



▶ SEXUAL HARASSMENT AND THE BENEFITS OF ALTERNATIVE DISPUTE RESOLUTION PROCESSES

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▶ SUMMARY OF PROPOSED NONDISCRIMINATION ORDINANCE

Everyone has the right to life, liberty and security of person. - Article 3, Universal Declaration of Human Rights

Sexual Harassment and the Benefits of Alternative Dispute Resolution Processes

by Susan J. Wurtzburg

What is Sexual Harassment?

Sexual harassment effectively undermines American people's rights to equal treatment regardless of their sex (physical characteristics), gender (social behavior), or sexual orientation (focus of sexual attraction). This type of discrimination is manifested by undesired attention, comments, or actions which an individual experiences as inappropriately focusing on her or his sexual attributes or identity. Basically, people who behave in this manner are treating members of a social group differently because of their sex, gender, or sexual orientation. Harassment and discrimination are typically supported by a belief system suggesting that a minority group is inferior or incapable in some way when it is compared to a majority group (which may be more powerful, more numerous, or advantaged in some other way). For example, a male business owner who harasses women employees may believe that he has the right to behave in this manner simply because he is a man. Another example might be a group of young heterosexual employees who shout inappropriate comments at another employee wearing a gay pride t-shirt in a public display of their negative views of the LGBTQ community.

Some might argue that there is little harm in such behavior, and that people have the right to express their biases

publicly, even if they cause discomfort or distress. Others, and this group could include lawyers, employment specialists, health practitioners, and academics, believe these actions harm individuals and also the community as a whole. Ample research exists to support these contentions, and relevant information is provided in the June 2009 Discrimination Report by the Salt Lake City Human Rights Commission.

For these reasons, harassment is negatively sanctioned in various legal codes, including Title VII of the Civil Rights Act, 1964. This Act specifically focuses on harassment in the context of employment (including Salt Lake City, the State of Utah and federal government agencies, and Utah businesses with more than 15 employees), and its negative outcomes for affected employees.

The U.S. Equal Employment Opportunity Commission online resources provide a useful reminder that "sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
 - 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.

- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome."

Who Experiences Sexual Harassment?

It is difficult to provide specific data about how many people experience harassment in the workplace since many people do not report their victimization. Reasons for not complaining may include shame, fear of retaliation, worry about losing one's employment, concern that job advancement might be affected, anxiety about one's reputation, and discomfort in disclosing



personal details to support a complaint, among other issues.

In addition to these reasons for not complaining about sexual harassment, people may also feel that the grievance process is difficult to navigate, and it may be challenging to provide proof of discrimination. The harassment may occur when no one else is around, or it may remain unnoticed or ignored by colleagues.

Despite all these barriers to filing a complaint, in fiscal year 2008, 13,867 sexual harassment charges were recorded at the U.S. Equal Opportunity Commission, which includes data collected from regional Fair Employment Practices agencies. Only 15.9% of these charges were filed by men. Typically, women have generated approximately 84-90% of the complaints over the past 16 years, demonstrating a fairly consistent gender pattern.

Legal Procedures and Alternative Dispute Resolution

Prior to 1991, harassment complainants often ended up filing cases in court, or working through the processes provided by the U.S. Equal Opportunity Commission. People seeking quick, understandable solutions to their immediate problems were often doomed to spending months in lengthy litigation procedures under highly challenging circumstances. Complainants without a legal education found the formal court proceedings too demanding to navigate without expensive legal assistance. Also, litigants with highly qualified

and commensurately costly lawyers were more successful typically in having the merits of their case confirmed by judgments in their favor. Not only were court-based harassment cases difficult for individuals, but they were also challenging and expensive for agencies supporting complainants.

These issues when combined with the expansion of alternative dispute resolution (ADR) organizations, an increase in trained mediators, and greater understanding of ADR processes by traditionally trained attorneys, and members of the general public, resulted in some significant procedural changes in 1991. At that time, the U. S. Equal Opportunity Commission began to provide mediation at a few locations, and within a few years, this service was widely available to both parties in harassment cases as an alternative to court procedures.

Mediation is a type of alternative dispute resolution which relies on the services of a trained neutral specialist to encourage productive dialogue between two parties in a disagreement. The mediator assists with the communication process, and is careful not to act as a lawyer, therapist, or supporter of either party. In Utah, mediators are governed by several legal codes and regulations including the Utah Uniform Mediation Act. They also are encouraged to undertake appropriate training, provided by agencies such as Utah Dispute Resolution, a Salt Lake City non-profit organization, which has been operating since 1991.

The trend of increased reliance on mediation has continued in 2009. Both U. S. and Utah Courts have been dealing with expanding case loads, with little growth in Court resources, resulting in lengthy delays in court hearings and commensurate increases in expenses for litigants. In part as the result of these factors, and also in response to other social forces (including the effect of the economic downturn on people's desire to spend money on legal fees), increasing numbers of harassment cases are channeled into mediation, rather than proceeding through court.

The mediation movement continues to grow, and offers many advantages to individuals experiencing sexual harassment

or other forms of discrimination. Mediation allows disputants to create solutions which work for their individual circumstances, and final agreements may include apologies, or other non-monetary components, which are difficult or impossible to include in court judgments. Structured extra-legal processes may also provide safe opportunities for victims of harassment to talk about their experiences and feelings. Court hearings are typically less flexible. Most importantly, mediation ensures access to justice for a broader spectrum of community members. It can be argued that the U. S. Courts have a greater tendency to provide "user-pays" justice, which favors people with higher levels of education, income, and other social assets. Supporting community mediation centers is an effective way of sustaining the human rights of all members of our society.

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To view the **2009 Discrimination Report** and a **summary** of the proposed **nondiscrimination ordinance**, click on www.slcgov.com



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