

## SAFETY BRIEF: HARASSMENT PREVENTION

### ***What is the difference between Bullying and Harassing? Aren't they the same thing?***

***Bullying*** – to unlawfully frighten, hurt or threaten another by written or oral words or conduct. This type of conduct is most frequently associated with schools. Alaska Statute 14.33.200 defines bullying behavior in schools to include physically harming the student or damages the student's property; has the effect of substantially interfering with the student's education; is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or has the effect of substantially disrupting the orderly operation of the school.

***Harassment*** – to unlawfully create an unpleasant or hostile situation for another, especially by uninvited and unwelcome verbal or physical conduct, when the act is undertaken with the intent of threatening, intimidating, harassing, or frightening another. This may include insults, taunts, or challenges in a manner likely to provoke an immediate violent response. This may include telephoning another and failing to terminate the connection with the intent to impair the ability of that person to place or receive calls, or make repeated telephone calls at extremely inconvenient hours; making an anonymous or obscene telephone call, and obscene electronic communication, or a telephone call or electronic communication that threatens physical injury or sexual contact; publishes or distributes electronic or printed photographs, pictures, or films that show the genitals, anus, or female breast of the other person or show that person engaged in a sexual act. (Alaska Statute 11.61.120)

They sound like each other, don't they? Both are harmful – and **ILLEGAL**.

Generally, depending on where the offensive conduct occurred, and if it was unwelcomed and unwanted, then your experience may be either bullying or harassment. To add even more to our discussion, did you know that the federal government also has specific ways that they define harassment, which outlines the difference between bullying versus harassing? Not surprisingly, federal, state, and city governments do not always align themselves when it comes to defining bullying or harassment.

Let's talk about a moment about federally protected classes. This includes:

- Race
- Color
- Sex (Including pregnancy, sexual orientation, and gender identity)
- National origin
- Age (40+)
- Disability
- Genetic information



It is illegal to harass another based on any of these protected classes.

***Sexual Harassment*** - In 2015, the U.S. Equal Employment Opportunity Commission (EEOC) reported that 45 percent of their harassment claims were sex-based. On average, the EEOC receives more than 7,200 sexual harassment allegations every year. EEOC claims received from Alaska between 2010 and 2020

averages about six (6) each year. By way of comparison, EEOC receives the most harassment cases from the state of Texas, leading the top ten states with most sexual harassment case per year during that same period. Texas averaged 795 cases per year between 2010 – 2020.

Sexual harassment is defined as unwanted sexual advances, verbal or physical harassment relating to sex, and requests for sexual services. There are two types of sexual harassment:

1. **Quid Pro Quo**- A form of sexual harassment where a manager or someone else with authority promises a work-related benefit in exchange for a romantic or sexual favor. An example of Quid Pro Quo is a manager offering a pay raise, promotion, easier or fewer job assignments, prevent job loss, job acceptance, or more favorable schedule in exchange for a date or other sexual favor.
2. **Hostile Work Environment**- A work environment is considered “hostile” when the unwelcomed speech or conduct is so severe and pervasive that it creates an intimidating or demeaning environment or situation that negatively affects a person’s job performance. This type of harassment can be perpetrated by anyone in the work environment, including a peer, supervisor, subordinate, vendor, customer, or contractor. Examples of conduct that may create a hostile work environment include:
  - a. Inappropriate touching,
  - b. Sexual jokes or comments,
  - c. Repeated requests for dates, and
  - d. A work environment where offensive pictures are displayed.

Hostile work environments situations are not as easy to recognize, given that individual comments or occurrences may not be severe, demeaning behavior may occur that is not based on sex, and there may be prolonged periods between offensive incidents.

Even if it does not rise to a level of what he may defined as harassment, your employer may want to put a stop to unproductive or disruptive behaviors. Sexual harassment rarely comes out of nowhere. Perpetrators start with injurious behavior such as inappropriate jokes and unfair behavior long before they escalate to harassment. Up-to-date policies and relevant sexual harassment training is an effective strategy that is in everyone’s best interest. We’ll talk more about policies in just a minute.

**How harassment affects people in the workplace:**

Harmful effects of harassment in the workplace include:

- Increased absenteeism
- Diminished presenteeism
- Increased staff turnover
- Managerial time spent

Beside the emotional distress for everyone involved, including witnesses, investigators, and victims, workplace sexual harassment has a significant financial cost attached to it.



### How harassment affects organizations:

Employer costs of harassment fall into four categories:

1. Replacing staff members that leave because of being harassed and the cost of training new employees.
2. Work effort being displaced as staff cope with harassment incidents (i.e., effort being directed away from work productivity and towards coping).
3. Costs associated with investigations of ill treatment, potential legal action, and loss of the organization's reputation.
4. Litigation is also a possibility if the employee claims to have emotional distress because of harassment.



As you might well imagine, employee turnover costs are enormous. Taking into consideration the cost of recruitment, screening, on-boarding, and training, some conservative estimates suggest that each departure costs about one-third of that worker's annual earnings. When you add attorney fees if there is litigation, and penalties imposed if the court finds the employer was at fault, the costs can be quite disastrous to the employer.

### Policies:

So, let's talk about policies. Employers need to take steps to combat workplace harassment.

1. Create a zero-tolerance harassment policy. This policy should be part of the wider commitment to a safe and healthful working environment and should have the full support of your governing body. It should be administered fairly and consistently.
2. Make sure that employees are educated about this policy and that they are aware of how to report an incident (even if they witnessed it) and who is the contact person.
3. Hold awareness campaigns for everyone on what constitutes harassment.
4. When witnessed or reported, the harassment behavior should be addressed IMMEDIATELY.
5. Complaints need to be taken seriously and investigated promptly and thoroughly, preferably by an experienced investigator familiar with harassment and hostile work environment investigations.

### Some last thoughts – What to do if you Experience or Witness Harassment Behavior:

- Don't laugh at questionable comments or jokes—don't accept the behavior as normal.
- Let the person know you don't appreciate the conduct .
- Note the event, date(s), time(s), any other witnesses (who, what, where, when, why, how).
- Report the conduct immediately to an authorized person.

If you are aware of harassment in the workplace and do not act, then you are accepting a share of the responsibility for any future abuses. This means that witnesses of harassment behavior should be encouraged to report any such incidences.



**Resources:**

Additional training is available through the **AMLJIA Online University** at [www.amljia.org](http://www.amljia.org). Log on to the Online University for courses related on this topic such as Harassment Prevention (HU54) or Harassment Prevention for Employees (HU94).

For more information about the Online University, contact the AMLJIA at 800-337-3682.

**Employment Law Hotline: (1-877-426-5542)**

The employment law hotline is a service AMLJIA offers to its members. Members can call Kim Dunn at Landye Bennett Blumstein LLP and receive a free 30-minute consultation per area of concern. If the issue requires more time, you will be advised to contact other counsel or get authorization from AMLJIA for more time. Call the employment law hotline the next time you are faced with:

- The need to lay off employees
- A discipline problem
- The need to restructure a department
- Whether or not to terminate an employee