

## Sexual Harassment: Advice for Employers and Employees

*Editor's Note: With sexual harassment cases making headlines on a daily basis, South Florida Legal Guide contacted several leading attorneys for their perspectives on this important issue. Please note that their comments are general in nature and not intended to provide legal advice.*

### When Does Sexual Harassment Become a Crime?



By **Marc Seitles**

Most people think of sexual harassment as unwanted advances to another that create a hostile work environment. The normal recourse is reporting the incident to your supervisor or to human resources.

Sexual harassment can become a crime when an unwanted advance becomes intentional, offensive physical contact or a threat of physical contact. In some states sexual harassment can also become a crime if the conduct is deemed be stalking, or involves the sending of sexual images of another without the person's consent.

In Florida, the vast majority of sexual harassment cases are civil matters. However, if the situation escalates into assault and battery or rape, then it becomes a criminal case.

Employers must educate their employees of the seriousness of sexual harassment, and the potential consequences both civilly and criminally. In particular, they should avoid unwanted physical contact or threats that make other workers afraid of assault. Having a clear policy, making sure employees understand the policy and enforcing the policy are important steps for South Florida employers.

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### What Should Employees Do?

By **Donna Ballman**

If you're offered a job, promotion or favors if you submit to sexual favors or are threatened that you'll be demoted, fired or disciplined if you don't; if the harasser is making comments about your gender or sexual comments; if they're treating people of your gender differently than the opposite sex or treating you differently, that's sexual harassment.

Watch carefully and take good notes of comments directed to you and others. Include date, time, place and any witnesses. If it's just you, then still document it. Don't worry if there are no witnesses.

If there are documents like text messages, emails, cards, notes or other inappropriate items, keep the originals or copies. You can take screenshots of anything you can't print out, and then print the screenshot.

Keep notes and any evidence in a purse or briefcase or write them on your home computer. If you're fired, you'll be prevented from taking your notes from work and they may be gone forever.

You're supposed to give the employer a chance to correct the situation (the exception being if it affects you in the wallet, such as firing, refusal to hire, demotion, denial of a promotion, etc.). Make sure you've followed the company sexual harassment policy, if there is one, and reported your concern to the correct person. I suggest reporting it in writing. If you've only reported it verbally, follow up in writing.

Don't tiptoe around the words "gender-based harassment" or "sexual harassment." If you report bullying or unfair treatment, you aren't legally protected against retaliation, but reporting sexual harassment is legally protected. You may want to talk to an employee-side employment attorney before you do this, but it's not required.

The employer is liable for the actions of a supervisor if that person takes tangible employment action. It includes failing to hire, denial of a promotion, firing, demotion, etc. Otherwise, if the company has a publicized sexual harassment policy, the company is only liable if the employee reports the harassment or the company is otherwise aware of the harassment (such as with the Weinstein case) and fails to take prompt action to correct the situation.

These cases are tough if there is no physical evidence. Your credibility is key, so the better your notes are, the better off you will be. Don't miss your filing deadline. In Florida, you have 300 days from the date of the harassment to file a charge of discrimination with EEOC, and 365 days to file with the Florida Commission on Human Relations. If you file with one you're automatically filed with both. I definitely suggest talking to an employee-side employment lawyer when in doubt about your rights.

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### What Are the Right Steps for Employers and Employees?

By **Richard Tuschman**

Employers should have a written policy that defines and prohibits sexual harassment and contains an effective complaint procedure. Employers should also train their employees to prevent sexual harassment, and lead by example. Training can include watching off-the-shelf videos or attending in-person training. Leading by example means making sexually charged conduct in the workplace unacceptable. And by "workplace," I mean any place where employees congregate, including off-site meetings, office parties, and trade shows.

From a legal standpoint, employees who believe they are being harassed must use the complaint procedure contained in the employer's policy. If the employee fails to complain and later files a sexual harassment claim, the employer may not be held liable, at least where there has been no adverse job action such as a termination or demotion.