

Sexual Harassment

Terms you Need to Know

Topics

- ◆ 1) Overview of what's considered sexual harassment under federal law,
- ◆ 2) Concept of discrimination in the workplace,
- ◆ 3) Prohibited employment policies/practices,
- ◆ 4) An individual's rights to file a discrimination claim with the U.S. Equal Employment Opportunity Commission,
- ◆ 5) Statistics of Sex-Based Charges. and
- ◆ 6) The most common terms used in discrimination claims/lawsuits with emphasis on sexual harassment.

What is Sexual Harassment

- ◆ Title VII of the Civil Rights Act of 1964
 - ◆ Sex Discrimination Harassment
 - ◆ sexual harassment
 - ◆ unwelcome sexual advances
 - ◆ requests for sexual favors (quid pro quo)
 - ◆ other verbal or physical harassment of a sexual nature

Types of sex-based harassment

- ◆ sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding)
- ◆ gender (including gender identity and gender expression)
- ◆ sexual orientation

Examples

- ◆ Unwanted sexual advances
- ◆ Offering employment benefits in exchange for sexual favors
- ◆ Making or threatening reprisals after a negative response to sexual advances
- ◆ Visual conduct: leering, making sexual gestures, displaying of suggestive objects or pictures, cartoons, or posters
- ◆ Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes
- ◆ Verbal sexual advances or propositions
- ◆ Verbal abuse of a sexual nature
- ◆ Suggestive or obscene letters, notes or invitations
- ◆ Physical conduct: touching, assault, impeding or blocking movements

Scenários

- ◆ Sandra is a cashier at a department store. She is approached by her supervisor, Nico. After a few minutes of small talk, Nico says, "I've been trying to get the courage to say this for 3 weeks... Would you like to go out to dinner with me?" This is totally unexpected for Sandra and, after an awkward silence, she says, "Sorry Nico, but I'm not interested in doing any dating right now." Nico looks embarrassed and says, "Well, I had to ask. I understand how you feel and I won't ask again." He then walks away. Nico is awkward around Sandra for the next month, but does not engage in any unwelcome conduct toward Sarah again.

Best answer

- ◆ Which statement is most accurate?
 - ◆ Sandra's claim for quid pro quo sexual harassment is strong because a supervisor should never ask a subordinate on a date.
 - ◆ Sandra's claim for quid pro quo sexual harassment is weak because there is no evidence that Nico was offering job benefits if Sandra said yes, or threatening punishment if Sandra said no.
 - ◆ Nico's awkwardness is a kind of harassment because it makes Sandra's daily experience at work kind of uncomfortable.

Discrimination in the workplace

- ◆ Includes any aspect of employment
 - ◆ hiring
 - ◆ firing
 - ◆ compensation
 - ◆ job assignments
 - ◆ promotions
 - ◆ layoff
 - ◆ training
 - ◆ fringe benefits
 - ◆ any other condition of employment

Individual's Right to File a Claim

- ◆ Person has been subjected to
 - ◆ sexual advances
 - ◆ request for sexual favors
 - ◆ comments or actions of a sexual nature
 - ◆ comments about your gender at work
- ◆ This behavior creates a hostile or offensive work environment

- ◆ Employer is required by law to investigate any complaints
- ◆ Employer cannot take any steps during the investigation that could negatively affect employment, such as
 - ◆ retaliation (not only limited to disciplinary write-ups or termination) in the form of:
 - ◆ removing employee from desirable projects
 - ◆ excluding employee from meetings, events or even social outings

- ◆ Filing a claim

- ◆ Employer must make a complaint at work with HR, even if there's no harassment or complaint policy in place
- ◆ If HR fails to take action to remedy the behavior/situation, then employee may move up the chain of command to managers and executives
- ◆ If complaining with employer didn't help, the next step is to resort to the federal agency that enforces Title VII--the Equal Employment Opportunity Commission (EEOC)--or the state's anti-discrimination agency

- ◆ Filing a federal lawsuit

- ◆ Employee can't skip any of the aforementioned steps

- ◆ If employee is pursuing a claim under federal law, they must first file a claim with the EEOC; a similar complaint procedure is required under state laws

- ◆ The EEOC or state agency will decide whether to prosecute the case on the employee's behalf; if not they issue a Notice of Right to Sue (EEOC Form 161)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

(CONCILIATION FAILURE)

To:

From:

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

Charge No.

EEOC Representative

Telephone No.

This Notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

- NOTICE OF SUIT RIGHTS -

source: https://www.eeoc.gov/eeoc/foia/forms/upload/form_161.pdf

Enclosure with EEOC
Form 161-A (11/09)

INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

source: https://www.eeoc.gov/eeoc/foia/forms/upload/form_161.pdf



Sex-Based Charges (Charges filed with EEOC) FY 1997 - FY 2017

The following chart represents the total number of charges filed and resolved under Title VII alleging sex-based discrimination.

The data are compiled by the Office of Research, Information and Planning from data compiled from EEOC's Charge Data System and, from FY 2004 forward, EEOC's Integrated Mission System.

This does not include charges filed with state or local Fair Employment Practices Agencies.

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Receipts	24,728	24,454	23,907	25,194	25,140	25,538	24,382	24,249	23,094	23,247	24,826	28,372	28,028	29,029	28,534	30,356	27,687	26,027	26,396	26,934	25,605
Resolutions	32,838	31,818	30,643	29,631	28,602	29,088	27,146	26,598	23,743	23,364	21,982	24,018	26,618	30,914	32,789	32,149	28,605	26,002	27,045	28,842	29,781
Resolutions By Type																					
Settlements	1,355	1,460	1,988	2,644	2,404	2,720	2,877	3,008	2,601	2,828	2,900	2,842	2,748	3,138	3,200	3,073	2,696	2,342	2,458	2,296	2,071
	4.1%	4.6%	6.5%	8.9%	8.4%	9.4%	10.6%	11.3%	11.0%	12.1%	13.2%	11.8%	10.3%	10.2%	9.8%	9.6%	9.4%	9.0%	9.1%	8.0%	7.0%
Withdrawals w/Benefits	1,205	1,148	1,269	1,332	1,321	1,304	1,329	1,347	1,418	1,460	1,443	1,646	1,701	1,774	1,780	1,768	1,708	1,672	1,773	1,881	1,787
	3.7%	3.6%	4.1%	4.5%	4.6%	4.5%	4.9%	5.1%	6.0%	6.2%	6.6%	6.9%	6.4%	5.7%	5.4%	5.5%	6.0%	6.4%	6.6%	6.5%	6.0%
Administrative Closures	11,127	10,056	8,747	6,897	6,391	5,819	5,484	5,052	4,188	4,409	4,304	4,563	5,701	5,727	5,728	5,433	5,124	4,805	5,015	5,223	5,025
	33.9%	31.6%	28.5%	23.3%	22.3%	20.0%	20.2%	19.0%	17.6%	18.9%	19.6%	19.0%	21.4%	18.5%	17.5%	16.9%	17.9%	18.5%	18.5%	18.1%	16.9%
No Reasonable Cause	17,832	17,493	16,689	15,980	15,654	16,752	15,506	15,481	13,853	13,191	12,036	13,670	15,139	18,709	20,660	20,454	17,936	16,280	16,790	18,505	19,938
	54.3%	55.0%	54.5%	53.9%	54.7%	57.6%	57.1%	58.2%	58.3%	56.5%	54.8%	56.9%	56.9%	60.5%	63.0%	63.6%	62.7%	62.6%	62.1%	64.2%	66.9%
Reasonable Cause	1,317	1,661	1,950	2,778	2,832	2,493	1,950	1,710	1,683	1,476	1,299	1,297	1,329	1,566	1,421	1,421	1,141	903	1,009	937	960
	4.0%	5.2%	6.4%	9.4%	9.9%	8.6%	7.2%	6.4%	7.1%	6.3%	5.9%	5.4%	5.0%	5.1%	4.3%	4.4%	4.0%	3.5%	3.7%	3.2%	3.2%
Successful Conciliations	332	454	535	707	739	688	520	491	454	437	439	382	407	475	510	500	459	351	373	403	341
	1.0%	1.4%	1.7%	2.4%	2.6%	2.4%	1.9%	1.8%	1.9%	1.9%	2.0%	1.6%	1.5%	1.5%	1.6%	1.6%	1.6%	1.3%	1.4%	1.4%	1.1%
Unsuccessful Conciliations	985	1,207	1,415	2,071	2,093	1,807	1,430	1,219	1,229	1,039	860	915	922	1,091	911	921	682	552	636	534	619
	3.0%	3.8%	4.6%	7.0%	7.3%	6.2%	5.3%	4.6%	5.2%	4.4%	3.9%	3.8%	3.5%	3.5%	2.8%	2.9%	2.4%	2.1%	2.4%	1.9%	2.1%
Merit Resolutions	3,877	4,269	5,207	6,754	6,557	6,517	6,156	6,065	5,702	5,764	5,642	5,785	5,778	6,478	6,401	6,262	5,545	4,917	5,240	5,114	4,818
	11.8%	13.4%	17.0%	22.8%	22.9%	22.4%	22.7%	22.8%	24.0%	24.7%	25.7%	24.1%	21.7%	21.0%	19.5%	19.5%	19.4%	18.9%	19.4%	17.7%	16.2%
Monetary Benefits (Millions)*	\$72.5	\$58.7	\$81.7	\$109.0	\$94.4	\$94.7	\$98.4	\$100.8	\$91.3	\$99.1	\$135.4	\$109.3	\$121.5	\$129.3	\$145.7	\$138.7	\$126.8	\$106.5	\$130.9	\$137.3	\$135.1

* Does not include monetary benefits obtained through litigation.

The total of individual percentages may not always sum to 100% due to rounding.

EEOC total workload includes charges carried over from previous fiscal years, new charge receipts and charges transferred to EEOC from Fair Employment Practice Agencies (FEPAs). Resolution of charges each year may therefore exceed receipts for that year because workload being resolved is drawn from a combination of pending, new receipts and FEPA transfer charges rather than from new charges only.

Source: https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm

Outcome-related Definitions

- ◆ Administrative closure:
 - ◆ charge was closed because the charging party was not located, didn't respond to communications sent by the EEOC, refused to accept full relief, or withdrew the charge without resolving the issue or receiving benefits
 - ◆ there's another litigation which renders the EEOC claim pointless
 - ◆ EEOC has no statutory jurisdiction

- ◆ No Reasonable Cause
- ◆ The EEOC determined no discrimination occurred based on their investigation; however the charging party has the right to bring a civil lawsuit

Download the glossary here:

www.exetranslations.com/sexualharassment

Sexual Harassment Cases of Note

- ◆ Ani Chopourian vs. Catholic Healthcare West (2012)
- ◆ PA in Mercy General Hospital (Sacramento) filed multiple complaints with HR Dept. over the span of her 2-yr employment
- ◆ Negotiated settlement of \$167 million

Causes of Action

- ◆ Surgeon would greet her saying "I'm horny" and then spank her on the rear
- ◆ "One harasser told me one day, 'You'll give in to me,'" "I'd look at him [and say] 'I'll never give in to you.' I'd look at my supervisor and say 'Do something.' They'd just laugh."
- ◆ Chopourian filed about 18 written complaints from patient safety to sexual harassment to the fact that meals and break rules were not being followed.
- ◆ Her last filed complaint was received by human resources July 31, 2008. She was terminated Aug. 7, 2008

Source: <https://abcnews.go.com/US/LegalCenter/168-million-awarded-woman-harassed-raunchy-cardiac-surgery/story?id=15835342>

21 14. Beginning in approximately October of 2006, various doctors made inappropriate and
22 derogatory gender-based comments. In particular, in surgery, Dr. Kaplon referred to Plaintiff as a
23 “stupid chick” and referenced actions she took by saying that it was “just like a girl.”

24 15. In approximately the summer of 2007, Dr. Zhu joined the team of surgeons and began
25 to subject Plaintiff to comments based on gender and national origin as well as sexual comments.

26 16. Other surgeons also made frequent comments about Plaintiff’s ethnicity. Plaintiff
27

10 18. On several occasions in late 2007, Dr. Zhu asked Plaintiff if she was “Al Qaeda.”
11 Plaintiff asked that such comments be stopped and reported them to management.

12 19. Plaintiff is informed and believes that no action was taken by Defendants to stop the
13 hostile environment created by the repeated remarks.

14 20. The surgeons also made derogatory and offensive about Plaintiff’s national origin,
15 i.e. Armenian.
16

17

First Amended Complaint

13 The FAC states claims under the following federal code sections: 42 USCS § 2000e (hostile
14 work environment based on gender and national origin); 42 USC 1981 (national origin harassment
15 and discrimination); and 42 USC § 2000e-3(a) and 42 USCS § 1981 (for retaliation). Decl. JCM
16 Ex. A, pgs. 7, 8, 9. The state claims alleged are: wrongful termination in violation of public
17 policy, intentional infliction of emotional distress (IIED, arising out of alleged gender or national
18 origin discrimination); California Labor Code §§226.7 and 512 (failure to provide adequate meals
19 and rest periods); interference with prospective economic advantage (termination allegedly
20 calculated to interfere with future economic benefit); and defamation (alleged false
21 communications regarding the reason for plaintiff's termination). Decl. JCM Ex. A, pgs. 10, 11,
22 12, 13, 14.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANI CHOPOURIAN,)
)
Plaintiff,) No. CIV S-09-2972 KJM KJN
)
v.)
)
CATHOLIC HEALTHCARE WEST,)
et al.,) VERDICT 1
)
Defendants.)
)
_____)

SEXUALLY HOSTILE WORK ENVIRONMENT

We the jury find as follows:

1. Was Ani Chopourian subjected to a sexually hostile work environment?

YES NO

If your answer is no, have the foreperson sign and date this form. If the answer is yes, proceed to question two.

2. If you answered yes to question one, what non-economic damages, if any, did Ani Chopourian sustain as a result of Catholic Healthcare West's unlawful conduct?

\$ 10,000,000.00

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANI CHOPOURIAN,)
)
Plaintiff,) No. CIV S-09-2972 KJM KJN
)
v.)
)
CATHOLIC HEALTHCARE WEST,)
et al.,) REVISED VERDICT 2
)
Defendants.)
)
_____)

RETALIATION

We the jury find as follows:

1. Did Catholic Healthcare West retaliate against Ani Chopourian for her involvement in protected activities by terminating her, interfering with her efforts to find and hold new employment and/or denying her privileges at one of defendant's other hospital facilities?

YES NO

If you answered no, have the foreperson sign and date this form. If you answered yes, proceed to question two.

2. If you answered yes to question one, would Catholic Healthcare West have made the same decisions even if plaintiff had not been involved in protected activities?

YES NO

3. If you answered yes to question one, what are Ani Chopourian's economic losses, if any, for termination of employment?

Past Lost Wages: \$ 549,360⁰⁰

Future Lost Wages: \$ 3,181,128⁰⁰

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANI CHOPOURIAN,)
Plaintiff,) No. CIV S-09-2972 KJM KJN
v.)
CATHOLIC HEALTHCARE WEST,)
et al.,) VERDICT 3
Defendants.)

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

We the jury find as follows:

1. Did Catholic Healthcare West terminate Ani Chopourian because of her complaints about hostile work environment, sexual discrimination, patient safety, employee safety and/or the failure to receive meal and rest breaks?

YES NO

If your answer is no to question one, have the foreperson sign and date this form. If your answer is yes, proceed to question two.

2. If you answered yes to question one, what economic damages, if any, did Ani Chopourian sustain as the result of Catholic Healthcare West's unlawful conduct?

Past Lost Wages: \$ 549,360⁰⁰

Future Lost Wages: \$ 3,181,128⁰⁰

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANI CHOPOURIAN,)
Plaintiff,) No. CIV S-09-2972 KJM KJN
v.)
CATHOLIC HEALTHCARE WEST,)
et al.,) VERDICT 4
Defendants.)

RETALIATION FOR REPORTS REGARDING PATIENT SAFETY

We the jury find as follows:

1. Did Catholic Healthcare West terminate Ani Chopourian because of her complaints about patient safety?

YES NO

If your answer to question one is no, have the foreperson sign and date this form. If the answer is yes, proceed to question two.

2. If you answered yes to question one, what economic damages, if any, did Ani Chopourian sustain as the result of Catholic Healthcare West's unlawful conduct?

Past Lost Wages: \$ 549,360⁰⁰

Future Lost Wages: \$ 3,181,128⁰⁰

3. If you answered yes to question one, what non-economic damages, if any, did Ani Chopourian sustain as the result of Catholic Healthcare West's unlawful conduct?

\$ 2,000,000⁰⁰

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANI CHOPOURIAN,)
)
 Plaintiff,) No. CIV S-09-2972 KJM KJN
)
 v.)
)
 CATHOLIC HEALTHCARE WEST,)
 et al.,) VERDICT 5
)
 Defendants.)
)
)
)
)
)

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

We the jury find as follows:

1. Did Catholic Healthcare West interfere with Ani Chopourian's economic relationship with RAS?

YES NO

If your answer to question one is no, have your foreperson sign and date this form. If your answer is yes, proceed to question two.

2. What economic damages, if any, did Ani Chopourian sustain as a result of Catholic Healthcare West's unlawful conduct?

Past Lost Wages: \$ 549,360⁰⁰

Future Lost Wages: \$ 3,181,128⁰⁰

3. If you answered yes to question one, what non-economic damages, if any, did Ani Chopourian sustain as a result of Catholic Healthcare West's unlawful conduct?

\$ 8,000,000⁰⁰

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANI CHOPOURIAN,)
)
 Plaintiff,) No. CIV S-09-2972 KJM KJN
)
 v.)
)
 CATHOLIC HEALTHCARE WEST,)
 et al.,) VERDICT 6
)
 Defendants.)
)
)
)
)
)

DEFAMATION

We the jury find as follows:

1. Did Catholic Healthcare West defame Ani Chopourian by making false negative statements about her work performance and professional ability to other employees, prospective employers, and/or a medical privileging committee?

YES NO

If you answered no to question one, have your foreperson sign and date this form. If you answered yes, proceed to question two.

2. What amount of damages did Ani Chopourian sustain as a result of Catholic Healthcare West's unlawful conduct?

\$ 6,000,000⁰⁰

3. If you answered yes to question one, do you find by clear and convincing evidence that Ani Chopourian is entitled to punitive damages?

YES NO

References

- U.S. Equal Employment Opportunity Commission. Types of Discrimination. Sexual Harassment. Accessed Sept 2018. [https://www.eeoc.gov/laws/types/sexual harassment.cfm](https://www.eeoc.gov/laws/types/sexual%20harassment.cfm)
- Chopourian v. Catholic Healthcare West, Verdict. Government Publishing Office. Annie https://www.govinfo.gov/content/pkg/USCOURTS-caed-2_09-cv-02972/pdf/USCOURTS-caed-2_09-cv-02972-18.pdf

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