

NEW YORK STATE
Sexual Harassment
Prevention Training

CASE STUDIES

OCTOBER 2018 EDITION



Combating
Sexual Harassment

Example 1



**Combating
Sexual Harassment**

Ex. 1: Not Taking “No” for an Answer

Li Yan's coworker Ralph has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Li Yan and Ralph have been friendly in the past and have had lunch together in local restaurants on many occasions. Ralph asks Li Yan to go on a date with him—dinner and a movie. Li Yan likes Ralph and agrees to go out with him. She enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time, but explains that she does not want to have a relationship with him. Ralph waits two weeks and then starts pressuring Li Yan for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.

Ex. 1: Not Taking “No” for an Answer

Question 1. When Ralph first asked Li Yan for a date, this was sexual harassment.

True or False?



**Combating
Sexual Harassment**

Ex. 1: Not Taking “No” for an Answer

Question 1. When Ralph first asked Li Yan for a date, this was sexual harassment.

FALSE: Ralph's initial comments about looking for a girlfriend and asking Li Yan, a coworker, for a date are not sexual harassment. Even if Li Yan had turned Ralph down for the first date, Ralph had done nothing wrong by asking for a date and by making occasional comments that are not sexually explicit about his personal life.



Ex. 1: Not Taking “No” for an Answer

Question 2. Li Yan cannot complain of sexual harassment because she went on a date with Ralph.

True or False?



**Combating
Sexual Harassment**

Ex. 1: Not Taking “No” for an Answer

Question 2. Li Yan cannot complain of sexual harassment because she went on a date with Ralph.

FALSE: Being friendly, going on a date, or even having a prior relationship with a coworker does not mean that a coworker has a right to behave as Ralph did toward Li Yan. She has to continue working with Ralph, and he must respect her wishes and not engage in behavior that has now become inappropriate for the workplace.



Ex. 1: Not Taking “No” for an Answer

Li Yan complains to her supervisor, and the supervisor (as required) reports her complaint to the person designated by her employer to receive complaints. Ralph is questioned about his behavior and he apologizes. He is instructed by the designated person to stop. Ralph stops for a while but then starts leaving little gifts for Li Yan on her desk with accompanying love notes. The love notes are not overtly offensive, but Ralph's behavior is starting to make Li Yan nervous, as she is afraid he may start stalking her.



Ex. 1: Not Taking “No” for an Answer

Question 3. Ralph's subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Li Yan for dates as instructed. He is just being nice to Li Yan because he likes her.

True or False?



**Combating
Sexual Harassment**

Ex. 1: Not Taking “No” for an Answer

Question 3. Ralph's subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Li Yan for dates as instructed. He is just being nice to Li Yan because he likes her.

FALSE: Li Yan should report Ralph's behavior. She was entitled to have effective assistance in getting Ralph to stop his inappropriate workplace behavior. Because Ralph has returned to pestering Li Yan after being told to stop, he could be subject to serious disciplinary action for his behavior.



Example 2



**Combating
Sexual Harassment**

Ex. 2: The Boss with a Bad Attitude

Sharon transfers to a new location with her employer. Her new supervisor, Paul, is friendly and helps her get familiar with her new job duties. After a few days, when no one else is around, Paul comes over to Sharon's work area to chat. Paul talks about what he did last night, which was to go to a strip club. Sharon is shocked that Paul would bring up such a topic in the workplace and says nothing in response. Paul continues talking and says that all the women in the office are so unattractive that he needs to get out and “see some hot chicks” once in a while. He tells Sharon he is glad she joined the staff because, unlike the others, she is “easy on the eyes.” Sharon feels very offended and demeaned that she and the other women in her workplace are being evaluated on their looks by their supervisor.

Ex. 2: The Boss with a Bad Attitude

Question 1. Because Paul did not tell Sharon that she is unattractive, he has not harassed her.

True or False?



**Combating
Sexual Harassment**

Ex. 2: The Boss with a Bad Attitude

Question 1. Because Paul did not tell Sharon that she is unattractive, he has not harassed her.

FALSE: Paul has made sexually explicit statements to Sharon, which are derogatory and demeaning to Sharon and her female coworkers. It does not matter that Paul supposedly paid Sharon a “compliment.” The discussion is still highly offensive to Sharon, as it would be to most reasonable persons in her situation.



Ex. 2: The Boss with a Bad Attitude

Question 2. By bringing up his visit to the strip club, Paul is engaging in inappropriate workplace behavior.

True or False?



**Combating
Sexual Harassment**

Ex. 2: The Boss with a Bad Attitude

Question 2. By bringing up his visit to the strip club, Paul is engaging in inappropriate workplace behavior.

TRUE: Simply bringing up the visit to the strip club is inappropriate in the workplace, especially by a supervisor, and it would be appropriate for Sharon to report this conduct. A one-time comment about going to a strip club is behavior that Paul would be told to stop, even though it probably would not rise to the level of unlawful harassment, unless it was repeated on multiple occasions.



Ex. 2: The Boss with a Bad Attitude

Question 3. Paul should be instructed to stop making these types of comments, but this is not a serious matter.

True or False?



**Combating
Sexual Harassment**

Ex. 2: The Boss with a Bad Attitude

Question 3. Paul should be instructed to stop making these types of comments, but this is not a serious matter.

FALSE: Paul's comments about the female employees are a serious matter and show his contempt for women in the workplace. Paul is required to model appropriate behavior, and must not exhibit contempt for employees on the basis of sex or any protected characteristic. Sharon should not have to continue to work for someone she knows harbors such contempt for women, nor should the other employees have to work for such a supervisor. Management should be aware of this, even if the other employees are not, and Paul should be disciplined and, most likely, removed from his current position.

Example 3



**Combating
Sexual Harassment**

Ex. 3: No Job for a Woman?

Carla works as a licensed heavy equipment operator. Some of her male coworkers think it is fun to tease her. Carla often hears comments like “Watch out, here she comes—that crazy woman driver!” in a joking manner. Also, someone keeps putting a handmade sign on the only port-a-potty at the worksite that says, “Men Only.”



Ex. 3: No Job for a Woman?

Question 1. Women in traditionally male jobs should expect teasing and should not take the joking comments too seriously.

True or False?



**Combating
Sexual Harassment**

Ex. 3: No Job for a Woman?

Question 1. Women in traditionally male jobs should expect teasing and should not take the joking comments too seriously.

FALSE: Whether Carla is being harassed depends in part on Carla's opinion of the situation; that is, whether she finds the behavior offensive. However, if at any point Carla does feel harassed, she is entitled to complain of the behavior and have it stopped, regardless of whether and for how long she has endured the behavior without complaint. Carla can always say when enough is enough.



Ex. 3: No Job for a Woman?

Question 2. Carla cannot complain, because the site supervisor sometimes joins in with the joking behavior, so she has nowhere to go.

True or False?



**Combating
Sexual Harassment**

Ex. 3: No Job for a Woman?

Question 2. Carla cannot complain, because the site supervisor sometimes joins in with the joking behavior, so she has nowhere to go.

FALSE: Carla can still complain to the supervisor who is then on notice that the behavior bothers Carla and must be stopped. The supervisor's failure to take Carla's complaint seriously, constitutes serious misconduct on his or her part. Carla can also complain directly to the person designated by her employer to receive complaints, either instead of going to the supervisor, or after doing so. The employer is responsible for assuring that all employees are aware of its anti-harassment policies and procedures.

Ex. 3: No Job for a Woman?

Some of Carla's other coworkers are strongly opposed to her presence in the traditionally all-male profession. These coworkers have sometimes said things to her like, “You're taking a job away from a man who deserves it,” “You should be home with your kids,” and “What kind of a mother are you?” Also, someone scratched the word “bitch” on Carla's toolbox.



Ex. 3: No Job for a Woman?

Question 3. These behaviors, while rude, are not sexual harassment because they are not sexual in nature.

True or False?



**Combating
Sexual Harassment**

Ex. 3: No Job for a Woman?

Question 3. These behaviors, while rude, are not sexual harassment because they are not sexual in nature.

FALSE: The behaviors are directed at her because she is a woman and appear to be intended to intimidate her and cause her to quit her job. While not sexual in nature, this harassment is because of her sex and will create a hostile work environment if it is sufficiently severe or frequent.



Ex. 3: No Job for a Woman?

Carla complains about the jokes and other behaviors, and an investigation is conducted. It cannot be determined who defaced Carla's toolbox. Her coworkers are told to stop their behavior or face disciplinary charges. The supervisor speaks with Carla and tells her to come to him immediately if she has any further problems. Carla then finds that someone has urinated in her toolbox.



Ex. 3: No Job for a Woman?

Question 4. There is nothing Carla can do because she can't prove who vandalized her toolbox.

True or False?



**Combating
Sexual Harassment**

Ex. 3: No Job for a Woman?

Question 4. There is nothing Carla can do because she can't prove who vandalized her toolbox.

FALSE: Carla should speak to her supervisor immediately, or contact any other person designated by her employer to receive complaints directly. Although the situation has become very difficult, it is the employer's responsibility to support Carla and seek a solution. An appropriate investigation must be promptly undertaken and appropriate remedial action must follow.



Example 4



**Combating
Sexual Harassment**

Ex. 4: Too Close for Comfort

Keisha has noticed that her new boss, Sarah, leans extremely close to her when they are going over the reports that she prepares. She touches her hand or shoulder frequently as they discuss work. Keisha tries to move away from her in these situations, but she doesn't seem to get the message.



Ex. 4: Too Close for Comfort

Question 1. Keisha should just ignore Sarah's behavior.

True or False?



**Combating
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Ex. 4: Too Close for Comfort

Question 1. Keisha should just ignore Sarah's behavior.

FALSE: If Keisha is uncomfortable with Sarah's behavior, she has options. If she feels comfortable doing so, she should tell Sarah to please back off because her closeness and touching make her uncomfortable. Another option is to complain directly to a person designated by her employer to receive complaints, who will speak with Sarah. Although this may not be sufficiently severe or pervasive to create an unlawful harassment situation (unless it was repeated by Sarah after she was told to stop), there is no reason for Keisha to be uncomfortable in the workplace. There is no valid reason for Sarah to engage in this behavior.

Ex. 4: Too Close for Comfort

Before Keisha gets around to complaining, Sarah brushes up against her back in the conference room before a meeting. She is now getting really annoyed but still puts off doing anything about it. Later Sarah “traps” Keisha in her office after they finish discussing work by standing between her and the door of the small office. Keisha doesn't know what to do, so she moves past her to get out. As she does so, Sarah runs her hand over Keisha's breast.



Ex. 4: Too Close for Comfort

Question 2. Sarah's brushing up against Keisha in the conference room could just be inadvertent and does not give Keisha any additional grounds to complain about Sarah.

True or False?



**Combating
Sexual Harassment**

Ex. 4: Too Close for Comfort

Question 2. Sarah's brushing up against Keisha in the conference room could just be inadvertent and does not give Keisha any additional grounds to complain about Sarah.

FALSE: Sarah is now engaging in a pattern of escalating behavior. Given the pattern of her "too close" and "touching" behavior, it is unlikely that this was inadvertent. Even before being "trapped" in Sarah's office, Keisha should have reported all of the behaviors she had experienced that had made her uncomfortable.



Ex. 4: Too Close for Comfort

Question 3. Sarah touching Keisha's breast is inappropriate but is probably not unlawful harassment because it only happened once.

True or False?



**Combating
Sexual Harassment**

Ex. 4: Too Close for Comfort

Question 3. Sarah touching Keisha's breast is inappropriate but is probably not unlawful harassment because it only happened once.

FALSE: Any type of sexual touching is very serious and does not need to be repeated to constitute sexual harassment. Keisha should immediately report it without waiting for it to be repeated. Sarah can expect to receive formal discipline, including possible firing.



Example 5



**Combating
Sexual Harassment**

Ex. 5: A Distasteful Trade

Tatiana is hoping for a promotion to a position that she knows will become vacant soon. She knows that her boss, David, will be involved in deciding who will be promoted. She tells David that she will be applying for the position, and that she is very interested in receiving the promotion. David says, “We'll see. There will be a lot of others interested in the position.”



Ex. 5: A Distasteful Trade

A week later, Tatiana and David travel together on state business, including an overnight hotel stay. Over dinner, David tells Tatiana that he hopes he will be able to promote her, because he has always really enjoyed working with her. He tells her that some other candidates “look better on paper” but that she is the one he wants. He tells her that he can “pull some strings” to get her into the job and Tatiana thanks David. Later David suggests that they go to his hotel room for “drinks and some relaxation.” Tatiana declines his “offer.”



Ex. 5: A Distasteful Trade

Question 1. David's behavior could be harassment of Tatiana.

True or False?



**Combating
Sexual Harassment**

Ex. 5: A Distasteful Trade

Question 1. David's behavior could be harassment of Tatiana.

TRUE: David's behavior as Tatiana's boss is inappropriate, and Tatiana should feel free to report the behavior if it made her uncomfortable. It is irrelevant that this behavior occurs away from the workplace. Their relationship is that of supervisor and supervisee, and all their interactions will tend to impact the workplace.



Ex. 5: A Distasteful Trade

After they return from the trip, Tatiana asks David if he knows when the job will be posted so that she can apply. He says that he is not sure, but there is still time for her to “make it worth his while” to pull strings for her. He then asks, “How about going out to dinner this Friday and then coming over to my place?”



Ex. 5: A Distasteful Trade

Question 2. David engaged in sexual harassment.

True or False?



**Combating
Sexual Harassment**

Ex. 5: A Distasteful Trade

Question 2. David engaged in sexual harassment.

TRUE: It is now evident that David has offered to help Tatiana with her promotion in exchange for sexual favors.



**Combating
Sexual Harassment**

Ex. 5: A Distasteful Trade

Tatiana, who really wants the position, decides to go out with David. Almost every Friday they go out at David's insistence and engage in sexual activity. Tatiana does not want to be in a relationship with David and is only going out with him because she believes that he will otherwise block her promotion.



Ex. 5: A Distasteful Trade

Question 3. Tatiana cannot complain of harassment because she voluntarily engaged in sexual activity with David.

True or False?



**Combating
Sexual Harassment**

Ex. 5: A Distasteful Trade

Question 3. Tatiana cannot complain of harassment because she voluntarily engaged in sexual activity with David.

FALSE: Because the sexual activity is unwelcome to Tatiana, she is a target of sexual harassment. Equally, if she had refused David's advances, she would still be a target of sexual harassment. The offer to Tatiana to trade job benefits for sexual favors by someone with authority over her in the workplace is quid pro quo sexual harassment, and the employer is exposed to liability because of its supervisor's actions.

Ex. 5: A Distasteful Trade

Tatiana receives the promotion.



**Combating
Sexual Harassment**

Ex. 5: A Distasteful Trade

Question 4. Tatiana cannot complain of harassment because she got the job, so there is no discrimination against her.

True or False?



**Combating
Sexual Harassment**

Ex. 5: A Distasteful Trade

Question 4. Tatiana cannot complain of harassment because she got the job, so there is no discrimination against her.

FALSE: Tatiana can be the recipient of sexual harassment whether or not she receives the benefit that was used as an inducement.



Ex. 5: A Distasteful Trade

Tatiana breaks off the sexual activities with David. He then gives her a bad evaluation, and she is removed from her new position at the end of the probationary period and returns to her old job.



Ex. 5: A Distasteful Trade

Question 5. It is now “too late” for Tatiana to complain. Losing a place of favor due to the break up of the voluntary relationship does not create a claim for sexual harassment.

True or False?



**Combating
Sexual Harassment**

Ex. 5: A Distasteful Trade

Question 5. It is now “too late” for Tatiana to complain. Losing a place of favor due to the break up of the voluntary relationship does not create a claim for sexual harassment.

FALSE: It is true that the breakup of a relationship, if truly consensual and welcomed at the time, usually does not create a claim for sexual harassment. However, the “relationship” in this case was never welcomed by Tatiana. David's behavior has at all times been inappropriate and a serious violation of the employer's policy. As the person who abused the power and authority of a management position, David has engaged in sexual harassment.

Example 6



**Combating
Sexual Harassment**

Ex. 6: An Issue about Appearances

Leonard works as a clerk typist for a large employer. He likes to wear jewelry, and his attire frequently includes earrings and necklaces. His boss, Margaret, thinks it's "weird" that, as a man, Leonard wears jewelry and wants to be a clerical worker. She frequently makes sarcastic comments to him about his appearance and refers to him "jokingly" as her office boy. Leonard, who hopes to develop his career in the area of customer relations, applies for an open promotional position that would involve working in a "front desk" area, where he would interact with the public. Margaret tells Leonard that if he wants that job, he had better look "more normal" or else wait for a promotion to mailroom supervisor.

Ex. 6: An Issue about Appearances

Question 1. Leonard's boss is correct to tell him wearing jewelry is inappropriate for customer service positions.

True or False?



**Combating
Sexual Harassment**

Ex. 6: An Issue about Appearances

Question 1. Leonard's boss is correct to tell him wearing jewelry is inappropriate for customer service positions.

FALSE: Leonard's jewelry is only an issue because Margaret considers it unusual for a man to wear such jewelry. Therefore, her comments to Leonard constitute sex stereotyping.



Ex. 6: An Issue about Appearances

Margaret also is “suspicious” that Leonard is gay, which she says she “doesn't mind,” but she thinks Leonard is “secretive.” She starts asking him questions about his private life, such as “Are you married?” “Do you have a partner?” “Do you have kids?” Leonard tries to respond politely “No” to all her questions but is becoming annoyed. Margaret starts gossiping with Leonard's coworkers about his supposed sexual orientation.



Ex. 6: An Issue about Appearances

Question 2. Leonard is the recipient of harassment on the basis of sex and sexual orientation.

True or False?



**Combating
Sexual Harassment**

Ex. 6: An Issue about Appearances

Question 2. Leonard is the recipient of harassment on the basis of sex and sexual orientation.

TRUE: Leonard is harassed on the basis of sex because he is being harassed for failure to adhere to Margaret's sex stereotypes.

Leonard is also harassed on the basis of his perceived sexual orientation. It does not matter whether or not Leonard is a gay man in order for him to have a claim for sexual orientation harassment.



Ex. 6: An Issue about Appearances

Leonard decides that he is not going to get a fair chance at the promotion under these circumstances, and he complains to the employer's designee about Margaret's behavior. The designee does an investigation and tells Margaret that Leonard's jewelry is not in violation of any workplace rule, that she is to consider him for the position without regard for his gender, and that she must stop making harassing comments, asking Leonard intrusive questions, and gossiping about his personal life. Margaret stops her comments, questions, and gossiping, but she then recommends a woman be promoted to the open position. The woman promoted has much less experience than Leonard and lacks his two year degree in customer relations from a community college.

Ex. 6: An Issue about Appearances

Question 3. Leonard has likely been the target of discrimination on the basis of sex, sexual orientation and/or retaliation.

True or False?



**Combating
Sexual Harassment**

Ex. 6: An Issue about Appearances

Question 3. Leonard has likely been the target of discrimination on the basis of sex, sexual orientation and/or retaliation.

TRUE: We don't know Margaret's reason for not recommending Leonard for the promotion, but it is not looking good for Margaret. It appears that she is either biased against Leonard for the same reasons she harassed him, or she is retaliating because he complained, or both.

