

**VRP: PATEL LAW GROUP P.C.**

**Vihar R. Patel  
Attorney at Law**

1608 W. Belmont, Suite 203

Chicago, IL 60657

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**Ten Answers to Questions Small Business Owners Have about Sexual Harassment**

**Question One:** Who may be subject to a sexual harassment claim?

**Answer:** Any employer with 15 or more employees may be subject to a sexual harassment claim by an employee. Individuals you think are contractors may actually be employees for purposes of the 15 employee rule. This can be public or private sector employees, including federal, state and local government agencies.

**Question Two:** Generally what constitutes sexual harassment?

**Answer:** Any form of unwelcome sexual advances verbal or physical conduct of a sexual nature that implicitly or explicitly adversely affects an individual's employment or unreasonably interferes with an individual's work performance or creates a hostile or intimidating work environment may constitute sexual harassment. This can include requests for sexual favors with either an explicit or implicit promise for some job benefit.

**Question Three:** Who can assert a claim for sexual harassment?

**Answer:** Any employee, either the victim or another individual exposed to a hostile work environment can assert the claim. The victim or the employee can be the same sex or the opposite sex as the harasser (a man or a woman).

**Question Four:** Who can the harasser be?

**Answer:** Any employee, either a co-worker, an agent, a supervisor, or an officer of the company can be a sexual harasser. This employee can be a person of the same sex or different sex as the victim. However, typically the company will only be vicariously liable for a supervisor's sexual harassment of an employee.

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Office: 847-972-6157

Email: vihar.patel@freydinlaw.com

Fax: 312-268-5242

This handout is being provided for information purposes. This handout does not constitute legal advice or a legal opinion. This handout does not create an attorney client relationship. If you believe you are the victim of sexual harassment or believe that someone is asserting a claim against you please consult an attorney to obtain the necessary legal advice or opinion.

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**Question Five:** Does the claimant or victim have to be terminated to assert a claim for sexual harassment?

**Answer:** Typically no. In fact, the claimant or victim may not even suffer a loss of pay, but so long as there is an unwelcome advance that unreasonably interferes with the work environment there can be a claim. (Negative job evaluation, denial of promotion, bonus, and health benefits, etc...).

**Question Six:** How can I protect the employee and protect against sexual harassment claims?

**Answer:** Providing sexual harassment training to all employees and having a formal and informal complaint reporting process can protect employees and limit an employer's exposure to sexual harassment claims. In addition, taking prompt action to investigate and correct any instances of sexual harassment claims will help protect an employer from exposure to sexual harassment claims.

**Question Seven:** Who typically investigates claims of sexual harassment?

**Answer:** In IL, typically, the Equal Employment Opportunity Commission (EEOC), Illinois Department of Human Rights (IDHR), or the Chicago Commission on Human Rights (CCHR) investigates claims of sexual harassment. These local and federal agencies will review an employee's charge of sexual harassment, contact employers, witnesses, conduct interviews, subpoena documents and witnesses, as well as file lawsuits in some cases where a determination indicates that sexual harassment has occurred.

**Question Eight:** Do I need a lawyer to file or defend a claim of sexual harassment through the investigation process?

**Answer:** No, a lawyer is not required to file or defend a claim of sexual harassment. However, having a lawyer on either side greatly increases your ability to assert or defend a claim of sexual harassment. The EEOC, IDHR, or the CCHR are not neutral and they are not always looking out for your interest. An attorney can help create an appropriate record, help in making

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sure a proper investigation is conducted, assist in fact finding conferences, mediation, conciliation efforts and keep track of appropriate deadlines to protect your interests throughout this process.

**Question Nine:** What happens after the EEOC, IDHR, or the CCHR investigates the claim?

**Answer:** Typically the claimant or the victim will be issued a 90 days right to sue notice. At this point the claimant or victim must file a lawsuit in federal court to continue to prosecute the claim for sexual harassment further. Often there are associated claims of assault, batter, intentional infliction of emotional distress, and/or false imprisonment. In some circumstances, where the EEOC has made a finding of cause for sexual harassment, the EEOC may file a federal lawsuit on the claimant or victim's behalf.

**Question Ten:** Do I need a lawyer to file or defend a claim of sexual harassment in a federal lawsuit?

**Answer:** No, however, even judges will highly recommend that you obtain an employment lawyer to adequately prosecute or defend claims of sexual harassment. There are a variety of theories of liability and/or defense that are unique to employee law that the lawyer can utilize to try and protect your interests.

Hypothetical One: Coworkers date within the same department.

Hypothetical Two: Supervisor dates with his or her subordinate.

Hypothetical Three: Supervisor offers a promotion than goes out with subordinate.

Hypothetical Four: Coworkers date outside the office.

Hypothetical Five: Current employee dates former employee of the company.

Hypothetical Six: Supervisor transfers a subordinate after a falling out.

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Hypothetical Seven: Coworker is transferred after the relationships ends.

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