Sexual Harassment
It's Unlawful; It Doesn't Belong in the Workplace!

According to the federal Equal Employment Opportunity Commission guidelines, sexual harassment is defined as "unwelcome" sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or;
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Specifically, sexual harassment can include:

- Verbal abuse (propositions, lewd or suggestive comments, sexual insults)
- Visual abuse (leering or display of pornographic material, designed to embarrass or intimidate an employee)
- Physical abuse (touching, pinching, cornering, rape)

Sexual harassment in the workplace generally falls into two broad categories:

1. What is called a "quid-pro-quo." That is, where sexual favors are demanded in exchange for specific job advantage, such as a promotion, better conditions, or even continued employment.
2. The "hostile environment." That is, where the victim is subjected to offensive conduct which is sexual in nature, or is sexually motivated, and which is so pervasive in the workplace that the terms and conditions of the victim's employment are seriously affected.

Employers are always legally responsible for a supervisor or other management employee's sexual harassment of an employee when the harassment results in a "tangible employment action," even if the employer was unaware of the harassment. A tangible employment action is a significant change in employment status, including: hiring or firing, promotion or failure to promote, demotion, undesirable assignment, a decision causing a significant change in employee benefits, compensation decisions, and work assignments.

Employers are, in general, also legally responsible for harassment by a supervisor or other management employee that does not result in a tangible job action, and for harassment by co-workers and nonemployees, when the harassment creates a hostile work environment. However, the employer can avoid liability for the harassment if the employer can prove that it took reasonable action to prevent and promptly correct harassment (such as adopting and enforcing an anti-harassment policy), and the harassed employee unreasonably failed to take action to report the harassment or to otherwise avoid harm.

Sexual Harassment Is Illegal

The U.S. Supreme Court has ruled that sexual harassment is illegal discrimination covered by Title VII of the Civil Rights Act. It subjects the worker to adverse employment conditions having nothing to do with job performance. Often it is accomplished by threats of adverse job actions or promises of raises or promotions. Management is always responsible for sexual harassment committed by a supervisor if it resulted in a "tangible employment action." Management is responsible for sexual harassment committed by a supervisor even if it did not result in a "tangible employment action" unless management exercised reasonable care to prevent and correct promptly any harassment (such as by adopting and enforcing an anti-harassment policy) and the employee who was harassed unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

The employer can also be held responsible for sexual harassment committed by employees, and even nonemployees, if it knew of or should have known of the problem and failed to take immediate and appropriate corrective action.

Yet, it is not just the employer who can be liable for acts of sexual harassment. Unions themselves are vulnerable to lawsuits, either for directly engaging in sexual harassment of the union's own members, or for failing to respond to complaints of sexual harassment. The courts have found members can sue a union for sexual harassment under theories of:

- Breach of the Duty of Fair Representation;
- Employment discrimination under Title VII of the Civil Rights Act of 1964;
- Conspiracy to deprive someone of their civil rights under the Civil Rights Act of 1871;
- Violation of civil rights and intentional infliction of emotional distress under state law.

What Can Y g Do?

OFFER SUPPORT

It is important that all victims, both women and men, report cases of sexual harassment to their union and that they be given support and help once they have reported it. Sexual harassment victims must feel confident that their local union officials take the matter seriously and will deal with it effectively.

WORKPLACE ENVIRONMENT

Labor and management need to create a climate in which sexual harassment will not be tolerated in the workplace. The issue needs to be discussed at labor/management meetings. Joint policy statements, brochures, training, resolutions and procedures should be developed to help all employees understand that harassment is inappropriate, unacceptable and illegal.

COMMUNICATE WITH MEMBERS

Some unions conduct confidential surveys to determine the extent of the problem in the workplace. The survey itself indicates to members that their union is concerned and interested in solving any problem that might exist with sexual harassment.

EDUCATION

Educational materials should be distributed to inform members of the nature of the problem and what to do if they become victims. Films, flyers and brochures on the subject are all available. Stewards and local union officials should receive special training in the handling of the sexual harassment cases.

GRIEVANCE PROCEDURE

Unions can negotiate special grievance provisions to handle the unusual circumstances of sexual harassment cases. The sensitive and potentially embarrassing situations can require unusual confidentiality and promptness in handling the case. Special procedures can be applied to just such cases. If special procedures are adopted, be sure that the procedures do not treat sexual harassment victims less favorably than employees filing other grievances under the normal grievance procedure.

SEXUAL HARASSMENT

Elements of An Effective Sexual Harassment Policy

- The policy should be **written**.
- The labor/management committee assigned to develop the policy should be representative of the workplace including race, gender, job classification, etc.
- The policy should be **explicit**. It should specifically address sexual harassment, not simply harassment of all types or other objectionable workplace conduct in general.
- The policy should be **clearly and regularly communicated to all employees.** For example, if safety policies are distributed with employee time cards or pay checks, the sexual harassment policy should be distributed in the same manner.
- The policy should be **prominently posted** on bulletin boards and in employee handbooks.
- The policy should be **the subject of training for all employees**, not just managers and supervisors.
- **Employee education should be ongoing and on paid time,** to show the employer's seriousness about preventing sexual harassment as well as dealing with it when it occurs.
- New hires should be required to **sign a receipt for the policy** to ensure that they are on notice of the standards of behavior.
- The policy should **include definitions of sexual harassment.** It should contain specific **examples of prohibited conduct**. Further, it should state that the list is not all-inclusive.
- The policy should provide for a **readily available complaint/grievance procedure,** designed to encourage victim(s) to come forward.
- The complaint procedure should **specifically identify, by name or title, two or more individuals to whom complaints can be made**, so as to enable a victim to avoid complaining to the alleged harasser.
- Individuals identified to receive complaints should receive appropriate specialized training.
- The complaint procedure should be **swift, and should include a prompt, thorough investigation.**
- The complaint procedure should establish a **timetable for action**.
- The complaint procedure should **ensure confidentiality**, to the extent possible.
- The complaint procedure should provide **effective remedies, including protection of victim(s) and witness(es) against retaliation.**
- The complaint procedure should include a **mechanism for appeals**.

Some Myths and Facts

MYTH: So-called sexual harassment is just natural, normal behavior. People should feel complimented that they are considered desirable and attractive.

FACT: Sexual harassment is a power play using sexually directed behavior as a weapon. It is an inappropriate way to control another person through degradation and humiliation. It is not "sexy" and is not part of healthy human relationships based on mutual caring and respect.

MYTH: Women are responsible for being sexually harassed by the way they dress and by provocative speech and behavior.

FACT: Sexual harassment victims are not limited to physically attractive people. The most common motivation for sexual harassment is power and aggression, not sexual desire. Victims who believe this myth have tried unsuccessfully to stop the harassment by making their physical appearance as unattractive as possible and otherwise behaving to discourage the harassment.

MYTH: If an employee asks another employee for a date, this could be grounds for sexual harassment charges.

FACT: There should be no sexual harassment problem in asking a co-worker for a date so long as there is no coercion. The potential for sexual harassment problems arise when the person asked says no, and the co-worker does not take no as an answer. Rejection is no cause to retaliate through sexual harassment. When a person makes it clear that the advances are unwelcome, his or her wishes must be respected. Repeatedly asking a co-worker for a date when he or she has clearly said no is sexual harassment.

MYTH: Women who enter a predominantly male field should expect to put up with rough language, dirty jokes and hazing. The women are not being treated any differently than the men treat each other.

FACT: This is often a myth because many times the new woman in a previously all-male environment is not just treated as "one of the boys." It is not business as usual, but rather the men escalate the foul language or sexual conduct to test her or make it difficult for her to succeed. While church-picnic behavior is not necessary, intensified on-going, sexually directed conduct has been held to be sexual harassment. Being a woman in a nontraditional job is difficult. She needs support from her co-workers.

SEXUAL HARASSMENT

THE DIFFERENCE BETWEEN FLIRTATION AND SEXUAL HARASSMENT

Recognizing subtle sexual harassment can be difficult. You need to know the difference between friendly behavior and sexual harassment. A three-step process can help you make a determination in most situations.

Step One: Obtain an objective description of the behavior.
Step Two: Determine if the behavior was welcome.
Step Three: Determine if the unwelcome behavior was sexual.

When an employee comes to you with a sexual harassment complaint, take the situation seriously. Remember that there are no stereotypical recipients of sexual harassment and there are no stereotypical sexual harassers. Their ages range from young to old. They include females and males.

QUESTIONS TO ASK

Encourage the alleged recipient of sexual harassment to talk specifically. Ask "What brought you here?" or "Please describe the situation."

Get all the facts required. Find out exactly what happened. Don't make assumptions about what the employee means. Ask the employee, "Is there anything else that the person has done that we've not talked about?"

IN ADDITION ASK,

"Where did the behavior occur?"
"Who was involved?"
"Were there any witnesses?"
"Did you talk with anybody else about what happened?"
"Has this happened before?"
"How long has this been going on?"
"Was the person told that the behavior was unwelcome?"
"What was the person's reaction when informed that his or her behavior was unwelcome?"

Find out what the employee wants to have happen. It is important to remember that you must take action to make sure the alleged unwelcome behavior stops even if the employee says that he or she doesn't want you to.

SEXUAL HARASSMENT

HOSTILE WORK ENVIRONMENT

In 1986 the Supreme Court, in recognizing hostile work environment, stated:

> *"Employees have the right to work in an environment free from discrimination, intimidation, ridicule and insult."**

Sexual harassment occurs when a supervisor or co-worker harasses someone solely because of gender to the point that the conduct makes it more difficult to perform a job or the conduct creates an intimidating, hostile or offensive working environment. Such conduct includes:

- **Explicit derogatory jokes**
- **Demeaning stereotypical comments**
- **Sexual innuendoes**
- **Discussing sexual activities**
- **Unnecessary touching**
- **Commenting on physical attributes**
- **Displaying sexually suggestive pictures**
- **Using demeaning or inappropriate terms, such as "babe"**
- **Using unseemly gestures**
- **Ostracizing workers of one gender by those of the other**
- **Sabotaging work of one gender by the other**
- **Using rude and offensive language**
- **Violating personal space**
- **Pranks**
- **Taunts**
- **Boisterous aggression**

Courts have considered the following factors to determine if a hostile work environment exists:

- **The severity and pervasiveness of the conduct**
- **Whether the conduct was physically threatening, humiliating or verbal**
- **How frequently the conduct was repeated**
- **Whether the conduct was hostile and blatantly offensive**
- **Whether the harasser was a co-worker or a supervisor**
- **Whether the harassment was by more than one person and**
- **Whether the harassment was directed at more than one person**

*Meritor Savings Bank v. Vinson

UNLAWFUL HARASSMENT

The legal definition of <u>*unlawful harassment*</u>*:* Unlawful harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual.

- Because of his/her race, national origin, gender, sexual orientation, age, disability or religion.
- Because of his/her relatives', friends' or associates' race, national origin, gender, sexual orientation, age, disability or religion.

That has the purpose or effect of:

- Creating an intimidating, hostile, or offensive working environment.
- Unreasonably interfering with an individual's work performance.
- Otherwise adversely affecting an individual's employment opportunities.

Any conduct relating to race, national origin, gender,sexual orientation, age, disability or religion that may be viewed by any person as offensive should raise a red flag.

Examples of unlawful harassment:

- Negative epithets, slurs or stereotyping.
- Threatening, intimidating or hostile acts relating to race, national origin, gender, sexual orientation, age, disability or religion.
- Written or graphic material visible or circulated in the workplace that denigrates or shows hostility or aversion toward a person or group because of race, national origin, gender, sexual orientation, age, disability or religion.

What about conduct that is harassing, but not sexual?

- The law says sexual harassment includes any harassing conduct that is directed at someone because of his/her sex.

Is there a legal difference between unlawful harassment by supervisors and unlawful harassment by co-workers?

- Under the U.S. Supreme Court decisions in 1998, employers can be held absolutely liable for unlawful harassment by a supervisor where the employee has suffered a tangible job detriment or where the employer fails to prove that (1) it took reasonable action to prevent and correct harassment and (2) the employee unreasonably failed to take advantage of those preventative/corrective actions.

SEXUAL HARASSMENT

ADDITIONAL TYPES OF SEXUAL HARASSMENT

- **Sexual favoritism:** These types of incidents involve a supervisor playing favorites and rewarding only those who submit to the sexual advances. Other employees who do not go along with the supervisor's game are denied the best job assignments, pay raises, promotions, etc., may claim harassment.

- **Indirect harassment:** An employee who witnesses sexual harassment on the job, but isn't a victim, can claim sexual harassment. For example, a California court ruled that an "environment of sexual harassment" was created by a doctor who grabbed other nurses in full view of the claimant who was not harassed. Although the third party claimant was not directly harassed by the doctor, she was adversely impacted by his actions which created a hostile, intimidating environment in which she was required to work.

- **Harassment by non-employees**: In both quid pro quo and hostile environment cases, the employer may be held responsible for the harassment of non-employees, like vendors, contractors or customers if the employer knew or should have known of the conduct, failed to take immediate and appropriate corrective action and has control or responsibility over the non-employee.

- **Harassment based on gender**: Behavior can be considered sexual harassment even if it doesn't involve overt sexual behavior. This type of harassment is directed at a man or woman explicitly because of his or her gender. Conduct such as profanity or other offensive behavior may be considered sexual harassment when it is based solely on gender.

  For example, a court ruled that a female police dispatcher experienced sexual harassment because she suffered persistent and hostile treatment by male police officers. One officer admitted that he felt she should not have been given the dispatcher position because it was a man's job. He made derogatory comments about her work performance over the police radio which were heard by other dispatchers. He also subjected her to pranks. Other officers purposely used lewd language around her even though she let them know it offended her. Her complaints to superior officers did not result in any corrective action. Eventually she resigned from her job.

DEALING WITH SEXUAL HARASSMENT

Marjorie refused her supervisor's date invitations and suddenly it seems all the better assignments are going to other people. When Marjorie asks him about it, he tells her she hasn't adequately demonstrated "team work skills" to obtain these assignments.

The men at Kathy's workplace put up Playboy pin-ups in the break room. Kathy has never heard them refer to women on the job, but she feels humiliated by the pictures.

What should stewards do about the situations these women face?

Incidents involving sexual harassment are particularly challenging. The incidents involve strong emotions, misuse of power, and the tension that historically surrounds relations between men and women in our society.

Unions have an obligation to make sure that all members are sensitive to the problem of sexual harassment in the workplace, and create an environment into which victims of harassment will feel comfortable turning to someone in the union for assistance.

The steward must investigate claims of sexual harassment as thoroughly and seriously as he or she would investigate any other grievance claim. Additionally, the steward must be sensitive to the victim. Victims—and most victims are women—often feel anxious, powerless, shamed and guilty. Confidential hearings for victims and the accused might be the best first step.

To be effective, it's important for a steward to know what legally constitutes sexual harassment.

Briefly, sexual harassment is any unwelcome sexual advance, request for sexual favors and any other verbal or physical conduct of a sexual nature.

Because of its legal background, sexual harassment is grievable even if your contract doesn't have specific language about it. So stewards should use grievance procedures as one strong way of dealing with sexual harassment situations.

Marjorie's case—she "hadn't adequately demonstrated 'team work skills'"—is the classic form of sexual harassment. In such cases, a superior tries to sexually coerce a subordinate through implied or direct threats of losing a job or promotion or getting less desirable assignments.

The supervisor most likely will deny he made advances. Undoubtedly, he will blame the employee's work performance or cite management rights as his justification for the change.

The steward should ask management to document anything that is alleged about the employee's work performance. The steward should also interview others in the department to see if this supervisor has a history of harassment; frequently harassers do, although no one may have complained before.

Employers are more likely than ever to treat these grievances seriously, because the courts have made it clear that management is responsible and liable for the actions of its employees. Ignorance of the situation cannot be used as an excuse.

Kathy's case, with the pin-ups, involves work environment. It's a category of sexual harassment which is less clear cut than Marjorie's. It is also more sensitive for the steward since it is Kathy's coworkers—potentially other union members—who have put up the offensive

pictures. However, legally, the employer still bears the responsibility for the atmosphere of the workplace because he allows it.

In a case like Kathy's, the steward should warn his coworkers that even if the pictures offend only one person, it is offensive and has no place at work. While it's not the steward's job to discipline workers, it is his or her job to warn them about possible consequences of their action. Continuation will undoubtedly lead to management disciplining workers over it, since management is ultimately liable.

Stewards should be prepared to take some static from coworkers who will claim that their behavior is in "good fun" or that workers like Kathy "just can't take it." You should remind such coworkers that if Kathy was their daughter, wife, mother or sister, they wouldn't want her treated like that.

The best strategy for dealing with the issue is a preventive one-educating workers about the issue before incidents occur.

Stewards should give the following advice to workers if they experience sexual harassment:

- Complain immediately to the employer and follow the employer's sexual harassment complaint procedure, if one exists.
- Complain immediately to someone in the union.
- Tell the offender very firmly that the behavior is unwelcome and offensive and that you want it to stop immediately.
- Keep a record of events in writing of what exactly was said; when; where; and names of witnesses. Record what you said in return, and how you felt.
- Seek support from friends, family and the union. No one experiencing harassment should have to endure that alone, and the steward plays the key role in demonstrating that the union is a supportive and discrimination-free organization.

Excerpted from Steward Update, Vol. Two, No. 5 by Patricia Thomas, SEIU

SEXUAL HARASSMENT

FREQUENTLY ASKED QUESTIONS

1. **How do I protect myself from false sexual harassment charges?**

   Answer: Avoid sexually offensive conduct in the workplace. Do not assume your co-workers enjoy comments about their appearance, or being called by anything other than their name. Do not assume that they enjoy hearing sexually oriented jokes or comments, being touched, stared at or propositioned. It is also important to know workplace rules including those related to sexual harassment issues.

2. **Can compliments be a form of sexual harassment?**

   Answer: In general no. For instance, a comment such as, "You look very nice today," would probably not be considered offensive by a reasonable person. But repeated compliments accompanied by a certain tone of voice and leering or other gesture could indeed impact how that "compliment" is received. The real concern is how your behavior affects the other person.

3. **If someone is not objecting to the behavior, does that mean it is welcome?**

   Answer: Just because someone does not object or complain about certain behavior does not mean that the conduct is welcome. Many victims are both embarrassed and frightened by unwelcome sexual conduct. They develop coping strategies to tolerate the harassment. They find it difficult to speak up or define themselves even though certain conduct is objectionable. Studies reveal that many women do not report unwanted advances due to fear of reprisal, fear that they will not be believed and fear that they will be blamed.

4. **Can the way a person dresses cause sexual harassment?**

   Answer: No. In most instances, sexual harassment is about the abuse of power and not about physical attraction. Each of us is responsible for our own behavior. However, courts may consider the speech or dress of the victim of the harassment in order to determine whether the conduct was welcomed. Again, remember that the courts look to the totality of the circumstances in deciding such cases.

5. **What happens if a fellow union member accuses me of sexual harassment?**

Answer: Both the victim and the accused are entitled to union representation and access to the grievance procedure, if requested. That representation should begin with a prompt, fair and thorough investigation of the facts.

6. **How do I know if my behavior is inappropriate?**

Answer: First and foremost, determine if your behavior has anything to do with or is at all related to your job. If it is not, avoid it. The bottom line is, if you would not say it or do it to your mother, your daughter or your sister, do not engage in that kind of conduct at work.

7. **Why doesn't the person who is being sexually harassed just tell the harasser to stop?**

Answer: Most often that person is intimidated by the harasser and for that reason does not tell the harasser that the behavior is unwelcome. Some victims are embarrassed and humiliated and find it difficult to speak up for themselves. They also fear retaliation or they fear that they will not be believed and that nothing will change anyway.

8. **Do I have to change my behavior because someone might be offended?**

Answer: YES. Sexual harassment is against the law. It is defined as any unwanted or unwelcome behavior of a sexual nature. To determine if your behavior could be construed as objectionable, ask yourself the following questions:

a. Did I initiate the behavior?
b. Was the behavior welcomed by the other person?
c. What is my relationship with that person?
d. What was the person's response to my behavior?
e. Was my conduct of a sexual nature?
f. Did the conduct make the other person's job environment unpleasant or interfere with his/her job performance?

9. **What should I do if I am being harassed?**

Answer:

a. Tell the harasser to **stop**. Object to the behavior and tell the harasser specifically what you find offensive.
b. Document your conversation (each incident) with the harasser. Get the time, date, place, witness(es) and any other information so that you will have it for your records.

c. Tell someone else what has happened. Seek support. Solicit help from others who may have witnessed the incident.
d. Get your local union involved. Put the shop steward on notice and ask for assistance.
e. Report the incident(s) to management.
f. Be informed—know your rights. (Memorandum of Understanding Sexual Harassment Policy, etc.)

10. If the victim grants a request for sexual favors or participates in sexual banter, can the harasser's conduct be unwelcome sexual harassment?

Answer: Yes. Some victims of sexual harassment believe they must comply with a request for favors as a condition of their continued employment. They may participate, even though they have not been forced to, out of fear of reprisal. To determine whether conduct is unwelcome, consider whether the accuser initiated, encouraged or provoked the accused and whether the conduct complained of was undesirable or offensive. Again, the courts look to the totality of the circumstances when deciding this issue.

EQUAL EMPLOYMENT OPPORTUNITY

Under Title VII of the 1964 Civil Rights Act, employers, unions, employment agencies and joint apprenticeship and training committees are required to treat all persons equally, without regard to race, color, religion, sex, or national origin. This applies to all phases of employment, including hiring, referral, promotion, firing, apprenticeship, and other training programs and job assignments. Harassment of any of those grounds is also prohibited. Harassment and hostile work environment claims also may be brought under Title VII. Employers with 15 or more workers are covered. Unions with 15 or more workers or who operate a hiring hall are covered.

The law provides for a five-member Equal Employment Opportunity Commission (EEOC) to handle complaints of discrimination and try to promote compliance with the law. If the EEOC cannot bring about a voluntary settlement, it can go to court on behalf of the charging party; or the charging party can file a lawsuit in court. Union members are urged to take grievances regarding discrimination to their union even if they intend to pursue their statutory remedies.

Sexual Harassment

ANSWER GUIDE

Part One

WHAT IS SEXUAL HARASSMENT?

Sexual harassment is against the law.

The Equal Employment Opportunity Commission (EEOC) guidelines define sexual harassment as:

- unwelcome sexual advances;
- unwelcome requests for sexual favors; or
- unwelcome verbal or physical conduct of a sexual nature when:

  1. Submission to such conduct is made either explicitly or implicitly a term or condition of employment;

  2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

  3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

TWO GENERAL CATEGORIES OF SEXUAL HARASSMENT

- **Quid pro quo** (this for that): When submission to unwelcome conduct, explicitly or implicitly, is made a condition of a person's employment, or the basis for employment decisions.

  This type of harassment is the most clear cut. It involves a supervisor, or someone in a position of authority, stating or implying that the victim's job promotion or job assignment depends on complying with the sexual advances. (A one-time incident is sufficient to prove quid pro quo harassment.)

- **Hostile environment:** When a supervisor or co-worker harasses someone solely because of gender to the point that the conduct makes it more difficult to perform a job or that the conduct creates an intimidating, hostile or offensive working environment, such as:

  - explicit jokes
  - demeaning comments
  - sexual innuendoes
  - discussing sexual activities
  - unnecessary touching
  - commenting on physical attributes
  - displaying sexually suggestive pictures
  - using demeaning or inappropriate terms, such as “Babe”
  - using unseemly gestures
  - ostracizing workers of one gender by those of the other
  - granting job favors to those who participate in consensual sexual activity, and
  - using crude and offensive language

To prove that a hostile environment exists usually requires that the incidents be severe, persistent and happen frequently; although a single serious incident may be sufficient to establish a hostile work environment.

ADDITIONAL TYPES OF SEXUAL HARASSMENT

- **Sexual favoritism:** These types of incidents involve a supervisor playing favorites and rewarding only those who submit to the sexual advances. Other employees who do not go along with the supervisor's game, and are denied the best job assignments, pay raises, promotions, etc., may claim harassment.

- **Indirect harassment:** Is where an employee who witnesses sexual harassment on the job, but isn't a victim, can claim sexual harassment. For example, a California court ruled that an "environment of sexual harassment" was created by a doctor who grabbed other nurses in full view of the claimant who was not harassed. Although the third party claimant was not directly harassed by the doctor, she was adversely impacted by his actions which created a hostile, intimidating environment in which she was required to work.

- ☛ **Harassment by nonemployees:** In both quid pro quo and hostile environment cases, the employer may be held responsible for the harassment of nonemployees, like vendors, contractors or customers if the employer knew or should have known of the conduct, failed to take immediate and appropriate corrective action and has control or responsibility over the nonemployee.

- ☛ **Harassment based on gender:** Behavior can be considered sexual harassment even if it doesn't involve overt sexual behavior. This type of harassment is directed at a man or woman explicitly because of his or her gender. Conduct such as profanity or other rude behavior may be considered sexual harassment when it is based solely on gender.

  For example, a court ruled that a female police dispatcher experienced sexual harassment because she suffered persistent and hostile treatment by male police officers. One officer admitted that he felt she should not have been given the dispatcher position because it was a man's job. He made derogatory comments about her work performance over the police radio which were heard by other dispatchers. He also subjected her to pranks. Other officers purposefully used lewd language around her even though she let them know it offended her. Her complaints to superior officers did not result in any corrective action. Eventually she resigned from her job.

Employers are always legally responsible for a supervisor or other management employee's sexual harassment of an employee when the harassment results in a "tangible employment action," even if the employer was unaware of the harassment. A tangible employment action is a significant change in employment status, including: hiring or firing, promotion or failure to promote, demotion, undesirable assignment, a decision causing a significant change in employee benefits, compensation decisions, and work assignments.

Employers are, in general, also legally responsible for harassment by a supervisor or other management employee that does not result in a tangible job action, and for harassment by co-workers and nonemployees, when the harassment creates a hostile work environment. However, the employer can avoid liability for the harassment if the employer can prove that it took reasonable action to prevent and promptly correct harassment (such as adopting and enforcing an anti-harassment policy), and the harassed employee unreasonably failed to take action to report the harassment or to otherwise avoid harm.

D. Questionnaire

Instructions: Refer to the Definitions and Types of Sexual Harassment and decide if the behavior described in each scenario constitutes sexual harassment. Be prepared to explain your answer. Answer Yes or No.

1. _______ The men in Kathy's workplace put up Playboy pinups in the break room. Kathy has never heard them refer to the pictures nor make sexual remarks to women in the workplace, but Kathy feels humiliated by the pictures.

Answer: *Yes. Sexual harassment can include anything (visual displays as well as remarks or physical advances) that causes humiliation to a person.*

2. _______ Whenever Ann does the filing, one male co-worker always makes a point of rubbing up against her when he walks past her. He always says "*excuse me*" but the look on his face indicates that it's no accident. Ann finds it demeaning and offensive.

Answer: *Yes. Sexual harassment is any unwelcome physical advance from anyone on the job or associated with the job (superior, co-worker, subordinate, customer, client, union official, etc.)*

3. _______ Ellen dated a co-worker for a while but broke off the relationship after a couple of months. Ellen occasionally works on projects with him, but he is very formal and never says more to her than he has to. Ellen feels badly that they can't be friends anymore.

Answer: *No. That's life and love in the workplace. She may feel bad, but he's working with her when the job demands it.*

4. _______ The supervisor is famous for his dirty jokes, sexual comments and leering. It really bothers Effie to the point that she gets headaches by late afternoon after listening to it all day. Effie talks about it with other

women in her workplace, but they tell her it doesn't bother them because "*He's all talk and no action.*"

Answer: *Yes. Such conduct need not offend the entire group. If even one worker feels humiliated, sexual harassment can be said to exist.*

5. _______ Jim refused his supervisor's dinner date invitations and now it seems that all the better assignments are going to other people. When Jim asks her about it, she tells him that he hasn't adequately demonstrated sufficient "teamwork skills" to obtain these assignments.

Answer: *Yes. Such a situation is termed quid pro quo; that is, when requests are coupled with implicit or explicit threats of adverse job consequences,* sex*ual harassment can be said to exist.*

6. _______ Arlene is on the union's negotiating committee which met very late one night recently. The union representative offered to drive her home and she accepted. On the way home he complimented her on her negotiating skills and how attractive and professional she looked at the bargaining table. In front of her house, he attempted to kiss her. She firmly resisted. He became very angry and questioned why she took a ride in the first place.

She later found out from another steward that the union had assigned her to the negotiating support committee to make sandwiches for the bargaining committee.

Answer: *Yes. This situation is similar to No. 5; accepting a ride home does not constitute an invitation for sexual advances.*

7. _______ Rita watches while her co-worker gets pinched and fondled by their supervisor. Although the co-worker laughs it off and says, *"I don't get it at home, I gotta get it somewhere,"* Rita is mortified. Rita's stomach turns and she gets shaky whenever the supervisor

comes around. She is in a state of perpetual anxiety. Rita is considering leaving her job.

Answer: *Yes. An employee who witnesses sexual harassment on the job but isn't the direct target of the harassment can claim sexual harassment, based on the EEOC guidelines which state that such conduct can create a "hostile or offensive work environment."*

Sexual Harassment

Part Two

MYTHS AND FACTS ABOUT THE EXTENT, CAUSES AND EFFECTS OF SEXUAL HARASSMENT

1. So-called sexual harassment is just natural, normal behavior. People should feel complimented that they are considered desirable and attractive.

_______Agree _______Disagree

Answer: *Sexual harassment is largely about the assertion of power at work. It is a power play using sexually directed behavior as a weapon. It is an inappropriate way to control another person through degradation and humiliation. At work management and sometimes even co-workers have power over you. You can walk away from a friend or acquaintance you don't like, but it can be difficult to do the same with someone who controls your job, your promotions and pay raises.*

Two thirds of all sexual harassment involves supervisors and higher level management. One third involves co-workers.

2. If an employee asks another employee for a date, this could be grounds for sexual harassment charges.

_______Agree _______Disagree

Answer: *There should be no sexual harassment problem in asking a co-worker for a date, as long as there is no coercion.*

3. Although women are the ones who are most harassed, only about 25 percent of women in the workforce are victims of sexual harassment.

_______Agree _______Disagree

Answer: *Research confirms women are far more likely than men to suffer sexual harassment at work. Studies suggest that between 37 and 88 percent of women and 15 percent of men say they have experienced sexual harassment at work.*

4. People who feel they're being sexually harassed basically have a "personal problem." Sexual harassment has little or no serious effect on the person being harassed.

_______Agree _______Disagree

Answer: *Research indicates that sexual harassment can have a very destructive effect in the workplace and on a person's physical and psychological health.*

<u>Workplace related effects</u> can include: Loss of wages and benefits, forced reassignment, loss of chance for promotion and job loss.

<u>Psychological and physical effects</u> can include: Self-doubt, denial and self-blame, humiliation, loss of interest in work, anger, depression, headaches, stomach problems, sleeping and eating disorders, and gastrointestinal problems.

5. Sexual harassment has been steadily increasing in the years since the EEOC (Equal Employment Opportunity Commission) has kept such data.

_______Agree _______Disagree

Answer: *Equal Employment Opportunity Commission data indicates that sexual harassment is increasing, although this understates the problem, since many cases go unreported or are handled privately or through other workplace procedures.*

Sexual Harassment

Court Cases

The following are examples of actual sexual harassment cases:

1. **Hostile Work Environment Cases** – In these cases, the court found the victims had been subjected to an unlawful hostile work environment.

   a). Based on the following facts, the court ruled that a female factory worker in a manufacturing plant was subjected to a hostile work environment:

   - She was not given training that male co-workers received.
   - Her supervisor told her repeatedly that women did not belong in the workplace.
   - Her supervisor gave her more difficult work assignments than he gave men.
   - Her supervisor assigned her to mop the floor, stating, "You can mop the floor. You should already know how to mop the floor" and co-workers would yell at her to mop the floor, stating "at least you can do that."
   - Her supervisor said to her, "Are you on the rag today?" and "Didn't you get any last night?"
   - When she experienced uterine bleeding at work, her supervisor insisted that she show him her stained pants in his open office where her co-workers could see, too.
   - Her supervisor followed her around the plant with a stopwatch, timing her when she was in the bathroom and on break.

   Conner v. Schrader-Bridgeport, Int'l, 227 F.3d 179, 84 Fair Empl. Prac. Cas. (BNA) 111 (4th Cir. 2000) (See Appendix 1).

   b). Based on the following facts, three female construction workers won a lawsuit for a hostile work environment:

   - Male employees referred to the female employees as "fucking flag girls."
   - Male employees nicknamed one of the female employees "herpes" after she developed a skin reaction to the sun.

- Male employees flashed obscene pictures of couples engaged in oral sex at the female employees.
- Male employees mooned the female employees.
- A male employee urinated in the gas tank of a female employee's car.
- The mechanic ignored the female employees' complaints about a carbon monoxide leak in the truck they were required to drive, but when a male employee began to drive it, the mechanic fixed the leak.
- Male employees wrote obscenities on the sides of a female employee's car.
- Male employees asked the female employees if they "wanted to f__k" and asked them to engage in oral sex.
- Male employees subjected the female employees to offensive and unwelcome physical touching.

Hall v. Gus Construction Co., 842 F.2d 1010, 46 Fair Empl. Prac. Cas. (BNA) 573 (8th Cir. 1988) (See Appendix 2).

c). Female store manager was subjected to a hostile work environment, created when her district manager:

- Grabbed her by the waist and asked her to go to his motel room.
- Twice put his arm around her when they were in a bar with a group of employees.
- Incessantly propositioned her, asking her to go for drinks, to stay with him at his home and "party," to go to his motel room, and to attend a concert.
- Offered to stay at her house to protect her from her estranged husband.
- Scolded her when he learned she had taken a canoe trip with a male companion.
- Became angry with her when a male friend visited her.

The court also found quid pro quo sexual harassment based on the following:

- When the female store manager refused the district manager's propositions, he responded by criticizing her performance and screaming at her over work matters.
- He also conditioned her raise upon submission to his advances and boasted about raises and promotions he had

Ogden v. Wax Works, Inc., 214 F.3d 999, 82 Fair Empl. Prac. Cas. (BNA) 1821 (8th Cir. 2000) (See Appendix 3).

d). Female accounts service representative was subjected to a hostile work environment by her male supervisor who told her:

- To "get a little this weekend" so she would return to work in a better mood.
- That she would be the worst "piece of ass" he ever had.
- That she must be "a sad piece of ass" who "can't keep a man."
- That she would find a decent man if she quit dating Mexicans.

Smith v. Norwest Financial Acceptance, *Inc.*, 129 F.3d 1408, 75 Fair Empl. Prac. Cas. (BNA) 1274 (10th Cir. 1997) (See Appendix 4).

2. **Harassment Resulting in a "Tangible Employment Action"** – Sexual harassment results in a "tangible employment action" when favorable job benefits or working conditions are conditioned on submission to sexual advances or where rejection of sexual advances results in a significant change in the employee's employment status, such as a demotion or other loss of pay or benefits. This type of harassment is sometimes referred to as "quid pro quo" (meaning this for that) harassment. The employer is *always* liable for a supervisor's sexual harassment that results in a tangible employment action. In the following cases, the court ruled that the victims had been subjected to sexual harassment that resulted in a tangible employment action and therefore the employer had violated the law.

a). Male senior park ranger sexually harassed a male park ranger who was under his supervision based on the following:

- Watched the employee every day as he changed from his civilian clothes, to his underwear, and then to his uniform.
- Gave the employee, and no other employee, an expensive knife as a Christmas present.
- Insisted that they take breaks together.
- Arrived uninvited to the employee's parents' home.

- Drove by the employee's girlfriend's home when the employee was there.
- Turned the spotlight in his patrol car on the employee when the employee was on patrol with a female park ranger.
- Called the employee 20-30 times at home.
- Called the employee and followed him unnecessarily when they were both on duty in separate patrol cars.
- Sent the employee's patrol car for service so they would have to ride together.
- Called the employee for cover when no cover was needed.
- Changed the employee's work schedule to coincide with his own schedule.
- Giving the employee a "standard" rather than an "exceptional" evaluation and then stating, "Now what can we do to turn this around?" When the employee replied that the senior park ranger should leave him alone, he stated, "Well, that's not going to happen. So what else can we do?"

The court found that by trying to get the park ranger to grant him sexual favors in exchange for a better evaluation, the senior park ranger had engaged in quid pro quo harassment in violation of federal law.

Kelly v. City of Oakland, 198 F.3d 779, 81 Fair Empl. Prac. Cas. (BNA) 1455 (9th Cir. 2000) (See Appendix 5).

b). The employer was held strictly liable for a male senior vice president's sexual harassment of a female loan officer when he:

- Instructed her to meet him at a park to go over business and then, when she arrived, pressed against her and asked if she could feel his erection.
- Stopped giving her promised business leads and rejected the loans she recommended after she rebuffed his advances, which adversely affected her pay.

Mallinson-Montague v. Pocrnick, 224 F.3d 1224, 83 Fair Empl. Prac. Cas. (BNA) 1746 (10th Cir. 2000) (See Appendix 6).

3. **Employer Defenses –** In general, employers are liable for the actions of their supervisors. The United States Supreme Court has held that an employer is always liable for a supervisor's harassment *if* it results

in a "tangible employment action," such as a demotion or loss of pay or benefits. In cases where a supervisor's harassment does not result in a "tangible employment action," or when a co-worker harasses the victim, the employer may avoid or limit its damages for the harassment by establishing an affirmative defense. The affirmative defense consists of showing that the employer took reasonable steps to prevent sexual harassment. To establish the affirmative defense, the employer must show: that (1) it exercised reasonable care to prevent and correct promptly any harassing behavior – generally by showing that it had established and enforced an anti-harassment policy, and (2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or otherwise failed to avoid harm. **If the employer has an anti-harassment policy, it is crucial that the victim promptly report the harassment to the employer, following any complaint procedures set forth in the policy.** In the following cases, the employer raised an affirmative defense against the employee's harassment allegations.

a). A used car saleswoman alleged that the assistant used car manager, over a two-month period, subjected her to repeated sexual harassment, including requests for sex. The employer had a formal anti-harassment policy in place, which had been provided to the employees. On all previous occasions when an employee or customer complained of sexual harassment, the employer had investigated the allegations and, if found to be true, had taken immediate corrective action. The saleswoman did not report the harassment to the employer, but rather, had an attorney send a demand letter to the employer, and when the demands were not met, sued. The court dismissed her sexual harassment lawsuit, noting that the employer had an anti-harassment policy, and finding that the saleswoman had unreasonably failed to report the harassment.

Mangrum v. Republic Industries, *Inc.*, 260 F. Supp. 2d 1229, 91 Fair Empl. Prac. Cas. (BNA) 1252 (N.D. Ga. 2003) (See Appendix 7).

b). A male sales manager for a television station alleged that he was sexually harassed by the station's female general manager, both verbally and physically. The employer had an anti-harassment policy, with which the male sales manager was familiar. After several months of harassment, the sales manager complained to his supervisor, but told her that he

wanted to "handle" the situation by himself. The court dismissed his sexual harassment lawsuit against the station, because it found that the sales manager had failed to fulfill his obligation of reasonable care to avoid harm by failing to promptly report the harassment.

Hardage v. CBS Broadcasting, Inc., 427 F.3d 1177, 96 Fair Empl. Prac. Cas. (BNA) 1353 (9th Cir. 2005) (See Appendix 8).

4. **Grievances and Arbitration** – Sexual harassment may become the subject of a grievance either by victims of sexual harassment or by employees disciplined for sexual harassment. Arbitrators generally apply the same standards the EEOC and the courts apply to determine if the conduct at issue is sexual harassment. Arbitrators tend to uphold the employer's discharge of an employee found to have engaged in sexual harassment on the basis that sexual harassment constitutes just cause for discharge. The following are examples of sexual harassment arbitration cases:

a). **Grievances by Sexual Harassment Victims –**

1). Female employee filed a grievance after her male supervisor sexually harassed her by:

- Inviting her to his house.
- Inviting her to go out for a drink.
- Telling her she should abandon her boyfriend.
- Telling her that he loved to please women.
- Telling her she had beautiful eyes.
- Telling her that he dreamed about her.
- Devising ways to be alone with her.
- Taking a picture of her backside.
- Constantly watching her.
- Keeping her near him while working.
- Reprimanding other male employees who talked to her.
- Giving her gloves and a flashlight.
- Offering to make expensive purchases for her.
- Bragging about his power to affect employees' terms and conditions of employment.

The arbitrator held that the company was liable for its supervisor's actions, even though, as soon as management learned of the harassment, the company took immediate action to prevent any further abuse. The arbitrator

ordered the company to reimburse the grievant for any remaining medical costs related to the harassment that had not been covered by the company's health insurance program and for any wages lost due to absence from work as a result of the harassment.

El Paso Electric Co., 109 LA 1086 (1998) (Allen, Arb.) (See Appendix 9).

2). Three female employees filed a grievance alleging a supervisor had sexually harassed them by:

- Making sexual comments and remarks about their appearance.
- Asking for dates, kisses, and visits to hotels.
- Brushing up against them.
- Grabbing them and caressing them.

The arbitrator concluded that, as a result of the supervisor's sexual harassment, the company was in breach of the anti-discrimination provision of the collective bargaining agreement. The arbitrator ordered the company to continue scheduling work in a manner to keep the supervisor away from the grievants and to prevent future sexual harassment "using whatever legal means will accomplish that result."

Union Camp Corp., 104 LA 295 (1995) (Nolan, Arb.) (See Appendix 10).

b). **Grievances by Alleged Harassers –**

1). More than three years before the grievant's discharge, three female employees had complained to the company about the grievant touching them in an inappropriate manner, and the company had suspended the grievant for five days and given him a final warning for violating the company's anti-harassment policy. About three years later, a male co-worker told the grievant that a married female employee, with whom the grievant had a platonic relationship, was going out to drink with another male employee after work, which was untrue. The grievant then approached the female employee, put his arms on her shoulders and asked, "Why are you going out with C__

when you are not going out with me?" The female employee became upset, and responded, "You're scaring me," and the grievant walked away. The company learned of the incident and, after an investigation, concluded that he had again violated the company's anti-harassment policy and therefore terminated the grievant. Finding that the evidence showed that the grievant had on several occasions touched the female employee in violation of the anti-harassment policy, the arbitrator upheld the grievant's discharge.

Interstate Brands Corp., 120 LA 865 (2004) (Staudohar, Arb.) (See Appendix 11).

2). Grievant, a 15-year employee, over a one and one-half year period, made lewd, vulgar, sexually explicit statements to a co-worker, including:

- Asking her to go to bed with him.
- Promising her a good time if she slept with him.
- Asking her to take off her clothes and roll around on the floor with him.
- Touching her legs and buttocks with his hands, books, and construction materials.
- Asking if she would sleep with two or three other employees.
- Commenting on her "ass."

The grievant contended that he was only teasing and joking around. The arbitrator found that the grievant had clearly violated the anti-discrimination clause in the collective bargaining agreement, EEOC guidelines, and accepted moral standards. The arbitrator therefore upheld the grievant's termination, concluding that it was for just cause.

International Mill Service, 104 LA 779 (1995) (Marino, Arb.) (See Appendix 12).

3). The company had suspended the grievant for two weeks without pay for allegedly sexually harassing female co-workers. The allegations were made after a co-worker, who suffered from post-traumatic stress syndrome from several unrelated past traumas, contended that the

grievant had “grabbed her ass” in the lunchroom and that for many months, he had stared at her breasts and crotch. After hearing of her accusations, two more female co-workers said that four years earlier, the grievant had put his arm around them and commented on their appearance.

Based in part on his observations at the hearing of the co-worker with post traumatic stress syndrome, the arbitrator concluded that she had imagined the staring incidents and that the grievant had not “grabbed her ass.” The arbitrator therefore ordered the company to remove any record of the suspension from the grievant’s file and make him whole for any losses resulting from the wrongful suspension.

King Soopers, Inc., 86 LA 254 (1985) (Sass, Arb.) (See Appendix 13).

WHEN DETERMINING IF SEXUAL HARASSMENT HAS OCCURRED, COURT MUST CONSIDER THE TOTALITY OF THE CIRCUMSTANCES

After finding that Plaintiff Cheryl Conner had been subjected to hostile work environment sexual harassment, a jury awarded her $20,000 in compensatory damages and granted punitive damages against Schrader-Bridgeport International, Inc. in the sum of $500,000. The district court vacated the jury verdict and entered judgment as a matter of law and a partial new trial in favor of her former employer. Conner appealed, and, for the following reasons, the U.S. Court of Appeals for the Fourth Circuit reversed the lower court and remanded the case with instructions that the lower court reinstate the judgment for Conner.

Ms. Conner was hired by Schrader-Bridgeport to work at its manufacturing plant as a temporary unskilled factory worker. She worked her way up to a position as a permanent employee assembling the stems on car and truck valves. Ms. Conner was then hired along with a number of men to operate "Acme-Gridley" machines. Men who did not have prior experience operating the Acme-Gridley machines were first placed temporarily in another department, where they received 6-months' one-on-one, hands-on training, and were taught how to properly load metal bars into the machines. Ms. Conner had no prior experience operating the Acme-Gridley machines and was not given this on-the-job training.

The supervisor in the new department on numerous occasions said that women did not belong in the department.

Although the men were given special instruction regarding how to load metal bars into the machines, Ms. Conner was given no such instruction. When she tried to place the metal bars into the machine, the foreman and the supervisor mocked her and laughed at her and encouraged other employees to laugh at her. When her brother helped Ms. Conner, on his own time, learn how to load the bars, the foreman and supervisor accused Ms. Conner of having her brother perform her work and then transferred her away from her brother.

The employer also gave Ms. Conner the more difficult assignments, which prevented her from becoming as efficient and productive as the male employees. The foreman also assigned Ms. Conner to mop the floor if her machine malfunctioned, saying, "You can mop the floor. That's something you can do. You should already know how to mop the floor." If a male operator's machine

malfunctioned, he would be given Ms. Conner's machine and she was then ordered to mop the floor.

When Ms. Conner became frustrated with a malfunctioning machine, the foreman would ask her in front of other employees, "Are you on the rag today? Didn't you get any last night?"

Ms. Conner experienced episodes of uterine bleeding. When this occurred, she would wrap a rag around her waist to cover her bloodied pants, go to the foreman's office to ask for permission to go home. The foreman insisted on seeing her bloodied pants, and Ms. Conner's co-workers could see her unwrap the rags from her waist to display her pants.

A supervisor followed Ms. Conner around the plant, timing her while she was in the ladies room and while she was on breaks. Unlike the male employees, Ms. Conner was required to use her break time to wash off machine oil. When she complained about the disparate treatment, the plant manager told her to do what her supervisors told her to do.

The lower court considered each of nine categories of conduct in isolation and found that all but two were not severe and pervasive. Accordingly, the court concluded that the alleged conduct was not sufficient to support the hostile work environment claim and dismissed the claim.

The lower court erred by considering alleged incidents in isolation. Instead, in determining if the plaintiff's work environment was hostile, the totality of the circumstances must be considered. Considering the totality of the circumstances, the Fourth Circuit found there was ample evidence to support the jury's finding of severe or pervasive conduct sufficient to constitute a hostile work environment.

Conner v. Schrader-Bridgeport Int'l, 227 F.3d 179, 84 Fair Empl. Prac. Cas. (BNA) 111 (4th Cir. 2000).

Court Cases – Appendix 2

THREE FEMALE CONSTRUCTION WORKERS WERE EXPOSED TO A HOSTILE AND ABUSIVE WORK ENVIRONMNET THAT RESULTED IN THEIR CONSTRUCTIVE DISCHARGE

The U.S. Court of Appeals for the Eighth Circuit affirmed a judgment imposing Title VII liability on Gus Construction Company and one of its foremen for failing to protect three female construction workers from sexual harassment by their co-workers.

The construction company hired the three women to work as "flag persons" or traffic controllers at road construction sites. They were the only females on the crew.

Immediately after they began work, male members of the crew began to verbally abuse the women. The men constantly referred to them as "fucking flag girls." The men nicknamed one of them "Herpes" after she developed an allergic skin reaction to the sun. "Craven Cunt" and "Blonde Bitch" were written in dust on the car in which two of the women came to work. Male crew members repeatedly asked them to "fuck" and to engage in oral sex. The women told the foreman that the verbal abuse upset them, and he talked to the crew about it, but the verbal abuse soon resumed.

Male co-workers subjected two of the women to offensive and unwelcome physical touching as well. The men would corner the women between two trucks and then run their hands down their thighs. They grabbed one woman's breasts. One male crew member held one of the women up to the cab window so other men could touch her. The foreman observed this conduct, and did nothing to stop it.

Male crew members frequently "mooned" the women. One crew member exposed himself. Male crew members flashed obscene pictures at the women. A male crew member urinated in one woman's water bottle. Several of the men urinated in the gas tank of one woman's car. When the women complained about a carbon monoxide leak in the pilot truck, their complaints were ignored, but when a male crew member used the truck, it was immediately repaired. Male crew members refused to give the women a truck to go to town for bathroom breaks, and when they had to relieve themselves in the ditch, male crew members watched them through surveying equipment.

The women finally quit. They sued for sexual harassment, alleging they were constructively discharged as a result of the sexual harassment.

The court held that the acts that form the basis for a sexual

harassment claim do not have to be clearly sexual in nature. Rather any harassment or other unequal treatment of an employee or group of employees that would not occur but for their sex may violate Title VII. The court concluded that the conduct inflicted on the women by their co-workers went far beyond that which even the least sensitive of persons is expected to tolerate.

Hall v. Gus Construction Co., 842 F.2d 1010, 46 Fair Empl. Prac. Cas. (BNA) 573 (8th Cir. 1988).

EMPLOYEE WAS EXPOSED TO HOSTILE ENVIRONMENT AND QUID PRO QUO SEXUAL HARASSMENT WHICH LED TO HER CONSTRUCTIVE DISCHARGE

The employer, Wax Works, Inc., hired Kerry Ogden as the sales manager for a newly opened Disc Jockey retail store. Ogden reported directly to a district manager, Robert Hudson, who was responsible for supervising several stores in a geographic area. The district manager performed yearly evaluations, which were a prerequisite to a sales manager's annual raise.

Ogden described three occasions when Hudson subjected her to unwelcome physical advances. On the first, an intoxicated Hudson grabbed Ogden by the waist and asked her to go to his motel room as they were leaving a restaurant. On another occasion, an intoxicated Hudson put his arm around Ogden while they were in a bar with a group of employees. On the third occasion, Hudson made a similar advance. On each occasion, Ogden pushed Hudson away and told him to leave her alone.

Hudson also propositioned Ogden incessantly. He constantly asked her to go for drinks after work; he asked her on several occasions to stay with him at his home and "party;" he asked her to go to a motel room during a convention, and he asked her to go to a concert. He berated Ogden after learning that she had taken a canoe trip with a male companion. And, he became angry when a male friend visited her.

When Ogden rejected Hudson's advances, he responded by constantly criticizing her performance. Hudson also screamed at her over work items shortly after she refused to go out with him.

Hudson conditioned Ogden's yearly evaluation on her willingness to submit to his advances. At one point, he told Ogden he would complete her evaluation if she would go on a three-day gambling trip with him. Hudson made no secret of his affairs with other employees and boasted of the raises and promotions he had obtained for those with whom he had affairs.

Hudson's conduct often caused Ogden to leave work in tears, she became withdrawn, depressed, and lost interest in doing anything outside of work. She was unable to sleep or eat and began drinking and smoking.

After Ogden complained to the regional manager, and he conducted an investigation, she was told that the company considered Hudson an "asset" and saw no reason to fire him and that, in light of her allegations against

Hudson, Ogden could no longer work for him.

The court concluded that the evidence supported the jury's conclusion that the employer was liable for quid pro quo sexual harassment, because Ogden's raise was conditioned on submission to Hudson's sexual advances. Moreover, the court stated, the jury reasonably concluded that the drumbeat of physical advances, propositions, and mistreatment Ogden endured was unwelcome and offensive and sufficiently severe or pervasive to alter the conditions of Ogden's employment and create an objectively hostile or abusive work environment. Finally, the court also held that the jury reasonably concluded that the harassment rendered Ogden's working conditions objectively intolerable and led to her constructive discharge.

The court upheld the jury's award of $40,000 in compensatory damages; $792 in pre-termination backpay; $260,000 in punitive damages.

Ogden v. Wax Works, Inc., 214 F.3d 999, 82 Fair Empl. Prac. Cas. (BNA) 1821 (8th Cir. 2000).

SUPERVISOR'S NUMEROUS SEXUALLY DISPARAGING REMARKS CREATED A HOSTILE WORK ENVIRONMENT

Plaintiff Debbie Smith was employed by Norwest Financial as an accounts service representative under the supervision of Curtis Mangus.

Over her 23 months of employment, Mangus made six sexually disparaging remarks to Smith, which he repeated often within ear-shot of her co-workers. The disparaging remarks included telling Smith to "get a little this weekend" so she would come back to work in a better mood; that she would be "the worse piece of ass" that Mangus ever had; that Smith "must be a sad piece of ass" who "can't keep a man"; and that Smith would find a decent man if she quit dating Mexicans.

The court found that Mangus' conduct was sufficiently severe to create a hostile work environment and upheld the jury's award of $289,000 for damages and over $93,000 for costs and attorneys' fees.

Smith v. Norwest Financial Acceptance, Inc., 129 F.3d 1408, 75 Fair Empl. Prac. Cas. (BNA) 1274 (10th Cir. 1997).

Court Cases – Appendix 5

SAME-SEX HARASSMENT IN THE FORM OF A REQUEST FOR SEXUAL FAVORS IN EXCHANGE FOR WORK BENEFITS VIOLATES FEDERAL DISCRIMINATION LAWS

Park ranger Stephen Kelly brought suit against his employer alleging that his supervisor Kent McNab had sexually harassed him by watching him change from his civilian clothes into his uniform; giving him an expensive knife as a Christmas gift; insisting that Kelly take breaks with him; going to Kelly's parents' house uninvited; driving by Kelly's girlfriend's house when Kelly was there; turning the spotlight of his patrol car on Kelly when Kelly was on night surveillance with a female officer; calling Kelly at home 20-30 times; calling Kelly on the radio when they were both on duty; following Kelly in his patrol car; sending Kelly's car in for service so Kelly would have to ride with him; calling Kelly for cover when cover was not needed; buying a motorcycle after Kelly bought one and suggesting they ride together; and changing Kelly's work schedule so they would work together.

Kelly previously had received "exceptional" performance ratings. After rebuffing McNab's attentions, McNab gave Kelly a rating of "standard." When McNab delivered the rating to Kelly, McNab said, "Now, what can we do to turn this around?" Kelly responded, "Honestly? Leave me alone." McNab replied, "Well, that's not going to happen. So what else can we do?"

Kelly complained to two supervisors and to the chief park ranger, but no steps were taken to investigate and stop the harassment. Kelly resigned.

The court upheld the jury's rulings in Kelly's favor, finding that by bargaining with Kelly for a better evaluation, McNab had engaged in quid pro quo sexual harassment. The award of $380,000 in compensatory damages and $35,000 in punitive damages was upheld as well.

Kelly v. City of Oakland, 198 F.3d 779, 81 Fair Empl. Prac. Cas. (BNA) 1455 (9th Cir. 2000).

EMPLOYER MAY NOT RAISE AFFIRMATIVE DEFENSE TO SENIOR VICE-PRESIDENT'S HARASSMENT THAT SERIOUSLY DIMINISHED EMPLOYEES' COMMISSIONS AND BONUSES BUT INSTEAD IS STRICTLY LIABLE

Senior vice-president of Professional Bank, James Pocrnick, encouraged two females to seek employment at the bank, and after they were hired as loan officers, he began sexually harassing them.

Pocrnick paged Rhonda Mallinson-Montague and instructed her to meet him at a park to go over business matters. When she arrived, Pocrnick immediately pressed himself against her, kissed her, and asked if she could feel his erection. She rebuffed his advances, and Pocrnick retaliated against her by denying her previously-promised business leads necessary for her to meet monthly sales goals. He also began rejecting loans she originated, resulting in the loss of commissions and performance bonuses. Prcrnick's treatment of Jessica Rotola was comparable to that of Mallinson-Montague.

The jury ruled that the loan officers had been subjected during their employment to unlawful sexual harassment. The U.S. Court of Appeals for the Tenth Circuit agreed, noting that where a supervisor has inflicted an economic injury upon a subordinate after he or she refuses to submit to sexual advances, the employer is strictly liable for the unlawful sexual harassment.

Mallinson-Montague v. Pocrnick, 224 F.3d 1224, 83 Fair Empl. Prac. Cas. (BNA) 1746 (10th Cir. 2000).

Court Cases – Appendix 7

THE EMPLOYER IS NOT LIABLE FOR A SUPERVISOR'S ALLEGED SEXUAL HARASSMENT BECAUSE EMPLOYER HAD A NO-HARASSMENT POLICY IN PLACE AND THE EMPLOYEE FAILED TO REPORT THE HARASSMENT

A used car saleswoman, Donnie Mangrum, who was employed by a Ford dealership owned by Republic Industries, Inc., alleged that her supervisor, used car manager Scott Wilson had sexually harassed her in violation of Title VII.

The dealership had a "No Harassment Policy," which required the prompt reporting of harassment and provided for the investigation and remedy of harassment, including sexual harassment. Mangrum had received a copy of the policy. The general manager of the dealership had made clear to employees during a sales meeting that the dealership had a "zero tolerance" no harassment policy and that if any employee had a grievance of any kind, he maintained an open door policy.

Mangrum alleged that after Wilson was promoted to used car manager, he began a regular practice of verbal and physical sexual assault. She alleged that he asked her for oral sex, said she could make more money on her car sales if she would accept his sexual advances, sexually propositioned her daughter in front of her, hugged her, patted her buttocks, and on one occasion, exposed himself to her. Mangrum alleged that she lost sales after she rebuffed Wilson's advances because he undervalued her customers' trade-in vehicles, causing deals to collapse.

Mangrum complained only to her co-workers. Management had no idea she was being sexually harassed until they received a demand letter from her attorney after she had quit.

The court granted summary judgment in the employer's favor. The court found that Mangrum had failed to show that Wilson's conduct – other than the last incident of indecent exposure after which she did not return to work – was unwelcome. The court noted that Mangrum never clearly told Wilson "no." When he asked her to engage in sexual acts, she responded, "No, not right now, no, I'm busy, I have a customer coming, no, leave me alone." The court also noted that Mangrum participated in and, in some instances, instigated inappropriate language and activity during work.

The court also concluded that Mangrum had not presented sufficient evidence to show that her rebuffs of Wilson's sexual "requests" had led to any tangible employment action – in this case, undervaluing trade-in vehicles.

Mangrum admitted that she "had problems with" Wilson's trade-in valuations before any alleged sexual harassment occurred.

Mangrum v. Republic Industries, Inc., 260 F. Supp. 2d 1229, 91 Fair Empl. Prac. Cas. (BNA) 1252 (N.D. Ga. 2003).

Court Cases – Appendix 8

DISCRIMINATION CASE IS DISMISSED WHERE EMPLOYEE REPORTED THE HARASSMENT UNDER THE EMPLOYER'S ESTABLISHED ANTI-HARASSMENT POLICY, BUT NOT FOR SEVERAL MONTHS AND WHEN CONTACTED BY THE COMPANY'S HUMAN RESOURCES DEPARTMENT, SAID HE WANTED TO "HANDLE IT BY HIMSELF"

Hugh Hardage worked as a local sales manager for a television station managed by CBS. He was supervised by general sales manager Patty Dean, who was in turn supervised by general manager Kathy Sparks. Hardage worked in the Seattle sales office and Sparks worked in the Tacoma sales office.

Hardage alleged that Sparks sexually harassed him on several occasions and retaliated against him after he rejected her advances. He alleges that when Sparks visited the Seattle office, she repeatedly flirted with him and made inappropriate comments, such as, "You need somebody that's older and more stable that can take care of you." Sparks would "camp out" in Hardage's office, sit in his chair, put her feet on his desk and smile and giggle in a flirtatious manner. Hardage admitted that he participated in some playful banter with Sparks. He admits referring to her as "Sparkalicious," "Baskin Robbins 32nd Flavor" and "Driving Ms. Sparky."

Hardage alleged that five serious instances of sexual harassment occurred outside the office. On Easter Sunday, Hardage, Sparks, Dean and a few others went to a hotel for brunch. After several drinks, Sparks asked Hardage if he thought her hands were pretty, put her foot on an air hockey table while Hardage was playing, and asked if he thought she had cute feet. Later, she put her arms around Hardage and told him he had a "cute ass." Later, after more drinking, Sparks took her shoe off under a dining table, and put her foot in his crotch. At the end of the evening, Sparks asked if she could sleep in Hardage's apartment, and when he said no, she stormed out.

Two days later, Sparks asked Hardage to go out for drinks after work. At the restaurant, she told him she had not been able to sleep and was having orgasms in her sleep. She asked Hardage if he felt the same way about her, and when he said he didn't want to damage his career by having a relationship, Sparks responded with words to the effect that Hardage should remember who got him where he was.

On another occasion when both Hardage and Sparks were traveling to Texas to visit their respective families, Sparks arranged her travel plans so they would be on the same flight.

During the flight, Sparks took off her shoe and began rubbing Hardage's leg with her foot. When he asked her to stop, she began rubbing his back. Sparks later, when ordering drinks from the flight attendant, referred to Hardage as her boyfriend. She grabbed his hand and made explicit sexual advances. She allegedly offered him oral sex and told him that one experience of sexual intercourse with her would be a life-altering experience.

On another occasion, when with clients at a baseball game, Sparks again began rubbing Hardage's leg with her foot. Hardage told her to cut it out; that it was inappropriate with clients sitting next to them. Later, Sparks allegedly took off her rain poncho, put it over Hardage's lap, and reached under it for his crotch. He elbowed her away and told her to stop.

After the game, Hardage invited her to join him for drinks with friends. When Hardage greeted his friends, including several women, at the bar, Sparks glared at him and said, "Who haven't you f___ed in here?" Hardage joked, "I haven't f___ed anybody in here, you know, but hopefully she's next," pointing to one of the other women. Sparks then became very upset, asked to be taken to her car, and shouted obscenities at Hardage.

When Hardage told Dean the specifics of what allegedly happened in the bar, Dean contacted an executive vice president, who immediately called Hardage to let him know that he had contacted Paul Falcone, who was a representative in the company's human resources department. Falcone called Hardage the day of Hardage's complaint and arranged to meet with him the following week.

When Hardage met with Falcone, Hardage did not give him the "gory details," but just made the broad statement that Sparks had made sexual advances and he was uncomfortable with the situation. When Falcone offered to talk to Sparks, Hardage insisted on handling the situation himself. When Falcone called Hardage to follow up about two weeks later, Hardage told him that nothing new had happened and that he still did not want Falcone to intervene.

The court concluded that the company had effectively established an affirmative defense to Hardage's discrimination lawsuit, since it was undisputed that the company had an anti-harassment policy with which Hardage was familiar as a supervisor. Even so, Hardage did not report the harassment to his superiors until about six months after it began, and when he did report it, he asserted that he wanted to "handle it by himself." Hardage thereby, the court concluded, had unreasonably failed to use the company's anti-harassment policies and

procedures. The court dismissed the case.

Hardage v. CBS Broadcasting, Inc., 427 F.3d 1177, 96 Fair Empl. Prac. Cas. (BNA) 1353 (9th Cir. 2005).

ARBITRATOR ORDERS THE EMPLOYER TO REIMBURSE A SEXUALLY HARASSED EMPLOYEE FOR MEDICAL COSTS INCURRED DUE TO HER SUPERVISOR'S SEXUAL HARASSMENT AND NOT COVERED BY THE EMPLOYER'S HEALTH INSURANCE PROGRAM.

The company's supervisor, P__, sexually harassed female grievant M__ by inviting her to his house and to go out for a drink, suggesting she should abandon her boyfriend, and telling her that he loved to please women, that she had beautiful eyes, and that he dreamed about her. P__'s harassing conduct included devising ways to get M__ alone, taking a "backside picture" of her even though she protested vehemently, constantly watching her and keeping her near him, directing her to come to work early and to clean his office when they were the only ones present, reprimanding male employees who talked to her, giving her gloves and a flashlight, and offering to buy her other costly items. P__ often bragged of his power to reward those who complied with his advances with compensation, promotions, etc., and to punish those who did not by giving them demeaning work assignments. P__ also used words such as "cunt" and "bitch" when referring to women.

Due to the mental stress M__ suffered as a result of the sexual harassment, she had a psychological breakdown and missed several months of work. M__ suffered lost wages and incurred medical expenses not fully covered by the company's insurance program.

P__ was guilty of "hostile environment" harassment.

As a result of the harassment, M__ suffered mental stress on and off the job. Since the harasser was a supervisor of the company, the company must be held responsible for any wages lost or medical costs not covered by the company's insurance program. The company's liability should be limited, however, since, as soon as it became aware of the harassment, it immediately took action to prevent any further abuse.

The company is ordered to reimburse the grievant for any remaining medical costs related to the harassment which have not already been covered by the company's insurance program. In addition, she is to be paid for any wages lost due to her absence from work, including doctor's visits, as a result of the harassment to the date of the arbitration decision.

El Paso Electric Co., 109 LA 1086 (1998) (Allen, Arb.).

Arbitration Cases – Appendix 10

ARBITRATOR HOLDS EMPLOYER VIOLATED COLLECTIVE BARGAINING AGREEMENT'S NON-DISCRIMINATION CLAUSE WHEN SUPERVISOR SEXUALLY HARASSED FEMALE EMPLOYEES

Three grievants credibly testified that when T__ became a supervisor, he began sexually harassing them. He moved from sexual comments and remarks about their appearance to requests for dates, kisses, and visits to hotels. Eventually he began touching them, sometimes by brushing up against them, often by positioning himself behind them when they were backing up, and ultimately by grabbing or caressing them.

The supervisor claimed that each of the three grievants lied about him because he was a strict supervisor and in particular, because he enforced safety rules against them. But in fact, the supervisor had not disciplined any of the grievants for safety violations. The company investigated the harassment, but concluded that the evidence was inconclusive. The company did not discipline the supervisor, but it did have all supervisors reiterate the company's sexual harassment policy in meetings with foremen and with hourly employees, and it specifically warned the supervisor about any future sexual harassment problems. The company also transferred the supervisor several times to prevent contact with the grievants.

The collective bargaining agreement expressly prohibits discrimination on the basis of sex. The agreement prohibited the supervisor's conduct and the company must bear responsibility for its supervisor's action.

I shall therefore direct the company to continue its policy of keeping the supervisor away from the grievants but will qualify the directive with the phrase "to the maximum extent possible."

The agreement does not give me the authority, however, to order the discipline of a supervisor. I shall therefore direct the company to prevent future misconduct by the supervisor but will leave the selection of the appropriate means to the company's judgment.

Union Camp Corp., 104 LA 295 (1995) (Nolan, Arb.).

Arbitration Cases – Appendix 11

ARBITRATOR UPHOLDS DISCHARGE OF EMPLOYEE WHO SEXUALLY HARASSED A CO-WORKER

The grievant was a "sanitor" for a Wonder Bread bakery. In 2000 – four years before the events at issue in this case – three female employees complained about the grievant touching them in an inappropriate manner. A company investigation confirmed that the grievant had engaged in the alleged conduct. The grievant admitted he was aware of the company's policy on sexual harassment, admitted to the improper conduct, apologized for it, and promised that he would not engage in the behavior in the future. The grievant was suspended for five days.

The events at issue in this case occurred in 2004. A__, a young married woman, had worked as a sanitor at the bakery for about a year. She had a friendly, platonic relationship with the grievant. On February 14, 2004, an employee named C__ told the grievant that he was going to drink margaritas with A__ after work. Although the grievant did not know it, the statement was untrue. A few minutes later, the grievant approached A__ and said, "Why are you going out with C__ when you are not going out with me?" He gently put his arms on A__'s shoulders, for perhaps two seconds, whereupon A__ became shocked and afraid. She said, "You're scaring me," and the grievant walked away.

A__ was shaken, upset, and was crying. A foreman walked by and asked her what had happened. The foreman reported the incident to the company's human resource manager, who proceeded to investigate the incident. The grievant was suspended pending the investigation. On March 1, 2004, the company notified the grievant that he was terminated for violating the company's policy on sexual harassment.

The grievant never claimed a lack of understanding of the company's instructions to him in 2000 to never touch female employees at work. The grievant also does not deny touching A__ on the back, shoulder, and waist prior to the February 14th incident. Although the union notes that she never complained, A__ said she would move his hand from her body to convey that she was not comfortable with the conduct.

The chance the grievant was given in 2000 was to be his last. This was made absolutely clear to the grievant. Because the grievant had been given a final warning and another offense occurred, discharge is unavoidable. Grievance denied.

Interstate Brands Corp., 120 LA 865 (2004) (Staudohar, Arb.).

Arbitration Cases – Appendix 12

ARBITRATOR UPHOLDS DISCHARGE OF A 15-YEAR EMPLOYEE WHO SEXUALLY HARASSED A CO-WORKER AS SUPPORTED BY "JUST CAUSE"

Grievant S__ has been employed by the company for about 15 years. Beginning in mid-1993, and continuing to November 1994, the grievant is accused of making sexually-explicit statements towards co-worker M__. M__ accused the grievant of repeatedly asking her to go to bed with him, promising her a good time if she slept with him, asking her to take off her clothes and roll around on the floor with him, and touching her legs and buttocks with his hands, books, and pieces of construction material. The grievant also asked her if she would sleep with two or three other employees, said she had a big ass, and said she had a nice ass.

Other company employees heard some of these statements. A company supervisor warned the grievant that his comments could be perceived as sexual harassment.

The grievant drove a pick-up truck around the jobsite with the words "Rambo fucks Barker" or "Barker fucks Rambo" plainly written in dust on the windshield. The grievant also left a large metal, penis-shaped object outside M__'s door at work. M__ repeatedly told grievant she did not want to go out with him or discuss sex with him because it made her uncomfortable. She repeatedly told him to go away and leave her alone.

After a co-worker heard the grievant's comment about M__'s ass, the co-worker reported the harassment to the company. The company then suspended the grievant pending an investigation, after which, the grievant was fired.

The grievant admits to all the allegations regarding his conduct, except that he denies writing the words on the truck windshield. This arbitrator is convinced that the grievant's intention was not to joke, as he claims, but to achieve what he desired from M__, that being a personal relationship.

The grievant clearly violated the collective bargaining agreement's prohibition of discrimination on the basis of sex by causing M__ to work in a hostile work environment. The arbitrator is of the opinion that the grievant's behavior was such that it violated accepted moral standards. Any co-worker who places his hands on the person of a female co-worker in an indecent manner commits grievous misconduct furnishing just cause for his dismissal. Therefore the arbitrator finds just cause for the grievant's termination.

International Mill Service, 104 LA 779 (1995) (Marino, Arb.).

OVERLY FRIENDLY EMPLOYEE WHO GAVE FREQUENT HUGS DID NOT ENGAGE IN SEXUAL HARASSMENT AND MUST BE MADE WHOLE FOR HIS TWO-WEEK SUSPENSION

The grievant was suspended for two weeks without pay for allegedly sexually harassing fellow employee Ms. R__. Once her accusations came to light, other employees, including Ms. P__ and Ms. C__ came forward and complained about certain things the grievant had done to them in the past.

Ms. R__ is a store courtesy clerk. She claims that she went to the lunchroom on her lunch break. She put her frozen dinner in the microwave and went to the restroom. When she returned, her dinner was sitting on the counter, and she touched it to see if it was done. She found it was frozen and said, "Oh, it's still hard." The grievant was in the lunchroom with another co-worker, Mr. W__. The grievant said something to Mr. W__ like, "Did you hear what she said, she said it's still hard." Both men then laughed. Ms. R__ interpreted this as a reference to an erect penis.

Ms. R__ put her dinner back in the oven and again left the room. When she returned to get it, she alleges that the grievant approached her and grabbed her "rear end." She then ran out of the room and into a secretary's office. After she calmed down, she returned to the lunchroom and ate her lunch. She contends that the grievant stared at her the whole time and that he then stared at another female employee when she came into the room.

Ms. R__ then complained to the store manager about the lunchroom incident and also alleged that for many months, the grievant had stared at her breasts and crotch and tried to touch her private parts. The secretary confirmed that Ms. R__ had come into her office upset on the day of the lunchroom incident, and she also reported that the grievant had touched her arms, the back of her neck, and put his arm around her on prior occasions.

Security officials spoke to other co-workers, and Ms. P__ and Ms. C__ said that in the past the grievant had put his arm around them, put his hand on their shoulders, stroked their hair, or commented about their appearance or their perfume in ways that made them uncomfortable.

Security personnel did not talk to the grievant to get his side of the story. Nor did they talk to Mr. M__ who had been in the lunchroom

when Ms. R__ alleges that the grievant grabbed her ass.

The store manager reviewed the statements security had taken and then called the grievant in to confront him with the evidence. The grievant professed shock at the allegations and offered to apologize to anyone he had offended without realizing it. He admitted to having an outgoing personality, to caring about people, and sometimes touching them or putting his arm around them, but said there were never any sexual connotations to his actions. He denied grabbing Ms. R__'s ass.

The grievant has worked for the company for 20 years, has never been suspended, and has an excellent work record.

The arbitrator finds that this case turns almost entirely on the credibility of Ms. R__. Ms. P__ and Ms. C__ were offended by the grievant's conduct, but the very same conduct was not offensive to other employees. As soon as the grievant became aware that Ms. P__ was offended by his conduct, he took extra care not to do anything that might offend her. This is not harassment.

Ms. R__ had been subjected to serious trauma and suffered from post-traumatic stress syndrome. According to the psychologist/social worker from the Post Traumatic Treatment Center, after someone has suffered from a serious trauma, even minor, relatively innocent conduct at a later point in time may be perceived as threatening and cause a serious reaction.

The fact that Ms. R__ at least occasionally perceives fairly innocent conduct as sexually and physically threatening was amply demonstrated at the arbitration hearing. She claimed that the grievant stared at her and tried to control her and intimidate her with his eyes. Even when her back was turned, she said she could feel his eyes constantly penetrating her. She was clearly terrified. The arbitrator observed that the grievant mostly kept his eyes down and off of Ms. R__ at the hearing.

The arbitrator finds that the grievant did not sexually harass anyone and that the company therefore did not have just and sufficient cause to suspend him for two weeks. The company is ordered to remove any record of the suspension and make the grievant whole for all lost pay and benefits.

King Soopers, Inc., 86 LA 254 (1985) (Sass, Arb.).