

# Harassment

## When does joking around cross the line into harassment?

Sexual harassment on the job took a dramatic leap into public awareness in 1991, when Professor Anita Hill made known her charges against Judge Clarence Thomas after his nomination to the U.S. Supreme Court. Many other incidents have erupted since then, from the Tailhook incident in the ranks of the U.S. Navy to Paula Jones's harassment claims against former President Clinton.

Although sexual harassment tends to get the most media coverage, other types of workplace harassment are also illegal, including harassment based on race, disability, and religion.

What is harassment?

Legally speaking, harassment is unwelcome conduct that is severe or pervasive enough to create an intimidating, hostile, or offensive work environment or results in an adverse employment action (such as being fired). Like discrimination, harassment is illegal only if it is based on a person's protected characteristic. Under federal law, protected characteristics include race, color, national origin, sex, religion, age (40 and older), disability, and citizenship status.

Harassment can take many forms, from racial or religious slurs to X-rated graffiti to cruel practical jokes played on employees with disabilities.

What is sexual harassment?

In legal terms, sexual harassment is any unwelcome sexual advance or conduct on the job that is severe or pervasive enough to create an intimidating, hostile, or offensive working environment or that results in an adverse employment action. Sexually harassing behavior ranges from repeated X-rated or belittling jokes to a workplace full of offensive pornography to suggestive touching.

While a hostile work environment can arise from one serious incident (such as sexual assault), it is usually the cumulative effect of a number of smaller incidents occurring over time. The offensive conduct does not need to be of a

sexual nature; for example, sexist comments about women can qualify as sexual harassment.

What laws prohibit workplace harassment?

The same federal laws that protect employees from discrimination also prohibit harassment. This means that you are protected from harassment only if your employer is subject to the federal antidiscrimination laws discussed in “Discrimination,” above. For example, if you work for an employer with fewer than 20 employees, your employer does not have to comply with the federal laws that prohibit discrimination and harassment based on your age.

Many state laws also prohibit harassment. In some states, the same laws that prohibit discrimination also prohibit harassment. In other states, separate laws or provisions prohibit harassment, and these laws may apply to different employers. For example, California prohibits harassment by all employers regardless of size, while only those employers with at least five employees are prohibited from discriminating.

My coworkers like to tease me about my accent and nationality. When does this kind of joking around cross the line into harassment?

There’s no clear point at which teasing becomes illegal harassment. Courts and the Equal Employment Opportunity Commission (EEOC), the federal agency that enforces federal laws prohibiting harassment, have said that one or two isolated jokes don’t constitute harassment. On the other hand, repeated and offensive jokes—such as using racial slurs or belittling you because of your nationality—probably do. The test is whether the harassing conduct unreasonably interferes with your work performance or creates an intimidating, hostile, or offensive work environment. The more your coworkers tease you—and the more offensive their jokes are—the more likely you are facing illegal harassment.

I’m being harassed at work. What is the first thing I should do?

Consider telling the harasser to stop. This works surprisingly often, when the harasser doesn’t realize how damaging the behavior is. For example, a coworker who doesn’t understand that his jokes about your religion or his comments about your appearance are offensive might be embarrassed to learn that his behavior is upsetting you and be willing to change his ways.

If you are not comfortable confronting the harasser(s), go directly to your supervisor, human resources department, or other manager and make a complaint. The benefit of complaining directly to the harasser(s) is that doing so lets the harasser know that the behavior is unwelcome. Conduct is harassing only if it is not welcome to the person on the receiving end. This can be a disputed issue, particularly in sexual harassment cases—for example, if you have participated in sexual banter in the workplace or have a prior dating relationship with the harasser, the harasser may later argue (to your employer or in court) that he or she didn't know you were offended. Telling the harasser directly that you are upset is a surefire way to be clear about this.

However, if the conduct is severely disturbing or offensive, you may sensibly believe that the harasser must know that you are upset by it. For example, if you have been threatened with racial violence or sexual assault, there is no need to sit down with your persecutor and explain why you are upset.

Also, document what's going on by keeping a diary or journal noting important facts like what occurred, the full names of any witnesses, and the dates that the events took place. Your case will be stronger if you can prove that the harassment continued after you confronted the harasser or made a complaint.

What should I do if the harasser keeps it up or I'm too intimidated to tell the harasser to stop?

Complain, complain, complain. Start by finding out whether your company has a complaint procedure in place (check your employee handbook or ask a manager). If so, use that process to make a formal complaint. If your company doesn't have a complaint policy or procedure, talk to your supervisor, someone in your company's human resources department, or another manager. When you make your complaint, be thorough and honest. Don't leave anything out or exaggerate any details. If the person taking your complaint asks you to sign or fill out a written complaint, make sure everything in the document is accurate—and that nothing important has been omitted—before you sign.

You might be afraid to complain about harassment, perhaps because the harasser is your supervisor or has made threats against you. The laws that prohibit harassment also prohibit your employer from retaliating against you for complaining about harassment. Although this might be cold comfort if you fear for your job or your safety, the fact is that your legal rights might be limited if you fail to complain. An employer that can successfully argue that it didn't know about the harassment often has a defense to a harassment

lawsuit. The best way to nip this argument in the bud is to complain to someone in authority, using the company's designated procedures.

What legal steps can I take to end harassment?

If complaining to the harasser and/or company officials doesn't stop the harassment, your next step is to file a charge of harassment at the federal EEOC or your state's fair employment practices agency. These agencies enforce federal and state laws prohibiting harassment; they are empowered to take complaints, investigate, try to settle or mediate the problem, and even sue on the employee's behalf, if they think the case warrants their involvement.

If you are considering suing your employer, you absolutely must take this step first. In most circumstances, courts will not allow your harassment lawsuit to go forward unless you have first filed with one of these agencies. And the deadlines for filing can be short; you might have only 180 days after the harassing incidents to file a charge.

These agencies don't often sue an employer on an employee's behalf. Usually, the agency will issue you a document referred to as a "right to sue" letter. This document allows you to take your case to court. If you decide to file a lawsuit, you will almost certainly want to hire an attorney to represent you.