

GUIDE FOR RECOGNIZING AND UNDERSTANDING SEXUAL HARASSMENT

Sexual harassment is a type of sex discrimination covered under Title VII of the Civil Rights Act of 1964, Title IX of the 1972 Educational Amendments and Executive Order 11246 (as amended).

SEXUAL HARASSMENT DEFINED

Sexual harassment involves unwelcome sexual advances, requests for sexual favors or verbal or physical conduct of a sexual nature. It is often imposed upon a person in an unequal power relationship through the abuse of authority. Central to this concept is the use of implied reward or threat of deprivation that interferes with the academic or work effectiveness of the victim.

Unwelcome sexual advances, requests for sexual favors, or other verbal or physical behavior of a sexual nature constitutes harassment when:

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

Sexual harassment can take different forms and the determination of what constitutes sexual harassment will vary according to the particular circumstance. Examples of sexual harassment include, but are not limited to:

- Seeking sexual favors or relationships in return for the promise of a favorable grade or other academic opportunity;
- Conditioning an employment related action (such as hiring, promotion, favorable work assignment, salary increase, or performance appraisal) on a sexual favor or relationship;
- Intentional and undesired physical contact, sexually explicit language or writing, lewd pictures or notes and other forms of sexually offensive conduct by individuals in positions of authority, or by co-workers, students, clients, contractors or visitors that unreasonably interferes with the ability of a person to perform his/her employment or academic responsibilities.

Federal law recognizes two different sets of legal grounds for claiming sexual harassment under Title VII. In the **quid pro quo** (this for that) form of harassment, a person in authority, usually a supervisor or instructor, demands a sexual favor of a subordinate or a student as a condition of getting or keeping a job or getting a good grade in a course. In quid pro quo cases, the offense is directly linked to the individual's terms of employment or academic success, or forms the basis for employment or academic decisions affecting the individual.

A **hostile work environment** occurs when a co-worker, supervisor, instructor, contractor, visitor, customer or vendor engages in unwelcome and inappropriate sexually based behavior which is severe or pervasive enough to render the workplace or academic atmosphere intimidating, hostile or offensive. Usually a pattern of this sort of behavior is required, but one incident can be enough, if it is severe or outrageous.

The Supreme Court clarified the definition of hostile environment by specifying that conduct that does not cause psychological injury can also be considered sexual harassment. The Court stated "Certainly Title VII bars conduct that would seriously affect a reasonable person's psychological well-being, but the statute is not limited to such conduct. So long as the environment would reasonably be perceived as hostile or abusive ... there is not need for it to be psychologically injurious."

Sexual harassment can be exhibited using three types of behaviors: **verbal behaviors, non-verbal behaviors and gestures,** and **unwanted physical contact.** Some types of **verbal behavior** that might constitute sexual harassment are:

- Continuous idle chatter of a sexual nature and graphic sexual descriptions;
- Sexual slurs, sexual innuendoes and other comments about a person's clothing, body and/or sexual activities;
- Offensive and persistent risqué jokes or jesting and kidding about sex or gender-specific traits;
- Suggestive or insulting sounds such as whistling, wolf calls or kissing sounds;
- Sexually provocative comments or compliments about a person's clothing or the way their clothes fit;
- Comments of a sexual nature about weight, body shape, size or figure;
- Comments about the sensuality of a person, or his/her spouse or significant other;
- Distribution of written or graphic materials that are derogatory and are of a sexual nature;
- Repeated unsolicited propositions for dates and/or sexual relations;
- Asking about sexual fantasies, preferences or history.

Examples of **gestures or non-verbal behaviors** that might be considered sexual harassment are:

- Sexual looks such as leering and ogling with suggestive overtones;
- Licking lips or teeth, winking or throwing kisses;
- Holding or eating food provocatively;
- Lewd gestures, such as hand or sign language to denote sexual activity;
- Persistent and unwelcome flirting;
- Staring at an individual or looking a person up and down (elevator eyes);
- Giving personal gifts;
- Displaying sexually suggestive pictures, calendars, posters, statues, etc.

Unwanted physical contact can range from offensive behavior to criminal acts. While some might dismiss some of these behaviors as an annoyance, others will consider them to be sexual harassment. It should be stressed that all of these behaviors are inappropriate in the workplace. Some examples of unwanted physical contact that might be considered sexual harassment are:

- Touching that is inappropriate in the workplace or classroom, such as patting, pinching, stroking or brushing up against the body;
- Cornering or mauling;
- Invading another's "personal space;"
- Attempted or actual kissing or fondling;
- Physical assault;
- Coerced sexual relations;
- Attempted rape or rape;
- Giving a massage around the neck or shoulders;
- Touching or rubbing oneself sexually around another person;
- Pranks such as exposing underwear or parts of the body;
- Intentionally blocking someone's path.

It should be stressed that while some behaviors may be offensive, unprofessional and/or against **NOVA's** policy, they may not necessarily be considered sexual harassment. For example, general use of profanity and vulgar language may not be sexual harassment unless it is sexually oriented or overused to the point that a hostile work environment is created.

In addition, sexual harassment is generally not the rare or singular occurrence of minor behaviors such as a comment/innuendo, a joke or a story, asking for a date, or a compliment about appearance or attire. However, frequent occurrences of these types of minor behaviors may rise to the level of harassment if they happen frequently and if it

is reasonable to assume that the behavior might be unwelcome, or if a single incident is particularly egregious.

SEXUAL HARASSMENT IS ABOUT POWER

There is not a typical harasser. A harasser can be male, female, young, old, and from any ethnic background. One thing that harassers generally have in common is that they have some sort of power over an individual or individuals and they use that power in a negative way to help them feel “in control.” Harassers generally look for “victims” who are weaker and less likely to have the ability or the inclination to fight back. This is generally because victims fear retaliation in the form of loss of employment, economic loss, loss of benefits, loss of status, loss of promotional or advancement opportunities, or, in some cases, fear of physical or emotional harm.

We generally see this type of behavior in supervisor/subordinate relationships, but it can also happen within work groups or student groups as well, if a member (female, person of color, etc.) causes the harasser to believe that he/she could directly impact his or her job or status within the group.

CONSENSUAL RELATIONSHIPS

The exchanging of gifts, dating, living with and/or other actions suggestive of a romantic relationship between supervisor and subordinate, senior and junior faculty, or between faculty or other staff, and students, are not unlawful. However, such sexual or romantic relationships are potentially exploitive and should be avoided. Even when both parties have consented to the development of the relationship, serious concerns may be raised about the validity of the consent, conflict of interest, and/or unfair treatment of others. Acquiescence to requests for sexual favors — or even voluntary participation in sexual activities — does not necessarily mean that the favors or activity were welcomed.

Some institutions’ policies specifically state that individuals are prohibited from evaluating the work performance of others with whom they have a familial relationship, or from making hiring, salary or similar financial decisions concerning such persons. The same principles apply to staff-student or faculty-student relationships in the context of work or academic evaluations. Thus, consensual romantic or sexual relationships between members of the faculty or staff, or between members of either group with a student, must be disclosed to the appropriate administrative supervisor so that arrangements can be made for objective evaluations and decision making.

In the event of a complaint of sexual harassment, when the facts establish that a faculty-student, staff-student or supervisor-subordinate power differential existed within the relationship, a defense based upon consent will generally be viewed unsympathetically by the institution.

SEXUAL HARASSMENT – PERCEPTION vs. INTENT

An individual's perception of what is, or is not, sexual harassment, adds greatly to the complexity of the sexual harassment issue. Well intentioned gestures such as a pat on the shoulder, touching, lewd remarks, jesting comments of a sexual nature or physical contact may be interpreted as acts of sexual harassment by one recipient, while another may dismiss them as merely annoying. Likewise, some individuals may perceive leering or ogling as sexual harassment, while others may perceive the same behavior as looking or staring and may attribute no meaning to it.

Often people accused of sexual harassment may not realize that they have committed acts of harassment. Accused harassers may have intended only to be funny or even complimentary, and may believe that their conduct is not only appropriate and acceptable, but also appreciated. They are often truly shocked when they are told that someone considered their behavior to be sexual harassment.

In determining whether behavior is to be considered sexual harassment, the courts generally use the “**reasonable person**” **standard**. Using this standard, the court asks whether a reasonable victim of the same sex as the plaintiff would consider the comments or actions sufficiently severe or pervasive enough to create an abusive working environment. Another way to look at the issue — and your own behavior — is to ask whether you would want your spouse/partner, child or parent to be subjected to the same type of behavior.