

Oregon Law Commission
Oregon State Capitol Workplace Harassment Work Group
Best Practices Subgroup
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What is a Protected Class?

A protected class is one that is protected by applicable law. Protected classes include:

- Sex
- Race
- National Origin
- Disability
- Age
- Religion
- Marital status
- Sexual orientation
- Gender identity or expression
- Engaging in whistleblowing activity
- Opposing an employer's actions when the employee reasonably believes them to be unlawful
- Taking leaves protected by law (such as OFLA, FMLA, disability-related leave)
- Any other classes protected by applicable law (provide link to list of applicable statutes)

What Is Harassment? Harassment is verbal or physical conduct or visual displays that denigrate or show hostility or aversion toward a person or group because of a protected class. This may include behavior such as:

- name-calling,
- slurs,
- stereotyping,
- threatening, intimidating, or hostile acts that relate to a protected class,
- demeaning or humiliating a person because of a protected class, and
- written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of a protected class.

Behavior creates a hostile work environment when (a) it is unwelcome and (b) it is so severe or pervasive that it either affects a person's ability to function effectively in the workplace or denies someone the benefits of the workplace. "Severe" means that one incident could be significant enough to create a hostile environment; "pervasive" means that a series of less significant incidents, taken together, could create also create a hostile environment.

The legislature prohibits all harassing behavior, even if it does not rise to the level of creating a hostile environment.

Examples of harassing behavior:

- Telling a non-white employee to "go back where you came from."
- Imitating a person's physical disability or referring to an employee with a mental health disorder as "unhinged," a "head case," or someone likely to "go postal."
- Assuming that a black employee is an expert on hip-hop music or basketball.
- Questioning a gay employee about the mechanics of sex between him and his partner or implying that he must have a sexually transmitted disease.

- Suggesting an older worker should retire, is unable to adapt to new technology, or is “behind the times”; complaining that the workplace needs fewer “gray hairs” or more “young blood.”
- Intentionally referring to a transgender employee by the wrong pronoun or using the employee’s former name associated with the wrong gender (“deadnaming”).
- Use of ethnic slurs, such as calling someone from the Middle East a "Camel Jockey"; calling someone from Mexico a "Wet Back"; or calling an African-American the "N-word" or "boy".

What Is Sexual Harassment? Sexual harassment is harassment based on sex. Sexual harassment occurs when it meets the criteria for harassment described above.

In addition, it may also include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when submission to the conduct is made an explicit or implicit term or condition of employment or submission to or rejection of the conduct is used as a basis for employment decisions.

The legislature prohibits all sexually harassing behavior, even if it does not rise to the level of creating a hostile environment.

Sexual harassment may include but is not limited to:

- unwanted sexual advances, flirtations, or propositions;
- demands for sexual favors in exchange for favorable treatment or continued employment;
- sexual jokes;
- verbal abuse of a sexual nature;
- verbal commentary about an individual’s body, sexual prowess, or sexual deficiency;
- leering, whistling, touching, or physical assault;
- sexually suggestive, insulting, or obscene comments or gestures;
- display in the workplace of sexually suggestive objects or pictures;
- sending or forwarding e-mail of an offensive or graphic sexual nature; and
- discriminatory treatment based on sex.

Examples of sexually harassing behavior:

- A female employee is usually asked to make coffee while male employees of equal status are not.
- An employee eyes a coworker’s rear end and comments that they must be “great in the sack.”
- On Monday mornings, the supervisor emails everyone a “dirty joke of the week.”
- A staffer keeps a calendar of semi-nude women posted in his office, despite a coworker’s statement that she finds the calendar demeaning.
- An employee hugs coworkers even though they pull away, explaining “oh, come here, I’m just a hugger.”
- A lobbyist pitches a bill regarding nonprofit boards. The legislator laughs and says, “well, sure, honey, if you got on my “board” I’d show you some results....” The lobbyist protests, but the legislator shrugs, “well, I’m just trying to lighten the conversation. If you don’t like these meetings, you don’t have to be here.”
- A male supervisor excludes female employees from after-hours meetings because he “does not want to be accused of sexual harassment later.”
- A supervisor tells an employee that he could get her a better assignment if she sleeps with him.

What Is Retaliation? Retaliation is the treatment of a person less favorably because the person exercised a legal right, made a good-faith complaint about unlawful conduct (such as prohibited discrimination, harassment, or retaliation), or participated in an investigation about unlawful conduct.

The legislature prohibits all retaliatory behavior, even if it does not rise to the level of behavior that the law recognizes as retaliation.

Examples of retaliatory behavior:

- In a staff meeting, a supervisor complains about all of the disruption that an employee's complaint is causing.
- An employee is not selected for an assignment because he is "not a team player" since he supported another employee's complaint.
- An employee returns from parental leave and is criticized because his attendance is unreliable.