



Protecting Applicants, Participants, and Employees from Sexual and Other Harassment

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Sexual Harassment

**UNFAIR
UNWANTED
UNACCEPTABLE
UNLAWFUL**

SEXUAL HARASSMENT CAN BE PREVENTED

If you are being subjected to sexual harassment and you have been unable to stop it, contact The Human Rights Commission.

"I might have a vacancy . . . how bad do you want it, honey?"

"So your stove needs fixing... how about...?"



Sexual Harassment

- Sexual Harassment in Housing Initiative
 - Effort to combat sexual harassment in housing led by the Civil Rights Division of the DOJ
 - Goal is to address sexual harassment by landlords, maintenance workers, property managers, loan officers, or other people who have control over housing



What is Sexual Harassment?

- Includes demands for sex or sexual acts in order to buy, rent, or continue renting a home
- Other unwelcome sexual conduct that makes it hard for a person (including an HCV participant or PH resident) to keep living in or feel comfortable in their home



Example of Sexual Harassment

- Landlord made a lot of comments about having sex with tenant Jane
- Jane ignored him
- When Jane fell behind on rent, he said there was another way Jane could pay
- Jane said no and landlord evicted Jane



Example of Sexual Harassment

- PHA inspector wouldn't approve the apartment HCV applicant, Van, wanted to rent unless Van performed a sexual act on him
- Van agreed in order to get their family off the street



Example of Sexual Harassment

- Maintenance man won't fix anything in Leslie's apartment unless Leslie has sex with him
- The heater is broken and it's getting cold



Example of Sexual Harassment

- HCV applicant, Carey, went to look at a unit and the owner told Carey he would lower the rent if Carey had sex with him



Example of Sexual Harassment

- Security guard has been talking about the renter's body and sending them naked pictures
- They asked him to stop
- They came home one day and found him naked in their bed



Example of Sexual Harassment

- HCV owner makes comments about their body, clothes, and the sexual acts he wants them to perform on him



DOJ
Don't
Play!

DOJ CIVIL RIGHTS DIVISION

SEXUAL HARASSMENT IN HOUSING
PARTNERSHIP TOOLKIT



DOJ Don't Play!

- In the past year, DOJ has opened 34 new sex harassment cases and has filed six pattern-or-practice lawsuits challenging alleged sexual harassment in housing



DOJ Don't Play!

- 7/23/18
 - [DOJ Launches Public Awareness Campaign with Victims of Sexual Harassment in Housing](#)
- 7/24/18
 - [U.S. Attorney Urges Public To Report Sexual Harassment In Housing To The Department of Justice \(D. Colo.\)](#)
- 9/27/18
 - [DOJ Files Sexual Harassment Lawsuit Against Owners of Oklahoma City Rental Properties](#)
- 10/30/18
 - [DOJ Reports Major Increases in Victim Reporting and Number of Lawsuits Filed in One Year Since Launch of Initiative to Combat Sexual Harassment in Housing](#)



Recent Cases

- Owner of units in Missouri made comments about a tenant's body, asked her sexual questions, attempted to touch her, and offered to reduce her rent in exchange for sex
 - Tenant filed complaint with HUD
 - Court settlement prohibits the owner and his wife (co-owner) from serving as property managers and requires them to pay \$600,000 to the tenants who were harassed



Recent Cases

- PHA in Kansas, complaint with HUD went to DOJ
 - One employee who conducted informal hearings overturned denial to applicants for sexual acts and dismissed fines and fees residents owed if he could engage in sexual behavior
 - Another PHA employee asked tenants for sex in exchange for getting into public housing or getting a housing transfer
 - A third employee evicted residents who rejected his sexual advances



Recent Cases

- PHA in Kansas, complaint with HUD went to DOJ
 - DOJ [filed a lawsuit](#) against the employees and the PHA
 - Settlement requires the employees and the PHA to pay \$360,000 to the residents and applicants the employees harassed



Recent Cases

- A nonprofit runs the HCV program in a county in North Carolina
 - DOJ received reports from HUD and Legal Aid of North Carolina that the manager and inspector of the HCV program sexually harassed female applicants and participants
 - Unwelcome sexual comment and advances, touched women sexually, and demanded sexual acts in exchange for passing HQS or moving up on WL

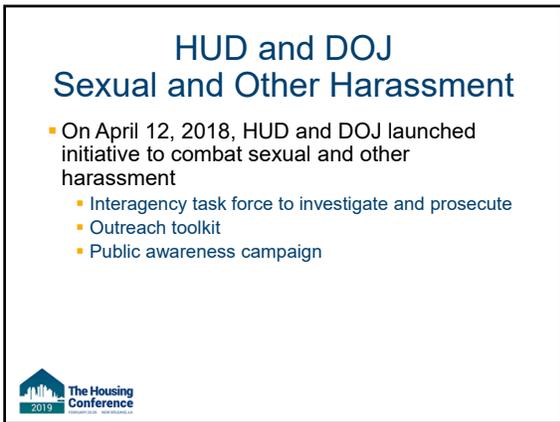


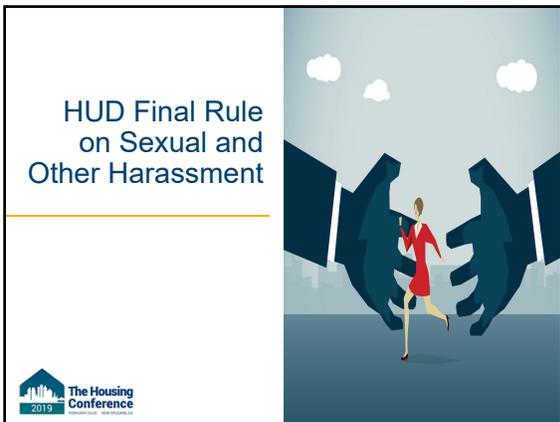
Recent Cases

- A nonprofit runs the HCV program in a county in North Carolina
 - DOJ [filed a lawsuit](#), which was combined with another lawsuit brought by female applicants and participants
 - The nonprofit fired the two employees
 - In 2015, the nonprofit paid \$2.7 million to [settle the lawsuits](#). The [settlement](#) requires the nonprofit to pay \$1 million of that \$2.7 million to a fund that compensated 71 people who the nonprofit's employees harassed









Sexual and Other Forms of Harassment

- HUD final rule on harassment and liability for discriminatory practices
 - Published in Federal Register on 9-14-16
 - Amends 24 CFR Part 100
 - Clarifies harassment can not only be a form of discrimination based on sex, but also based on race, color, religion, national origin, disability, or familial status



Sexual and Other Forms of Harassment

- The courts and HUD have long considered harassment based on race, color, national origin, religion, sex, family status, and disability (the “protected classes”) to be prohibited under the Fair Housing Act
- However, the doctrines of quid pro quo and hostile environment harassment were not previously specified under the Act



Sexual and Other Forms of Harassment

- Encourages housing providers to create and maintain safe, welcoming, and responsive housing environments by regularly training staff, developing and publicizing anti-discrimination policies, and acting quickly to resolve complaints



Sexual and Other Forms of Harassment

- Harassment can be written, verbal, or other conduct, and does not require physical contact



Two Types of Harassment Claims

- Quid pro quo harassment
 - Something for something
- Hostile environment harassment
 - These types are now clearly defined in the final rule
 - Not limited to sexual harassment



Sexual and Other Harassment

- One's home is a place of privacy, security, and refuge (or should be)
- Harassment that occurs in or around one's home can be far more intrusive, violative and threatening than harassment in the more public environment of one's workplace



Quid Pro Quo

- An unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to:
 - Sale, rental, or availability of a dwelling, or
 - Terms, conditions, or privileges of the sale or rental, or
 - Provision of services or facilities in connection with the sale or rental; or
 - Availability, terms, or conditions of a residential real estate-related transaction



Quid Pro Quo

- An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces in the unwelcome request or demand



Hostile Environment

- Unwelcome conduct sufficiently severe or pervasive as to interfere with:
 - Availability, sale, rental, use or enjoyment of a dwelling
 - Terms, conditions, or privileges
 - Provision or enjoyment of services or facilities



Hostile Environment

- Does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction



Hostile Environment

- Whether hostile environment harassment exists depends upon “the totality of the circumstances”



Hostile Environment

- Factors regarding “the totality of the circumstances” include the:
 - Nature of the conduct;
 - Context in which the incident(s) occurred;
 - Severity, scope, frequency, duration, and location of the conduct; and
 - Relationships of the persons involved



Hostile Environment

- The final rule clarifies the totality of the circumstances related to evidence of psychological or physical harm



Hostile Environment

- "Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists."
- "Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment existed and, if so, the amount of damages to which an aggrieved person may be entitled."



Final Rule on Sexual and Other Harassment

- Rule clarifies that a single incident may constitute a discriminatory housing practice
 - If the incident is sufficiently severe to create a hostile environment or provides evidence of a quid pro quo
 - Applies to both hostile environment harassment and quid pro quo harassment



Note on Sexual and Other Harassment

- The victim can be anyone affected by the harassment, not just the person harassed
 - For example, a child may be victimized because a parent has been harassed



Final Rule on Sexual and Other Harassment

- Final rule also prohibits retaliation against anyone because they reported a discriminatory housing practice to a housing provider or other authority



Final Rule on Sexual and Other Harassment

- Retaliation can include:
 - Rent increases
 - Refusing repairs
 - Restrict use of facilities or services
 - Or assign a tenant to a less desirable unit because of a fair housing complaint
 - Threats and intimidation



Final Rule on Sexual and Other Harassment

- Addresses direct liability
 - Person can be directly liable if that person failed to take prompt action to correct and end harassment by a third party when the person knew or should have known of the harassment



Final Rule on Sexual and Other Harassment

- An example of direct liability is if a PHA knew of a PHA manager harassing a resident
- In order to be directly liable, the person must have the power to correct the actions of the third party



Final Rule on Sexual and Other Harassment

- What about a resident harassing another resident?
 - Not every dispute between neighbors is a violation of the FHA
 - But freedom of speech protections do not extend to certain acts of coercion, intimidation, or threats of bodily harm



Gender Identity, Sexual Orientation and Sex Stereotyping



Final Rule on Sexual and Other Harassment

- Advocates asked HUD to define harassment because of sex to include harassment based on sexual orientation, gender identity, or sex stereotyping



Final Rule on Sexual and Other Harassment

- Preamble: "HUD reaffirms its view that under the FHA, discrimination based on gender identity is sex discrimination
 - Quid pro quo or hostile environment harassment in housing because of a person's gender identity is indistinguishable from harassment because of sex."



Equal Access: Notice PIH 2014-20

- Published August 20, 2014
- Provides additional guidance on Equal Access Final Rule of 2012
- Clarifies that HCV landlords become subject to the rule at the point of HAP contract execution



Sexual and Other Harassment in the Workplace



Sexual and Other Harassment Quid Pro Quo

- In the workplace, quid pro quo is sometimes referred to as “supervisory harassment”
 - Sexual and other harassment against employees, as it is for applicants, participants and tenants, is illegal under the Fair Housing Act



Sexual and Other Harassment in the Workplace

- The burden of preventing sexual harassment rests on the employer
 - Employers are responsible for providing their employees with a work environment that does not discriminate and is free of harassment
 - Employers are, therefore, required by law to take steps to prevent and deal with harassment in the workplace



Sexual and Other Harassment in the Workplace

- Employer may be liable for any harassment which does occur if the employer has not taken all reasonable steps to prevent and deal with harassment in the workplace
 - Even if unaware that the harassment was taking place



Sexual and Other Harassment in the Workplace

- An effective policy and procedures, with training for all staff, will assist in preventing harassment and support individuals who are being harassed to come forward and ensure that the problem is addressed quickly and effectively



Sexual and Other Harassment in the Workplace

- Courts have held that an employer who responds quickly and effectively to a complaint by taking steps to remedy the situation and prevent future harassment will not be liable to the same extent, if at all, as an employer who fails to adopt such steps



Doing It Right



Who Needs Protection?

- Taking all the necessary steps protects everyone!
 - The PHA, applicants, participants, tenants, and employees
- There is no insurance for a civil rights (fair housing) lawsuit



Clear Policies

- Explain what harassment is
- State that harassment will not be tolerated
- Detail how employers and employees should respond to incidents of harassment



Clear Policies

- Policies should also have a detailed process by which employees can make complaints
- Provide multiple ways for applicants, residents, program participants, and staff to easily and safely submit a complaint



Clear Policies

- Admin plan, ACOP and lease, HR policies, code of ethics
 - Definitions, acceptable and unacceptable behaviors, consequences
 - Retaliating against any person because that person reported a discriminatory housing practice to a housing provider or other authority violates the FHA



Set up a System

- Set up a system to receive, investigate, and respond to complaints
- Designate a complaint coordinator
 - Responsible for ensuring complaints are appropriately handled and processed quickly



Set up a System

- Use a case management system to:
 - Flag harassment reports
 - Identify staff or housing providers named in complaints
 - Document any corrective action taken
- Establish process for consistently and appropriately responding to each complaint



Set up a System HCV

- Ensure your admin plan allows existing voucher program participants to retain or receive a tenant-based voucher or project-based unit when the participant wishes to transfer because of sexual or other discriminatory harassment



Practice Must Match Policy!

- Even if the PHA has good policies, if what is accepted behavior in the workplace is discriminatory, the courts will consider what is accepted as the “de facto” (“in fact”) policy
- Enforce your policies and procedures



Practice Must Match Policy!

- What about bullying?
 - A hostile environment in violation of the Act is broadly worded and fully captures the concept of bullying because of a protected characteristic



What YOU Must Do

- Don't accept harassment!
- Ignoring it is *not* okay – if you see something, say something
 - How serious or repeated the harassment is will determine your actions
 - Address the behavior directly with the person if you have the authority to do so



What YOU Must Do

- Inform the person how to file a complaint with HUD, as you would any discrimination complaint
- If you don't have the authority to address the situation, take it up the chain
 - The PHA has a legal and ethical duty to address it



Practical Guidance

- Address it – every time – when it comes up
 - Your job is not to play judge, but to be alert and vigilant
 - You set the tone



Practical Guidance

- If it's one serious incident, or if it's repeated, and you have the authority – take action
- If you don't have authority – report it



Summary

- What have we learned?
 - Did you learn anything that helped you?
 - Any surprises?
 - What will you do differently in your job?



Thank you for attending!



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