

PA HUMAN RELATIONS COMMISSION

Guidelines on Sexual Harassment

Pursuant to its authority to adopt rules and regulations to effectuate the policies and provisions of the Pennsylvania Human Relations Act, the Pennsylvania Human Relations Commission has adopted Guidelines on Sexual Harassment that are very similar to those promulgated by the United States Equal Employment Opportunity Commission (EEOC) in the Federal Register, Vol. 45, No. 219, Monday, November 10, 1980, pp. 74676-74677.

Harassment on the basis of sex is a violation of both Section 703 of Title VII of the U.S. Civil Rights Act of 1964, and Section 5(a) of the Pennsylvania Human Relations Act, act of October 27, 1955 (P.L. 744) as amended (43 P.S. § 951 et seq.)

These guidelines were adopted as a prevention tool, to help assure that everyone in Pennsylvania is permitted to work in an environment free from unsolicited and unwelcome sexual advances. Although complaints of sexual harassment will be decided by the Commission on a case-by-case basis, these guidelines are designed to help employers and employees understand how the Commission will make such decisions.

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Executive Director

Following are the guidelines, which the Pennsylvania Human Relations Commission will use in the investigation and determination of complaints of discrimination in employment on the basis of harassment because of sex:

Guidelines on Sexual Harassment

(a) Harassment on the basis of sex is a violation of the Pennsylvania Human Relations Act. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case-by-case basis.

(c) Applying general Title VII and Pennsylvania Human Relations Act principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, and employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility, which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII and the Pennsylvania Human Relations Act, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

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