

Sexual Harassment Prevention: A Recap of the Recent Training Sponsored by the Whale Founda- tion

Last November 3, thirty members of the river community—guides, outfitters, and others—gathered at the Coconino Center for the Arts to attend a workshop on sexual harassment. Sponsored by the Whale Foundation, this 1-day event was presented by Priscilla Mills and Jennie Duran from NAU’s Office of Affirmative Action and Equal Opportunity. The goal was to address concerns raised at the spring GTS, where a panel chaired by Brad Dimock convened to explore issues of “mutual respect and safety.”

The panel discussion yielded some interesting results. Participants—both male and female—not only shared stories but also completed questionnaires about their experiences and perceptions. Most felt that training on sexual harassment was long overdue. Brad’s article in the Summer 2006 BQR, “Beyond Consenting Adults,” gives a nice overview of the issues covered during this panel discussion.

The overriding issue here is simple: When it comes to sexual harassment, the commercial boating industry is essentially no different from Wal-Mart. That’s right. We’re subject to many of the same laws. And perceptions have changed. Laws are clearer and more developed. Insurers now demand training and refuse to cover acts of harassment. Businesses are more likely to discipline harassers. New guides are less likely to tolerate harassment... and passengers are more likely to report it. Finally, harassment incidents that also constitute crimes are more likely to be prosecuted.

This article summarizes what we learned during this informative, timely training. We offer it as a resource to those who were unable to attend.

DEFINITION & TYPES OF HARASSMENT

Originally a form of gender discrimination, the term “sexual harassment” is now much broader in scope. This form of employment discrimination is prohibited under *Title VII* of the *Civil Rights Act of 1964*. The U.S. Equal Employment Opportunity Commission (the “EEOC”) defines sexual harassment as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment,
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
- 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.

Sexual harassment takes two forms: *quid pro quo* and *hostile environment*. *Quid pro quo* involves an exchange; that is, the victim gives sexual favors to make something good happen or to prevent something bad from happening. On the other hand, a hostile environment involves no exchange—only unwelcome sexual conduct that creates an intimidating, offensive, or disruptive work environment.

THE RIVER AS A WORKPLACE

Let’s face it: The river isn’t the real world. We’re together for days at a time in insulated, dangerous situations—“instant societies.” We’re isolated from law enforcement and witnesses. It’s one of the few work environments where alcohol and drugs are ubiquitous. If you’re a guide, passengers see you as a leader—they trust you, depend on you, and maybe

even admire you. In fact, the very attributes that make you a good leader may also make it easy to become an abuser or harasser.

However, the bottom line is that sexual harassment is prohibited in *any* business-related context, regardless of location. This applies at the warehouse, on a trip, at a meeting or training, while traveling for work, or at the holiday party.

THE IMPACTS OF SEXUAL HARASSMENT ARE SERIOUS.

Victims of sexual harassment may experience a constellation of psychological and/or physical symptoms. Their work performance and attitude may decline. Harassers may lose their jobs and reputation; they may also be sued or face criminal convictions.

FROM THE LEGAL STANDPOINT, HARASSMENT CAN BE REALLY SERIOUS.

Sexual harassment can be a civil wrong and/or a criminal act; the difference lies with the severity of the act and the burden of proof. Unwelcome touching can be a criminal battery, and assault can be as severe as kidnapping or rape. In the case of a civil wrong, the victim initiates a lawsuit for monetary damages. A criminal act is prosecuted by the government and punished by a fine, probation, and/or jail.

To be a viable claim or lawsuit, sexual harassment must be “severe” or “pervasive” (frequent or a normal part of workplace culture). It must also be offensive to a “reasonable man or woman.” Let’s examine the first condition. A single incident might not qualify as harassment unless it’s severe. A few jokes or pats are probably not severe. On the other hand, touching breasts or private areas is usually severe, and may also be criminal assault.

The other condition—the “reasonable man/woman standard”—determines if “unwelcome behavior”

constitutes sexual harassment. Unwelcome behavior is unsolicited and unwanted by the offended person. Even though you may perceive your behavior as friendly and harmless, a coworker or passenger may find it offensive. Examples include staring at someone’s body rather than looking them in the eye while talking, discussing sexual exploits within earshot of others, or asking someone to reach into your pocket to retrieve something. Unwelcome behaviors may even include remarking that someone is dressed attractively, or offering to carry something heavy for a woman.

If you’re unsure whether your behavior will offend someone, you’re taking a risk.

Risky behaviors fall into three categories: visual, physical, and nonverbal. The visual category includes materials of a sexual nature—posters, cartoons, drawings, calendars, pinups, computer graphics—as well as inappropriate, sexually expressive, or revealing clothing. Nonverbal behaviors include looking someone up and down (“elevator eyes”), making derogatory gestures of a sexual nature, and giving someone suggestive looks. Physical behaviors include uninvited massaging, kissing, hugging, patting, stroking, or “accidentally” rubbing against someone, as well as inappropriately touching someone’s clothing or blocking their path to make a sexual advance. Other risky physical behaviors include stalking, indecent exposure, mooning, or flashing.

Intent is irrelevant; only the impact of the behavior matters.

IT’S ALL ABOUT POWER.

Most workplace sexual harassment is based on unequal positions of power—for example, a supervisor and a subordinate, or a guide and a passenger.

These situations are rife with the potential for abusing power. Unfortunately, when these relationships sour, resentments develop, and behavior that was once welcome becomes offensive.

WHAT SHOULD YOU DO?

If you're a victim... Don't ignore a sexual harassment incident. Report it to your human resources manager, to the company owner, or to your supervisor as soon possible. Document the incident and get professional help to deal with it. Remember, you have the right to confront the harasser—but you don't have to.

If you're accused... Above all, be professional... and seek professional advice. It's especially important not to retaliate against those who report an incident or cooperate in an investigation—in fact, retaliation can be legally as dangerous as the sexual harassment itself. Examples of retaliation include damaging someone's reputation, spreading rumors, withdrawing support or letters of reference, and giving the accuser poor evaluations, as well as firing, demoting, or threatening them. Retaliation can also include failing to schedule guides for trips.

If you're a supervisor or business owner... Preventing sexual harassment is much easier than dealing with an incident. That's why it's important to have policies and educate your employees. Make sure they know how to file both informal and formal complaints. Designate a neutral complaint handler and document all training.

You also need a plan for investigating complaints. Follow through swiftly and don't penalize anyone. Find creative solutions to avoid contact between the parties. Be fair, respectful, and impartial; refrain from making assumptions. Interview the complainant and accused separately, using open-ended, non-leading questions. Document your interviews. Don't tell witnesses what each other said.

And, to the extent possible, maintain a functional environment—not only by limiting gossip and rumors but also by protecting the confidentiality of both the victim and any witnesses. Caution against

retaliation. Finally, if discipline is warranted, take action.

SO, WHERE DO WE GO FROM HERE?

The Whale Foundation is committed to exploring these issues further and supporting the river community through continuing education. A follow-up training is currently in the works for April; check our column, "Back of the Boat," for announcements.

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