

# The General Court Sexual Harassment Prevention Policy

**Rep Jess Edwards**



# Qualifications

- **Ten hours – Commissioner & Exec Dir NH Human Rights Commission (RSA 354-A)**
- **Asst G3 98<sup>th</sup> Training Support Div**
- **Over 30 courses from 1993 in military and major corporations**
- **Falsely accused 2x, race & height**
- **Instructor at Georgetown Univ.**
- **Adjunct Instructor 2 other colleges**
- **Not an attorney**

# Course Material

- **Based on same presentation used by Paula Booth and Anne Edwards on 2 January 2019**
- **Adapted to audience of legislators**
- **Augmented to add history, Rights of the Accused and Recourse for False Allegations as well as other information**
- **Strategies for self-protection**

**The**



**and politics**

**have changed .....**



# In the News



# Harassment?



**Alexandria Ocasio-Cortez**  @AOC · Jan 10, 2019



a) this is not an apology

b) you've been posting hysteric, misrepresentative articles about me nonstop - many within 24h.

The [@DailyCaller](#), funded by [@TuckerCarlson](#) (at [@FoxNews](#)), has a well-documented relationship with white supremacy.

Unsurprising they're targeting me.



**Alexandria Ocasio-Cortez** 

@AOC

The real question is, at what point is their nonstop, targeted behavior considered harassment? [splcenter.org/hatewatch/2017](https://splcenter.org/hatewatch/2017)



 16K 9:14 AM - Jan 10, 2019



# Boundary Condition

- **From this point on, no names (or hints about) of any legislators or staff shall be used**
- **If it hasn't been made publicly known, anecdotes or jokes in this setting could trigger allegations of a hostile environment.**

# CLAIM: “NH House Hostile”

- **Concord Monitor, “N.H. House chief of staff releases more complaints of harassment in the State House”, August 02, 2018**
- **One Representative used Twitter to accuse the entire House of hostility**

# **EEOC Guidelines on Discrimination Because of Sex**

- **Sexual harassment is defined: as follows:**
- **"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:**

# **EEOC Guidelines on Discrimination Because of Sex**

- 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,**
- 2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or**

# **EEOC Guidelines on Discrimination Because of Sex**

**3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile or offensive working environment.”**

**NH State Reps most need to focus on  
this one in their personal conduct**

# Civil Rights Act of 1964

- **Prohibited employment discrimination based on race, color, sex, religion, or national origin.**
- **Title VII original intent was primarily to protect women in the workplace. This remains its main emphasis today.**
- **1980 - The EEOC states that sexual harassment is a form of sex discrimination prohibited by Title VII**

# What is Discrimination?

People discriminate every day,  
but not all discrimination is illegal

- age
- disability
- race
- veteran or military status
- sexual orientation
- marital status
- color
- genetic information
- religion
- sex
- pregnancy
- national origin
- gender identity



# More Title VII

- ***Bundy v. Jackson (1981)*, Title VII violation either of two types:**
  - **harassment that involves the conditioning of concrete employment benefits on sexual favors, and harassment that,**
  - **while not affecting economic benefits, creates a hostile or offensive working environment**

# More Title VII

**1986 - SCOTUS landmark, sexual harassment can be sex discrimination prohibited by Title VII. The case of *Meritor Savings Bank v. Vinson* ruled "hostile environment" sex discrimination is actionable under Title VII and delineated employer liability.**

# ***Meritor Savings Bank v. Vinson***

- **Voluntary sexual relationship between supervisor & employee morphed into a hostile work environment**
- **No complaints to employer**
- **“Voluntariness” might have been based on “the voluminous testimony regarding respondent's dress and [publicly expressed] personal fantasies”**

# ***Meritor Savings Bank v. Vinson***

- **The correct inquiry is whether respondent by her conduct indicated that the alleged sexual advances were unwelcome, NOT if her participation in sexual intercourse was voluntary.**
- **Employer will be liable 1) actual knowledge of the harassment or 2) victim had no reasonably available avenue for making complaint known to appropriate management officials."**

# ***Meritor Savings Bank v. Vinson***

- **Court of Appeals believed "had no place in this litigation."**
- **Employers are responsible for acts of supervisors regardless**
- **Title VII's definition of "employer" to include "any agent of such a person,"**

# *Meritor Savings Bank v. Vinson*

- **Supervisor is an "agent" of his employer for Title VII purposes, even if he lacks authority to hire, fire, or promote, since "the mere existence — or even the appearance — of a significant degree of influence in vital job decisions gives any supervisor the opportunity to impose on employees."**

# Civil Rights Act of 1991

- **Modified Title VII to add more protection against discrimination in the workplace.**
- **Allows harassment and discrimination plaintiffs right to a jury trial in federal court.**
- **Plaintiffs can collect compensatory and punitive damages**

# Violence Against Women Act of 1994

- **Limited acceptability of evidence of the past sexual history of the plaintiff in sexual harassment cases**
- **Permits such evidence against sexual harassers accused of assault**

# **Government Accountability Act 1995**

- Made Congress's own members subject to the same employment laws as the rest of the country**

**Note: Between 1997 and 2017,  
Congress paid \$17 million in  
settlements**

# Gov. Lynch Started the NH Policy

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Governor of New Hampshire

## THE STATE OF NEW HAMPSHIRE POLICY ON SEXUAL HARASSMENT

### I. POLICY STATEMENT

All employees of the State of New Hampshire are entitled to work in an environment free of sexually inappropriate behavior. The State of New Hampshire is committed to preventing and eliminating such misconduct in the workplace before it rises to the level of sexual harassment. To accomplish these goals, the state's policy against sexual harassment shall be clearly and regularly communicated to all state employees, both supervisory and non-supervisory, through periodic educational programs and training. In addition, this policy shall be implemented through the complaint investigation procedures set forth below. This policy shall also serve as a guideline for the investigation of any other type of discrimination prohibited by law.

All complaints of sexual harassment or retaliation shall be promptly and thoroughly investigated. Particular care shall be taken in the course of investigations to protect the confidentiality of all involved to the extent possible. Should it be determined that a state employee has violated this policy, immediate and appropriate corrective and/or disciplinary action shall be taken. This may include discharge and/or other forms of discipline. The type and extent of corrective action regarding non-employees will depend on the amount of control the agency has over the non-employee.

# NH Policy

- All employees and members of the NH General Court are entitled to work in an environment **free** from any form of unlawful discrimination or harassment.
- The General Court is committed to preventing and eliminating such misconduct in the workplace **before** it rises to the level of illegal conduct or is severe or pervasive.
- <https://das.nh.gov/hr/sxharas.html>

# Third Party Harassment

- The NH General Court is a blended workplace - with both public and House members/employees
- The policy protects institution/members/employees from third party harassment/discrimination

# Conduct of a Sexual Nature

**Can be any or all:**

- **Verbal**
- **Visual**
- **Physical**

# Ten Examples

- Physically blocking a person's movements; in other words – standing in their way
- 'Accidentally on purpose' brushing up against a person
- Staring or looking their body up and down
- Following them around or paying excessive attention
- Making insulting comments about someone's gender identity or sexual orientation or asking about someone's sexual orientation
- Telling lewd jokes or sharing stories about sexual experiences – even if this is not directed at you but done in your presence to cause you discomfort
- Sending unwanted suggestive or lewd emails, letters or other communications or sharing images of a sexual nature around the workplace or displaying posters, items or screensavers of a sexual nature
- Inappropriate and suggestive touching, kissing, rubbing or caressing of a person's body and/or clothing
- Repeatedly asking for dates despite being rebuffed or asking for sexual favors
- Making sexually offensive gestures, remarks or facial expressions

# HOSTILE ENVIRONMENT

A person engages in

- unwelcome and inappropriate sexually-based behavior that is
- so severe or pervasive that it creates an atmosphere that is
- intimidating or offensive
- which unreasonably interferes with an individual's work performance.



The following is prohibited conduct in the workplace **regardless** of whether it rises to the level of being severe or pervasive (by policy)

- Verbal abuse of a sexual nature
- Unwelcome, offensive sexual flirtation
- Unwelcome, graphic verbal comments about an individual's body
- Sexually degrading words to describe an individual
- Unwelcome brushing, touching, patting, or pinching an individual's body
- Sexually explicit gestures

# “But I was only joking!”

- Harassment is not judged by the person who engages in the offensive behavior, but by the person who observes or is subjected to the conduct.
- Offensive jokes based on sex or gender are a form of prohibited conduct.
- Two willing participants can offend someone else who observes them.

Employees are NOT required to confront an alleged harasser before making a complaint of harassment.



# Submitting Complaints

Complaints may be

- Verbal or in writing in accordance with the Policy's Reporting Procedures
- Supervisors must report
- Reports submitted to employee's supervisors or to the Chief of Staff of House or Senate
- The Legislative Ethics Committee RSA 14-B is an alternate process
- LBA staff file with LBA directors

# Complaints

- Complaints regarding Members and Non-employees go to the Chief of Staff
- Complainant can choose to have it investigated under the Policy or RSA 14-B
- Complaints regarding Executive or Judicial Branch Employees will be sent to their branches
- Lobbyists, Press and members of the general public's complaints will be investigated

# Submitting complaints concerning joint legislative employees and Chief of Staff

## Complaints concerning Chief of Staff

- Submitted directly to the Senate President or Speaker of the House

## Complaints concerning joint legislative employees

- Report to employee's supervisor or Chief of Staff of House or Senate. The bodies will decide which one will investigate.

# Confidentiality

- Protection to all involved to the extent possible under the law and the policy
- Complainant and alleged harasser will be advised of the finding of the investigation
- Complainant will be advised that corrective action will take place
- Complaints can be made public under the policy



# How much support can we expect?

Edwards, Anne [Anne.Edwards@doj.nh.gov]    Actions

To: Edwards, Jess

Monday, January 14, 2019 7:58 PM

- You replied on 1/14/2019 8:53 PM.

Representative Edwards, Unfortunately, I will not be able to attend. We only do presentations for the House when we are invited by leadership, such as the all-House training. Since this is not an all-House training, I cannot present.

Your questions below are valid questions and you could ask House legal counsel or the House's Chief of Staff for that clarification. It's not a question I can answer as it is more of an implementation question than a legal question.

Good luck with your presentation! Anne

On: 14 January 2019 11:29, "Edwards, Jess" <[Jess.Edwards@leg.state.nh.us](mailto:Jess.Edwards@leg.state.nh.us)> wrote:

Thank you for the response.

I'd be disappointed if the AG said no.

For one thing, I'd like clarification on when the accused can pierce "confidentiality" to learn who is accusing him (or her) and when they accuser is shielded from the accused.

Best Regards,

**Jess Edwards**  
NH State Representative (Auburn, Chester, Sandown)

“But if I make a complaint,  
things could get ugly!”

- Employees must be protected from further harassment occurring.
- The policy strictly prohibits retaliation of any kind.
- Retaliation may result in severe discipline.
- Retaliators can be held personally liable for damages.
- Supervisors/managers must report according to the Policy's Reporting Procedures.

# Rights of the Accused

- **5<sup>th</sup> & 14<sup>th</sup> Amendments – No self incrimination. Representation. Due process - government officials fair and impartial when seeking to fine, imprison or take personal property. Courts interpret to mean that officials must establish consistent and fair procedures to decide when to limit freedoms**

# Right to Confront Accusor

**The right only applies to criminal prosecutions, not civil cases or other proceedings. The Confrontation Clause has its roots in both English common law, protecting the right of cross-examination, and Roman law, which guaranteed persons accused of a crime the right to look their accusers in the eye.**

# What is retaliation?

- It is another word for "getting even."
- Ex. a poor evaluation, discipline, failure to promote, changing someone's working conditions, or something as simple as giving someone "the cold shoulder."



# False Allegations Happen

- ❑ **Carolyn Bryant v. Emmett Till**
- ❑ **Crystal Mangum v. Duke Lacrosse**
- ❑ **Woman v. VanDyke Perry and Gregory Counts**
- ❑ **Sabrina Rubin Erdely v. Phi Kappa Psi fraternity**
- ❑ **Sherita Dixon-Cole v. Trooper Daniel Hubbard**
- ❑ **Julie Swetnick v. Brett Kavanaugh**
- ❑ **Judy Munro-Leighton v. Brett Kavanaugh**
- ❑ **Peggy Shippen v. Philomena Cheer (Fiction?)**
- ❑ **Witches, War Collaborators, Taliban Sympathizers**

# When to file a complaint

- When behavior/actions are related to harassment or discrimination - not just work performance
- When behavior/actions are targeted at one group or type of people
- When behavior/actions make the receiving party or others seeing the behavior uncomfortable
- When you are a supervisor and see inappropriate behavior

# When to discuss whether to file

- When actions are related to a job performance issue - such as enforcement of a corrective action plan
- When a supervisor may be acting like a "toxic boss"
- When a workplace is poorly organized and not well managed

# Electronics: Double-edged Sword

- Telephones/Cell Phones
- Instant Messaging
- Email
- Facebook
- Screensavers
- Cartoons
- Text of a sexual nature
- Sexting and texting

# Stop & Think

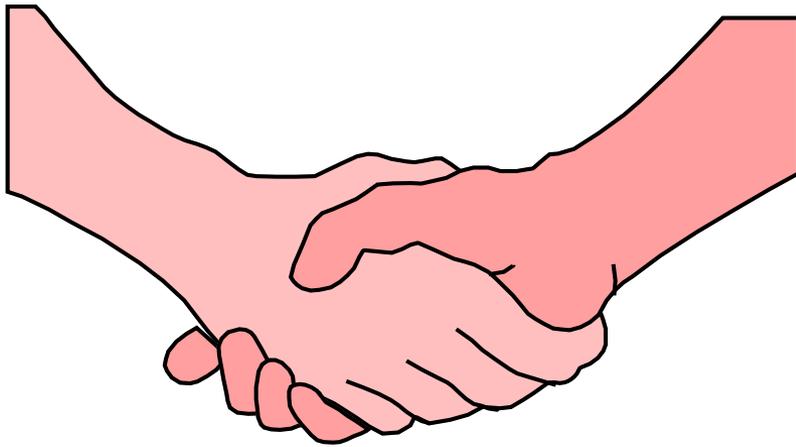
- **Non-Compliance = Consequences**
- **Discipline, dismissal, financial liability, embarrassment to you, your family and the General Court.**
- **If you have to stop and think about whether something you are about to say is acceptable to say, then "DON'T SAY IT"!**



# How to Protect Yourself

- **Defamation case – Probably not**
- **Would you say it to your mom at a family Thanksgiving meal?**
- **Situational Awareness**
- **Spidey Sense:**
  - **Document details**
  - **Tell multiple people what happened rapidly**
  - **Seek advise if more concerned**
  - **Contingency plan your media response**

# ULTIMATE GOAL



To create a workplace characterized by mutual respect and mutual acceptance *while being politically astute about the threat.*