

Workplace Sex Harassment in Agriculture



Nebraska Equal Opportunity Commission

Presented by
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Nebraska Equal Opportunity
Commission

Introduction



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History and Responsibilities



- The Nebraska Equal Opportunity Commission (NEOC) was created by state statute in 1965 with a vision to eliminate unlawful discriminatory practices in the State of Nebraska.
- The principal function of the NEOC is to receive and neutrally investigate complaints of unlawful discrimination occurring anywhere within the State of Nebraska in the areas of:

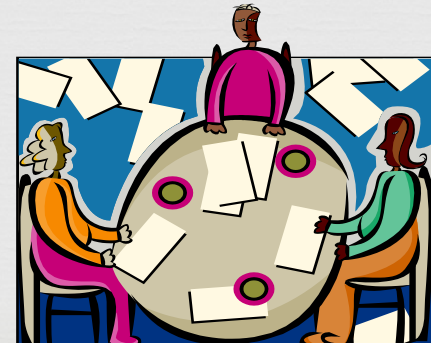
Housing



Public Accommodation



Employment



What is the NEOC?



The NEOC is an *administrative law enforcement agency* of the State.

The NEOC *receives, investigates, and renders formal determinations* on charges filed.

The NEOC attempts to *conciliate* parties both during investigation and after a Reasonable Cause determination.

The NEOC provides information and assistance (*technical assistance*) in matters of civil rights laws and compliance.

Laws Enforced



The NEOC is authorized to investigate and enforce the following statutes:

- Nebraska Fair Employment Practice Act (FEPA)
- Age Discrimination in Employment Act (Age Act)
- Equal Pay Act of Nebraska
- Nebraska Fair Housing Act
- Providing Equal Enjoyment of Public Accommodations (PA Law)

Outreach and Office Locations



- The NEOC provides education and training to the general public, employers, and housing providers to help reduce incidents of intentional or unintentional discrimination.
- The NEOC has a variety of information available to educate and assist the general public, businesses, and schools on its website at www.neoc.ne.gov
- The NEOC has three office locations:
 - Lincoln
 - Omaha
 - Scottsbluff

Working Relationships



The NEOC has established working relationships with two federal agencies to render determinations on employment and housing cases...

- U.S. Equal Employment Opportunity Commission (EEOC)
- U.S. Department of Housing and Urban Development (HUD)

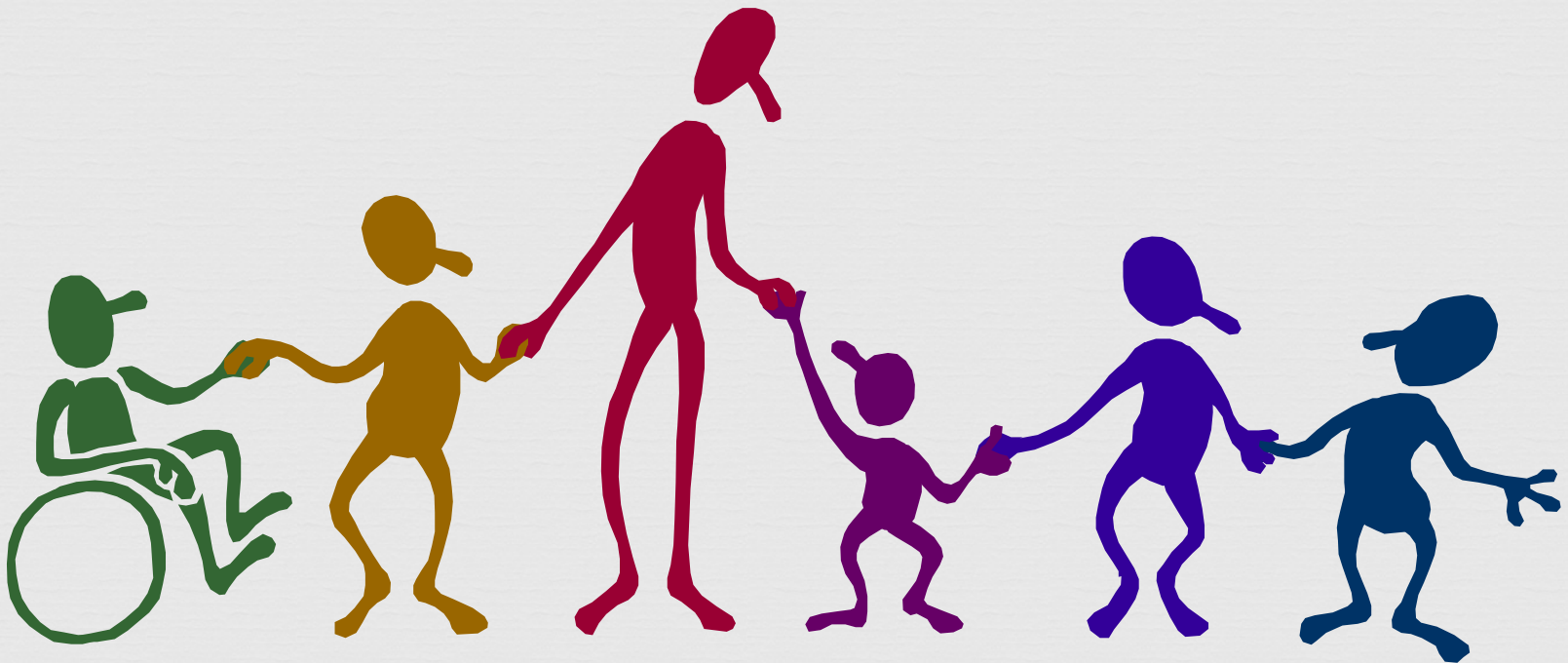


Illegal Discrimination



Showing prejudice in the treatment of
others based on their
“protected class”

What are the “**protected classes**”
under discrimination law?



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What are the “**protected classes**”
under Nebraska’s discrimination laws?

Religion

Race

Age

Sex

Color

Marital Status

National Origin

Pregnancy

Disability

Harassment in Agriculture (or any workplace)



❧ What is sexual harassment?

**Unwelcome physical, verbal or other conduct
of a sexual nature directed at an employee.**

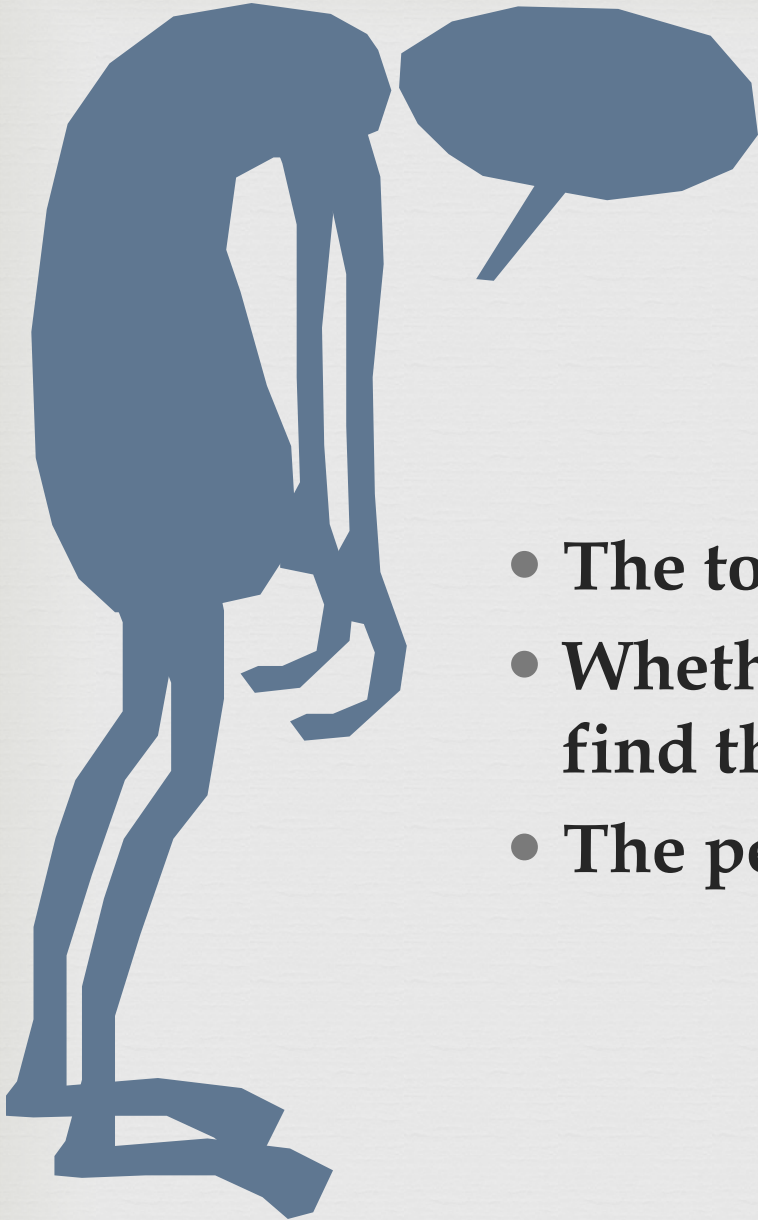
80% of women farmworkers in a recent study had experienced some form of sexual harassment. Most studies of other workplaces have statistics between 20-50%, for comparison.

“Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women” – Irma Morales Waugh 2010

HOW TO IDENTIFY HARASSMENT...



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Is it harassment? When investigating, we consider...

- The totality of circumstances
- Whether a reasonable person would find the behavior objectionable
- The perception of the victim

Two general types of sexual harassment in the workplace:

1. “Hostile Environment”
2. “Quid Pro Quo”



definition

“Quid Pro Quo”

Unwelcome behavior
by **someone who**
has authority or
power to control
or make decisions

ALSO REQUIRED: Impacts tangible terms and conditions of employment:
hiring, promotion, demotion, discipline/termination, compensation, work assignments, etc.

For quid pro quo, does it
matter if the victim
consents/participates?

If the sex was
unwelcome then it
does not matter if
the victim consents.

Unwelcome



☞ Maria does not want to go on a date with Greg, but since he is a crew lead, and since he just will not take “no” for an answer, she decides to go on the date anyway to avoid being fired.



Welcome



œ Maria had always liked her crew lead Greg and wanted to go on a date with him, so she was happy when they finally went dancing.

Unwelcome conduct is not consensual



It may set off an alarm

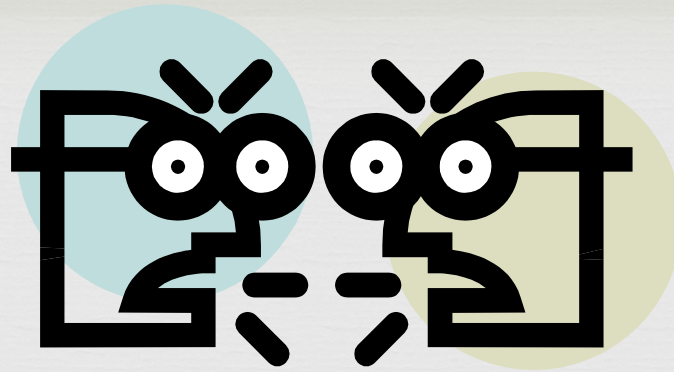


When does the employer/business become liable for the quid pro harassment taking place?

Pretty much immediately and automatically. "Strict Liability."

Affirmative Defenses: If the employer exercised reasonable care to prevent/correct; and the employee unreasonably failed to take advantage of any preventative/corrective opportunities.





definition:

‘Hostile Environment’

A work environment created by a
workplace contact

(including a supervisor)

who does not impact tangible terms and
conditions of employment

The conduct must be sufficiently

severe or pervasive

to be actionable under discrimination law

Severe means egregious just one time

Pervasive means occurring frequently

What should a victim of harassment do?

**Clearly
communicate that
the behavior is
offensive or
unwelcome.**

NO

“Intent” VS “Impact” – It doesn’t matter what the intent was of a comment or action, it is the impact on the victim that matters. Once a victim has made it clear that the action, words, etc. of the perpetrator were unwelcome or offensive, that action, words, etc. should not continue.

It is **inappropriate** conduct
when it is
verbal, or physical, or visual,
or any combination of these

The perpetrator may be a
coworker, manager, vendor,
... *any* workplace contact



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The victim and the harasser *do not* have to be of a different protected class membership



**Not all unwelcome conduct is
illegal harassment.**

**It is illegal harassment when
the unwelcome conduct is
based on the person's
protected class membership**

Scenarios – Hostile Environment or Quid Pro Quo?

A. Georgetta, a tractor service technician apprentice, walks by a supervisor and feels him slip something into her pocket. He winks at her and says “A little something for later, if you like.” Georgetta walks away and checks her pocket and finds a packaged condom.

B. Stan tells her subordinate Lori that if she doesn't want to be fired, she will have to sleep with him.

C. Royce likes to give nicknames to all the females on his crew. He calls them things like “Sweetie”, “Gorgeous”, “Honey”, and “Babe”.

D. “As a joke” Craig casually mentions to his co-worker Lorna that she’d look great naked, and that since it is hot maybe she should take her top off.

E. Farm Manager Harry calls Paula into his mobile office at the end of the day. "So as you may know there is a spot opening up supervising a crew that would be a significant promotion for you. If you have sex with me I can make sure you get it."

Businesses/event not covered?



- œ To be covered under FEPA (state employment law that covers sex), you must have 15 employees (or more) for each working day in 20 or more weeks of the current or previous year.
- œ Last date of harm must be within previous 300 days.

When does the employer/business become liable for the hostile environment harassment taking place?

When...

1. Employer fails to prohibit harassment
2. Employer does not monitor the workplace
3. Employer failed to respond to complaints, or failed to respond promptly
4. Employer failed to provide a system for registering complaints
5. Employer discouraged complaints from being filed or failed to protect against retaliation.
6. Employer does not protect confidentiality

Basically:

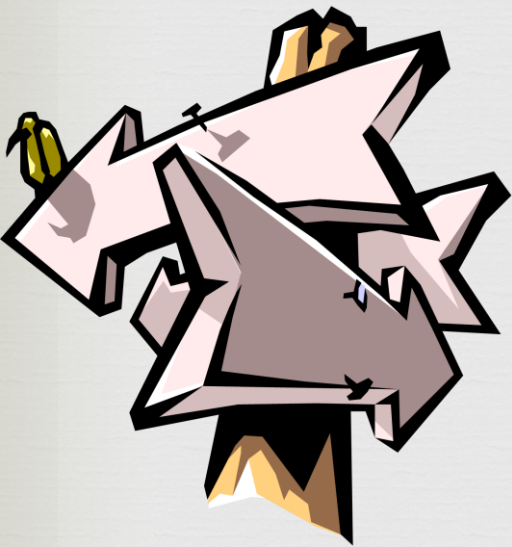
If you provide no reasonable avenue for complaint;
OR you knew (or should have known) of the harassment but unreasonably failed to stop it.

Note: Must actually rise to unlawful harassment.



Know the policies and procedures
for addressing harassment

Have a clear understanding



Follow the
company policy on
resolving problems

IMPORTANT: Do you have a policy?

Policies and Procedures

- œ Prompt inquiry as soon as management/supervisor is made aware
- œ Clear instructions on who has to be informed
- œ If allegations are confirmed, process for corrective actions
- œ Create an environment where witnesses are willing to come forward to report



Difficulties



- ❧ Nature of sexual harassment in agriculture is that it is a *Hidden Problem*.
- ❧ Difficulties in reporting
 - ❧ Language barriers, if employing non-English-speaking
 - ❧ Lack of training for employees and supervisors all the way up the chain
- ❧ Pressure/Reasons to not report
 - ❧ Supervisors “in on it”
 - ❧ Retaliation or fear of retaliation
 - ❧ Deportation fears for undocumented workers – or even threats specific to undocumented workers by harassers

Difficulties, cont.



- ❧ These difficulties make it more difficult for the NEOC/EEOC to find out that harassment occurred, and thus more difficult to enforce the law.
- ❧ This, in turn, makes it more likely that your operation will develop a major problem over time, which will eventually be reported and result in the law being enforced. By then probably will be systemic sexual harassment occurring.
- ❧ Important to train your first level supervisors and above on how to look out for and handle harassment, and train all workers about their rights and how to report.

RETALIATION



Discrimination against a person who
has opposed an illegal practice or
participated in an investigation

Overview of Retaliation

The law prohibits retaliation against someone who complains or has participated in an investigation, and covers:

- ∞ Current workplace contact
- ∞ A perspective workplace contact
- ∞ A former workplace contact



Examples of Retaliation by Employers

1. **Suspension, even with pay**
2. **Changing the qualifications for an open position sought**
3. **Selective strict enforcement of a policy**
4. **More Harassment**
5. **Reprimands**
6. **Transfer to a lower grade or salary**
7. **Intimidation of witnesses during an internal investigation of a complaint**
8. **Threatening to report to ICE**

Retaliation: there must be a link

A successful complaint of Retaliation requires a Complainant to show that there is a causal link between his/her complaint (or other protected activity) and the action that is alleged Retaliation.

1. Document : keep records, notes, emails, etc. of concerns or complaints
2. The internal investigation should be conducted by a person who does not have stake in the outcome
3. Be honest with the parties
4. Reasons for decisions should be made crystal clear to the extent possible to all employees involved



Contact



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