

KNOW YOUR RIGHTS

Sex Discrimination

Sex discrimination occurs when a person is treated less favorably because of that person's sex, which includes sexual orientation, gender identity or expression, pregnancy or pregnancy-related condition (including lactation), or a sex stereotype. Learn more here about your right to be protected against sex discrimination and what to do if your rights are violated.



I'm experiencing sex-based discrimination at my job

Examples of workplace sex discrimination

- Your boss, coworkers, or third parties like customers direct derogatory comments, jokes, or gestures at you that are related to your sex or your status as a recently pregnant or nursing person.
- You are fired, denied a job or promotion, or subjected to less favorable terms, conditions, or privileges of employment than your colleagues (like opportunities or training benefits, or sexual harassment) because of your sex.

Your rights

- Under Title VII of the Civil Rights Act of 1964, employees, job applicants, and union members are protected from sex discrimination at the workplace and at the union hall.
- Title VII applies to employers with 15 or more employees. Some state laws provide such protection to workers at companies with fewer employees.
- Federal courts and agencies have recognized that existing sex discrimination bans also prohibit discrimination based on sexual orientation and gender identity. The Supreme Court has recently announced it will take up that question.

What to do if you believe that your workplace rights have been violated

- Check any policies your employer has in place applying to discrimination and harassment, including complaint

protections, and follow them.

- If your employer does not have an established complaint procedure, you should report the unwelcome behavior to your human resources department.
- Contact the U.S. Equal Employment Opportunity Commission, the federal agency in charge of investigating violations of Title VII, or the state or local agency with similar authority.

What kind of conduct is considered sexual harassment?

Sexual harassment is a form of sex discrimination. There are many kinds of conduct that may be defined as sexual harassment. These include unwelcome sexual advances or requests for sexual favors, or other unwanted conduct of a sexual nature. Such conduct may be physical, ranging from massages or hugs to sexual assault and rape. It can consist of verbal conduct, like vulgar jokes or discussions about sex. It can be visual, such as pornography, graffiti, or sexual gestures. Unwanted communication, like emails or text messages, or conduct directed at you on social media, also may be considered harassment.

Be aware that harassment need not target you specifically to be unlawful. And the harasser's intention – such as to be humorous or to pay a compliment – also does not affect whether the conduct is illegal.

Sexual harassment can be perpetrated by co-workers, subordinates, and supervisors who don't have direct authority over you. Harassers also may be third parties, like a customer, vendor, or independent contractor like a consultant.

Is sexual harassment necessarily “sexual” in nature?

Harassment does not have to be motivated by sexual desire or be sexual in nature to be unlawful. Sexual harassment can include statements that belittle someone based on their sex, a policy that disadvantages a group based on sex (regardless of intent), or an environment that is hostile toward members of the disadvantaged sex. This includes hostility directed at you because of your sexual orientation, your gender identity, or because you do not conform to stereotypes about how someone of your sex should look or act. Harassment based on other sex-based traits, like pregnancy or breastfeeding, also is unlawful. It can be illegal regardless of whether the perpetrator and victim are of the same sex or different sexes.

What separates conduct that is merely obnoxious from conduct that is illegal harassment?

Simple teasing, offhand comments, or isolated incidents that are not very serious and do not reoccur usually will not be considered unlawful. Harassment is illegal when it is so frequent, widespread, or severe that it affects your job, unreasonably interferes with your work performance, or creates a work environment that is intimidating, hostile, or objectively offensive.

Harassment also is illegal where your submission to it – or your rejection of it – is made a condition of your employment or advancement; for instance, if your supervisor promises you a promotion if you sleep with him, or threatens to fire you if you do not. If you are fired or face other negative action because you oppose the harassment, such action also likely violates the law.

What should I do if I think I am being sexually harassed?

- If you feel safe doing so, tell the harasser that the conduct is unwelcome and ask that it stop. If you do not feel comfortable confronting the harasser, or if the harassment continues despite your requests, check your employer's policies regarding harassment, and follow its instructions for filing a complaint.
- If your employer does not have formal policies against harassment, inform your employer's human resources department or a supervisor. If you are a member of a union, tell your union representative.
- Keep a record of the harassment and other negative treatment. As soon as possible, write down what happened – what was said or done, who was present, where you were, and when it occurred. It is helpful to do so in a text message to yourself or other method that will date and time-stamp your notes. Do not use your employer's computer or your company email to make these records.
- It is natural to be reluctant to talk about harassment, due to embarrassment or for other reasons, like fear that you might be punished. But if you do not tell your employer about the harassment, it may harm your ability to later bring a legal claim. Also, it is illegal for an employer to retaliate against you. One way to feel safer is to come forward with a group. A harasser often does not limit his/her behavior to just one person; talk to your co-workers and see if they are facing the same behavior.

What if I complain and nothing changes?

Unfortunately, taking legal action might be your only option. It is important to talk to an attorney who specializes in employment law. You may submit a request for assistance to the ACLU, at by filling out the [sex discrimination legal intake form](#).

- The National Employment Lawyers Association (NELA) is a group of attorneys who regularly represent employees (not employers), and has an attorney locator on its website, www.nela.org. Your state or local bar association also can provide referrals.
- The Time's Up Legal Defense Fund can defray the cost of legal assistance and maintains a network of attorneys willing to represent harassment survivors.
- Low- and no-cost legal assistance may be available through state or local legal aid or legal services organizations. Local law schools may run "clinics," which are free services provided by law students supervised by an attorney-professor.
- You also may file a complaint with the EEOC, at www.eeoc.gov, or your local human rights agency. Note that you must file your charge as early as 180 days after the last act of harassment against you, so do not delay. You do not need an attorney to file a charge.

I'm experiencing pregnancy-related discrimination at my job

Examples of pregnancy-related workplace discrimination

- An employer refuses to hire you because of your pregnancy.
- Your boss, coworkers, or third parties direct derogatory comments, jokes, gestures, or pictures at you that are related to being pregnant or nursing.
- Your employer fails to investigate and take action after you notify them that you are being harassed.
- Your employer fires or otherwise retaliates against you in relation to your pregnancy.

Your rights

- Under Title VII, as amended by the Pregnancy Discrimination Act (PDA), pregnancy discrimination is a form of unlawful sex discrimination. Harassment based on you being pregnant or breastfeeding is a form of unlawful harassment.
- Employers governed by federal civil rights law cannot treat you differently from other employees because you are pregnant. Most states have laws prohibiting pregnancy discrimination, too.
- Federal law forbids covered employers from harassing workers based on pregnancy, childbirth, or related conditions.
- Your employer can't fire you because you are pregnant and can't make your job so miserable that quitting is the only option or that you are unable to do your job.
- If you are looking for work, under most circumstances, a prospective employer cannot refuse to hire you because you are pregnant.
- Title VII also, amended by the PDA, requires covered employers to treat pregnant workers the same way they treat other workers "similar in their ability or inability to work" when it comes to benefits like health coverage, disability benefits, or job modifications like "light duty" if necessary for a healthy pregnancy.
- You are legally entitled to work as long as you are willing and physically able. Workers covered under the Family Medical Leave Act (FMLA) are entitled to 12 weeks of unpaid leave for pregnancy-related reasons. Your boss cannot require or pressure you to take FMLA leave or other time off just because you are pregnant.
- The FMLA prohibits covered employers from treating you differently from other employees, whether you are on parental leave or have returned to work after giving birth.
- You can use your accrued vacation or sick days for pregnancy- and childbirth-related reasons.

What to do if you think your rights have been violated

- If you feel uncomfortable or harassed, you should report the unwelcome behavior to your human resources department.
- If you complain to your supervisor about harassment, your employer must investigate at no cost to you and take effective measures to stop the harassment. The investigation process may result in payment to you of monetary damages and other lost benefits, and it could require the employer to change its policies.
- If your employer attempts to fire or retaliate against you, you are entitled to file a retaliation complaint, either with the federal Equal Employment Opportunity Commission, the federal Department of Labor, or both, as well as seeking relief in court.
- You may also consider filing a lawsuit in state or federal court. You should consult an attorney if you think you're being retaliated against.

I'm taking parental leave or returning to work after having a child

Examples of workplace discrimination after childbirth

- Upon returning to work, your employer assigns you to a lesser role, or refuses to reinstate your position.
- Your boss denies you a promotion because of your caregiving responsibilities.

- Your employer doesn't allow breaks from work or a private location for pumping breast milk.
- Your boss, coworkers, or customers direct derogatory comments, jokes, gestures, or pictures at you that are related to your status as recently pregnant or nursing.
- Your employer fails to investigate and take action after you notify them that you are being harassed.
- Your boss or company policy does not permit you to take (or discourages you from taking) parental leave because you are a father.

Your rights

- Workers covered under the Family Medical Leave Act (FMLA) are entitled to 12 weeks of unpaid leave for pregnancy-related reasons, including for prenatal visits, recovery from childbirth, or to care for your spouse or a new child. Other state laws may offer greater protections.
 - Under FMLA, you can use your accrued vacation or sick days for pregnancy- and childbirth-related reasons.
 - Once you return to work, if you are covered under FMLA your employer must reinstate you to the same position you held prior to your pregnancy (or one of similar pay and level).
- If you require absences for follow-ups with your doctor or to deal with childbirth-related medical issues, your employer should treat these absences the same as those of other temporarily-disabled employees.
- Employers can offer a period of paid disability leave to employees who have given birth to recover from childbirth. But if your employer offers paid (or unpaid) *parental* leave for childcare purposes, the same amount of leave must be available for mothers and fathers.
- Hourly workers covered by the Fair Labor Standards Act have the right to pump on the job. Under the Affordable Care Act, nursing women are entitled to:
 - Reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth; and
 - A place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.
 - If you complained about problems with accommodations for pumping, your employer must respond appropriately and fulfill its obligations to provide breaks and a private location to pump *each time* you need to pump.
 - You can't be retaliated against if you complain that your employer is not giving you the ability to pump or about the conditions for pumping.
- Federal law forbids covered employers from treating workers worse than others or harassing them harassing workers based on pregnancy, childbirth, or related conditions, or because of gender stereotypes related to caregiving. That includes discriminating against you because you are breastfeeding or because you have just given birth, or because of your caregiving obligations.

What to do if you are discriminated against

- If your employer is interfering with your rights to leave under the FMLA, you can complain to the U.S. Department of Labor, or file a lawsuit.
- If you're facing discrimination because you are a new parent or because of your caregiving responsibilities, you can file a discrimination charge with the federal Equal Employment Opportunity Commission, and/or the parallel state agency.
- If you feel uncomfortable or harassed, you should report the unwelcome behavior to your human resources department.(See the section on workplace harassment, above).

- If your employer attempts to fire or retaliate against you after you complain about discriminatory unfair treatment when you return to work, you are entitled to file a retaliation complaint, either with the federal Equal Employment Opportunity Commission, the federal Department of Labor, or both, as well as seeking relief in court. You should consult an attorney if you think you're being retaliated against.

Additional resources

Workplace

- [U.S. Department of Labor Wage and Division Hour \(WDH\)](#)
- [The Fair Labor Standards Act \(FLSA\) Coverage and Employment Status Advisor](#)

Breastfeeding

- [Talking to Your Boss about Your Pump](#)
- [A Better Balance: State Laws for Nursing Mothers at Work](#)
- [Womenshealth.gov: Supporting Nursing Moms at Work](#)

I'm experiencing sex-based discrimination in housing

Examples of sex-based housing discrimination

- Your landlord subjects you to sexual harassment at your home.
- A landlord denies you housing or evicts you because of your sex.
- A landlord or public housing authority learns that you have experienced domestic violence in the past and rejects your application for tenancy as a result.
- You are abused by an intimate partner in your home, and your landlord or public housing authority seeks to evict you immediately afterwards.

Your rights

- Under the Fair Housing Act, a landlord cannot reject your application for tenancy because of your sex, a sex stereotype, or as a result of learning that you have experienced domestic or gender-based violence in the past.
- Your landlord cannot demand sexual favors in exchange for doing repairs or not raising the rent.
- Your landlord cannot apply rules to you that are not applied to other tenants in response to learning that you are in an abusive relationship.
- The federal Violence Against Women Act of 2013 (VAWA) sets out specific provisions to protect survivors of domestic violence, dating violence, sexual assault, and stalking who live in certain types of federally subsidized housing from discrimination. Public Housing Authorities and landlords covered by federal law cannot refuse you admission to housing or deny you a housing voucher based on your status as a victim of domestic violence, dating violence, sexual assault, or stalking.
- Federally-subsidized housing providers must keep confidential all information relating to the fact that you are a victim of domestic violence, dating violence, sexual assault, or stalking.
- Some states and jurisdictions have laws that may provide additional protection from discrimination for survivors of domestic violence, dating violence, sexual assault, or stalking. Check this [state and local law compendium](#) from the National Housing Law Project for more information.

What to do if you are discriminated against

- Identify a state or local civil or human rights agency that takes complaints.
- File a complaint with the U.S. Department of Housing and Urban Development.

Additional Resources

- [Safe Homes, Safe Communities: A Guide for Local Leaders on Domestic Violence and Fair Housing](#), report from the ACLU Women's Rights Project (2015)
- [Safe at Home: Fair Housing for Survivors of Domestic Violence](#)

I'm experiencing sex-based discrimination on campus

Examples of sex-based discrimination on campus include:

- Unequal resources or facilities for athletic teams or other school groups based on the sex of its members.
- Failure to accommodate pregnant or breastfeeding students, or exclusion of pregnant students from educational programs or activities.
- Tolerating harassment by faculty, staff, or students.
- Refusing to permit transgender students from accessing educational programs or activities consistent with their gender identity.
- Sex segregation of classes (and sometimes schools), under many circumstances.

Your rights

- Title IX of the Education Amendments of 1972 prohibits sex discrimination in educational programs that receive federal funding, which includes almost all universities, private as well as public.
- Title IX requires equitable treatment in athletics, protects pregnant and parenting students and transgender students against discriminatory treatment, and requires schools to respond appropriately to allegations of gender-based violence and harassment on campus.
- Except in narrow circumstances, colleges that receive federal funds are not allowed to exclude students from programs or activities based on their sex, including by holding sex segregated classes. Some exceptions include contact sports, religious universities, and historically single-sex colleges.
- Schools are required by law to have internal Title IX complaint procedures, including a designated Title IX office, and must be responsive to your complaints and take steps to prevent further discrimination.

What to do if you believe your rights have been violated

- Report your complaint to the office named in your school's internal Title IX complaint procedures.
- If your school is unresponsive, you can bypass it and complain directly to the Department of Education's Office of Civil Rights.

Am I protected by law from sexual harassment or assault on campus?

- Sexual harassment can qualify as discrimination under Title IX of the Education Amendments of 1972 if it is “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.”
- A school becomes legally responsible when its response to harassment “is clearly unreasonable in light of the known circumstances.”
- Discrimination on the basis of sex can include sexual harassment, sexual assault, and rape. A college or university that receives federal funds may be held legally responsible when it knows about and ignores sexual harassment or assault in its programs or activities.

Your rights

- You have the right to report harassment, assault, or rape to school administrators.
- You have the right to receive a prompt and effective response from the school that prevents and protects you from further harassment or injury.
- You have the right to pursue enforcement of your Title IX rights in court.
- You can [report harassment to the Department of Education’s Office for Civil Rights](#) (OCR) by writing a letter or filing a complaint form.
- A college that has deliberately ignored harassment or assault on campus may be liable under Title IX. Consult an attorney with Title IX experience.

How to help survivors of sexual harassment or assault on your campus

- Urge school officials to adopt policies to prevent sexual assault on campus and to ensure that the school will be prepared to respond appropriately should an assault occur.
- Explain to administrators that adopting and vigorously implementing a comprehensive sexual assault policy can help the school comply with its legal obligations under Title IX. A strong sexual assault policy should include meaningful efforts at educating students about the dynamics of sexual assault, the effect it has on survivors, and the many factors that allow it to continue. A good policy should include student input, be available and understandable to students, be fair to victims and the accused, and provide crisis intervention assistance and prevention programs.
- If assault or rape occurs, insist that the administration respond to victims’ needs and take action to protect students.
- Urge the college administration to respond appropriately so it can avoid the “deliberate indifference” that could render the school liable under Title IX.

Additional resources

- [Students Active for Ending Rape](#) (SAFER)
- [Legal Momentum, Legal Resource Kit: Sexual Harassment in the Schools](#) (2008).
- American Constitution Society for Law and Policy, [Restoring Effective Protections for Students Against Sexual Harassment in Schools: Moving Beyond the Gebser and Davis Standards](#) (Jan 28, 2008).
- United States Department of Education, Office of Civil Rights, [OCR Case Processing Manual](#) (May 2008).
- American Civil Liberties Union Women’s Rights Project, [Title IX –Gender Equity in Education](#).

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