



# **An Employee Complained They Were Being Harassed at Work. Now What?**

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# Outline

- What is harassment?
- What do I do if an employee complains about harassment?
- What if the complaint results in discipline?



# What is harassment?

- Harassment is a form of discrimination, which is illegal under state and federal law.
- Harassment can occur against any protected class: age, race, creed, color, sex, sexual orientation, gender identity, national origin, veteran status, genetic information, religion, or disability.

# What is harassment?

- Harassment includes sexual harassment.
- Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances or other verbal, visual, or physical conduct of a sexual nature.
- Can occur in the form of quid pro quo or hostile work environment claims.

# What is harassment?

## Hostile Work Environment

Unwelcome harassment based on a protected characteristic of the complainant that affected a term, condition or privilege of the complainant's employment.

# What is harassment?

## Hostile Work Environment

This can include a hostile work environment based on sexual harassment or a protected class.

# What is harassment?

## Hostile Work Environment

“Harassment rises to the level of a hostile work environment when the workplace is permeated with discriminatory intimidation, ridicule and insult sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” *White v. State*, 5 N.W. 3d 315 (Iowa 2024).

# What is harassment?

## Hostile Work Environment

“These standards are intended to filter out complaints attacking the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing; this is a demanding standard and does not prohibit all verbal or physical harassment.”  
*White v. State*, 5 N.W. 3d 315 (Iowa 2024).



# What is harassment?

## Quid Pro Quo

Quid pro quo occurs when an employee's willingness to engage in sexual activity or behaviors is used to make employment decisions. This can include advancement, offering benefits, or taking/refraining from punitive actions against the employee.

# What is harassment?

**Example: Rachel complains that Ross is sending her sexual memes over e-mail and text message during the workday and after work. She has asked Ross to stop, but he refuses. She also said he has asked her out every week for a month and she has told him that she is not interested every time. Yesterday, things escalated and Ross hit Rachel on the rearend and then told other co-workers about it. Rachel says she is humiliated.**

# What is harassment?

Is this harassment?

1. Is Rachel a member of a protected class?
2. Is the alleged conduct unwelcome?
3. Is the alleged conduct based on a protected characteristic?
4. Is the conduct affecting a term, condition, or privilege of her employment?

# What is harassment?

**Example: Brian complains to his manager that his co-worker teased him about his outfit. He had worn gray pants with a gray shirt and his co-worker teased him about his “groutfit.” Brian says he will not tolerate this harassment and if something does not change, he will be consulting with his lawyer.**

# What is harassment?

Is this harassment?

1. Is Brian a member of a protected class?
2. Is the alleged conduct unwelcome?
3. Is the alleged conduct based on a protected characteristic? (fashion sense)
4. Is the conduct affecting a term, condition, or privilege of his employment?

# What do I do if an employee complains about harassment?

You should have a policy in place that outlines (1) what harassment is and that you do not tolerate it; (2) how an employee complains about harassment; and (3) what you do once you receive a complaint.

# What do I do if an employee complains about harassment?

No matter what, once you receive a complaint you have a duty to promptly investigate and if harassment is occurring take prompt remedial action to prevent harassment from occurring again.

# What do I do if an employee complains about harassment?

**For Rachel:**

- Rachel has made a complaint of harassment.
- On its face, the complaint rises to the level of sexual harassment.
- What are your next steps?



# What do I do if an employee complains about harassment?

For Rachel:

- Paid administrative leave for the alleged harasser?
- Any special protections for either party?
- Appoint Investigator (must be impartial and trained, external or internal).
- Stress that the City will not tolerate retaliation to all parties.

# What do I do if an employee complains about harassment?

For Rachel:

- Allow the investigator to go where the evidence leads them within the scope of the investigation.
- Receive findings from investigator.
- Determine next steps for alleged harasser (your duty is prompt remedial action to stop the harassment).

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# What do I do if an employee complains about harassment?

**For Rachel:**

- **Inform witnesses investigation is over.**
- **Inform complainant that investigation is over and whether the complaint was substantiated.**
- **Anti-retaliation warnings for everyone involved.**

# What do I do if an employee complains about harassment?

**For Brian:**

- **Brian has made a complaint of harassment.**
- **On its face, the complaint is not harassment (fashion sense is not a protected class).**
  - **Potential landmines to be careful of?**
  - **Consult legal counsel.**
- **What are your next steps?**

# What do I do if an employee complains about harassment?

For Brian:

- Even though this is not “harassment,” Brian still should be able to feel respected at work.
- Speak with Brian’s co-worker about their actions, get their side of the story.
- Take action to stop their behavior if necessary.
- Report to Brian that you cannot discuss confidential personnel matters, that the matter is resolved, and thank him for bringing his concerns to your attention.
- Anti-retaliation warnings for everyone involved.

# What do I do if an employee complains about harassment?

## What about a close call?

- Close call for whether an investigation is required, close call for paid administrative leave?
- Always err on the side of protecting the organization.
- Consult legal counsel.

# What do I do if an employee complains about harassment?

Is the investigation available to anyone to review? Maybe.

- Iowa Code section 22.7.
- Peace Officer Bill of Rights.
- Attorney/client privilege.

# What if the harassment complaint results in discipline?

Your duty is to take prompt remedial action to stop the harassment from occurring again.

What does that look like?

- Coaching?
- Progressive discipline?
- Termination?
- Separation Agreement?



# What if the harassment complaint results in discipline?

Do other employees/the public get to know about the discipline? Maybe.

The fact that an employee resigned in lieu of termination, was discharged, or was demoted as the result of a disciplinary action, and the documented reasons and rationale for that action are a public record. All other records are confidential.



**QUESTIONS?**