This PowerPoint file is a supplement to the video presentation. Some of the educational content of this program is not available solely through the PowerPoint file. Participants should use all materials to enhance the value of this continuing education program.

Reducing Sexual Harassment in the Workplace

Andrew K. Littlefield, PhD
Assistant Professor, Clinical Psychology
Department of Psychological Sciences
Texas Tech University
Lubbock, Texas
Overview

• Definitions of sexual harassment
• Main types of sexual harassment
• Approaches to minimize sexual harassment in the workplace
• Your Role as a Health Information Professional

What is Sexual Harassment?

• Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964
• Title VII applies to employers with 15 or more employees, including state and local governments, employment agencies, labor organizations, federal government
• Applies to organizations that employ health information professionals

https://www.eeoc.gov/eeoc/publications/fs-sex.cfm
What is Title VII?

- Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin.

“An Act: to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations”

“To authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education”

“To extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes”

https://www.eeoc.gov/laws/statutes/titlevii.cfm

What is Title VII?

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the ‘Civil Rights Act of 1964’”

https://www.eeoc.gov/laws/statutes/titlevii.cfm
What is Sexual Harassment?

- Title VII of the Civil Rights Act of 1964 does not explicitly prohibit sexual harassment
- U.S. Supreme Court rulings have made clear that sexual harassment constitutes a type of unlawful sex discrimination that violates the Civil Rights Act
- "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment"
- It is unlawful to harass a person (an applicant or employee) because of that person’s sex
- Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature

https://www.eeoc.gov/eeoc/publications/fs-sex.cfm

What is Sexual Harassment?

- Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person’s sex
  - For example, it is illegal to harass a woman by making offensive comments about women in general
- Although the law doesn’t prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted)
- The harasser can be:
  - The victim's supervisor
  - A supervisor in another area
  - A co-worker
  - Someone who is not an employee of the employer, such as a patient or customer

https://www.eeoc.gov/laws/types/sexual_harassment.cfm
Sexual Harassment: Parties Involved

Can be from:
• Male to female
• Female to male
• Male to male
• Female to female
• Supervisor to employee

• Employee to supervisor
• Employee to employee
• Customer (e.g., patient) to employee
• Customer (e.g., patient) to supervisor

Equal Employment Opportunity Commission (EEOC)

• Under federal law, the EEOC prosecutes claims of discrimination
Equal Employment Opportunity Commission (EEOC)

• Under federal law, the EEOC prosecutes claims of discrimination

Sexual Misconduct in the Workplace

In 2022, a common topic in the news
• e.g., “Nearly 1 in 4 hospital doctors are mistreated at work by patients, visitors and other doctors, and female doctors are nearly two times more likely than male doctors to face this abuse, a new study reveals.” (Health News, 2022)
• "All members of the healthcare team share the responsibility to mitigate mistreatment," said senior study author Dr. Mickey Trockel
• Relevant to those working in medical records
• Health information professionals can keep detailed records regarding sexual harassment and create digital solutions for other medical professionals, e.g., nurses
• “Digital solutions for workplace safety, such as sexual harassment reporting apps and safety planning apps, can then be prioritized for implementation and use.” (Troncoso and Breads, 2021)
Sexual Misconduct in the Workplace

• “...efforts to integrate nursing and health information technologies have been notably championed by and developed under the nursing informatics specialty.” (Troncoso and Breads, 2021)
• Several pivotal cases involving sexual harassment and individuals working in medical records
  • Case: civilian health information manager with the U.S. Depart of the Army
  • Co-work, later supervisor harassed the technician daily across a two-year period
  • Included criticisms of clothing, underwear being visible, comments to others, work interference
  • Technician provided evidence of depression, panic attacks, losing hair, hospitalization, receiving psychiatric treatment/medication
  • District court ruled that supervisor’s actions amounted to a “lack of courtesy and professionalism” rather than sexual harassment severe enough to create a hostile work environment

Sexual Misconduct in the Workplace

• First Circuit Court disagreed with district court that conduct did not create a hostile work environment in violation of Title VII
  • Considered: frequency of conduct, severity, humiliating, physical threatening, interfered unreasonably with employee's job
  • First Circuit Court: noted that while “employees are expected to have reasonably thick skins”, the “accumulated effect” of constant verbal attacks and physical intimidation “may reasonably be found to constitute sexual harassment”
  • Emphasized that behavior “need not be overtly sexual in nature” but rather any conduct that undermines ability to complete job
  • Overall evidence to consider sexual harassment: comments on the employee’s body, criticized clothing (underwear), mocking the employee, descriptions of her as a “street woman” on daily basis during a two-year period
Types of Harassment

Quid pro quo (“this for that”)
- “Refers to the association of an employee’s benefits, such as getting a raise, or not getting fired, to the employee’s acquiescence to the employer’s or supervisor’s unwelcome sexual advances”
- “This does not apply only to employment situations, but any situation in which the harasser has a superior position to the victim”

Examples of Quid Pro Quo Harassment

- Supervisor/employer promises a raise in exchange for sex
- Supervisor/employer threatens to fire employee if employee doesn’t engage in sex
- Firing/punishing an employee who ends a work-place romance
- Modifying work demands after subordinate refuses sexual advances (e.g., flirting, requests for a date)

https://legaldictionary.net/sexual-harassment/
Beginning of Quid Pro Quo Cases

- In mid 1970s, courts began to recognize that sexual harassment violates Title VII
- Barnes v. Costle is the first case to recognize quid pro quo harassment under Title VII
- Court concluded that if a woman proved her job was terminated because she refused a sexual relationship with her boss, then actionable discrimination was established


Types of Harassment

Hostile work environment
- “Refers to situations in which an employee is exposed to offensive sexual materials or comments, and/or unwelcome sexual contact or advances”
- “To be considered sexual harassment, the offending behavior generally must be repeated, or part of an ongoing pattern”
- “A hostile work environment may be created by co-workers, a supervisor or employer, or even customers or clients”
- “Employers are responsible for ensuring that sexual harassment does not take place in their workplaces, and to stop any sexual harassment that does take place as soon as they are made aware of it.”

https://legaldictionary.net/sexual-harassment
Examples of Hostile Work Environment

- Sexual material (e.g., posters, objects) at work
- Offensive comments, gestures, language, jokes
- Circulating offensive letters, e-mails, cartoons
- Inappropriate touching
- Negative stereotyping

Determining a Hostile Work Environment

The EEOC considers multiple factors:
- Whether the conduct was verbal or physical or both
- How frequently was it repeated?
- Whether the conduct was hostile or patently offensive
- Whether the alleged harasser was a co-worker or supervisor
- Whether others joined in perpetrating the harassment
- Whether the harassment was directed at more than one individual
- What happened when senior management became aware of the situation — such as whether the offensive conduct was dealt with and immediately ended or condoned

Legal elements under consideration include:
- Does the victim belong to a protected class based on race, religion, ethnicity, age, sex, or disability?

Determining a Hostile Work Environment

- Was the harassment directly related to the victim being of one of these protected classes?
- Did the employer know of and fail to address the harassment?
- Was the harassment ongoing or did it happen only once?

Some jurisdictions (e.g., NJ) summarize with a four part test: conduct of complaint...
1. Would not have occurred but for the employee’s protected status
2. Was severe and/or pervasive
3. Make a reasonable person believe that (not hypersensitive plaintiffs)
4. The conditions of employment are altered and the working environment is hostile or abusive


Case Example

Case: health information manager working in WV hospital
- Responsibilities: retrieving patient’s medical charts per physician request, obtaining physician’s signatures for chart removal, refiling documents
- Alleged supervisor subjected her to multiple inappropriate/offensive/sexually suggestive acts
  - Improper, unsolicited physical contact, abusive/intimidating comments, threats involving a knife
- After filing a complaint, the technician started receiving disciplinary write-ups from supervisor
- Technician suspended
- Technician believed write-ups were a form of retaliation
- Technician eventually took medical leave claiming she could not continue at work due to harassment
Case Example

- Technician filed complaint to circuit court alleging harassment and retaliation
- Technician claimed depression, PTSD, anxiety disorder as a result of sexual harassment and full disability to work
- Court ruled since there was no expert testimony linking harassment to psychological conditions, then the case could not proceed to jury
- Technician sought reversal of this decision from Supreme Court of WV
- Supreme court of WV decided lower court committed an error by not allowing case to proceed
- Supreme court determined “prima facie case of sexual harassment” based on four-part test

Post-traumatic stress disorder (PTSD)

Case Example

- “A plaintiff-employee must prove that (1) the subject conduct was unwelcome; (2) it was based on the sex of the plaintiff; (3) it was sufficiently severe or pervasive to alter the plaintiff's conditions of employment and create an abusive work environment; and (4) it was imputable [attributed to] on some factual basis to the employer.”
Determining a Hostile Work Environment

Conduct that interferes with work performance can be considered sexual harassment

• Examples:
  o Sexual comments makes one so uncomfortable that performance suffers
  o Professional opportunities are declined to avoid the harasser
    ▪ e.g., avoiding a work-related trip to not be exposed to the harasser

Quid Pro Quo and Hostile Work Environment

• A hostile work environment is the most common form of sexual harassment
• Typically involves a course of inappropriate conduct rather than an isolated incident
• Conduct must be “severe, persistent, or pervasive” to constitute a hostile environment
• The impact of the conduct and how it is perceived by the person subject to the conduct is also important
  o “Welcomeness” defined by the victim
  o Failure to complain/acquiescence does not mean conduct was welcome
Welcomeness Defined by the Victim

- Conduct is not considered sexual harassment if it is welcome
- It is important that it is communicated to the harasser that the conduct makes one uncomfortable and needs to stop
- Communication can be verbal or written
- Focus is on the impact of the behavior, not the intent

Quid Pro Quo and Hostile Work Environment

- The distinction between quid pro quo and hostile work environment not always clear
- Two types can co-occur
  - Employee’s job conditions are impacted when a sexually hostile work environment leads to employee’s discharge
  - A supervisor makes sexual advances towards employee while communicating an implicit threat to impact their job if employee isn’t compliant
- Hostile environment may have features of quid pro quo if supervisor abuses authority to force victim to endure or participate in the sexual conduct
- If employee is subsequently fired in retaliation for reporting sexual harassment, both harassment and retaliation in violation of section 704(a) of Title VII have occurred
Types of Sexual Harassment

- Sex-based harassment
  - Allegations that an employee has been harassed because of his/her sex even though the harassing conduct is not sexual in nature, e.g., frequent misogynistic comments
- Bystander harassment
  - A bystander witnesses the sexual harassment and becomes fearful, intimidated, or is offended
  - Harassment may occur to bystanders despite acceptance by original parties, e.g., overhearing an off-color joke

Retaliation Against Accusations

- Fear of retaliation is the top reason individuals do not report misconduct or confront harassment
- Retaliation is the most common alleged basis of discrimination in the federal sector and most common discrimination finding in federal sector cases
- The EEO laws prohibit punishing job applicants or employees for asserting their rights to be free from employment discrimination including harassment
  - Asserting these rights referred to as “protected activities”
Protected Activities

- It is unlawful to retaliate against applicants or employees for:
  - Filing or being a witness in an EEO charge, complaint, investigation, or lawsuit
  - Communicating with a supervisor or manager about employment discrimination, including harassment
  - Answering questions during an employer investigation of alleged harassment
  - Refusing to follow orders that would result in discrimination
  - Resisting sexual advances, or intervening to protect others
  - Requesting accommodation of a disability or for a religious practice
  - Asking managers or co-workers about salary information to uncover potentially discriminatory wages

Examples of Retaliation

- May be retaliation if an employer acts because of employee’s EEO activity to:
  - Reprimand the employee or give a performance evaluation that is lower than it should be
  - Transfer the employee to a less desirable position
  - Engage in verbal or physical abuse
  - Threaten to make, or actually make reports to authorities (such as reporting immigration status or contacting the police)
  - Increase scrutiny
  - Spread false rumors, treat a family member negatively (e.g., cancel a contract with the person's spouse)
  - Make the person's work more difficult (e.g., punishing an employee for an EEO complaint by purposefully changing his work schedule to conflict with family responsibilities)
Proving Legal Claim of Retaliation

• Legal proof of retaliation requires evidence of:
  o Engagement in a prior protected activity
  o Materially adverse action was taken by the employer
    ▪ Action that might deter a reasonable person from engaging in protected activity
  o Retaliation was the cause of the employer’s action

Liability for Sexual Harassment

• Employees could be held liable for both actions and inactions
  o Failure to report harassment
  o Retaliation by the harasser
  o Discipline, including termination, if person guilty of harassment
  o If sued, harasser could be liable for both economic and non-economic damages to the person who was harassed
EEOC Guidelines for Sexual Harassment

- Employer may be responsible for the acts of non-employees and is determined on the basis of the total facts and circumstances of each case, including employer knowledge, corrective action, control, and other legal responsibility
  - Co-worker harassment: employer liable if management knew/“should have known” about harassment and did not take remedial action

When Employer “Knows” or “Should Know” About Harassment

- An employer is considered to know about harassment when:
  - An employee files a complaint
  - When an employee witnesses the harassment
    - Important for witnesses to report observed harassment to their supervisors
  - If the employer would have detected harassment via “reasonable diligent inquiry”
  - When harassment is widespread, openly practiced, or well-known to staff
EEOC Guidelines for Sexual Harassment

• The EEOC has issued guidelines on sexual harassment which prohibit harassment by both fellow employees and non-employees
  o Third party harassment: always a case of hostile work environment and employer liability based on negligence

Sexual Harassment: Verbal Examples

• Referring to coworker with a “pet” name (e.g., girl, hunk, doll, babe)
• Whistling at someone, “cat calls”
• Sexual comments about a person's body, clothing, or looks
• Sexual comments or innuendoes
• Turning work discussions to sexual comments
• Telling sexual jokes or stories
• Asking about sexual information (e.g., fantasies, orientation, history)
• Repeatedly asking out a person who is not interested
• Telling lies or spreading rumors about a person's personal sex life
Sexual Harassment: Non-Verbal Examples

• “Elevator eyes” (i.e., looking a person up and down)
• Prolonged staring
• Impeding a person's path
• Following the person
• Giving personal gifts (beyond normative)
• Sexually-suggestive facial expressions (e.g., winking)
• Making sexual gestures with hands/body movements

Sexual Harassment: Physical Examples

• Unrequested massage (e.g., neck, shoulders)
• Unwanted touch to the person's clothing, hair, or body
• Unwanted hugging, kissing, patting, or stroking
• Touching/rubbing oneself against another person
• Standing close or brushing up against a person
Question to Determine Appropriate Behavior

• Would you act/talk the same way if a family member was present?
• How would your actions/language be perceived as a news headline?
• Would you want someone to behave the same way toward your children?
• Is there an equal power differential with the involved parties?
• Would you behave the same way in front of a supervisor?

Impact of Technological Revolution

• Sexual harassment does not have to occur “in person” and can occur:
  o Over cell phone/text
  o Through email/instant messaging
  o On social media (e.g. Facebook)
  o On blogs/message boards
• Two broad categories:
  o Materials received by a victim
  o Materials posted about a victim

Sexual harassment on the internet may include different types of gender harassment
• Verbal gender harassment examples:
  o Offensive sexual messages aimed towards a victim that are initiated by a harasser
  o Gender-humiliating comments
  o Rape threats

Impact of Technological Revolution

- Remarks which are unwelcome, uninvited, nonconsensual
- Verbal harassment can be either passive (targets potential victim) or active (targets specific victim)
- Graphic gender harassment:
  - Sending of erotic, pornographic, lewd, and lascivious images and digital recordings by a harasser to specific or potential victims
  - Graphic harassment often occurs via email, instant messaging, text, social media, online apps


Impact of Technological Revolution

- Unwanted sexual attention on the internet occurs when harasser users online communication to harass victim
  - Examples:
    - Refer to the victim’s sex organs
    - Refer to the victim’s sex life
    - Refer to intimate subjects
    - Impose sex-related images or sounds
    - Insinuate or offer sex-related activities
- Title VII is relevant for online harassment
- Vigilance needed for not only physical workplace but also “virtual office” and other online communication among employees

Impact of Technological Revolution

  - Blakely was first female captain to fly an Airbus
  - She complained about pornographic photos, vulgar gender-based comments that appeared in the workplace
  - During litigation, harassers continued to post material on online company message board
  - Blakey alleged a hostile work environment based on online comments
  - Supreme court of New Jersey held harassment outside the workplace can be actionable
  - Conduct arose out of employee relationships and was therefore relevant regardless were harassment occurred
  - Court also held that an employer may not disregard offensive messages posted on a company website when employer is aware/should be aware of messages


Impact of Technological Revolution

- Behaviors that could constitute sexual harassment:
  - Viewing pornographic material online at work
  - Offensive emails (e.g., “sharing” a sexually-explicit joke)
  - Posting sexually-provocative material online that can be accessed publicly (e.g., social media sites)
  - Making offensive comments about coworker on blog
  - “Revenge porn” – posting explicit material of another online without consent

Reducing Sexual Harassment in the Workplace

- Prevention is the best way to reduce sexual harassment in the workplace
- Employers should take steps to prevent sexual harassment from occurring
  - Employers should:
    - Clearly communicate that sexual harassment will not be tolerated, e.g., written policies
    - Provide and require sexual harassment training for their employees
    - Establish an effective complaint/grievance process
      - Prompt and thorough investigations
    - Take immediate/appropriate action when an employee files a complaint

https://www.eeoc.gov/eeoc/publications/fs-sex.cfm

Reducing Sexual Harassment in the Workplace

- Creating a positive work environment
  - Base evaluation of employees, co-workers on performance, and behaviors
  - Treat others with respect based on what they do
    - Not on looks, style, etc.
  - Create a work environment that all people would want to work in
- Why emphasize respectful behaviors?
  - ~50% of sexual harassment cases involved co-workers, peers
    - ~25% involved immediate supervisors
  - Respect reduces harm for co-workers, employees, and costs to would-be harassers
    - 1991 amendment to Title VII permits punitive damages
    - Lawsuits have financial and legal consequences for harasser
Reducing Sexual Harassment in the Workplace

- Employees of all skill levels do not want to work in an environment that is uncomfortable and contains harassment
- Respectful behaviors increases worker productivity
- Disrespectful behavior involving harassment can not only cost harasser their job (and other costs) but disrupt an otherwise productive, effective work setting

Actions in Response to the Experience of Sexual Harassment

- If you encounter sexual harassment in the workplace:
  - Clearly identify the behavior/environmental factor that is source of harassment
  - Let the harasser know that his/her conduct is unwanted and unwelcome
  - Report harassment to your supervisor
  - If harasser is a supervisor, report to human resources or appropriate organizational entity
  - Retaliation for reporting harassment is against the law – report any retaliatory behavior to human resources or appropriate entity
Actions in Response to the Experience of Sexual Harassment

• If you observe potential harassment:
  o Ask the victim if he/she felt harassed (victim’s perception determines welcomeness of the behavior)
  o Advise harasser (if you know the person) that you observed the behavior
  o Assist victim in reporting the situation as necessary
  o Can report even if victim does not want to report the incident
  o Document the situation in case of further investigation

Actions in Response to the Experience of Sexual Harassment

Reducing harassment (supervisors’ role):

• Be the standard-bearer of appropriate workplace behaviors
  o Educate others
  o Stay informed
  o Establish and be consistent with guidelines
  o Be aware and responsive to workplace behaviors
Practices to Reduce Incidence of Retaliation

Although job settings vary, some practices that may minimize retaliation violations include:

• Employers should maintain a written, plain-language anti-retaliation policy, and provide practical guidance on the employer's expectations with user-friendly examples of what to do and not to do
• Employers should consider training all managers, supervisors, and employees on the employer's written anti-retaliation policy, and sending a message from top management that retaliation will not be tolerated
• Managers and supervisors alleged to have engaged in discrimination should be provided with guidance on how to handle any personal feelings about the allegations when carrying out management duties or interacting in the workplace
• Employers may also wish to check in with employees, managers, and witnesses during the pendency of an EEO matter to inquire if there are any concerns regarding potential or perceived retaliation

• This may help spot issues before they fester, and to reassure employees and witnesses of the employer's commitment to protect against retaliation
• Employers may choose to require decision-makers to identify their reasons for taking consequential actions, and ensure that necessary documentation supports the decision
• Employers may examine performance assessments to ensure they have a sound factual basis and are free from unlawful motivations, and emphasize consistency to managers
Actions to be Avoided

- Ignore a problem/complaint
- Ignore/deviate from workplace policy
- Discuss allegations with the violator informally
- Try to resolve the situation by letting the victim and the harasser “sort it out” during a meeting
- Engage in retaliation against the victim
- Engage in cursory investigations
- Dismiss allegations as “personality”

When Accused of Harassment

- If you are accused of harassment:
  - In all cases, STOP THE OFFENDING BEHAVIOR IMMEDIATELY
  - Take the complaint seriously
  - Consult legal counsel as necessary
Reducing Sexual Harassment in the Workplace: Summary

- Sexual harassment can take many forms
- ALL individuals involved in duties of health information management have responsibilities to avoid harassing behaviors in the workplace
- Emphasizing respect and good judgment goes a long way to avoid sexual harassment in the workplace
- Essential to be aware of Title VII policies as well as policies of your institution of employment
- Interview with Rita Bowen, vice president of privacy, compliance, and health information management (HIM) policy and active member of the American Health Information Management Association discussing workplace sexual harassment as a civil rights violation