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*Harassment Claims:  
The Elected Official's  
Responsibility*

*MASC Annual Meeting*

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**CURRENT ISSUES**

**#MeToo  
#TimesUp**

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**WORKPLACE  
HARASSMENT ISSUES  
EVOLVED FROM TITLE VII**

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**TITLE VII OF THE CIVIL RIGHTS ACT OF  
1964  
(TITLE VII)**

Prohibits discrimination in public and private employment on the basis of:

- race
- color
- religion
- sex
- national origin
- sexual orientation???

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**STATE LAW CLAIMS**

- Outrage
- Assault and Battery
- False Imprisonment
- Defamation

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**STATE LAW CLAIMS  
LIMITED BY S.C. TORT  
CLAIMS ACT**

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Title VII

**UNLAWFUL HARASSMENT  
CAN BE BASED ON ANY  
OF THE PROTECTED  
CATEGORIES LISTED IN  
TITLE VII**

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**SEXUAL HARASSMENT IS A  
FORM OF SEX  
DISCRIMINATION AND CAN  
TAKE MANY FORMS**

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The image shows a newspaper clipping with the headline "Sexual harassment rampant in science". The text discusses the prevalence of sexual harassment in the scientific community, mentioning that it is a form of sex discrimination. It notes that while there are laws against it, enforcement is often difficult. The article also mentions that many women in science face harassment, and that the problem is widespread across various fields. The clipping includes a sub-headline "Sexual harassment rampant in science" and a byline "By Louise M. Young".

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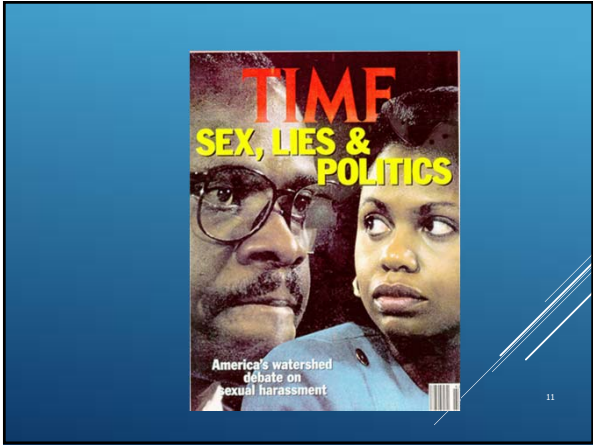
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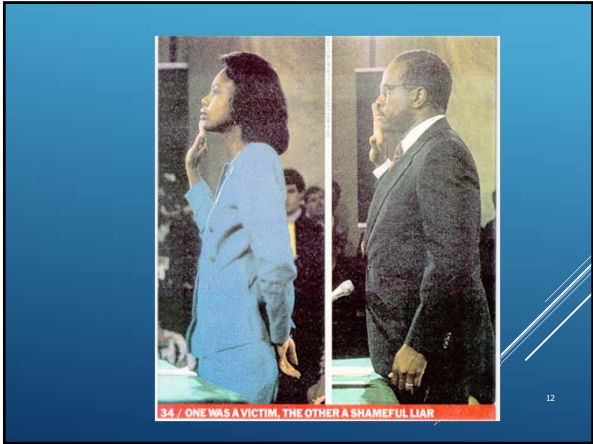
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34 / ONE WAS A VICTIM, THE OTHER A SHAMEFUL LIAR

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INTRODUCTION

- ▶ The conduct that constitutes sexual harassment can be physical, verbal, written, or pictorial.
- ▶ The conduct must be "based on sex."
- ▶ the conduct must be unwelcome to the victim.

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TANGIBLE EMPLOYMENT ACTION

- Tangible job benefits: granted/denied based on response to unwelcome sexual conduct.
- Job benefit must be tangible.
- Only a supervisor or manager in direct line of supervision can take a tangible job action and commit this type of harassment.

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**TANGIBLE EMPLOYMENT ACTION**

- Hiring, firing, failing to promote;
- Reassignment with significantly different responsibilities;
- A significant change in benefits.

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**TANGIBLE EMPLOYMENT ACTION**

**If a tangible employment action has been taken, then . . .**

**The Employer is Liable if a connection to unlawful harassment can be made.**

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**AFFIRMATIVE DEFENSE**

- **EMPLOYER** – exercised reasonable care to prevent and promptly correct any sexually harassing behavior; AND
- **EMPLOYEE** – unreasonably failed to take advantage of any corrective opportunities provided by employer or to avoid harm otherwise.

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## HOSTILE ENVIRONMENT HARASSMENT

- Comments or conduct that have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.
- A supervisor, co-worker, or non-employee can commit this type of harassment.
- Does not have to be tied to a tangible job benefit.

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## HOSTILE ENVIRONMENT HARASSMENT

- ▶ HARASSMENT MUST BE SEVERE OR PERVASIVE.
- ▶ "Reasonable person"  
Severe psychological harm not necessary.  
Evaluate totality of the circumstances.

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## OBJECTIVE STANDARD

- Frequency
- Severity
- Physically threatening or humiliating  
v.  
Mere offensive utterance
- Unreasonably interferes with employee's work performance.

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## HOSTILE WORK ENVIRONMENT HARASSMENT OTHER THAN SEX

Conduct, related to a protected status, which is unwelcome and has the effect or purpose of unreasonably interfering with an individual's work performance and creating an intimidating, hostile or offensive working environment.

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## QUID PRO QUO

Employee is forced to choose between submission to sexual demands or the loss of job benefits, promotion or employment.

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## QUID PRO QUO SEXUAL HARASSMENT

To establish a *quid pro quo* cause of action, an employee must show that:

1. He or she belongs to a protected class.
2. He or she was subjected to unwelcome sexual harassment.
3. The harassment complained of was based on sex.
4. The employee's reaction to the harassment affected tangible aspect of the employee's terms, conditions or privileges of employment.

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**CONSTRUCTIVE DISCHARGE**

**WORKING  
CONDITIONS SO  
BAD EMPLOYEE  
COMPELLED TO  
RESIGN**

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**RETALIATION\***

**Activities Protected:**

1. EEOC charge/Lawsuit filed.
2. Employee raises internal complaints.
3. Communicated intent to file complaint.
4. Testified or assisted in the filing of or investigation of complaint.

\* must oppose conduct which violates Title VII

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**WHAT IS SEXUAL  
HARASSMENT?**

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Let's discuss your promotion over dinner.



# PROPOSITIONS

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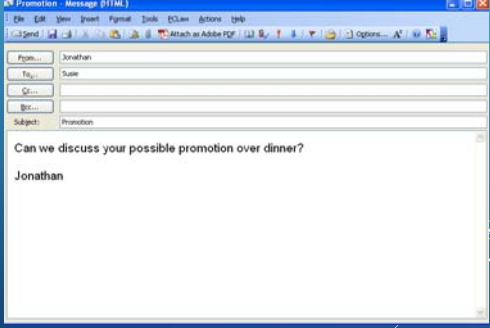
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Can we discuss your possible promotion over dinner?

Jonathan

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Did you and last night's episode of *Survivor*?



# COMMENTS

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# PINUPS

## TOUCHING

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- 10 EXAMPLES OF WORKPLACE BEHAVIOR THAT SHOULD **NOT** HAPPEN
- Inappropriate remarks
  - Sexual generalization/sexual put-downs
  - Terms of endearment
  - Out-of-bounds compliments
  - The body snatchers
  - Corporate kissing
  - Rubbing others the wrong way
  - Guilty eyes
  - Blaming it on Uncle Guido
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**MYTH**

Sexual Harassment  
Must Involve  
“Sexually Intimate”  
Conduct

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**MYTH**

Sexual Harassment is a  
Men v. Women  
Issue

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**WHO?**

- Women by Men
- Men by Women
- Men by Men
- Women by Women

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**MYTH**

Employers are Not  
Responsible  
For Sexual Harassment  
By  
Non-Employees

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The law prohibits **ALL** types of harassment, whether by:

- Managers
- Fellow Employees
- Customers
- Vendors

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**MYTH**

Employers Are Not Liable  
For Harassment  
That Occurs  
Away From The Workplace

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**MYTH**

ISOLATED OR SPARSE EVENTS  
CANNOT CONSTITUTE  
SEXUAL HARASSMENT

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Confronting Manager  
Responsibility  
For  
Workplace  
Harassment

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**TITLE VII**  
Potential Parties:

Plaintiff: current employee, former employee,  
applicant

Defendant: employer, customer/client,  
vendor, AND even you an elected official.

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**EMPLOYER LIABILITY FOR  
HARASSMENT**

▶ **NEGLIGENCE THEORY**  
*Harassment by co-workers or non-employees/third  
parties*

▶ **VICARIOUS LIABILITY THEORY**  
*Harassment by Manager*

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## NEGLIGENCE THEORY

Employer is liable if it knew or should have known of the conduct and took no action to stop it.

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## NEGLIGENCE THEORY

"Don't Look the Other Way"

- If you witness harassing conduct in the workplace, you **must** report it.
- If someone reports harassment to you, you **must** report it.
  - Supervisor
  - Human Resources Manager

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## VICARIOUS LIABILITY THEORY

MANAGERS = EMPLOYER

Manager conduct may automatically create liability for the entity, depending on its severity and whether it affects an employee's job.

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## INDIVIDUAL LIABILITY

- ❖ No individual liability under Title VII, the ADEA, and the ADA.
- ❖ Managers may be held liable for various state law violations such as:
  - ❖ State human affairs law
  - ❖ Assault and battery
  - ❖ Emotional distress

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## MANAGER RESPONSIBILITY

- Keep work area free from harassment
- Keep your eyes and ears open
- Respond and Report Promptly

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**What should an Elected Official do if any employee reports sexual harassment?**

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## THINGS TO CONSIDER

- ▶ Elected Officials are not employees
- ▶ What is your form of government?
- ▶ What is the authority of your Administrator/Manager?
- ▶ What is the authority of your Department Managers?
- ▶ What are your policies?

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