



## MIA Employee Assistance Program

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### **The Able Workplace: “No” means “No” Sexual Harassment on the Job**

*Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality in the workplace that racial harassment is to racial equality...and can be as demeaning and disconcerting as the harshest of racial epithets. - from Eleventh Circuit Court's decision in Henson v. City of Dundee*

In human terms and in financial terms it can be costly for **any workplace to ignore sexual harassment**. In 2006 the EEOC received 23,034 charges alleging harassment and resolved 22,408 cases, recovering 59.8 million dollars in monetary benefits for charging parties and other aggrieved individuals. The underlying theme of all kinds of harassment is the **rights of an individual to work in an environment safe for benefit, advancement, and participation** based on merit and other rights, and not impinged upon by coercion, threats, blackmail, pressure to submit to unwanted contact or context. Therefore, **defining, preventing, and remediating sexual harassment**, as well as other forms of harassment, constitute **the threefold foundation of the employer's enterprise**.

Based on the work of experts Juliana Lightle and Betsy Doucet, try this test of your knowledge of sexual harassment by answering **True** or **False**:

1. Only physical acts by one employee against another constitute sexual harassment. **T F**
2. A sex or sexist cartoon hung over an employee's desk constitutes sexual harassment. **T F**
3. Ignoring another employee constitutes sexual harassment. **T F**
4. Sexual actions by non-employees are sexual harassment. **T F**
5. Staring at an employee by another is not sexual harassment. **T F**
6. Dirty jokes or those with sexual innuendoes are not sexual harassment. **T F**
7. Unpermitted touching of one employee by another is not sexual harassment. **T F**
8. The promotion of a willing participant in an office romance is not sexual harassment. **T F**
9. Failure to promote an employee because s/he will not date you is sexual harassment. **T F**
10. Again inviting a subordinate on a date after his/her prior refusal is sexual harassment. **T F**

Questions of sexual harassment are complex. First, **harassment does not proscribe all conduct of a sexual nature**. Sexual harassment only concerns “unwelcome sexual conduct that is, implicitly or explicitly, a term or condition of employment.”

## The Able Workplace - Continued

In contrast, two employees of equal status may willingly date each other or pursue a sexual relationship if not against employer policy. Sexual attraction can often play a role in day-to-day social exchanges between employees. So “the distinction between invited, uninvited-but-welcome, offensive-but-tolerated, and flatly rejected sexual advances, must be accomplished,” whether verbal or physical. Unequal treatment based on sex, is also discriminatory.

Sexual harassment is of **two kinds** - “**quid pro quo**,” and “**hostile environment**.” In the first instance there is a direct relationship between the submission to, or rejection of, a supervisor’s sexual conduct, by an employee, and employment decisions regarding that individual. An example would be, “If you don’t go out with me I will not recommend your promotion.” This is a **direct threat**.

In classic hostile environment cases it is **implied** that an employee must tolerate or participate in unwelcome sexual conduct of a verbal, visual or physical nature. In reality **the two often overlap**.

Back to our test. In the first case, the answer to number 1 is False because **verbal or pictorial** material can be sexually harassing. Number 2, for the same reason, is True. While number 3 is False usually, in some cases this might be a discrimination based on sex such as when a male employee is always preferred for a certain duty or role. In number 4, it is True that **clients or customers** of a company can also be considered sexually harassing. A hostile work environment is created when an employer does not stop this behavior from adversely affecting a company employee. In number 5 **even staring**, when it is unwelcome, can be defined as sexually harassing. Number 6 ties in with the first two questions in that dirty jokes may be harassment when unwelcome or uninvited. Number 7 is classic, and False. Question 8 is interesting. The answer is False because, even though a willing participant in an office romance is promoted, someone else may not be promoted, and therefore the discrimination is against the person not involved in the office romance. Number 9 is obviously True. The last question is also True. It is harassing to pursue a subordinate who has refused a supervisor or manager in the past.

**Prevention Guidelines are quite inclusive.** Employers must “take all steps necessary to prevent sexual harassment from occurring,” according to the EEOC. That means **raising the subject, expressing disapproval, developing sanctions, informing employees** of the right to raise the issue and how to raise the issue, and **encouraging confidentiality**.

**Remediation is equally forceful.** Employers must “eradicate hostile or offensive work environments.” This means **prompt investigation** of complaints, **dealing appropriately with the offending personnel**. **Restoring lost employment benefits** or opportunities to the victim is key, as is providing opportunities for help--the **EAP**, or, when disabling, providing **disability benefits or time-out** opportunities.

The **responsibility of the complainant is to make the complaint contemporaneously** - while the harassment is going on or shortly thereafter.

When you are a **manager or supervisor dealing with a harasser** it is useful to **avoid making derogatory remarks**; to use “**I messages**” concerning the safe and productive department you want; tell the person it is important to **keep good relationships** in the department; be careful to **comment on the person’s behavior rather than his or her character**; be **prepared for a defensive or angry comeback**; suggest you do not want to offend the person, but as Lightle and Doucet emphasize, in productive workplaces people **feel safe and secure from physical or psychological harm, have good relationships with co-workers, and feel respected for who they are and what they contribute**. Finally, be prepared to **listen to the harasser’s “side”** before taking appropriate action.

