U.S. Fish and Wildlife Service

EEO Workshop for Managers and Supervisors

Part 3 of 4

"Top EEO Issue: Harassment (Non-Sexual)"

Presenter:

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Federal Sector / Top Three EEO Issues

Harassment (Non Sexual) (4,999)
Promotion / Non Selection (2,882)
Terms / Conditions (2,606)

Source: EEOC FY 2009 Annual Report on the Federal Work Force

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Harassment

What's a good shorthand definition of harassment?

Is harassment the same as hostile environment?

What's involved in these kinds of cases?

How does the agency defend against these claims?

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Harassment

- Complainant, a District Conservationist, claimed that he was discriminatorily harassed on the basis of his race (Native American) and his national origin (Cherokee Nation), when an Agency client harassed him (with threats and frequent comments such as "worthless Indian", etc.). Hem v. Agriculture, 0720060012 (2008)

How is this different from the typical case?

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Harassment

- An employee made allegations of sexual harassment against several co-workers, consisting of touching and remarks / The co-workers who were named as harassers all claim that complainant is retaliating against them for various reasons, such as that one refused to corroborate her allegation of sexual harassment against a co-worker, and another did not find her sexually attractive, and that therefore Complainant concocted grandiose allegations of sexual harassment well after they allegedly occurred. Henderson v. USPS, 0120083298 (2008).

What kind of evidence would be helpful to resolve the credibility differences?

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Harassment

- Two male co workers, in a cubicle next to female complainant's cubicle, would continuously make sexual references to themselves or to others on the phone. After Complainant objected to them, the coworkers began a constant barrage of insults, some of which were sex-based, Including referring to her by the "b" word and claiming that she was a "hysterical female."Joiner v. SSA, 07A50049 (2006)

Harassment?

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Some Recent Harassment Cases

- **Gender and Reprisal**: Complainant, a Federal Air Marshal, proved sex(pregnancy) and reprisal harassment / request to be taken off flight schedule and assigned to light duty closer to home and instead required to report to Atlantic City, a considerable distance from home and her doctor / forced to take 2 weeks of sick leave

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Some Recent Harassment Cases

(Cont'd) Third level held a negative view of women in law enforcement and did not believe that complainant should be taken off flight duty status just because she was pregnant and had expressed the view that women should choose between being law enforcement officers or mothers, and specifically, that complainant should choose between having children and being an FAM.

Cestero v. Department of Homeland Security, (Transportation Security Administration), 0120080771 (April 21, 2010).

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Some Recent Harassment Cases

- **Disability:** Aviation Safety Inspector with 71% hearing loss / while agency provided employee with an accommodation, a Smartlink microphone and hearing aid but interfered with its effective use / management would regularly refuse to properly place the Smartlink transmitter closer to the speaker so that Complainant could not only hear but understand what was said. Based on management's lead regarding the use of the Smartlink, Complainant's co-workers believed that they were not required to use the transmitter properly either. As a result, Complainant was treated poorly by both management and co-workers.

Wagner v. Department of Transportation, (Federal Aviation Administration), 0120103125 (December 1, 2010).

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Some Recent Harassment Cases

Sex Harassment: These were the incidents relied on: 1. The co-worker approached Complainant, pointed to his chest, and said "[Complainant], this is a tit;"; 2. the coworker sent Complainant an email and the subject line of this email read "turkey" and the email read "gobble.", which the Complainant believed was a reference to oral sex; 3. the coworker sent Complainant an email which stated, "I know you're a sweet tater;", which the Complainant believed was a reference to oral sex; 4. the coworker made a derogatory and/or sexual comment to Complainant when Complainant and the coworker encountered each other in a hallway.

How is this analyzed? Proven or not?

Byrd v. USPS, 0120070800 (April 15, 2010), recons. den. 0520100452 (August 13, 2010)

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Some Recent Harassment Cases

- **Race**: Out of the blue a coworker said to the African - American complainant, “Why is it that black people are able to call each other n_____ but white people like me can’t use that word?” Soon after that, the co worker came up to the complainant and asked him if he thought Michael Jackson bleached his skin. Other similar comments, as well.

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Some Recent Harassment Cases

- **National Origin and Race**: The employee, a female Korean-American was frequently referred to at work by derogatory nicknames and other statements of a similar nature. These included incidents in which the complainant was referred to as "Kim chee", "slant-eyes" and other like derogatory comments.

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Some Recent Harassment Cases

Sex Harassment: Complainant and a coworker had a consensual relationship from approximately 1996 to 1998. Complainant married someone else in June 2001. In December 2002, Complainant was awarded a bid that put him in proximity to this coworker. The coworker began asking Complainant out on dates, and when he refused her advances told him, "f--- you and go to h---." The coworker subjected Complainant to obscenities and comments about his sexual performance, including telling him, "you're not s---" and others. She also told employees that Complainant had a "little penis" and stated she didn't want him anyway. Complainant complained about the coworker's behavior to his supervisor who told him that it did not sound like he had a problem and stated, "Oh, I wish I had those problems." Complainant complained again the next month, but nothing changed, and again the next month when he was told "you need to just knock this s--- off and just give it up."

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Some Recent Harassment Cases

(Cont'd) After an incident where the coworker told Complainant to "eat my p-----" and grabbed her crotch and Complainant responded, "Leave me alone, b----" both employees received letters of warning and Labor Relations initiated an investigation, after which complainant was moved to another building.

Your views?

Crawford v. United States Postal Service, 0720070020 (March 5, 2010).

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Some Recent Harassment Cases / Affirmative Defenses

- Employee, among others, had alleged sex harassment as a result of "a kiss on her cheek and one on her head" by a coworker (CW1). Agency acted by "prohibiting CW1 from entering Complainant's work area, except for purposes of picking up keys for his vehicle or meeting with his supervisor . . . . [which] 'dramatically reduced" the time CW1 spent in close proximity to Complainant and that no further physical contact occurred after the Agency took this action."' (citation omitted).

Appropriate action by agency?

Reynolds v. USPS, (Northeast Area), 0120083992 (January 14, 2010).

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Some Recent Harassment Cases / Affirmative Defenses

- Administrative Support Assistant failed alleged that a coworker intentionally and inappropriately made bodily contact with her / agency conducted an inquiry, concluding that any touching had not been intentional, but counseled the coworker to avoid contact with the complainant and relocated the coworker.

Appropriate action by agency?

Robinson v. Department of the Army, 0120102369 (December 9, 2010).

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Harassment

Common Agency mistakes in harassment cases

- Waiting too long to do something
- Being too nice
- Being too harsh
- Sometimes applying different standards to men and women
- Assume that one on one situations can't be resolved
- Assuming that harassment is just an EEO problem

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ANOTHER TRUE OR FALSE QUIZ

True	False		
❒	❒	1.	The agency or employer may be liable for harassment on the job by managers or supervisors even if top management doesn't know what's going on .
❒	❒	2.	Sexual harassment can only occur between members of opposite sexes
❒	❒	3.	The law and regulations do not outlaw consensual sexual relationships between co workers. between supervisors and employees?
❒	❒	4.	The only kind of harassment covered by EEO is sexual harassment
❒	❒	5.	Unless the complainant has confronted the alleged harasser the complaint will be dismissed.

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ANOTHER TRUE OR FALSE QUIZ

❒	❒	6.	I can tell a sexy joke to a friend who tells them to me and that's not sexual harassment.
❒	❒	7.	An agency cannot be liable for harassment off the job.
❒	❒	8.	In trying to decide what is harassment, it is the victim's opinion that decides.
❒	❒	9.	EEO complaints are filed against individual employees or supervisors and not against the agency or employer.
❒	❒	10.	One serious incident can be enough to prove EEO harassment.

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