



“Sexual Harassment is Still Real”

*And so are other workplace
environment issues.*

By
Lori Lamb
January 2007

Types of Issues

- ♦ **Illegal Harassment (based on protected status)**
- ♦ **Illegal Discrimination (based on protected status)**
- ♦ **General Harassment (bullying, intimidation, threats, abusive treatment)**
- ♦ **Workplace Violence**
- ♦ **Retaliation**

Effects of these Actions

- ◆ **Emotional/Physical Distress to Victim**
- ◆ **Reduced Productivity**
- ◆ **Low Morale** (not just the victim)
- ◆ **Absenteeism**
- ◆ **Employee Turnover**
- ◆ **Litigation Costs** – damages, attorneys fees for lawsuits related to illegal harassment, discrimination and retaliation
- ◆ **Personal Liability** – illegal harassment, discriminatory behaviors and retaliation are outside the scope of employment

 MINNESOTA STATE UNIVERSITY MANKATO

Potential Personal Consequences

- ◆ **Internal disciplinary action**
- ◆ **Civil Lawsuit** - university will not defend you
- ◆ **Attorneys' fees and potential damages** - university will not indemnify you
- ◆ **Criminal record** - 5th degree sexual assault for pinching, touching, etc.

 MINNESOTA STATE UNIVERSITY MANKATO

Applicable Laws & Policies

Federal Law - Title VII and other federal laws related to discrimination and retaliation (race, age, religion, national origin, gender, disability)

State Law – Mn. Stat. 363A - Prohibits discrimination and harassment (race, age religion, national origin, gender, disability, marital status, sexual orientation, status with regard to public assistance))

MnSCU Board Policy 1B1 – Prohibits discrimination and harassment (same as state law)

Minnesota State Mankato Workplace Environment Policy – Prohibits violence and general harassment



Illegal Harassment

- ♦ **Unwelcome verbal or physical conduct directed at another**
- ♦ **Because of that individual's protected status – race, gender, disability, etc.**
- ♦ **Unreasonably interferes with the individual's educational or employment**
- ♦ **Sufficiently severe, pervasive or persistent**
- ♦ **Purpose or effect of creating a hostile work environment**



Illegal Discrimination

- ♦ Treating someone differently
- ♦ Based on the individual's protected status
- ♦ Interferes with or limits the ability of a person to participate in, or benefit from the services, activities, or privileges provided by the university, or
- ♦ Otherwise adversely affects the person's employment or educational experience

 MINNESOTA STATE UNIVERSITY MANKATO

General Harassment

- ♦ Any direct or indirect behavior and/or bullying that is intended to interfere with the work performance of another or creates a hostile work environment.
- ♦ Does not have to be because of protected status.
- ♦ Examples:
 - Abusive comments/behavior
 - Emails of a harassing nature
 - Constant unwarranted criticism
 - Inconsistent enforcement of rules (favoritism)
 - False or malicious statements
 - Withholding resources or information

 MINNESOTA STATE UNIVERSITY MANKATO

Workplace Violence

- ♦ **Any direct or indirect physical or verbal assault, threat, or intimidating behavior occurring in the workplace**
- ♦ **Examples:**
 - Verbal or non-verbal threats to inflict harm
 - Disorderly conduct (throwing or pushing objects, punching walls, slamming doors)
 - Physical assaults (hitting, slapping, pulling hair)

Retaliation

- ♦ **Taking adverse employment or education action against a person who files a complaint of discrimination, harassment (illegal or general), or who testifies, assists or participates in an investigation of a complaint.**
- ♦ **Examples of adverse action:**
 - Termination, demotion
 - Reduction in pay or responsibilities
 - Poor working conditions (e.g. office space)
 - Bad grades, poor treatment in class

Two Other Issues to Know

- ♦ **MnSCU Board Policy 4.10 on Nepotism** -- prohibits anyone from having supervisory authority over a family member of member of household
- ♦ **MnSCU Board Policy 1B1** provides that employees shall not enter into a consensual relationship with a student or an employee over whom he or she exercises direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority or influence.

Discussion

Why do we need the nepotism and consensual relationship policies?

Sexual Harassment is Real (And so is racial and other Harassment)

Two forms:

Hostile Work Environment – unwelcome verbal or physical conduct that is directed at the individual because of gender/race and subjects the individual to different treatment that interferes with or limits the ability of the individual to participate in or benefit from the services, employment, etc. of the university.

Quid Pro Quo – “this for that” – unwelcome sexual advances, requests for sexual favors, etc. that are made implicitly or explicitly a condition of employment or education

 **MINNESOTA STATE UNIVERSITY MANKATO**

Where do we see these claims arise?

- ♦ **Where consensual relationships go bad**
- ♦ **When one person wants a relationship and the other doesn't**
- ♦ **Where people seek power over others and use their position to obtain the power**
- ♦ **Where people put themselves in positions that can easily be misconstrued**
- ♦ **Where people demonstrate a lack of respect for diversity**
- ♦ **Other???**

 **MINNESOTA STATE UNIVERSITY MANKATO**

Discrimination is Real

- ◆ Anytime you treat someone different based on a protected status
- ◆ The intent to discriminate is everywhere.
- ◆ Does not have to be intentional.
- ◆ Can be overcome by legitimate business reasons.
- ◆ Often “legitimate reasons” are just a pretext for illegal discrimination.

 MINNESOTA STATE UNIVERSITY MANKATO

Where do we most often see incidents of illegal discrimination?

- ◆ Where there is a significant power differential.
- ◆ Where there is a lack of respect for diversity.
- ◆ Where people are in situations where they can be misunderstood.
- ◆ Where there is a disparate impact that is unintended, e.g. the application of a policy.
- ◆ Where relationships have gone bad.
- ◆ Where someone has the best of intentions?
- ◆ Other???

 MINNESOTA STATE UNIVERSITY MANKATO

Workplace Environment Issues Are Real

- ◆ **Reports of these incidents are on the rise** (we have a formal mechanism for reporting through the Employee Complaint Procedure).
- ◆ **Reports range from general bullying, to abuse of power, to threats and more.**
- ◆ **Most dysfunctional work units have some degree of bullying or general harassment present.**

 MINNESOTA STATE UNIVERSITY MANKATO

Why do these issues arise in the workplace?

- ◆ **For the same reasons someone harasses based on sex or race: power.**
- ◆ **Good relationships have gone bad.**
- ◆ **Jealousy.**
- ◆ **Lack of respect and civility.**

 MINNESOTA STATE UNIVERSITY MANKATO

Commonalities/Similarities?

- ♦ Good relationships gone bad.
- ♦ Jealousy and envy.
- ♦ Perceived favoritism or unfairness.
- ♦ Power.
- ♦ Lack of respect and civility.
- ♦ Misunderstandings of fact.
- ♦ Putting ourselves in bad situations.

 MINNESOTA STATE UNIVERSITY MANKATO

Workplace Violence Issues are Real

- ♦ When a customer bangs on the counter when they don't get what they want.
- ♦ When a supervisor screams at an employee or locks them in an office during a "conversation."
- ♦ Threats via email or phone (I'm gonna get you).
- ♦ Statements such as "I'm so angry I'm going to get a gun."

 MINNESOTA STATE UNIVERSITY MANKATO

Retaliation is Real

- ♦ It is a natural human emotion – everyone can relate to it.
- ♦ It is the easiest cause of action to prove.
- ♦ Virtually anything action can constitute retaliation.
- ♦ It can be sustained even when the underlying concern (discrimination or harassment) is not valid or proved.

 MINNESOTA STATE UNIVERSITY MANKATO

Avoiding Retaliation

- ♦ Don't try to learn who filed the complaint (unless you have to in order to respond).
- ♦ Keep information about complaints and investigations confidential.
- ♦ Insure your actions and the actions of others are truly based on legitimate business reasons.
- ♦ Respect an individuals right to voice their concern.

 MINNESOTA STATE UNIVERSITY MANKATO

What can we do to prevent all of these issues in the workplace?

- ◆ **Create formal processes for individuals to file complaints and obtain a response and manage these processes responsibly:**
 - < MnSCU Procedure 1B1.1 provides the procedure for reporting and investigating complaints under 1B1 (through our Affirmative Action Office).
 - < Minnesota State Mankato has an Employee Complaint Procedure for workplace environment issues (managed through the chain of command).

 MINNESOTA STATE UNIVERSITY MANKATO

What can we really do?

- ◆ **Establish and maintain an environment based on civility and respect for all**
- ◆ **Model appropriate behaviors for others**
- ◆ **Identify potential troubling behaviors and attitudes**
- ◆ **Take immediate action to end inappropriate behaviors** (training, corrective action, discipline)
- ◆ **Create an environment where people do not fear retaliation for coming forward with complaints**

 MINNESOTA STATE UNIVERSITY MANKATO

Discussion

What can you do?

 MINNESOTA STATE UNIVERSITY MANKATO

"Respect for yourself,

Respect for others and

Responsibility for your actions."

Dali Lama

 MINNESOTA STATE UNIVERSITY MANKATO