

*“Sexual Harassment Part 2:
Quid Pro Quo & Retaliation”*

PROGRAM INFORMATION HIGHLIGHTS

Quid Pro Quo (Economic) Sexual Harassment

“Quid Pro Quo” is Latin. It means “this for that”

DEFINITION

An exchange of sexual favors for a job benefit

-OR-

Basing an employment decision on an employee’s willingness to accept, tolerate, or participate in unwelcome conduct of a sexual nature.

TYPICAL QUID PRO QUO

A manager or supervisor basing a job decision like a promotion, assignment, raise, or the job itself on a subordinate submitting to unwelcome sexual advances.

THE LAW

Sexual Harassment is illegal under Title VII of the 1964 Civil Rights Act as part of gender discrimination. Title VII also outlaws harassment on the basis of:

- Race
- Color
- Religion
- National origin

Other federal, state and local laws prohibit other forms of discrimination, including, but not limited to:

- Age
- Physical or mental disability
- Sexual orientation
- Ethnicity
- Ancestry
- Pregnancy
- Marital status
- Veteran status

You’re encouraged to learn what your local and state laws provide.

DIFFERENCES BETWEEN QUID PRO QUO AND HOSTILE ENVIRONMENT SEXUAL HARASSMENT

Hostile environment can be unintentional

- Quid pro quo is virtually always intentional

Hostile environment can occur between peers with equal power and authority.

- Quid pro quo occurs between managers and employees, or other managers, without equal power and authority

Hostile Environment is frequent, severe, ongoing and pervasive,

- Quid pro quo can be harassment if it happens one time, depending on the severity

Employers may have a legal defense when managers or supervisors engage in Hostile Environment sexual harassment

- Employers are absolutely liable, or without a legal defense, for managers or supervisors who engage in quid pro quo sexual harassment

IS FAVORITISM HARASSMENT?

Possibly. In California, for example, courts have ruled that sexual favoritism in the workplace may be sexual harassment if the message is sent that the way for employees to advance is to engage in sexual conduct with supervisors or managers.

Managers and supervisors who give undeserved job benefits create a possible harassment claim from other employees who don't get the benefits.

MANAGER AND SUPERVISOR PERSONAL LIABILITY

Managers and supervisors MAY, under some STATE laws, have personal liability for certain actions, including, but not limited to:

- Failing to take immediate, appropriate action when they know or should have known about possible harassment
- Aiding, abetting, or engaging in sexual harassment
- Retaliating against an employee for making a complaint

IS IT LEGAL TO BASE JOB DECISIONS ON EMPLOYEES PARTICIPATING IN NON-WORK RELATED ACTIVITIES?

In most instances, an employee's private life and private activity should not effect workplace decisions. However, there are exceptions. That's a question for H.R.

ARE COMPANIES RESPONSIBLE FOR SEXUAL HARASSMENT OF EMPLOYEES BY NON-EMPLOYEES, SUCH AS CLIENTS?

The consensus among the courts is that employers may be held liable for quid pro quo harassment of employees by non-employees if the company's made aware of it and fails to investigate and remedy the situation.

UNLAWFUL RETALIATION

DEFINITION

Retaliating against an employee for complaining by changing pay, work hours or other terms and conditions of employment

-OR-

Depriving the complaining employee of opportunities or benefits.

LAW

Retaliation is outlawed by Title VII of the 1964 Civil Rights Act and state laws.

Companies have a legal duty to protect employees from retaliation. It's human nature to want to strike back if you feel wrongly accused in a complaint. Resist that impulse. It can be very costly. Managers and supervisors put careers on the line by retaliating.

WHAT IS NOT RETALIATION?

Behavior arising from the strain complaints can often can put on relationships, but which usually alter workplace conditions, such as:

- Occasional insults, teasing or isolated ridicule
- Being loyal to the accused
- Engaging in the normal controversy complaints can cause
- Silent treatment
- Cold shoulder
- Expressing opinions

ARE THREATS OF RETALIATION ILLEGAL?

Threats of retaliation may be illegal, depending on the circumstances and context
Threats of discipline or change in work status are retaliation and illegal if it has what's called a "chilling effect" on employees' exercising their right to come forward with a complaint.

MANAGERS AND SUPERVISORS WHO ARE AWARE SEXUAL HARASSMENT OR RETALIATION IS OCCURRING MUST TAKE IMMEDIATE AND APPROPRIATE ACTION

Managers and supervisors are agents of the corporation. In the eyes of the law, they are the corporation. What they know, the company knows. What they do, the company does. The company, and therefore managers and supervisors, have a mandatory legal duty to take immediate and appropriate action if aware of possible harassment.

RECOMMENDED IMMEDIATE, APPROPRIATE ACTION FOR MANAGERS AND SUPERVISORS TO TAKE:

NOTIFY H.R. AND DOCUMENT YOUR ACTION.

EMPLOYEE COMPLAINT PROCEDURE

Most companies give employees 3 options for letting management know about possible sexual harassment:

- Speak to their direct supervisor or manager
- Speak to anyone in management
- Go directly to Human Resources

In most instances, you do not need to follow a formal chain of command when filing a complaint of harassment or discrimination, and you may report your complaint directly to Human Resources.

Check out your complaint procedure in your company's sexual harassment policy, or ask Human Resources about it.

Employees are encouraged to exercise personal responsibility by refusing to participate in quid pro quo sexual harassment and notifying H.R. of the problem