation Reporter and Business Wire.

The high price of litigation was illustrated in May, when a Fresno County jury awarded $1.7 million to Janet Orlando, a salesperson who was spanked in front of co-workers as part of so-called team building exercises at Alarm One, an alarm systems company.

The verdict may be appealed, but the size of the award shows that judges and juries are willing to punish companies that don't take the training -- or an employee's complaint -- seriously. Alarm One supervisors had undergone sexual harassment training; when Orlando protested, her complaints were ignored. Now, two of her supervisors must pay $50,000. The company will pay the remainder.

"In California, a supervisor may be held personally liable for his or her own acts of harassment that harm a person," said Janie Hickock Siess, assistant deputy director of training for the California Department of Fair Employment and Housing.

"When I tell people this during training, I frequently see jaws drop!" Siess said. "But if you go to work and engage in this unlawful conduct, you're putting your own assets at risk."

Training also has helped victims of sexual harassment understand that they are not at fault and that they have the legal right to be protected against harassment.

At Stanford University, Laraine Zappert founded the Sexual Harassment Policy Office in 1993. "The training gives employees the sense that there is an office where help is available, where they can consult 'off the record,' and that is incredibly important," Zappert said.

Training also has a pre-emptive effect, since it helps companies to solve problems before they escalate.

In the past, employees often filed claims directly with a federal or state agency such as the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing. Today, when a worker calls a government agency, the caller is commonly asked if he or she has first gone through their company's complaint system.

"We have seen an increase in internal complaints, which is a good thing," said Donna Rutter, a management-side defense lawyer with the San Francisco firm of Curiale, Dellaverson, Hirschfeld & Kraemer.

"If you're an employer, you really want employees to come to you," Rutter said. "You don't want them to go
to the government agencies or a plaintiff's attorney."

The national spokesman for one government agency agreed. "The purpose of training is for employers to resolve problems through their own complaint procedures and policies, which helps to preserve a positive working relationship," said David Grinberg of the federal Equal Employment Opportunity Commission.

Though sexual harassment claims have declined, jury awards have increased for those that do make it to court. This may be because government agencies and plaintiff's attorneys naturally take cases that look winnable -- that is, cases where the employer had no clear complaint system or where training was substandard. It is just one more reason employers want to nip problems in the bud.

"In 90 percent of these cases, when the violators are clearly told the behavior is not tolerated, it will stop. But when that message is not communicated, that's when the thing escalates," said Garry Mathiason, a partner in Littler Mendelson, an employment-law firm with headquarters in San Francisco.

"People rail against the legal system, but with sexual harassment, it has been an extraordinary deterrent," Palefsky said. "When employers saw the $3 million final verdict in the Baker & McKenzie case, it changed how business was done."

That 1994 case took place in the Palo Alto office of one of the world's largest law firms, Baker & McKenzie. A jury awarded a record $7 million verdict (later reduced to $3 million) to a woman who claimed to have been repeatedly sexually harassed and humiliated by her boss. The jury found that multiple complaints had been filed against the harasser in his previous post, and that those who complained suffered retaliation.

The case threw a floodlight on the importance of training all employees, including top management and high-performance rainmakers.

After the verdict, the New York Times published an impassioned editorial: "If that judgment conveys its intended meaning, law firms and other enterprises across the country will bolt from their complacency and rectify the mistreatment of women in the workplace."

Today, Baker & McKenzie has 3,300 employees in 70 cities in 38 countries, all of whom receive training. "Whether training protects you in a lawsuit or not is irrelevant," said Edward Zulkey, the firm's general counsel. "It's a vehicle by which you make people aware of the right thing to do."

Still, some people feel constrained by the more cautious atmosphere in the workplace. They complain about walking on eggshells and fearing a lawsuit if they so much as compliment a co-worker.

"You can't say anything at work anymore," is a common refrain, to which Fresno civil rights attorney William Smith has a succinct response.

"Hogwash," said Smith, who has represented plaintiffs in sexual harassment cases for nearly 30 years.

"Just ask your daughter -- or your spouse -- if they think they should have to tolerate uninvited touching or suggestive comments at work."

In the end, training is just good business.

"An environment where harassment is not acceptable helps to build trust," said Mathiason of Littler
Mendelson. "And the increase in trust means you can keep and attract better employees. You have more productivity, higher profits. The gain is far greater than the cost."

Definitions

STATE OF CALIFORNIA

The Fair Employment and Housing Act defines sexual harassment as harassment based on sex or of a sexual nature, gender harassment and harassment based on pregnancy, childbirth, or related medical conditions. The definition of sexual harassment includes many forms of offensive behavior, including harassment of a person of the same gender as the harasser. The following is a partial list of types of sexual harassment:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Actual or threatened retaliation
- Leering; making sexual gestures; or displaying sexually suggestive objects, pictures, cartoons or posters
- Making or using derogatory comments, epithets, slurs or jokes
- Sexual comments including graphic comments about an individual's body; sexually degrading words used to describe an individual; or suggestive or obscene letters, notes or invitations
- Physical touching or assault, as well as impeding or blocking movements

Source: California Department of Fair Employment & Housing

FEDERAL GOVERNMENT

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment. Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker or a nonemployee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

Source: U.S. Equal Employment Opportunity Commission