

## THE TOP 10 THINGS TO DO... CONTINUED

problem, i.e. make the harassment stop; and if the conduct does not abate, you have proof that your employer knows about the problem.

**6. Remember: anything you tell human resources can be revealed to others in the company.**

Don't assume that anything you tell them is going to be kept confidential. They may report your complaint to their supervisors and to other managerial employees.

**7. Don't quit your job.**

Quitting might enable the employer to argue that you didn't give it time to fix the problem; quitting could adversely affect your ability to recover for lost income; and quitting might make it harder to collect unemployment benefits, because your employer could contend that you abandoned your job.

**8. Retaliation is illegal - and sometimes easier to prove than the actual harassment.**

You might have a strong retaliation claim if you make a reasonable good faith complaint of harassment to your employer and your employer then takes any "adverse action" against you because of your complaint.

**9. Keep doing your job well.**

Making a complaint about sexual harassment doesn't give you permission to stop doing your job to the best of your ability or excuse you from the same standards you had to meet before the conduct started or you complained.

**10. Get legal advice from someone who knows about sexual harassment law.**

If you think you're being sexually harassed, talk to a lawyer who's experienced in sexual harassment cases. This is especially important if you're considering quitting your job.

For more information please go to: [workharassment.net](http://workharassment.net)  
or contact us at [contact@workharassment.net](mailto:contact@workharassment.net)  
or call 212.245.1000.

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# stop sexual harassment

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## SEXUAL HARASSMENT AT WORK

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Sexual harassment is a form of sex discrimination. The legal definition of sexual harassment is “unwelcome verbal, visual, or physical conduct of a sexual nature that is severe or pervasive and affects working conditions or creates a hostile work environment.” A key factor is whether the conduct is “unwelcomed.” If the conduct is welcomed then it is not sexual harassment. For this reason, it is important to communicate (either verbally, in writing, or by your own actions) to the harasser that the conduct makes you uncomfortable and that you want it to stop.

There are many different kinds of conduct whether verbal, visual, or physical that may be considered sexual harassment. For example, oral and written comments about a person’s body; sexual or sex-based jokes; viewing or posting pornographic material; requesting sexual favors or repeatedly asking a person out; sexual innuendoes; physical assault; impeding or blocking movement; inappropriate touching of a person; kissing, hugging, patting, stroking; nonverbal conduct such as looking up and down a person’s body or leering at them; or derogatory gestures or facial expressions of a sexual nature may be found by courts to be sexual harassment. This applies to your boss, your co-worker, your subordinate, and sometimes even to your customers. Remember – a critical point is whether any of the above described behavior is “unwelcomed.”

## RETALIATION

### Know Your Rights: Retaliation

Federal and state laws prohibit employers from firing, demoting, harassing or otherwise “retaliating” against an employee who complains about sexual harassment. Complaining could mean speaking to a superior about conduct that an employee believes is illegal conduct. Even if the employee is wrong and the conduct is not illegal (i.e. does not rise to the level of sexual harassment), the employee may be protected

from retaliation if the complaint is made based on a good faith belief. Complaining also includes filing a complaint with Human Resources, filing a charge with the Equal Employment Opportunity Commission, participating in a discrimination proceeding, or any other type of conduct opposing discrimination. A retaliation claim is a claim separate from a sexual harassment claim. In other words, an employee need not show that he or she was sexually harassed in order to prove retaliation. Retaliation occurs when an employer takes an **adverse action** against a covered individual because he or she engaged in a “**Protected Activity**.”

### What is an “adverse action”?

An adverse action is an action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. Examples of adverse actions include: termination, refusal to hire, denial of promotion, threats of termination and/or demotion, unjustified negative evaluations, unjustified negative references, and/or increased surveillance of one’s performance. Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, “snubbing” a colleague, or negative comments that are justified by an employee’s poor work performance or history. Of course, employees are not excused from continuing to perform their jobs or follow their company’s legitimate workplace rules just because they have opposed discrimination and/or filed a complaint with the EEOC or other agency.

### What is a “Protected Activity”?

Protected activity includes opposition to a practice believed to be unlawful discrimination. Opposition is informing an employer that you believe that he/she is engaging in a prohibited discrimination.

## THE TOP 10 THINGS TO DO IF YOU ARE A VICTIM OF WORKPLACE SEXUAL HARASSMENT

### 1. Don’t ignore the harassment.

Talking about sexual harassment can be uncomfortable, but you can empower yourself by talking with other employees who may also be experiencing harassment and by speaking up.

### 2. Make it clear to the harasser that the conduct is unwelcome.

An essential element of a sexual harassment claim is that the conduct must be “unwelcome.” Harassers sometimes contend that their victims welcomed and enjoyed their words and actions. Although it can feel uncomfortable or even frightening to object, you must tell the harasser unequivocally to stop the behavior.

### 3. Not all offensive behavior is sexual harassment under the law.

Whether certain offensive behavior constitutes sexual harassment is considered on a case-by-case basis. This makes it especially important to talk to a lawyer who knows about sexual harassment law and about how to deal with such behavior.

### 4. Keep careful notes of what happened, but not on employer owned equipment.

Keep any notes, memos, letters, gifts, or other tangible evidence from the harasser. But be careful how and where you record your evidence. Your communications using company equipment are not confidential and can be used against you. This includes public websites that may contain your personal information (i.e., Facebook and MySpace).

### 5. Report the conduct.

Your report does two important things. It gives your employer an opportunity to correct the **CONTINUED**