

PREVENTING SEXUAL HARASSMENT IN THE CONSTRUCTION INDUSTRY

A Trainer's Guide for Apprenticeship Programs, Unions and Contractors



**The National Center
for Women's Equity in
Apprenticeship and Employment**
at Chicago Women in Trades
www.womensequitycenter.org





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OVERVIEW

Sexual harassment, an issue in all workplaces, continues to be a significant barrier to the successful integration of women into the construction industry – occurring on worksites, in apprenticeship training, and in union settings. The Building and Construction Trades Department, AFL-CIO, and many of its affiliates, are taking steps to prevent and address sexual harassment in a proactive manner with policy and training. This module is designed to provide a thorough understanding of sexual harassment and identify ways individuals, unions, apprenticeship programs, and contractors can prevent and address sexual harassment.

Acknowledgements:

- * Wider Opportunities for Women
- * Jobs For the Future
- * Dr. Bernice Sandler

LEARNING OBJECTIVES

Students will be able to:

- Define the legal definition of sexual harassment and identify the evolution of laws pertaining to sexual harassment.
- Recognize and define different forms of sexual harassment.
- Explain why sexual harassment is a problem in the construction workplace.
- Identify who is harmed by sexual harassment.
- Describe the role of employers, unions, and workers in preventing and addressing sexual harassment.
- Demonstrate action steps to take in response to witnessing or experiencing sexual harassment.

SESSION #	SESSION TITLE	TIME
1	UNDERSTANDING SEXUAL HARASSMENT	4.50 Hours
	1.1 Introduction and Overview	5 Mins.
	1.2 Myths and Facts	30 Mins.
	1.3 Sexual Harassment in the Trades	10 Mins.
	1.4 Sexual Harassment in the News	15 Mins.
	1.5 Sexual Harassment Law	15 Mins.
	1.6 Understanding Types of Sexual Harassment	45 Mins.
	1.7 Responsibility and Enforcement	15 Mins.
	1.8 History of Sexual Harassment Awareness and Law	60 Mins.
	1.9 Identifying Sexual Harassment	45 Mins.
	1.10 Impact of Sexual Harassment	30 Mins.
2	ADDRESSING AND PREVENTING SEXUAL HARASSMENT	90 Mins.
	2.1 Who is responsible for addressing sexual harassment?	5 Mins.
	2.2 What to do if you are a target of sexual harassment	25 Mins.
	2.3 What to do if you observe sexual harassment	30 Mins.
	2.4 General Guidelines for Employers, Unions and Apprenticeship Programs	30 Mins.
3	RESPONDING TO SEXUAL HARASSMENT	75 Mins.
	3.1 Imperfect Pictures	60 Mins.
	3.2 Summary and Conclusion	15 Mins.

The lesson plan is divided into three parts: Understanding Sexual Harassment; Addressing and Preventing Sexual Harassment; and Responding to Sexual Harassment. The module is designed to be flexible and can be tailored to class schedule, class size, time constraints and program needs.

MATERIAL LIST

MODULE MATERIALS	SUPPLIES/EQUIPMENT
<ul style="list-style-type: none"> • Handouts 	<ul style="list-style-type: none"> • Flipcharts
<ul style="list-style-type: none"> • Exercise Sheets 	<ul style="list-style-type: none"> • Markers

FACILITATOR INSTRUCTIONS

SESSION 1: Understanding Sexual Harassment

[4.5 Hours]

MATERIALS NEEDED:

- Flipcharts and markers
- Handouts:
 - EX Myths and Facts
 - HO Four Types of Sexual Harassment
 - EX Is This Sexual Harassment
- Reference:
 - REF Myths and Facts Answer Guide
 - REF Is This Sexual Harassment Answer Guide
 - Appendix B – Key Legal Decisions

1.1 INTRODUCTION AND OVERVIEW

[5 Mins.]

Introduce the module by giving a brief overview of the learning objectives and providing the following summary:

Sexual harassment happens in all kinds of workplaces, as well as in schools, the military and can even arise in landlord tenant situations. Sexual harassment victims can be of any race, gender, age, class, and employment level. Sexual harassment is a sensitive topic as many women, and some men, have experienced it. It can leave people with a variety of feelings including vulnerability, lack of trust, anger, fear, frustration or being shut down.

In order to ensure all students feel safe to discuss the issue, and personal experiences related to harassment, establish and review the following ground rules:

- Practice attentive and active listening.
- Be respectful of other students and listen objectively to their experiences, opinions and feelings without judging.
- Be sensitive to others' experiences, sensitivity, and capacity to handle different behavior.
- Respect the feelings, comments and opinions of others.
- Keep an open mind and be open to new ideas.
- Be an engaged and active participant; do not monopolize the conversation.
- Refrain from side conversations.

- If you need to leave because the conversation makes you uncomfortable, please do so and consult with the teacher about how to address your concerns.
- Refrain from joking and teasing about this subject.
- Maintain the confidentiality of what is shared during this module.

Review the statement of the Building and Construction Trades Department, AFL-CIO:

In a letter to building trades members on sexual harassment in the workplace, Robert Georgine, former president of the Building and Construction Trades Department, AFL-CIO stated:

"Unfortunately, some men can be pretty hard-headed about women in hardhats. And, this hard-headedness can turn into behavior that is not only unbrotherly but it can be illegal as well....Our Unions are harmed to the very core when a member sexually harasses another member, or when one of our members is harassed by a supervisor and her co-workers do nothing about it. If a union member cannot count on another member, then whom can she count on?"

This quote, taken from the booklet *Sexual Harassment IS Against the Law*, published by the BCTD is one indication that the construction trades labor movement is increasingly recognizing, taking responsibility, and acting to stop sexual harassment in the workplace.

1.2 MYTHS AND FACTS

[30 Mins.]

Introduce this section by explaining that there is still a lack of awareness, understanding and of recognition of this issue. The laws pertaining to sexual harassment are relatively recent and still evolving. As a result, our society is experiencing a learning curve in understanding sexual harassment, defining it in legal and layperson terms, addressing it, and preventing it.

ACTIVITY: Distribute the Myths and Facts exercise sheet and explain that the exercise is designed to gauge awareness and current understanding of sexual harassment. This is an exercise designed to start a conversation and to share beliefs, understandings and perceptions; no one will be graded or judged on right or wrong answers.

- Give students 5 – 7 minutes to individually complete the exercise sheet.
- Divide the class into small groups and assign each group a question(s) to discuss for 5 - 7 minutes.
- Ask the groups to identify a reporter to relate the discussion on each point.
- Have each reporter share the group's conclusions. Ask the other students for their responses, things that were surprising.

Remind students that they are encouraged to hear a variety of opinions and to try to reach consensus, but can also report out differing views. Encourage them to have a lively discussion about opinions without finger pointing and to remember the ground rules.

SUMMARY: Summarize key points from the group reports and discussion. Use the *Myths and Facts Answer Guide* to review the correct answer for each question.

1.3 SEXUAL HARASSMENT IN THE TRADES

[10 Mins.]

Provide a brief overview of sexual harassment in the trades using the following information and data:

No worker is completely safe from being a target of sexual harassment. Studies suggest anywhere between 40-70% of women and 10-20% of men have experienced sexual harassment in the workplace. In 2010, 32,053 complaints of harassment were filed with the Equal Employment Opportunity Commission. In 2010, 11,717 charges were filed, 83.6 percent from women, yielding \$48.4 million in monetary compensation for charging parties and other aggrieved individuals. Some employees are at greater risk than others of being targets of unwanted sexual attention. Employees who work exclusively or mostly with people of the opposite sex and are supervised by members of the opposite sex are more likely to experience sexual harassment.

Not surprisingly, sexual harassment is a serious problem for female construction workers. According to a 1996 USA Today analysis of U.S. Equal Employment Opportunity Commission and Bureau of Labor Statistics data, female construction workers had the second highest rate of sexual harassment complaints per 100,000 employed women. Female miners experienced the highest rate of harassment. In a study conducted by Chicago Women in Trades of 200 tradeswomen, tradeswomen reported that they faced the following forms of sexual harassment:

- 88% reported pictures of naked or partially dressed women on their jobsites
- 83% reported they experienced unwelcome sexual remarks
- 57% reported being touched or asked for sex while on the job

In a study of 393 women in the Teamsters Union, sixty four percent of reported similar findings to that of the Chicago Women in Trades study. In the 2008 California Blue Ribbon Report on Women in Apprenticeship, 60% of the 150 women responding reported that sexual harassment was a serious problem. Women of color are particularly vulnerable because of stereotypes around gender and race, and because they are often in the weakest economic position. Additionally, tradeswomen may be harassed because of or about their sexual orientation, whether or not they identify as a lesbian.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- Both men and women can be targets or perpetrators of sexual harassment.
- Sexual harassment can happen between two people of the same sex, regardless of sexual orientation.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- A victim of sexual harassment does not have to suffer from economic injury, psychological harm, or discharge for it to be unlawful conduct.

1.4 SEXUAL HARASSMENT IN THE NEWS

[15 MINS.]

ACTIVITY: Conduct a class discussion on current news regarding sexual harassment.

Sexual harassment has received extensive media coverage in recent years. What are you aware of that has recently been in the news regarding sexual harassment?

1.5 SEXUAL HARASSMENT LAW

[15 Mins.]

Review the law with the class.

According to the Equal Employment Opportunity Commission, sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964, which states:

“It is illegal to discriminate against employees because of race, color, religion, sex or national origin. It shall be an unlawful employment practice for an employer:

- a) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual’s race, color, religion, sex, or national origin or
- b) To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex or national origin.”

Title VII gives employees the right to a workplace free of harassment, intimidation, insult or ridicule based on any of the statuses listed above. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Submission to or rejection of this conduct explicitly or implicitly affects an individual's employment.
- Your submission to or rejection of such conduct is used as a basis for employment decisions about you.
- Such conduct had the effect of unreasonably interfering with your work performance or creating an offensive, hostile or intimidating work atmosphere.

1.6 UNDERSTANDING TYPES OF SEXUAL HARASSMENT

[45 Mins.]

ACTIVITY: Distribute the HO Four Types of Sexual Harassment. Divide the class into 4 groups. Assign each group one of the 4 types of sexual harassment.

Ask the groups to choose a reporter from their group who will report back to the large group. Direct the groups to:

- 1. Discuss the assigned type of harassment.**
- 2. Write a short definition on a flipchart.**
- 3. List 2 examples of sexual harassment conduct that would illustrate the assigned category. Encourage the groups to describe realistic scenarios that might occur.**

REPORTS: Have the reporters give an overview of their team's responses. Conduct a discussion based on the scenarios developed by the groups. Highlight key points and review the four types of sexual harassment.

1.7 RESPONSIBILITY AND ENFORCEMENT

[15 Mins.]

Review the employer's responsibility and enforcement agencies:

The Employers Responsibility

Employers have a duty and legal responsibility to try to prevent sexual harassment. If the harassment is by co-workers or non-employees temporarily at your place of work, the employer can be held responsible if a supervisor or other managers were informed of the incident and the employer failed to take immediate and appropriate action. With respect to conduct between fellow employees, an employer is responsible for acts of

sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct.

A victim does not have to be asked for sex or lose a job or a promotion to file a sexual harassment suit. According to the EEOC, in determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case-by-case basis.

Enforcement Agencies

Various public agencies are responsible for civil rights enforcement. At the federal level, the Equal Employment Opportunity Commission handles individual complaints. Individuals have up to 180 days following the last occurrence of the sexual harassment to file a complaint.

Federally funded construction contractors are also covered by Executive Order 11246, which mandates that “contractors and subcontractors must maintain a work environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor’s employees are assigned”. (41 CFR 60-4.3(a) 7.a.) The Office of Federal Contract Compliance Programs, which monitors compliance with the Executive Order, can investigate a specific complaint of sexual harassment or make a finding about a hostile work environment as part of a compliance review.

Sexual harassment is also covered by both state and local human rights regulations and ordinances. The period in which you have to file a complaint may be longer at state and local agencies.

1.8 HISTORY OF SEXUAL HARASSMENT AWARENESS AND LAW [60 Mins.]

Provide an overview of the historical development of sexual harassment awareness and the law using the information below and the key case summaries in Appendix B.

Less than forty years old, sexual harassment law is evolving and public perceptions of sexual harassment continue to change. While conduct that qualifies as sexual harassment has existed for many years, the term was first used in the early 1970’s, as the women’s movement began to talk about and address forms of sex discrimination that women faced in the workplace. The first legal cases of sexual harassment were decided in the 1980’s. In 1980, the Equal Employment Opportunity Commission (EEOC) issued guidelines for courts to use in deciding sexual harassment cases.

Greater public attention to sexual harassment grew as large cases or charges against public figures came into the spotlight. One of the most prominent cases was that of Supreme Court Justice Clarence Thomas in 1991. During the Senate confirmation process following his nomination to the U. S. Supreme Court, Anita Hill came forward to testify about his sexual harassment of her when he was her boss at the EEOC.

Also in 1991, the sexual harassment of more than 80 women and several men by Navy and Marine Corps aviation officers at their Las Vegas Symposium of the Tailhook Association was widely reported. The highly visible and degrading behavior included an infamous “gauntlet” in a hallway that women had to pass through, where they were groped, fondled and abused by the military officers. The conduct was justified by a flawed initial investigation that condoned the misconduct as tradition, the understandable actions of soldiers returning from the stress of combat, and harmless. One female Navy commander underscored that the behavior also sent a message about women’s growing role in the male-dominated military. She explained that the '91 convention was different from other years both because of the Gulf War and recent congressional inquiries about women in combat: *“This was the woman that was making you, you know, change your ways. This was the woman that was threatening your livelihood. This was the woman that wanted to take your spot in that combat aircraft.”*

While men and women’s perceptions of what constitutes sexual harassment have grown closer over the last years, there are still some gaps. In the 2008 California Blue Ribbon Report on Women in Apprenticeship, 67 % of the 12 sponsors of joint apprenticeship programs said sexual harassment was not a problem, while 60 % of the 150 women responding reported that sexual harassment was a serious problem.

ACTIVITY: **Think about and write down your first awareness of the term sexual harassment. This may include sharing your personal experience with sexual harassment, but only if you are comfortable. Ask for volunteers to share their comments.**

Numerous court decisions since the 1980’s have clarified and expanded understanding of what constitutes sexual harassment. A number of these cases addressed issues facing women in male-dominated workplaces. Examples of some of the important cases are summarized in Appendix B.

ACTIVITY: **Assign small groups of students a legal case from Appendix B. Ask them to research the case and prepare a short report:**

- *What was the case?*
- *What was the significance of the case?*
- *What has been the impact of the case?*

REPORTS: Have each group give a short report on the case they researched. Engage the group in discussion on the impact and relevance of these legal cases.

1.9 IDENTIFYING SEXUAL HARASSMENT

[45 Mins.]

Sexual harassment can take many forms. It can encompass: verbal, behavior, graphic/ written, or physical actions. [Post the four forms of sexual harassment on a flipchart.]

ACTIVITY: Have students work individually to write down an example in each of the four categories. When all students have written down examples, divide students into small groups of four 4-6. Have the students share in their group the examples they wrote down and then work as a team to identify other examples. Direct the groups to record their responses on a flipchart and be prepared to report back to the larger group.

REPORTS: Have each group report out their examples. Conduct a discussion using student examples to highlight key points.

While it may be easy to identify some overt forms of sexual harassment, in the case of behavior that creates a hostile work environment, there may be a question about when conduct crosses the line from innocuous and inoffensive behavior to harassing. The following questions, and the chart on the next page, can help frame the intent of the behavior and serve as a guideline to assess your own behavior.

ACTIVITY: Engage students in discussion on how they would determine if behavior is merely annoying or rises to the level of sexual harassment. Use the following questions as points for discussion:

- *Would a perpetrator want their family member (mother, daughter, sister, and spouse) to be the target of the behavior?*
- *Would the perpetrator be likely to act in this way if their spouse/partner were present?*
- *Would the perpetrator want the behavior to be the subject of an article in the community or religious newsletter?*

Nan Stein, of the Wellesley Center for Research on Women and an expert on the sexual harassment of young women, developed the following checklist as a way one can tell whether questionable behavior is more than harmless flirting, and when it is sexual harassment. [Post on flipchart or distribute as a handout.]

Sexual Harassment	Flirting
feels bad	feels good
one-sided	reciprocal
feels unattractive	feels attractive
is degrading	is a compliment
feels powerless	in control
power-based	equality
negative touching	positive touching
unwanted	wanted
illegal	legal
invading	open
demeaning	flattering
sad/angry	happy
negative self-esteem	positive self-esteem

ACTIVITY: **Distribute the Is This Sexual Harassment exercise sheet.**

- **Have students work individually to identify whether or not each scenario listed would constitute sexual harassment.**

When students have completed the exercise sheet, have students discuss their responses in pairs or small groups (depending on time).

- **In the pairs / small groups, have students identify the type of sexual harassment (based on the handout and previous discussion of the four types) for each scenario they determined to be sexual harassment.**

REPORTS: **Have each pair / small group share their response to one scenario; rotate until every team has had an opportunity to respond. If time permits, continue rotating until all scenarios have been reviewed.**

1.10 IMPACT OF SEXUAL HARASSMENT

[30 Mins.]

Provide a brief introduction to the topic using the following information:

Sexual harassment does not just cause harm to an individual. The worksite, classroom or union can become poisoned as a result of a hostile work environment. Costs to employers can be significant even beyond terms of monetary settlements, which can be substantial.

In 2010 for instance, 11,717 charges of sexual harassment were brought – 83.6 percent from women – yielding \$48.4 million in monetary benefits (not including monetary benefits obtained through litigation) for charging parties and other aggrieved individuals. A 2004 EEOC suit against Fed Ex on behalf of a woman truck driver resulted in a verdict for \$101,400 in back pay, \$290,000 in front pay, \$350,000 for emotional suffering and \$2.5 million in punitive damages, for a total award of \$3,241,400. (EEOC v. Fed Ex, #1:02-cv-1194 (M.D. Pa. verdict 2004). Sexual harassment can be costly for unions as well, in one case, a state court jury found a local union liable for \$800,000 in damages to four women who charged the union with sexual harassment, retaliation and breach of the duty of fair representation. These are examples of just a few of the damages resulting from sexual harassment.

ACTIVITY: Divide students into small groups of 3-5 and assign each group to a flipchart easel. Ask the groups to discuss what harm is caused by sexual harassment from the perspective of each of the following:

- Individuals
- Apprenticeship programs
- Unions
- Contractors

Have the groups record their responses on the flipchart and be prepared to give a 2 minute report on the group's responses.

REPORTS: Have each report give a short report on their responses. Use questions to engage students during the report backs on points that may have been missed. Summarize the discussion.

MATERIALS NEEDED:

- Flipcharts and markers

2.1 WHO IS RESPONSIBLE FOR ADDRESSING SEXUAL HARASSMENT? [5 Mins.]

This section will go over the various entities that have responsibility for ensuring a workplace free of sexual harassment. Ultimately, employers have the most power to establish a work environment that treats all workers equitably and with respect. They can and should do this by setting and promoting clear policy, conducting sexual harassment prevention training, monitoring the workplace and conducting prompt and thorough investigation of complaints. While the employer or school has the primary responsibility, individuals and co-workers can also play a role in maintaining a non-hostile work environment. This section begins with a discussion of how a victim of sexual harassment can attempt to stop or seek redress from sexual harassment. It is followed by an outline of best practices that co-workers, employers, unions, and apprenticeship programs can take to create a harassment free environment.

2.2 WHAT TO DO IF YOU ARE A TARGET OF SEXUAL HARASSMENT [25 Mins.]

Provide an overview of what to do using the following information and references:

The avenues for resolving sexual harassment incidents remain unclear to many in the trades. An exceedingly high percentage of women reported they were completely misinformed, or poorly informed, about remedies for sexual harassment. According to a 2008 California Blue Ribbon report on women in apprenticeship, 42 % of women felt they were either completely misinformed or were not well informed about remedies for harassment. While 39% said they were highly informed, many women reported that when they did file grievances, those grievances were bungled, mishandled, or not processed correctly. This section offers strategies for actions that an individual can take if they think they are being sexually harassed. It covers confronting a harasser, documenting harassment, reporting harassment, and coping with the impact and cost of harassment.

The Teamsters union created a strategy checklist for victims, which includes topics such as "Do Not Quit," "Find Support," "Be Prepared," "Confront the Harasser," "Put it in Writing," "Keep a Record," "Find Witnesses," and "Find the Harasser's Other Targets." Although the most common response to unwanted sexual attention is to ignore the

behavior or do nothing, asking or telling a person to stop is often the best way to make things better. Since claims of sexual harassment due to a hostile work environment are evaluated individually, and take into account whether the target found the behavior to be unwelcome, it is critical to make it clear that the behavior or actions offensive and objectionable

Steps to take if you are harassed

Your immediate objective and goal should be to:

- Get out of harm’s way
- Stop the harassment – if possible before it escalates or causes significant damage
- Prevent it from happening again
- Avoid damaging repercussions

If you think you are being harassed, as a first step, when possible, directly inform the harasser that the conduct is unwelcome and must stop. You should also seek support from a friend, a family member or a tradeswomen’s organization.

An informal resolution is usually preferable, and a direct, immediate response is likely to be the most effective one. Make it clear in your response that you find the actions offensive and unwelcome. This list below includes example of ways to ask the abuser to stop:

- Stop.
- That kind of behavior makes me uncomfortable. Please don’t do that around me.
- I’ll be removing those pictures (magazines, graffiti, etc.) and I hope I don’t see them around here again. They are inappropriate for the workplace.
- No, I don’t like to mix my social life with work. Please don’t ask me again.

The chart below, from a 1994 report of the federal government’s Merit Systems Protection Board, demonstrates the effectiveness of different responses.

Table 9
How Well Did the Informal Actions Work?

Percentage of victims who said in 1994 that the indicated action made things better, made things worse, or made no difference

	Better		Worse		No Difference	
	Men	Women	Men	Women	Men	Women
Asking or telling the person to stop	61	60	15	8	25	32
Reporting the behavior to a supervisor or other official	33	58	16	13	52	29
Avoiding the person	52	44	13	8	36	48
Threatening to tell or telling others	55	37	0	14	46	49
Making a joke of the behavior	29	29	3	16	68	55
Ignoring the behavior or doing nothing	32	17	6	10	62	73
Going along with the behavior	18	7	17	37	65	57

Note: Respondents could choose more than one action.

Next Steps

If these kinds of responses don't work, and the harassment continues or increases, additional action is necessary. The victim should use any employer complaint mechanism or union or apprenticeship program grievance system available. The victim should find out what the company/union/program policies and procedures are for addressing sexual harassment. It is important to have a written copy. It is critical to document the harassment and to identify witnesses. A victim should think about a resolution that would "make you whole" -- a union term that means going back to the state you were in before the adverse action.

- 1) Document all incidents of harassment, recording the date, place and time of the incident.
 - What was said or done,
 - By whom,
 - What you did in response,
 - Any witnesses to the harassment.

This is important for several reasons. Making a record as soon as possible after the incident increases the likelihood of remembering exactly what happened. Using a specific workplace notebook (used only for that purpose), a victim should write down what happened, and how it affected them, as well as any actions taken in response.

Documentation can also work as a tactic to stop the harasser, who may be forced to review their actions when they know they are being recorded. Using smart phone technology may also be a way to document harassment. In all forms, it is important to make copies of records and keep them in a safe place, off the worksite.

Documentation can also be important evidence in an investigation, and demonstrates that the harassment was taken seriously enough to make a record of it.

- 2) A victim must make it clear that they find the actions offensive and unwelcome. Saying 'no' verbally directly to the harasser and following-up with a written letter to reinforce the verbal message, using the documentation and records will make it very specific. Using the employer/union/school sexual harassment prevention policy can also reinforce why the behavior is inappropriate. Again, maintaining copies in a safe place is important.
- 3) It is not uncommon for others to have experienced similar harassment. A victim can try to gather direct or indirect information about this.

- 4) When a victim is unable to stop the harassment on his or her own, it is time to tell a supervisor, union steward or apprenticeship program official. If the harasser is a supervisor, their supervisor should be told.
- 5) Understanding how the investigation will be conducted will enable a victim to be prepared to answer the following kinds of questions:
 - What happened?
 - Who was involved?
 - When did the action occur?
 - Has it happened before? How many times? How often?
 - How long has this been going on?
 - Where did this take place?
 - Were there any witnesses?
 - What effect did this have on you (economic, physical, and psychological)?
 - What have you done about this so far?
 - What is your relationship with the harasser outside of work?
 - Is anyone else having the same problem?
 - What do you want done about it?
 - What would make you feel whole?

An employer is required to investigate complaints of sexual harassment immediately and thoroughly; every company will have their own procedure and timeline. Most investigations begin with confidential interviews with both the victim and the accused harasser. If an employer finds that the complaint is valid, he or she must make sure that the harassment stops. If the victim has suffered financially or emotionally as a result of the harassment, the employer is liable for monetary damages.

- 6) If the employer does not take a complaint seriously, take action to stop or investigate the harassment, or if a victim does not agree with the conclusions of the investigation, there may have other options for support, advice and intervention. It is strongly encouraged that a victim should seek out all avenues of redress available before taking any legal action.
- 7) A union representative should be able to advise a victim about what to do next, including filing a union grievance. A union steward can help with this procedure.
- 8) If none of these steps are sufficient to stop the harassment, a victim may be able to seek protection and redress from a local, state, or federal civil rights entity. This is not an easy step or one to take lightly. It is strongly encouraged to enlist a tradeswomen's organization, other support group, or a lawyer experienced with sexual harassment cases to discuss these other options.

It makes sense to wait to see if management corrects the harassment before filing a charge. However, if management does not act promptly to investigate the complaint and undertake corrective action, then it may be appropriate to file a charge. The deadline for filing an EEOC charge is either 180 or 300 days after the last date of alleged harassment, depending on the state in which the allegation arises. This deadline is not extended because of an employer's internal investigation of the complaint.

Resolution will depend on the type and severity of the harassment and may include:

- Disciplinary action for the harasser
- A transfer for the harasser
- A transfer to a different area
- Removal of offensive material
- Guidelines for respectful communication
- Implementation of, or review of sexual harassment prevention training
- Re-enforcement or improvements to policy

If you are harassed, remember it is important to take care of yourself. Sexual harassment can leave a victim with a range of feelings, physical and mental reactions. A victim can experience stress, be distracted on the job and risk working safely, find work and non-work relationships challenging. The American Association of University Women (AAUW) reported that:

- 68% of female students felt very or somewhat upset by sexual harassment they experienced; only 6% were not at all upset.
- 57% of female students who have been sexually harassed reported feeling self-conscious or embarrassed.
- 55% of female students who have been sexually harassed reported feeling angry.
- 32% of female students who have been sexually harassed reported feeling afraid or scared.
- 16% of female students who have been sexually harassed found it hard to study or pay attention in class.

It is important to get support for dealing with sexual harassment, regardless of whether you take action, get redress on your own, or have to go through your apprenticeship program, company or union channels. This support may be found in a number of ways and places. Talking with others who have had similar experience can make you feel less isolated and address the range of concerns and feelings that can accompany being a victim of sexual harassment. You may be able to find another tradesperson, a tradeswomen's support group, a women's committee, a mentor or assistance through a company human resources employee assistance program. While friends and family may be sympathetic, people that understand firsthand the work environment can best understand. You may also need to consult a medical or mental health professional to deal with stress, anxiety or any health concerns that may arise from the harassment.

2.3 WHAT TO DO IF YOU OBSERVE SEXUAL HARASSMENT

[30 Mins.]

Stopping sexual harassment is not just the responsibility of the employer, the union, the teacher or the victim. Anyone who witnesses or observes verbal, written, graphic, or other behavior that may be sexual harassing can play a role in stopping it. Even though it may feel risky to intervene, or that it is interfering in someone else's business, being pro-active to stand up to and to try to stop sexual harassment sends a message that the behavior is not legitimate, it is unwelcome and inappropriate in the workplace. A witness to sexual harassment can be critical in supporting the victim by urging the perpetrator to cease the behavior, recording what happened, and alerting company management of the problem.

There is no one way to respond when witnessing or observing sexual harassment. It is best to use strategies that feel natural and comfortable. To the extent possible, it is best if interventions occur immediately after offensive behavior occurs.

ACTIVITY: **Intervention strategies - assign students to work in small groups to identify intervention strategies that might be effective using the following methods:**

- a direct response verbally or in writing,
- humor,
- shock or surprise,
- pretending not to understand.

If needed, have the groups use the scenarios from the earlier activity as a basis for their intervention strategies.

REPORTS: **Have each group report out. Conduct a discussion on the effectiveness of the various intervention strategies developed, what the challenges are to using these strategies, and what other approaches might be used in a given situation.**

2.4 GENERAL GUIDELINES FOR EMPLOYERS, UNIONS AND APPRENTICESHIP PROGRAMS

[30 Mins.]

Provide an overview of general guidelines using the following information:

While a worker has limited ability to create company-wide policy, understanding what constitutes a good sexual harassment policy is important to expectations, practices to redress, and opportunities to influence a company's approach.

GENERAL GUIDELINES

1. **Written Policy**
 - a. Have a written policy prohibiting illegal discrimination of all employees/union members/students/apprentices. The policy specifically addresses sexual harassment as prohibited conduct and describes steps to be taken if harassment occurs.
 - b. Establish a grievance procedure for reporting incidents of sexual harassment.

2. **Resolution: Problem Solving Investigations and Discipline**
 - a. Have informal mechanisms that enable complainants to discuss concerns about sexual harassment without filing a formal complaint.
 - b. Investigations of sexual harassment complaints are handled in a fair and timely investigation manner.
 - c. Disciplinary process to address those found to have sexually harassed others.
 - d. Process to swiftly address persons or causes of sexual harassment.

3. **Awareness Training**
 - a. People in leadership are required to attend training sessions regularly to review relevant laws, organizational policy, build problem-solving skills, and discuss their responsibility to create a harassment-free environment.
 - b. People in leadership actively model appropriate behavior.
 - c. Sexual harassment awareness training is conducted for employees/union members/apprentices.

4. **Assessing the Work Environment**
 - a. Periodically assesses, and regularly monitor, the work/school environment for issues of sexual harassment including pictures, calendars, magazines, graffiti, etc.

GUIDELINES FOR EMPLOYERS

An employer is legally responsible for harassment by a supervisor when it culminated in a tangible employment action, for example a change to a less favorable work assignment, lay-off, firing, or loss of overtime opportunities. If the harassment did not lead to a tangible employment action, the employer is liable unless it proves that:

- 1) It exercised reasonable care to prevent and promptly correct any harassment; and
- 2) The employee unreasonably failed to complain to management or to avoid harm otherwise. The law does not specify what steps an employer must take to prevent sexual harassment, but an employer will be looked on more favorably if

a charge of sexual harassment occurs and the company has a strong sexual harassment prevention policy and active programs to assure employees understand the policy. The courts have held that without clear evidence that employees have been trained and understand the company's harassment policy, the employer has little chance of creating an affirmative defense against harassment claims. EEOC data shows that in 2010 only 40% of employers who faced sexual harassment charges were able to demonstrate that they had policies and practices in place that might have prevented or stopped workplace harassment.

The following are elements of a strong plan and include policy, awareness and prevention training, workplace assessment, and clear measures to address incidences of sexual harassment.

1) Written Policy

- a. Have a written policy prohibiting illegal discrimination of all employees. The policy specifically addresses sexual harassment as prohibited conduct and describes steps to be taken if harassment occurs.
- b. Update a nondiscrimination and sexual harassment policy and reissue it to employees annually.
- c. Post the policy in prominent locations throughout the workplace.
- d. Establish a grievance procedure for employees that enable them to report complaints of harassment to their direct supervisor, another level of management, union representative, or human resource specialist.

2) Resolution: Problem Solving Investigations and Discipline

- a. Have informal mechanisms that enable complainants to discuss concerns about sexual harassment without filing a formal complaint.
- b. Before completing the investigation, the employer should take steps to make sure that harassment does not continue. If the parties have to be separated, then the separation should not burden the employee who has complained of harassment. An involuntary transfer of the complainant could constitute unlawful retaliation. Other examples of interim measures are making scheduling changes to avoid contact between the parties or placing the alleged harasser on non-disciplinary leave with pay pending the conclusion of the investigation.
- c. Investigations of sexual harassment complaints are handled by or with specialists trained in conducting fair and timely investigation procedures.
- d. Records of complaints filed are not kept in personnel files and access to investigation reports is strictly limited.
- e. If an employer determines that harassment occurred, it should take immediate measures to stop the harassment and ensure that it does not recur. Disciplinary measures should be proportional to the seriousness of the offense. The employer should also correct the effects of the harassment.

- f. An employer should correct harassment that is clearly unwelcome regardless of whether a complaint is filed. For example, if there is graffiti in the workplace containing racial or sexual epithets, management should not wait for a complaint before erasing it.
- g. An employer should ensure that its supervisors and managers understand their responsibilities under the organization's anti-harassment policy and complaint procedures.
- h. An employer should screen applicants for supervisory jobs to see if they have a history of engaging in harassment. If so, and the employer hires such a candidate, it must take steps to monitor actions taken by that individual in order to prevent harassment.
- i. An employer should keep records of harassment complaints and check those records when a complaint of harassment is made to reveal any patterns of harassment by the same individuals.

3) Awareness Training

- a. Supervisors are required to attend training sessions regularly to review relevant law, organizational policy, build problem-solving skills, and discuss their responsibility to create a harassment-free workplace.
- b. People in leadership are aware of the importance of their compliance with the policy and actively model appropriate behavior.
- c. Ongoing sexual harassment awareness training is conducted for every level of employee on paid time.
- d. Beyond stating the law and what the policy is, the training requires employees to apply legal definitions to real-life situations through interactive tools, such as board games, video vignettes, or role-playing exercises.

4) Assessing the Work Environment

An employer should periodically assess the work environment for signs of sexual harassment by surveying employees about their experiences, looking at printed and other graphic material, watching and listening to co-workers interactions. Questions asked may include employees' opinion on the level of sexual harassment in the workplace, the extent to which they believe they understand the policy, and their factual knowledge about what to do if harassment occurs.

GUIDELINES FOR UNIONS

Unions have an affirmative duty to prevent discrimination and harassment and are covered by Title VII, which states:

It shall be an unlawful employment practice for a labor organization-

- (1) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;
- (2) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or
- (3) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

The union can adopt many of the same elements as employers:

- a. Set policy
- b. Conduct training for union leaders and representatives
- c. Develop contract language
- d. Monitor the workplace and union environment
- e. Investigate complaints
- f. Union leadership can model equitable treatment

Below are examples of sexual harassment policies from two unions.

International Brotherhood of Electrical Workers – IBEW

From the IBEW® Stands Against Sexual Harassment. A Guide for Defining, Recognizing and Confronting Sexual Harassment in the Workplace. (REV. 12/05)

“Sexual harassment is dehumanizing and divisive, and hinders us from achieving career goals, such as having control over our working lives and shaping our future, being treated fairly and working productively. As diversity in the workplace increases, we must learn to value our differences and similarities, and work together to take advantage of our various skills, experiences and abilities.

Sexual harassment is one of the most corrosive influences that can infect the workplace. It can divide the bargaining unit and pit workers against each another. It can destroy the promise of effective labor/management cooperation when power is

wielded in a sexually manipulative and dehumanizing manner. Sexual harassment is illegal discrimination based on sex and has no place in a healthy work environment.

“Although it is the employer’s obligation under the law to maintain a workplace free of sexual harassment, all of us—women and men, union and management—must work together to eliminate sexual harassment. In this regard, the IBEW endorses an active role by local unions in representing their members and in assisting them when claims of sexual harassment or any other form of discrimination arise. Workers must be empowered with knowledge about sexual harassment so they may assert their right to a workplace free of sexual harassment. You need not suffer sexual harassment in silence, imprisoned by the fear of speaking out. Every woman and man must be empowered to confront such abusive behavior in the workplace.”

Bricklayers and Allied Craftworkers – BAC

In an article in the BAC Journal, Issue1, 2008 an article titled “Strength in Diversity” addresses the union’s commitment to equal and fair treatment for all members:

“The BAC members belong to a union out of a commitment to solidarity, collective action, mutual support, and the attainment of social and economic justice for all working people. These are the reasons unions were formed, and it is the commitment to achieving fair treatment for all workers that keeps the union movement alive. Discriminating against or harassing others is against everything for which our proud organization was created and stands.”

While preventing sexual harassment is ultimately the responsibility of the employer, unions can be vital to preventing harassment before it occurs and stopping it when it does occur.

The union can work to get a strong anti-discrimination or sexual harassment clause included in the collective bargaining agreement. This is important because the contract dictates what can be covered by the grievance procedures.

In addition, the union should have a strong anti-discrimination clause in the union constitution prohibiting sexual harassment as a form of sex-based discrimination. This sets a tone that communicates the union’s commitment to equal protection of all its members. It also is important since it sends a strong message that sexual harassment in any union activity is prohibited.

Unions are also bound by the *duty of fair representation*, which means that the union must act to protect the rights of all members. A union that fails to represent a member who has a grievance of sexual harassment may be found in violation of this provision of the National Labor Relations Act. It also means that in a case of co-worker harassment a union may be in the position of representing both the person harassed and the alleged harasser. In these cases the union representative must not act "arbitrarily,

discriminatorily, capriciously, perfunctorily, or with bad faith, hostility, or dishonesty." A member who feels they have not been fairly represented can file a charge with the National Labor Relations Board (NLRB) or sue the union in court.

An effective union program will have three core components:

- A strong policy, reflecting the commitment of the union leadership at all levels, that is concisely written and widely communicated.
- Grievance procedures that clearly explain how to handle sexual harassment complaints against both management and union members and that provide for training shop stewards.
- Awareness training that includes workshops for all members on how to prevent sexual harassment and how to respond to sexual harassment if it occurs.

In the case of co-worker harassment, the investigation may begin with an informal approach, since it is usually preferable to try to resolve a complaint without involving the company. As in any investigation, the steward or business agent should start by taking a complaint seriously and documenting the key issues in the complaint. The union representative should then interview the alleged harasser. If the alleged harasser acknowledges the behavior, the union should review the sexual harassment policy, inform and inform the harasser that the conduct must stop immediately.

In the case of supervisor harassment, the union representative may try to resolve the problem to the complainant's satisfaction informally, but if that is not successful, move to file a formal grievance. The union should provide and maintain as much documentation as possible about the incident(s).

GUIDELINES FOR APPRENTICESHIP AND PRE-APPRENTICESHIP PROGRAMS

The apprenticeship program has the same responsibilities as employers and unions to protect its participants from sexual harassment. If the apprenticeship program is housed or affiliated with a secondary or post secondary educational institution, sexual harassment is also protected under Title IX, which prohibits sex discrimination in any institution receiving federal education funds.

The apprenticeship program should follow the same basic protocol that is outlined above for employers and unions; setting policy, conducting training for trainers and staff, monitoring the workplace and classroom environment and investigating complaints.

The following are examples of policies from two apprenticeship programs in regards to sexual harassment.

JATC Policy West Texas Joint Electrical Apprenticeship and Training Committee

The Joint Apprenticeship and Training Committee does not tolerate sexual harassment of any type. Sexual harassment is unlawful and such prohibited conduct exposes not only the Committee, but also individuals involved in such conduct to significant liability under the law. The Committee expects committee employees (including instructors), employers who hire apprentices, and apprentices to treat each other with respect and dignity. Sexual harassment not only hurts the immediate victim, but also can result in a general atmosphere in which the purpose of the apprenticeship and training program is undermined. The Committee, therefore, is committed to vigorously enforcing this policy against sexual harassment. Committee employees or apprentices who engage in such conduct will be disciplined. Employers who engage in such conduct against apprentices will be denied access to apprentices.

The International Union of Bricklayers and Allied Craftworkers (BAC)

The International Union of Bricklayers and Allied Craftworkers (BAC) and its related organizations, the International Pension Fund, the International Health Fund, and the International Masonry Institute, reaffirm that they are committed to providing all employees with a workplace free from discrimination and harassment. BAC does not discriminate against or harass any employee because of race, religion, creed, color, sex, age, national origin, sexual orientation, disability, ancestry, protected activity under the antidiscrimination statutes (that is, opposition to prohibited discrimination or harassment or participation in the statutory complaint process), or on any other basis prohibited by law.

In keeping with this policy, BAC and its related organizations reaffirm that they will not tolerate any form of discrimination or harassment on any of the bases listed above. This prohibition covers discrimination and harassment by anyone in the workplace – supervisory and non-supervisory employees, officers, members, vendors and other outsiders.

MATERIALS NEEDED:

- Handouts:
 - EX Imperfect Pictures Roleplay

3.1 IMPERFECT PICTURES**[60 Mins.]**

Explain that during the role-play exercise, you will be assigned a role as one of a number of different characters on a job site reflecting management, workers, union, and advocates. You will read a scenario involving a complaint of sexual harassment and work in small groups to identify possible resolutions to the case from the point of view of the character that you are assigned. It is important to stay in character during the exercise. Each of the groups will present how they were able to address and resolve the sexual harassment.

ACTIVITY: Distribute the Imperfect Pictures Roleplay handout and review the directions with the class. Give students time to individually read through the assignment.

Follow the guidance as outlined in the roleplay directions; give groups time to prepare and then conduct the roleplay.

Conduct a discussion to debrief the roleplay:

- *What did they learn from this exercise?*
- *What was challenging about a particular role?*
- *What did you think of ____'s reaction during the roleplay?*
- *What other approaches could be taken?*

Summarize key points from the discussion.

3.2 SUMMARY AND CONCLUSION**[15 Mins.]**

Conduct a review of the key points of the module drawing on the discussion and student comments. Use questions to review with students – examples might include:

- *What is sexual harassment?*
- *What are the types of sexual harassment?*
- *Who's responsible for preventing addressing sexual harassment?*
- *What should you do if you are sexually harassed?*
- *What can you do if you observe sexual harassment?*

APPENDIX A – MODULE 2 MATERIALS GUIDE

The following is an outline of the file structure for Module 2 electronic resources. Some resources are provided in both Word and PDF formats to allow for modification as needed and to provide a formatted version for printing.

MATERIALS KEY		GUIDE KEY	
HO	Handout	BOLD	Folders / subfolders
EX	Exercise	○ BULLETED	Files
REF	Reference Document	[BRACKETS]	File format(s)

MODULE 2 – SEXUAL HARASSMENT

- **MOD 2 – FACILITATOR GUIDE**

- [Word / PDF] MOD 2 – Sexual Harassment - Facilitator Guide

- **MOD 2 – HANDOUTS**

- [PDF] MOD 2 – EX Imperfect Pictures Roleplay
- [PDF] MOD 2 – EX Is This Sexual Harassment
- [PDF] MOD 2 – EX Myths and Facts
- [Word / PDF] MOD 2 – HO Four Types of Sexual Harassment
- [PDF] MOD 2 – REF Is This Sexual Harassment Answer Guide
- [PDF] MOD 2 – REF Myths and Facts Answer Guide

APPENDIX B – KEY LEGAL DECISIONS

Williams v. Saxbe (1976) First case establishing that sexual harassment was a violation of Title VII of the Civil Rights Act.

Meritor Savings Bank v. Vinson (1986) Hostile work environment is a form of sexual harassment. Sexual harassment was originally understood as only “quid pro quo” until the Supreme Court decided that a hostile work environment alone was a form of unlawful discrimination and not just limited to “tangible economic discrimination”. Meritor Bank established that “hostile work environment” harassment is actionable under Title VII of the Civil Rights Act of 1964.

Harris v. Forklift Systems (1993) Damage suffered by a victim is not relevant to determining if sexual harassment occurred. The U.S. Supreme Court decided unanimously that the amount of damage suffered by a victim is not relevant to determining if sexual harassment occurred, clarifying that “harassing conduct didn’t need to lead to a nervous breakdown.” Rather, Title VII merely requires that the discriminatory conduct be so severe or pervasive that it creates an abusive workplace for someone based on their sex. Justice Sandra Day O’Connor wrote that as long as the environment could “reasonably be perceived, and is perceived, as hostile or abusive there is no need for it also to be psychologically injurious.”

Hall v. Gus Construction Co. (1988) Conduct such as hazing, even if not of a sexual nature, can constitute sexual harassment. In *Hall v. Gus Construction Co.*, three women working as “flag persons” were subjected to a range of degrading verbal and physical abuse by their co-workers. One of the women, who developed a skin rash, found herself nicknamed “Herpes.” They found obscenities written in the dust on their car. They were “moonied” by their co-workers, who also urinated in their water bottles and automobile gas tanks. The company’s supervisor was aware of the abusive conduct but did not stop it. The court found this conduct violated Title VII because it was unwelcome conduct of a sexual nature, even though it did not contain “explicit sexual overtones.”

Robinson v. Jacksonville Shipyards, Inc., (1991) Pornography equals a hostile workplace. In this case a female welder at the Jacksonville Shipyard company was continually subjected to nude and partially nude pictures posted by her male co-workers, not only in common areas, but also directly where the victim would find them, including her tool box. Despite the victim’s complaints on a number of occasions that she found these materials offensive, the company’s supervisory personnel provided little or no assistance. The court ruled that pornographic images, including graffiti, create a hostile work environment and the company was ordered to remove the offensive pictures. The decision was critical in that it established that, ‘pornography communicates a message about the way [an employer] views women strikingly at odds with the way women wish to be viewed in the workplace.’ Importantly for women working in a male-dominated environment, the court ruled that the pornography displayed around the workplace

had “a disproportionately demeaning impact” on the female employees and thus “convey[ed] the message that [women] do not belong.” In other cases, courts also rejected the idea that a woman who works in a male-dominated workplace should accept the risk of harassing conduct, asserting that there is no “‘crude environment’ exception, if there was it would only remove the legal “safeguards” for those who need them most.”ⁱ

Ellison v. Brady (1991) Sexual harassment cases the facts can be judged from the perspective of a “reasonable woman”, as opposed to a “reasonable person.” This case established that women and men may have different perceptions of what conduct constitutes workplace sexual harassment. The court provided a refinement in the evaluation of whether or not conduct was sexually harassing, by acknowledging that the traditional standard of a “reasonable person” might not take a woman’s perspective into account.

Oncale v. Sundowner Offshore Services (1998) Sexual harassment also applies to harassment in the workplace between members of the same sex. Joseph Oncale, an oil refinery worker, who worked offshore for long periods at a time, was sodomized, threatened and humiliated by members of his crew. Although he reported the incidents, no action was taken against the offenders, and Oncale voluntarily left his job, citing sexual harassment as his reason. The District Court of Eastern Louisiana ruled against Oncale in his sexual-harassment suit, holding that as a male, he was not protected from the actions of other men. In an appeal, the U.S. Supreme Court, reversed the District Court and declared that same-sex harassment can occur.

Jenson v. Eveleth Taconite Co. Allowed for class action complaints to address sexual harassment. Several female miners at the Eveleth Taconite Co. mine in Minnesota during the 1970s and 1980s were regularly harassed by male workers in a sexual, threatening manner and faced ongoing harassment and retaliation when they complained. Although the case took years to be resolved, the plaintiffs eventually settled with the Eveleth Taconite Co. for \$3.5 million. This case is the subject of the 2005 movie "North Country", starring the actor Charlize Theron, as the lead plaintiff.
