



Shining Light on Sexual Harassment & Misconduct Training



Legal Disclaimer

This presentation addresses general issues and principles. Nothing in this presentation should be understood to provide legal advice or create an attorney-client relationship. Participants are encouraged to consult with an attorney licensed in their jurisdiction to determine how locally applicable law applies to specific circumstances.

© 2019 Brotherhood Mutual Insurance Company

www.brotherhoodmutual.com

Kathleen Turpin, JD, CPCU

- Vice President – Human Resources, Brotherhood Mutual
- Licensed attorney in Indiana
- Member of the Indiana State Bar Association, Christian Legal Society, and the Society of Human Resource Management
- Oversees employment and human resources operations



“Finally, brothers and sisters, whatever is true, whatever is noble, whatever is right, whatever is pure, whatever is lovely, whatever is admirable — if anything is excellent or praiseworthy — think about such things.”

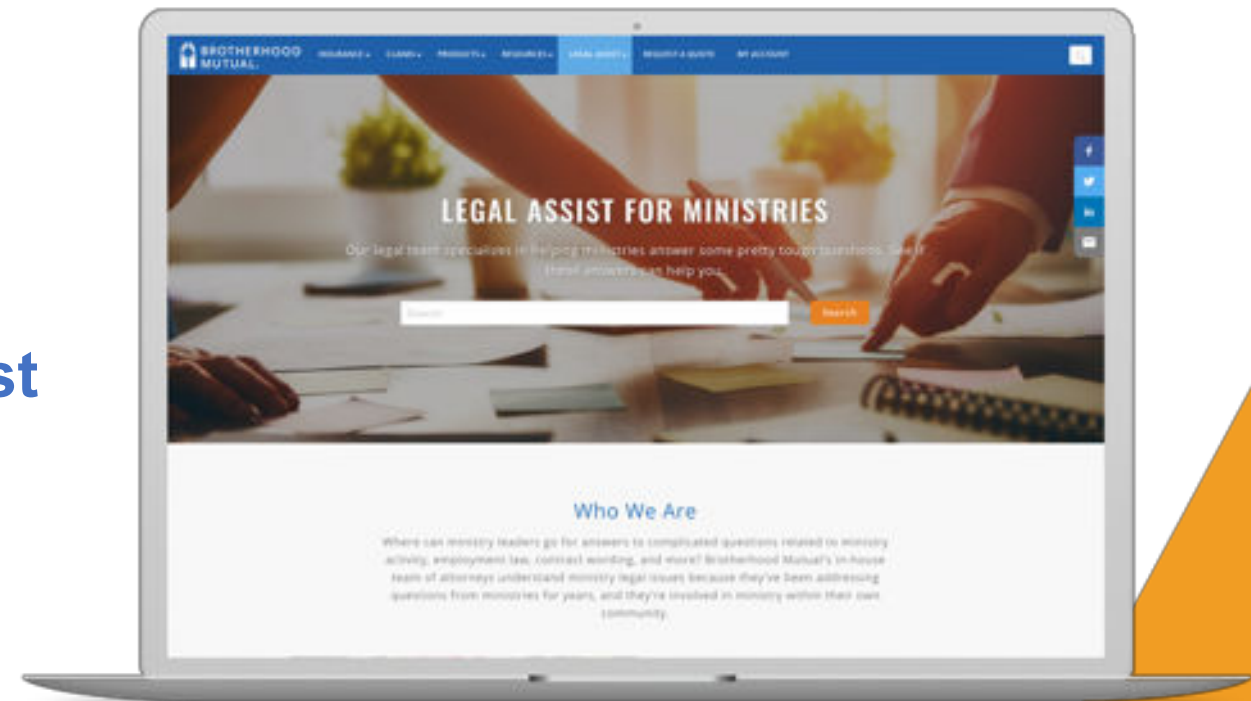
—Philippians 4:8 (KJV)

Legal Assist

A free service for ministries from Brotherhood Mutual

- Responses to common questions
- Personal response service
- Attorney referral service
- Legal resources

BrotherhoodMutual.com/legalassist



What we will talk about today:

- The difference between sexual harassment and sexual misconduct
- Defining sexual harassment – legally and practically
- Responding to sexual harassment (offender, receiver, ministry)
- Sexual misconduct in Ministry
- Reporting sexual misconduct

Sexual harassment is a form of sexual misconduct. There are, however, many differences between what qualifies as sexual harassment and what qualifies as sexual misconduct.

In the employment context, sexual harassment is limited to employee on employee misconduct and typically involves adults (although minor employees could be included).

Sexual misconduct is much broader and involves employees and volunteers, may arise from multiple areas (i.e. counseling, youth ministries, vulnerable adult ministries), and may involve adults, children, or youth.

Sexual Harassment or Misconduct

Sexual Harassment

- Comes about through employment relationships
- Includes employee on employee actions (usually between adults which may be peers or supervisory)
- Title VII and State employment laws apply
- Civil remedies (criminal less common)
- Insurance coverage under Employment Practices

Sexual Misconduct

- Comes about through relationships built within ministry environment
- Includes adult to adult, adult to youth, youth to youth, or vulnerable adults
- Federal, State, and Case law apply
- Criminal and civil remedies
- Insurance coverage under Sexual Acts Liability coverage

Sexual Harassment

-The Legal Definition-

Sexual harassment is present whenever there are:

- Unwelcome sexual advances (visual, verbal, or physical)
- Requests for favors
- Other conduct of a sexual nature (verbal or physical) including offensive behavior and gender-based harassment of a person of the same or opposite sex as the harasser

Sexual Harassment

-The Legal Definition-

Sexual harassment exists when submission to this conduct:

- Is a condition of employment (stated or implied)
- Is used for making employment decisions
- Substantially interferes with work performance
- Creates an intimidating or hostile work environment

Sexual Harassment

-The Legal Definition-

Courts consider multiple factors in determining whether sexual harassment occurred:

- Frequency of conduct
- Severity
- Whether conduct is physically threatening or humiliating
- Whether conduct unreasonably interferes with employee's ability to perform work
- Totality of Circumstances Test

Harris v. Forklift Sys. (92-1168), 510 U.S. 17 (1993).

Sexual Harassment

-The Legal Definition-

A key element of sexual harassment is the behavior must be **unwelcome**.
As one court stated:

In the day-to-day social exchange between employees, “the distinction between invited, uninvited-but-welcome, offensive-but-tolerated, and flatly rejected” sexual advances may well be difficult to discern. But this distinction is essential because sexual conduct becomes unlawful only when it is unwelcome.

U.S. Equal Employment Opportunity Commission, *Policy Guidance on Current Issues of Sexual Harassment* (1990)
Barnes v. Costle, 561 F.2d 983, 999, (D.C. Cir. 1977), <https://www.eeoc.gov/policy/docs/currentissues.html>

A Higher Expectation

In addition to avoiding legal boundaries for sexual harassment, there is a higher expectation in ministry.

“Treat younger men as brothers, older women as mothers, and younger women as sisters, with absolute purity.” - I Timothy 5:1-2

What may be acceptable or “permissible” under the law, may still be unwise or harmful in a ministry setting.

Sexual Harassment

-The Legal Definition-

In 2017, the Barna Group conducted a study regarding sexual harassment.

When asked about experiences of sexual harassment:

- 29% responded “Yes, I have been sexually harassed”
- 23% responded “Yes, someone I know well was sexually harassed”
- 15% responded “Yes, I have witnessed sexual harassment”

Sexual Harassment

-The Legal Definition-

The study also asked what behaviors Americans count as sexual harassment.

Whether these specific actions would actually meet the legal definition of sexual harassment is less important than the perception.

One significant contrast is how men and women differ in their perceptions. Women viewed certain behaviors as sexual harassment significantly more often than men viewed the same behaviors.

■ Women
■ Men

Sexual harassment behaviors both women and men over 75%



96% 86%

Touching or
Groping



91% 83%

Being forced to
do something
sexual



89% 76%

Someone touching
themselves/
masturbating

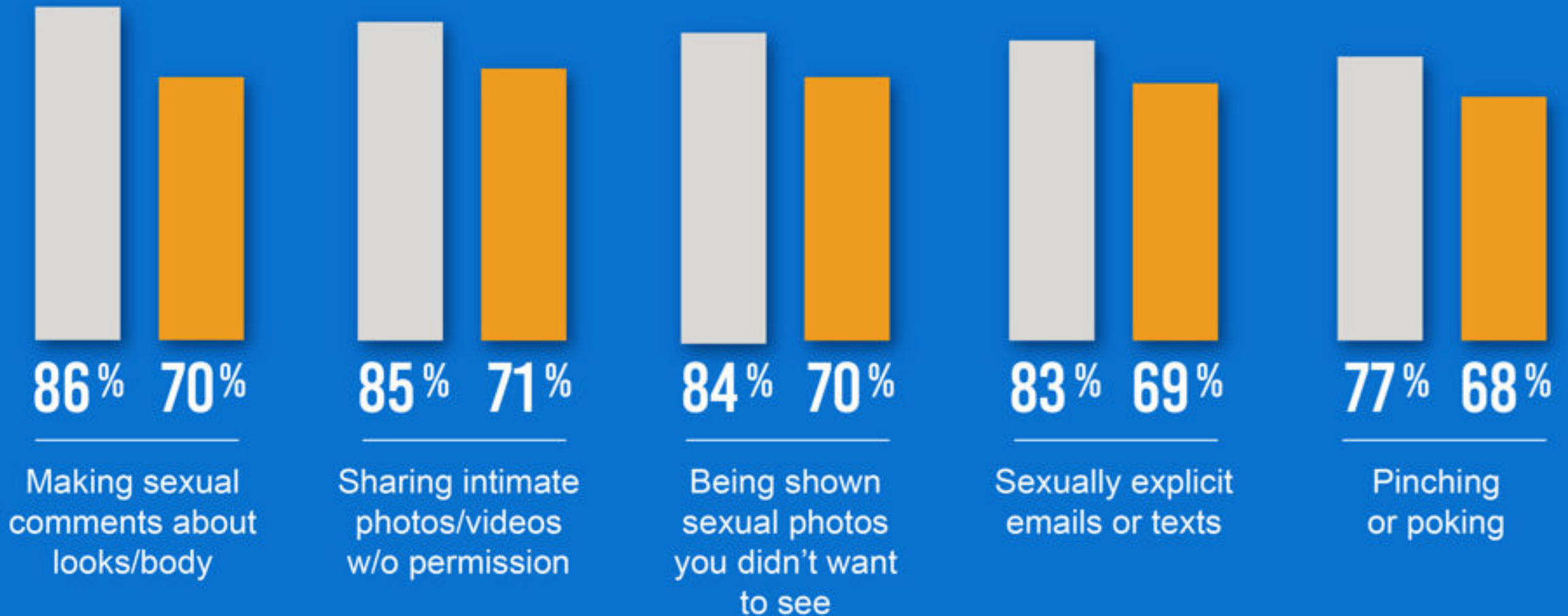


89% 76%

Flashing or
exposing
themselves

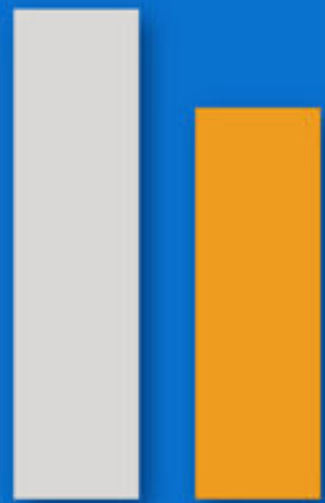
■ Women
■ Men

Sexual harassment behaviors both women and men over 50%



■ Women
■ Men

Sexual harassment behaviors women above 50% - men below 50%



63% **49%**

Having your
path blocked



58% **47%**

Persistently
asked out after
being told no



55% **41%**

Making a kissing
sound or action

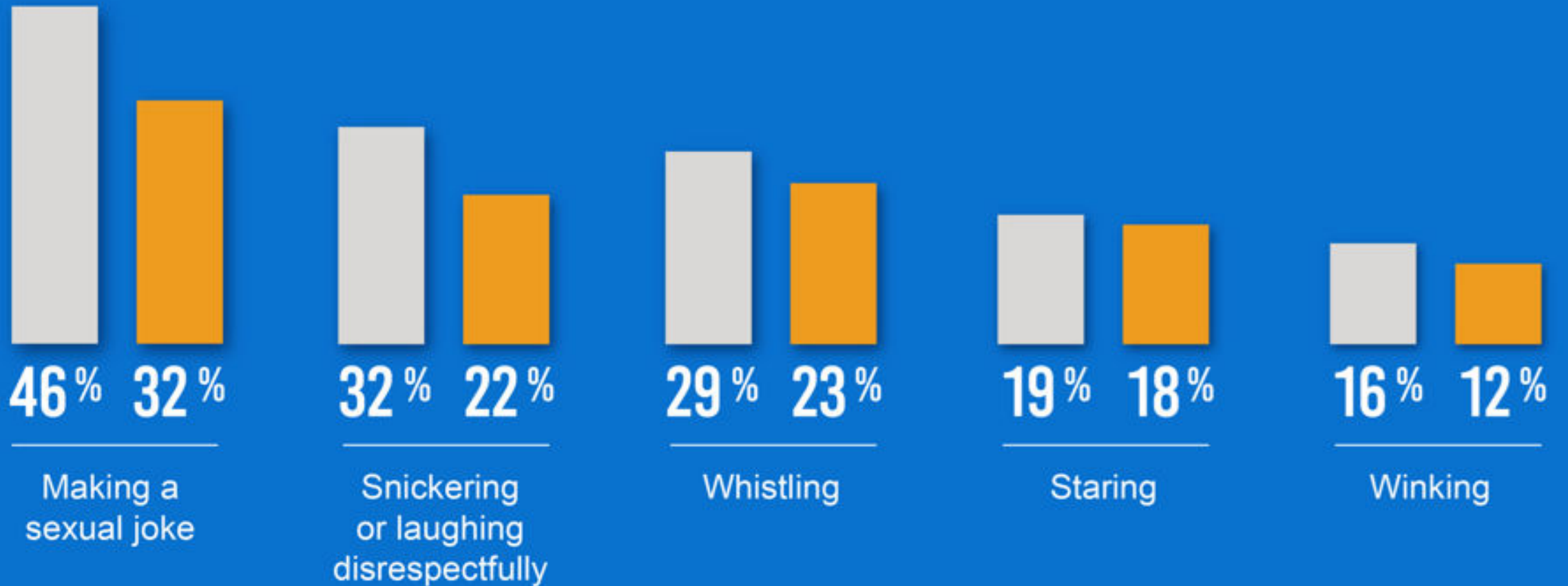


52% **38%**

Following

■ Women
■ Men

Sexual harassment behaviors women and men below 50%



Sexual Harassment

-The Practical Definition-

Behaviors not captured in Barna's survey that could occur more often in ministry settings (may or may not cross the sexual harassment line):

- Unwanted hugs
- Intruding on personal space
- Persistent personal social media, email, or texting by one party only
- Unwanted intimate conversations or touches when one or both parties are married

Responding to Sexual Harassment

Responding To Sexual Harassment

As the Barna study demonstrates, not all behaviors will be received the same by individuals. Sensitivities, boundaries, and comfort levels may differ person to person. This is especially true with behaviors such as non-sexual touch (hugs or close contact), jokes, or verbal and non-verbal communication.

If a behavior makes an employee feel uncomfortable or inappropriate, the employee has a duty to advise the individual the behavior is unwelcome and ask them to stop.

If the behavior continues, the employee should follow your harassment policy and report it to the appropriate party.

Responding To Sexual Harassment - Example

Jenny reports to Bob and their families have been friends since college. In the past month, Bob started setting private meetings after hours, complimenting Jenny's outfits, and sharing details about his marital struggles. Today, Bob texted her a meme with a sexual undertone and referenced a television comedy series they'd discussed recently. Jenny has begun to feel anxious and uncomfortable whenever Bob comes into the office.

What is an appropriate response?

Responding To Sexual Harassment - Example

What are some effective and ineffective ways Jenny could respond to Bob?

- After hours appointments
- Complimenting her outfits
- Discussing marital issues
- Sending a meme

Responding To Sexual Harassment - Example

Bob's behaviors may be morally inappropriate, however, Bob may not be aware his actions are unwelcome and are making Jenny uncomfortable.

While his actions may not yet rise to the level of sexual harassment, the combination of behaviors is concerning and needs addressed. If these types of behaviors continue after addressed, Jenny should report her concerns in accordance with the harassment policy.

Responding To Sexual Harassment

Certain behaviors, such as groping, forced sexual advances, or requests for sexual favors in exchange for employment related opportunities, are illegal and are never acceptable. If an employee believes any of these behaviors occurred, the employee should immediately report these to human resources, the board, or the appropriate individuals detailed in your harassment policy.

In these severe situations, an employee is not expected to confront the individual directly.

Avoiding Crossing the Sexual Harassment Line

Individuals in supervisory or authority roles need to have a heightened sensitivity regarding behaviors that could cause a co-worker or subordinate to feel uncomfortable or harassed.

Much of the “#Me Too movement” arose out of the power differential that existed between the two parties. Employees may fear retaliation if they confront or call attention to something that makes them uncomfortable coming from a person in authority.

Avoiding Crossing the Sexual Harassment Line

When a supervisor or person in authority is involved, the legal standard is higher.

FARAGHER V. CITY OF BOCA RATON

Employer is subject to “vicarious liability,” regardless of knowledge, for hostile environment created by supervisor unless:

- Employer adequately communicated policy
- Employer exercised reasonable care to prevent and promptly correct harassing behavior and
- Employee failed to take advantage of preventive or corrective opportunities provided by the employer

Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998)

BURLINGTON INDUSTRIES, INC. V. ELLERTH

Companion case that added defense for vicarious liability only exists as long as employee didn't suffer tangible job consequences.

Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998)



Avoiding Crossing the Sexual Harassment Line

Every individual has different acceptable boundaries. Not everyone clearly, verbally states where the boundary lies. Paying attention to non-verbal cues may help avoid unintentionally making someone uncomfortable.

Avoiding Crossing the Sexual Harassment Line

Non-verbal Indicators:

- Avoiding eye contact
- Not returning texts/emails/instant messages of a personal nature
- Not laughing at a joke
- Making excuses to avoid interaction
- Stiffening, avoiding, or pulling back with non-sexual touch

Employer's Role In Preventing Sexual Harassment

1. Communicate your written policy
2. Follow the policy
3. Encourage employees to report
4. Investigate and document all claims
5. Discipline employees guilty of harassment
6. Follow up

Employer's Role In Preventing Sexual Harassment

An effective sexual harassment policy should:

- Define sexual (and other) harassment
- State harassment will not be tolerated
- Clearly lay out reporting procedure
- Encourage employees to report

Employer's Role In Preventing Sexual Harassment

An effective sexual harassment policy should:

- Explain the investigation process
- Protect those who report from retaliation
- Assure confidentiality
- Discuss disciplinary action

Employer's Role In Preventing Sexual Harassment

An effective sexual harassment investigation should include:

- Interviewing the victim
- Interviewing the accused
- Interviewing witnesses
- Preparing a written summary
- Researching and collecting documentation that supports the victim's account

Employer's Role In Preventing Sexual Harassment

Once the investigation is complete, the following steps should be taken:

- Consult legal counsel before disciplining the accused person
- If there has been inappropriate behavior, including sexual harassment, take some form of action. Discipline may range from written warning (for minor offenses) to immediate termination
- Follow up with the victim, the accused, and supervisors
- Follow up with witnesses, interviewees, and other impacted parties with a high-level summary

Employer's Role In Preventing Sexual Harassment

What to share with the victim, accused, and supervisors of both:

- Explain specific disciplinary action taken to the accused. You are not required to share the details of disciplinary action with the victim, but may if desired
- Encourage victim to report further instances of harassment
- Monitor behavior with appropriate follow up

Employer's Role In Preventing Sexual Harassment

What to share with the victim, accused, and supervisors of both:

- Results of the investigation
- Retaliation will not be taken against the victim for reporting
- Harassment was taken seriously; charges were investigated thoroughly
- Clarify future expectations, including any restrictions on the accused

Employer's Role In Preventing Sexual Harassment

Matthew 18 Principle and Sexual Harassment

Ministries often desire reconciliation when conflict exists between employees. In many interpersonal conflicts, it is appropriate to encourage the parties to go to one another individually first.

This is not an appropriate response to an employee if sexual harassment is reported. Employers should never instruct a victim to confront the accused one-on-one if the employee voices fear or concern of retaliation.

Guidelines To Prevent Sexual Misconduct

Growing Concerns

- Child abuse affects ministries nationwide – reports of child abuse are increasing.
- Abuse has no regard for church size, denomination, or location.
- Many ministries are unaware of the potential for abuse within their ministry.
- Most incidents are never reported.
- In the past 2 years, Brotherhood Mutual has seen an increase in claims of sexual misconduct – an average of 4 to 5 per week.

Growing Concerns

The church is uniquely vulnerable due to the culture of trust, the large number of children, and the reliance on and need for numerous volunteers.

Many churches still do not have or follow an effective child protection policy. Many high profile cases have occurred in ministry settings, and the church needs to be proactive.

Growing Concerns

In May of 2018, The Washington Post ran a story about the response to sexual abuse in the evangelical church.

“So many Christian churches in the United States do so much good — nourishing the soul, comforting the sick, providing services, counseling congregants, teaching Jesus’s example, and even working to fight sexual abuse and harassment. But like in any community of faith, there is also sin — often silenced, ignored and denied — and it is much more common than many want to believe. It has often led to failures by evangelicals to report sexual abuse, respond appropriately to victims and change the institutional cultures that enabled the abuse in the first place.”

Pease, Joshua. (2018, May 31). The sin of silence, the epidemic of denial about sexual abuse in the evangelical church. Washington Post. Retrieved from https://www.washingtonpost.com/news/posteverything/wp/2018/05/31/feature/the-epidemic-of-denial-about-sexual-abuse-in-the-evangelical-church/?noredirect=on&utm_term=.5646167c

Child Protection Policy Basics

- Screening for employees and volunteers
- Supervision policy for ministry participants
- Volunteer waiting period
- Regular training for employees and volunteers of policy, reporting requirements, and sexual abuse indicators

Developing a Screening Procedure

- Conduct background screenings on all employees in addition to all volunteers involved with children's ministry or vulnerable adults
- Require a written application for all employees and relevant volunteers
- Request and check at least two references
- Conduct personal interviews

Supervision Guidelines

- Require individuals to be involved in the ministry for at least **six months**
- Encourage special training (CPR, first aid)
- Appoint adequate number of supervisors who can maintain control of the group
- Insist on two unrelated adults or the rule of three
- Require supervisors to report all injuries and disciplinary actions to the event leader

Reporting Sexual Misconduct

Take Accusations Seriously

- When a child reports abuse, pay special attention to the report—do not delay
- Make a formal report immediately (every state has a reporting hotline)
- Get help from your church's legal counsel and local law enforcement representatives. This helps:
 - Prevent further harm to the child
 - Determine the report's accuracy

Follow Mandatory Reporting Laws

Know your state's mandatory reporting law.

ALWAYS report any abuse:

- Physical
- Emotional
- Sexual

Every state is different. For more information, visit:

childwelfare.gov/topics/systemwide/laws-policies/can/reporting/

THE SAFE SPORT LAW

This “safe sport” law expands mandatory reporting and training requirements for adults involved with amateur sports organizations that participate in interstate or international amateur athletic competition involving adults interacting with minors.

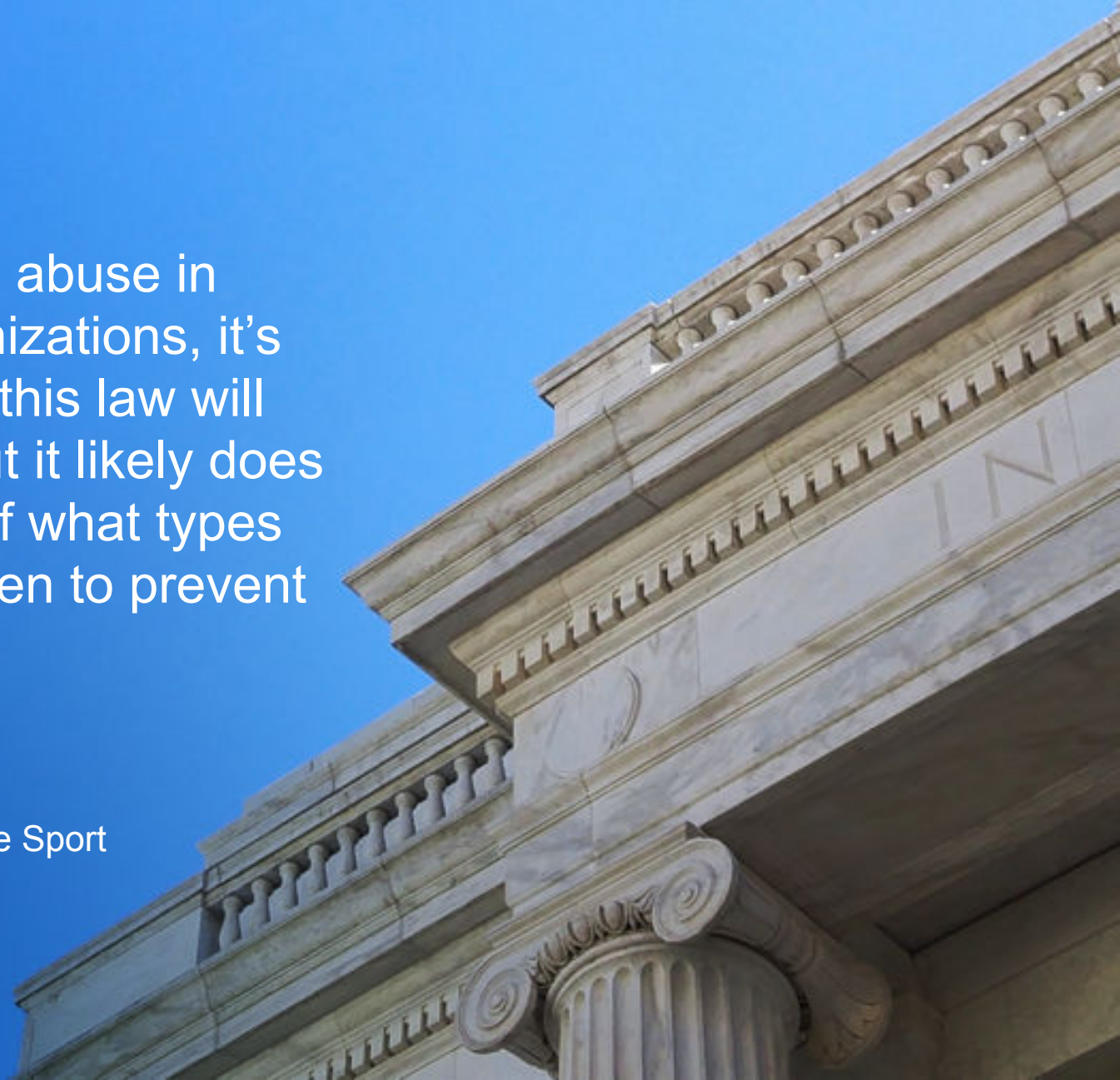
Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017



THE SAFE SPORT LAW

While this law was written to address abuse in Olympic related amateur youth organizations, it's broadly written. It is unclear whether this law will apply to ministry sports programs, but it likely does create a new minimum expectation of what types of preventative actions should be taken to prevent abuse.

Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017



THE SAFE SPORT LAW

Reporting:

Any adult affiliated with a youth sporting organization is required to report a suspected abuse (sexual, physical or emotional) to the state/ local authorities within 24 hours.

In essence, this means every adult becomes a mandatory reporter when he or she “learn of facts that give reason to suspect a child has suffered an incident of child abuse.”

THE SAFE SPORT LAW

Training:

The Safe Sport law requires “consistent training” of child abuse reporting and prevention to all adult members who are in regular contact with a minor.

Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017



Dealing with Sex Offenders in the Church

Churches are faced with a dilemma. Their goals:

**PROTECT
THE INNOCENT**



**MINISTER
TO THE FALLEN**

CAN MINISTRIES

DO BOTH?



Sex Offender Supervision Policy

- Written policy with specific restrictions, such as:
 - Off-limits areas
 - Restricted programs/functions
 - Chaperone requirements, etc.
- Assigned sponsor/mentor
- Regular professional counseling
- Regular participation in support group (e.g., Celebrate Recovery)

Sample policy and forms available at
[BrotherhoodMutual.com](https://www.brotherhoodmutual.com)

- *Child/Youth Worker Application Form*
- *Annual Renewal Application Form*
- *Activity Participation Agreement*
- *Reference Response Form*
- *Notice of Injury Form*



Wise as Serpents; Innocent as Doves

Behold, I am sending you out as sheep in the midst of wolves, so be wise as serpents and innocent as doves. Beware of men, for they will deliver you over to courts and flog you in their synagogues, and you will be dragged before governors and kings for my sake, to bear witness before them and the Gentiles.

—Matthew 10:16-18 (ESV)