



ASSISTANT SECRETARY FOR
FAIR HOUSING AND EQUAL OPPORTUNITY

November 17, 2008

MEMORANDUM FOR: All FHEO Regional Directors
All FHEO Program Center Directors
FROM: *Kim Kendrick*
Kim Kendrick, Assistant Secretary for
Fair Housing and Equal Opportunity, E
SUBJECT: Questions and Answers on Sexual Harassment under the Fair
Housing Act

INTRODUCTION:

This document addresses general questions about sexual harassment in housing under the Fair Housing Act. HUD may publish a rule on this topic in the future.

QUESTIONS AND ANSWERS

1. What law prohibits sexual harassment in housing and what kind of sexual harassment does it prohibit?

The Fair Housing Act (42 U.S.C. 3601-3619) protects individuals against discrimination because of sex. Courts have consistently recognized sexual harassment as a form of discrimination that violates the Fair Housing Act. In order to sustain a claim of sexual harassment under the Fair Housing Act, an individual must show that the sexual conduct was unwelcome. Nonetheless, if an individual submitted to the sexual conduct, that conduct still may have been unwelcome and a claim may be filed.

Courts recognize two types of sexual harassment: (1) quid pro quo sexual harassment (i.e., when a housing provider, or his or her employee, agent or contractor conditions access to or retention of housing or housing-related services or transactions on a victim's submission to sexual conduct); and (2) hostile environment sexual harassment (i.e., when a housing provider or his or her employee, agent or contractor, or in certain circumstances another tenant, engages in sexual behavior of such severity or pervasiveness that it alters the terms or conditions of tenancy and results in an environment that is intimidating, hostile, offensive, or otherwise significantly less desirable). Claims may be filed even if the alleged victim did not experience the loss of a housing opportunity or some tangible economic loss.

Complaints alleging sexual harassment may involve one or both types of harassment. Each complaint filed with HUD or a substantially equivalent state or local fair housing agency will be evaluated on its individual merits and factual circumstances to determine whether there is reasonable cause to believe that discrimination occurred.

2. Must sexual harassment be motivated by sexual desire in order to violate the Fair Housing Act?

No. Sexual harassment does not have to be motivated by sexual desire in order to violate the Fair Housing Act. For example, sexual harassment could be motivated by hostility toward a particular sex, even if the harasser is the same sex.

3. What duties do property owners or property managers have to prevent or stop sexual harassment?

A property owner or property manager has a duty not to engage in sexual harassment. Additionally, a property owner or manager has the duty to ensure that his or her employees or agents do not engage in sexual harassment. If a property owner or manager knows or should have known that an employee, agent or contractor is sexually harassing applicants, tenants or residents, he or she has the duty to take action to stop the harassment. A property owner or manager may be held liable if any of his or her employees, agents, or contractors sexually harass an applicant, resident or tenant.

4. Can a property owner or property manager be held liable for the actions of individuals who work for him?

Yes. A property owner or manager may be either directly or vicariously liable for sexual harassment. Under the Fair Housing Act, a property owner or manager who engages in sexual harassment will be directly liable for the harm caused by his or her own conduct. In addition, a property owner or manager who directs his or her employees, agents or contractors to engage in sexual harassment, or who knows or should have known about sexual harassment perpetuated by such persons but fails to take action to stop it, is directly liable for any resulting harm. In general, such persons are as responsible as if they had personally engaged in sexual harassment.

In addition, a property owner or manager may be vicariously liable for the acts of his or her employees or agents regardless of whether he or she knew of or intended the wrongful conduct, or was negligent in failing to prevent it from occurring. In general, property owners or managers use employees and other agents to conduct housing transactions. The agency relationship between property owners or managers and employees is one where the owners or managers direct the employees, and the employees represent the owners or managers in the conduct of the property owner's or property manager's business. A property owner or manager may be vicariously liable for acts committed by employees or agents within the scope of the agency relationship. For example, if an apartment manager authorizes a maintenance worker to enter a tenant's home to make a repair, and the maintenance worker sexually harasses the tenant, the management company

is vicariously liable for the discriminatory actions of the maintenance worker.

5. Can a property owner or property manager be held liable if a tenant sexually harasses another tenant?

Some courts have held owners and managers, including condominium associations, liable in situations where they knew of tenant-on-tenant harassment and did not take remedial action.

6. Is it a violation of the Fair Housing Act when a woman sexually harasses a man?

Yes. The Fair Housing Act protects both men and women from sex discrimination, including sexual harassment. It is a violation of the Fair Housing Act for a female property owner, manager, agent, employee or contractor to sexually harass a male applicant, tenant or resident.

7. Is it a violation of the Fair Housing Act when an individual sexually harasses someone of the same sex?

Yes. The Fair Housing Act protects men and women from sex discrimination, including same sex sexual harassment. It is a violation of the Fair Housing Act for a property owner, manager, agent, employee or contractor to sexually harass an applicant, tenant, or resident, even if the harasser and the victim are the same sex.

8. What legal action can an applicant, tenant or resident take if he or she is a victim of sexual harassment?

A victim of sexual harassment can file a complaint with HUD or a substantially equivalent state or local fair housing agency. HUD or the state or local fair housing agency will investigate the complaint at no cost to the complainant, and attempt to reach a voluntary resolution. If supported by the evidence gathered during the investigation, HUD or the state or local fair housing agency will file a charge against the harasser(s) and litigate the complaint in an administrative proceeding.

A victim has one year after the alleged sexual harassment occurred or terminated to file a complaint with HUD. The statute of limitations for filing complaints with substantially equivalent state or local fair housing agencies may be less than one year; in some cases as short as 180 days. For more information about filing a complaint, call 1-800-669-9777 or go to <http://www.hud.gov/complaints/housediscrim.cfm>. For more information on the complaint process, go to <http://www.hud.gov/offices/theo/complaint-process.cfm>.

A victim of sexual harassment may also file a private legal action in U.S. district court or state court. When filing a complaint under the federal Fair Housing Act, a victim has two years after the alleged sexual harassment occurred or terminated to file in federal court or state court. If proceeding under a substantially equivalent state or local law, a victim may have less than 2 years in which to file a complaint. In either case, however, the time period to file a private action in federal court or state court is suspended during the time that an administrative proceeding is pending.

9. If a person files a complaint with HUD or substantially equivalent state or local fair housing agency, can that same complainant also bring a private lawsuit?

Yes. A sexual harassment victim can file a private legal action in U.S. district court or state court, or file a complaint with HUD or a substantially equivalent state or local fair housing agency, or pursue both private and government actions simultaneously. There are two exceptions to this: (1) a court action cannot be filed if the HUD complaint has resulted in a conciliation agreement, and (2) a court action cannot be filed if the HUD proceedings have reached the hearing process. Similarly, if a civil trial commences, any administrative proceedings will be dismissed.

10. Does an individual have to report sexual harassment to the property owner or property manager, particularly when an owner or manager has a procedure for applicants or tenants to report sexual harassment?

No. A sexual harassment victim is not required to follow the particular sexual harassment reporting procedures of the property owner or property manager. However, a sexual harassment victim may want to make a written report or send a letter to the property owner or manager in order to create a record of the harassment and to provide the property owner or manager the opportunity to take action to stop the harassment.

A sexual harassment victim may report the harassment to HUD or a substantially equivalent state or local fair housing agency or file a legal action in U.S. district court or state court even if he or she has not reported it to the property owner or manager.

11. If an individual files a complaint alleging sexual harassment with HUD or a substantially equivalent state or local fair housing agency, what protection does the individual have from retaliation?

Under the federal Fair Housing Act, and substantially equivalent state and local laws, it is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, any right granted or protected by the Act. It is also unlawful to coerce, intimidate, threaten, or interfere with any person on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Act. In other words, a property owner or property manager, or the employees or agents of the owner or manager, are prohibited from punishing an individual for exercising his or her fair housing rights, or helping another individual exercise his or her fair housing rights.

For example, a property owner or manager cannot, among other things, deny housing, increase rent, withhold maintenance or similar services, harass, sue, or evict because an individual filed a housing discrimination complaint, cooperated with a housing discrimination investigation, or otherwise exercised his or her legal rights under the Act. Such conduct, if determined to be retaliatory in nature, may be grounds for further legal action.

12. What should a property owner or property manager do if an applicant, resident or tenant accuses the property owner or manager or one of his employees or contractors or another tenant or resident, of sexual harassment ?

In the event that an individual alleges sexual harassment and/or files a complaint against a property owner or manager, one of his or her employees, contractors, or another tenant or resident, the owner or manager may wish to consult an attorney. The owner or manager should also take steps to stop any harassment that may be occurring, including disciplining or discharging the employee or contractor, or evicting the harasser. It is also important that the owner or manager and his or her employees do not retaliate against the person making the complaint. Retaliation includes, but is not limited to, denying housing, increasing rent, withholding maintenance or similar services, harassing, suing, and evicting, because a person exercised her legal rights under the Fair Housing Act.

13. What housing provider/manager best practices may help protect applicants, tenants and residents from sexual harassment?

HUD encourages property owners and managers to: (1) adopt policies against sexual harassment; (2) develop processes for applicants and tenants to report sexual harassment; (3) establish sanctions for employees and contractors who engage in sexual harassment; (4) educate employees, contractors, residents, and applicants about these policies and the Fair Housing Act; and (5) enforce these policies against employees, residents, and contractors who engage in sexual harassment.

14. Where can I obtain more information about the Fair Housing Act and filing a complaint?

For more information on the Fair Housing Act and filing a housing discrimination complaint, go to <http://www.hud.gov/fairhousing>.