



Prevention of Sexual Harassment (Posh) Training

IAW SECNAVINST 5300.26D, Prevention of Sexual Harassment Training will be completed by all USCS and military personnel within 90 days of accession into the Department of Navy and annually thereafter.



Training Objectives

At the end of this online training, participants should have a better understanding of:

- Policies on Preventing Sexual Harassment
- What constitutes Sexual Harassment
- Navy's Three-Tiered Zones of Behavior
- Responsibilities in Preventing Sexual Harassment
- Procedures for Reporting Harassment
- Steps to Prevent Reprisal Against Employees who Raise Sexual Harassment Concerns
- Alternative Dispute Resolution



“I rely on you to ensure each member of this team is treated with dignity and honor, regardless of background. I insist on fair treatment for yourselves and others. Barriers to performance in the form of unequal treatment or discrimination, real or perceived, restrict our ability to operate at our maximum capacity.”

Excerpt from RADM Wren's 1 May 09 EO/EEO Mission and Diversity Policy Statement and still in effect until RADM Cloyd signs new Policy Statement.



So Let's Get Started Shall We...



Anyone who works or enters a Navy workplace is protected from workplace harassment.

This includes U.S. civilians, employees covered by the Master Labor Contract and Indirect Hire Agreement, military members, and contractors. All individuals have a right to a workplace that is free of sexual and non-sexual harassment. Additionally, everyone has a responsibility to ensure that their behavior complies with acceptable behavior when in the workplace or other work-related environments.

Later in the training we will discuss the different options available to employees based on their employment status.



FACT OR FICTION

Sexual Harassment is Behavior that is Sexual in Nature and can be either welcome or unwelcome behavior



FICTION!

By the very definition, sexual harassment is **unwelcome** behavior that is sexual in nature. If the behavior is welcomed it is not considered sexual harassment.

However, just because the behavior in question (sexual in nature) is welcomed by the participants, it is still inappropriate for the work center and should be avoided.

Let's take a look at the whole definition...



Sexual Harassment is...

A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct sexual in nature, which is in some way connected to the job or the work environment.



There are two categories of Sexual Harassment



“Tangible Employment Action” Sexual Harassment (also known as Quid Pro Quo Sexual Harassment)

Classic type of sexual harassment in which the harasser threatens to withhold or promises to give employment benefits in exchange for sexual favors.



“Hostile Environment” Sexual Harassment

- Conduct is so **severe or pervasive** in the workplace that it creates an intimidating, hostile, or offensive work environment for the target of the conduct.
- The conduct does not have to involve actual monetary loss, or loss of job or benefits by the victim.
- Whether this conduct creates a hostile environment must be viewed through the perspective of a **“reasonable person.”**



Reasonable Person Standard

This standard is an objective test used to determine if behavior meets the legal assessment for sexual harassment. The test requires a hypothetical exposure of a reasonable person to the same set of facts and circumstances of which the complainant was subjected to. If the behavior is offensive, then the test is met. The reasonable person standard considers the complainant's perspective and does not rely upon stereotyped notions of acceptable behavior within that particular work environment.

An Example as Provided by the Equal Employment Opportunity Commission (EEOC): The charging party (complainant) alleges that his coworker made repeated unwelcome sexual advances toward him. An investigation discloses that the alleged "advances" consisted of invitations to join a group of employees who regularly socialized at dinner after work. The coworker's invitations, viewed in that context and from the perspective of a reasonable person, would not have created a hostile environment and therefore did not constitute sexual harassment.



**Now that you have a clearer understanding,
let's take a look at some examples of both
Tangible Employment Action and Hostile
Work Environment Sexual Harassment.**

Please note...these lists are not all inclusive

Sexual Harassment Types and Examples



Tangible Employment Actions include:

- Hiring
- Firing
- Promote
- Failure to Promote
- Demotion
- Undesirable Reassignment
- A decision causing a significant change in Benefits
- Compensation Decision
- Work Assignment

Hostile Environment Behavior includes:

- Comments about body parts, sex- life, off-color jokes or teasing,
- Excessive attention in the form of letters, contacts, emails, gifts, unwanted pressure for dates
- Touching, pinching, brushing, shoulder rubs,
- Suggestive or explicit pictures, leering, starring, inappropriate emails, cat calls, whistles, licking of lips



FACT OR FICTION

Sexual Harassment Can Only Occur in the Workplace.



FICTION!

Regardless of where the behavior that is considered sexual in nature occurs, if it impacts the workplace then it could constitute sexual harassment.

You have to be mindful of your actions not just at work but also at command functions such as holiday parties, picnics or karaoke after work.

“What goes on in Vegas stays in Vegas” is a commercial slogan but will not excuse behavior that is sexual in nature and impacts the workplace.



Sexual Harassment can be...

**Verbal, Non-Verbal and/or Physical
and can occur**

Male to Female

Male to Male

Female to Male

Female to Female

Supervisor to Subordinate

Employee to Employee

Contractor to Employee

Customer to Employee



FACT OR FICTION

The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.



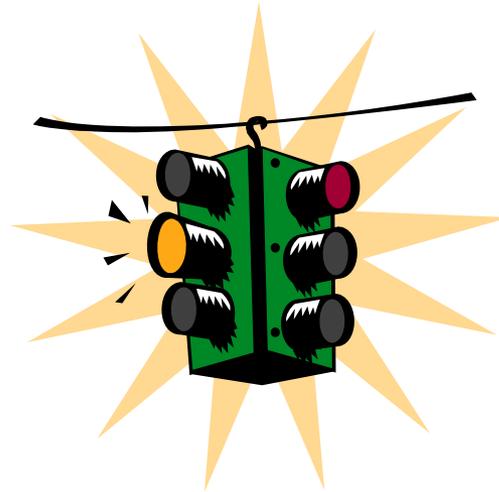
FACT!

Even if the behavior is not directed toward someone in particular, if the person sees or hears something sexual in nature, it could constitute sexual harassment.

True case: the complainant was subjected to sexual harassment when two coworkers continually engaged in loud conversations with lewd and sexist remarks near her work area. The conduct continued over the complainant's protests. *Joiner v. Social Security Administration*, EEOC No. 07A50049, 106 LRP 6967 (EEOC OFO 2006).



Behaviors...



Let's look at a range of behaviors as shown in SECNAVINST 5300.26D using the famed traffic light approach.



The Three Color Zone Approach

Green Zone behaviors are acceptable and are not sexual harassment: GO

Yellow Zone behaviors may be sexual harassment: CAUTION

Red Zone behaviors are sexual harassment: STOP



"Green Zone Behaviors"

- **PERFORMANCE COUNSELING**
- **COUNSELING ON MILITARY APPEARANCE**
- **SOCIAL INTERACTION SHOWING**
- **CONCERN, ENCOURAGEMENT A POLITE**
- **COMPLIMENT**
- **FRIENDLY CONVERSATION**



"Yellow Zone Behaviors"

- **VIOLATING PERSONAL "SPACE SPACE"**
- **WHISTLING**
- **QUESTIONS ABOUT PERSONAL LIFE**
- **LEWD OR SEXUALLY SUGGESTIVE COMMENTS**
- **SUGGESTIVE POSTERS OR CALENDARS**
- **OFF-COLOR JOKES, FOUL LANGUAGE**



FACT OR FICTION

**A Victim must initially inform the Offender
that the Behavior is Offensive and/or
Unwelcome.**



FACT!

Yellow-zone behavior might be considered a gray area for some but many people (the reasonable person) would see the behaviors as unacceptable and engaging in those behaviors constitutes sexual harassment. The offender can be disciplined.



"Red Zone Behaviors"

- **SEXUAL FAVORS IN RETURN FOR EMPLOYMENT REWARDS**
- **THREATS IMPACTING EMPLOYMENT DECISIONS IF THE SEXUAL FAVORS ARE NOT PROVIDED**
- **OBSCENE LETTERS, COMMENTS OR EMAILS**
- **USING STATUS OR POSITION TO REQUEST OR PRESSURE FOR DATES**
- **SEXUALLY EXPLICIT PICTURES (including but not limited to calendars, posters or email attachments)**



FACT OR FICTION

A Victim must initially inform the Offender that the Behavior is Offensive and/or Unwelcome.



FICTION!

Sometimes, people will tell the offender if the behavior is offensive. SECNAVINST 5600.26D encourages that practice, however it is not mandatory. You cannot assume that your behavior is appropriate simply because no one has told you to stop.

Behavior that is sexual in nature is fairly easy to determine. For example, if someone tells sexually explicit jokes, displays sexually suggestive photos or pictures, and talks about sex, that person's behavior is sexual in nature. Engaging in this type of behavior even when no one complains is still a violation of Navy's policy on sexual harassment.

If the behavior is sexual in nature, regardless of whether you're told it is offensive or not, it can constitute sexual harassment.



One Offensive Remark

The EEOC awarded the complainant \$1500 because of the emotional distress experienced after a supervisor made a single, but extremely offensive remark.

Schrahl v VA



Intent vs. Impact

It is important to understand that **intent** is not relevant in determining whether or not a behavior is sexual harassment. All that matters is the **impact** of the behavior on the work environment.

This fact is critically important. The statement “I didn’t mean anything by it” is **not** a valid defense of harassing behavior.



Responsibilities in Preventing Sexual Harassment



FACT OR FICTION

Commands can be liable for Sexual Harassment if they should have known about the Harassment.



FACT!

It is known as “vicarious liability.”

With respect to conduct between coworkers, an employer is responsible for sexual harassment if the agency's supervisory employees knew or should have known of the conduct but failed to take immediate and appropriate corrective action (29 CFR 1604.11(d)).

In addition, an agency can be subject to “vicarious liability” for unlawful harassment perpetrated by a supervisor with immediate or successively higher authority over an employee. If a supervisor's harassment results in a “tangible employment action” the agency will be liable for the harassment.



Vicarious Liability (concluded)

In *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257 (1998), and *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998), the Supreme Court made clear that employers are subject to vicarious liability for unlawful harassment by supervisors. The standard of liability set forth in these decisions is premised on two principles:

- (1) an employer is responsible for the acts of its supervisors, and
- (2) employers should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment. In order to accommodate these principles, the Court held that an employer is always liable for a supervisor's harassment if it culminates in a tangible employment action. However, if it does not, the employer may be able to avoid liability or limit damages by establishing an affirmative defense that includes two necessary elements:
 - (a) the employer exercised reasonable care to prevent and correct promptly any harassing behavior, and
 - (b) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.



Supervisor's Responsibilities In The Workplace

- Provide Guidance on Appropriate Behavior
- Ensure Subordinates Receive a Copy of the Command's EEO/POSH Policy Statements
- Monitor the Workplace
- Ensure Subordinates Received Annual POSH training
- Lead by Example
- Treat Both Victim and Alleged Harasser Respectfully and Professionally
- Take all Allegations Seriously...Gather Facts
- Consult with the Employee Relations and/or EEO/EO Staff
- Take Appropriate Corrective Action
- Refrain from Taking Reprisal Against Someone for Alleging Sexual Harassment/Discrimination



Responsibilities In The Workplace (Applies to All Personnel)

- Comply with Navy and Command's Policy on Prevention of Sexual Harassment
- SECNAVINST 5300.2D encourages victims to tell the offender that the behavior is unwelcome and offensive
- Report behavior that appears offensive or unwelcome to a Management Official if unresolved
- Refrain from participating in or ignoring inappropriate behavior
- Treat others in the workplace with respect
- Refrain from telling jokes that single out a particular sex, group, etc.
- Refrain from retaliating against someone who is alleging harassment
- Refrain from falsely accusing someone of sexual harassment



Preventing Sexual Harassment

- **Know your rights and assert them**
- **Maintain a professional manner in:**
 - your dress/appearance while at work (and dress appropriately at command functions)
 - your actions
 - your comments
- **Treat others fairly, with respect and dignity**
- **Refuse to participate in off-color jokes, comments and/or “horseplay”, share inappropriate e-mails**
- **Caution those exhibiting “borderline” sexual harassment behavior**
- **Report acts or allegations to management official/EEO staff**





When Reflecting Upon Your Own Behavior, Remember the “What if They Were Here” principle...

- Would you want your behavior to be witnessed by your own family member?
- Would your spouse or significant other react in a positive manner to your behavior?
- Would you want someone to make that type of comment to your spouse, significant other or your child?



If the answer to any of these questions are no, it is probably best if you not engage in the behavior!



Reporting Sexual Harassment



FACT OR FICTION

USCS Civilian Employees Can Report Sexual Harassment to the Head of their Activity to initiate an investigation and also Utilize the Civilian Complaint Process to File an Allegation of Sexual Harassment.



FACT!

The employee has three options:

- 1. Request the Commanding Officer (CO) appoint an individual to conduct an inquiry;**
- 2. Utilize the EEO Civilian Complaint process by contacting an EEO Officials; or**
- 3. Use both processes.**

If an employee elects option “2”, the Commanding Officer may still choose to appoint someone to conduct an inquiry into the allegations.





Fear of Reprisal

The EEO Statutes prohibit any adverse treatment that is based on retaliatory motive, and is reasonably **likely to deter** the complainant or others from engaging in protected activity.

If you feel that an adverse action has been taken against you as a result of filing a sexual harassment claim, you have the right to raise the claim in an EEO complaint and/or discuss with the supervisor of the individual you feel is harassing you.



The next 3 slides will provide information on who you should contact to report sexual harassment based on your employment status...



(appropriated and non-appropriated fund)

- Contact the EEO Office within **45 calendar days** of the perceived sexual harassment and/or alleged discriminatory action:

CNRJ EEO Office:

DSN:315-243-8163/9579/7092

COMM:011-81-46-816-8163/9579/7092

FAX:011-81-46-816-9962/315-243-9962

Or

- **File a Sexual Harassment claim with the Head of the Activity or his/her designee.**



Military Personnel

- **Contact your Agency Equal Opportunity Advisor**

Or

- **The CNFJ Regional Regional Equal Opportunity Officer:315-243-3094**



Master Labor Contract (MLC) and Indirect Hire Agreement Employees (IHA)

**Contact the CNRJ Employee Relations
Division to obtain procedural guidance
regarding Administrative Grievance under
the Master Labor Contract (MLC) or Indirect
Hire Agreement (IHA) at:**

243-8186

243-5366



Resolving Allegations of Sexual Harassment



Sexual Harassment....

- Jeopardizes **mission** requirements
- Impacts **readiness** because of unresolved workplace disputes
- Degenerates **morale** and workplace esprit de corps to an atmosphere of suspicion and hostility

Every one must do their part to ensure the workplace is free of inappropriate behavior



- **There is another option that does not replace any other means or methods for resolution...**

Using ADR To Resolve Sexual Harassment Claims



Alternate Dispute Resolution (ADR)

ADR is any procedure that is used in lieu of a formal administrative process or litigation to resolve issues in controversy, including, but not limited to, partnering, conciliation, facilitation, mediation, using ombudsmen, fact finding, mini-trials, neutral evaluation, and arbitration or any combination thereof.



Alternative Dispute Resolution

The DON's policy is to use ADR to resolve conflict "to the maximum extent practicable"
(SECNAVINST 58800.13A)



FACT OR FICTION

Employees who elect to use ADR can continue to use the EEO complaint process if resolution is not reached during the ADR session.



FACT!

ADR does not replace the informal or formal EEO complaint, or MLC/IHA grievance process or procedures. Instead it is a tool that can be used as a means to resolve the issue between the parties directly. If resolution is not achieved, neither party loses their standing in the complaint process.



The Four Guiding Principles of ADR

Neutral – A third-party member has no stake in the outcome and no loyalty to either the initiator or respondent.

Voluntary – SECNAVINST clearly states that it is a voluntary process and can end at any time during the process.

Confidential – The results of process are noted as either successful or not successful and the requirements of the agreement, if one is reached, is only provided to those with a need or requirement to know.

Enforceable – Should settlement/resolution be reduced to writing, once signed it is an enforceable agreement.



Benefits of ADR

- **Joint Resolutions**
- **Reduced Cost**
- **Less Adversarial**
- **Focuses on Meeting Interests**
- **Parties get to Determine Outcome**
- **Builds trust and understanding**
- **Improves Communication**



Does ADR Work?

Analysis of Mediation Data from FY2010

In FY10 the DON had a **64.25% ADR resolution rate** of 786 workplace cases that used various forms of ADR.

87.9 % of participants in mediation stated that the mediator helped the parties work through issues and move toward closure!

For more information on the ADR Program, contact the ADR Program Manager at 243-8163 or visit <http://www.adr.navy.mil/>



Overview and Recap

- **Preventing Sexual Harassment is Everyone Everyone's Responsibility**
- **Sexual Harassment Impacts Morale, Productivity, and Mission Readiness**
- **Don't be Afraid to Speak up and Report Inappropriate Behavior**
- **Supervisors and Managers: *Always Take prompt and Appropriate Action when Allegations are Raised and when you Observe Inappropriate Behavior***



- **Remember, all personnel entering a Navy workforce, regardless of their status of service or citizenship, has the right to be treated with infinite dignity and respect.**
- **Individuals who fail to comply violate Navy and Federal guidelines, the Master Labor Contract (MLC), and the Indirect Hire Agreement (IHA), and may be subject to disciplinary action.**



TEST YOUR KNOWLEDGE 1 OF 3

1. The instruction covering Prevention of Sexual Harassment is:
 - a. SECNAVINST 5300.26D
 - b. SECNAV INSTRUCTION 5354.2
 - c. Civil Rights Act of 1964
 - d. The Golden Rule
2. Conduct between two consenting adults can be considered sexual harassment if it causes another individual to feel uncomfortable, threatened, or intimidated.
 - a. True
 - b. False
3. Sexual harassment can only occur male to female or female to male.
 - a. True
 - b. False
4. Which is NOT an example of Green Zone Behavior?
 - a. Performance Counseling
 - b. Social Interaction
 - c. Showing Concern or Encouragement
 - d. Violating personal space

TEST YOUR KNOWLEDGE 2 OF 3



5. Employees can be disciplined for Yellow-Zone behavior.
 - a. True
 - b. False

6. The aggrieved person is required to inform the alleged offender the action was sexually harassing and/or offensive prior to filing a complaint with the supervisor or EEO.
 - a. True
 - b. False

7. The term used to describe Commands liability for Sexual Harassment if they should have known about the Harassment is:
 - a. Quid Pro Quo
 - b. Vicarious Liability
 - c. Serious Consideration
 - d. Intent versus Impact



TEST YOUR KNOWLEDGE 3 OF 3

8. With regards to preventing sexual harassment, whose responsibility is it to refrain from retaliating against someone who is alleging harassment?
- a. Commander
 - b. Executive Officer
 - c. Supervisor
 - d. Everyone
9. If you feel you have been discriminated against or sexually harassed you have how many days to contact the Equal Employment Opportunity Office to initiate an informal EEO complaint?
- a. 15 days
 - b. 30 days
 - c. 45 days
 - d. 60 days
10. Once an employee has elected Alternate Dispute Resolution (ADR) to attempt resolution of their complaint, they can not use the traditional complaint process.
- a. True
 - b. False



RESPONSES 1 OF 3

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If you have

Questions?

**Please contact the CNFJ EEO Office
at 243-8163/9579/7092**

