

# THE ALLEGED HARASSMENT AS AN OFFENCE

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*“It’s not enough for women to speak out on the issue for the message to be strong and consistent, women’s voice must be backed by men.”-rep. john conyers, jr. ,michigan*

## Introduction

### What is consent

Permission for something to happen or agreement to do something. <sup>1</sup>

A Definition of **Consent** to Sexual Activity. Subsection 273.1(1) defines **consent** as the voluntary agreement of the complainant to engage in the sexual activity in question. Conduct short of a voluntary agreement to engage in sexual activity does not constitute **consent** as a matter of **law**.<sup>2</sup>

### For consent to be valid:

The patient must be competent – mental capacity is decision-specific. Assessment of a person's capacity should be based on his/her ability to understand, retain and weigh in the balance the information relevant to a particular decision. The person must also be able to communicate the decision.<sup>3</sup>

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<sup>1</sup> <https://en.oxforddictionaries.com/definition/consent>

<sup>2</sup> [www.justice.gc.ca/eng/cj-jp/victims-victimes/def.htm](http://www.justice.gc.ca/eng/cj-jp/victims-victimes/def.htm)

<sup>3</sup> [www.medicalprotection.org/uk/resources/factsheets/england/.../uk-eng-consent-the-basic](http://www.medicalprotection.org/uk/resources/factsheets/england/.../uk-eng-consent-the-basic).

## What is harassment?

**Harassment Law and Legal Definition.** Harassment is governed by state laws, which vary by state, but is generally **defined** as a course of conduct which annoys, threatens, intimidates, alarms, or puts a person in fear of their safety.<sup>4</sup>

### Definition of Workplace Harassment

Workplace harassment is a form of discrimination that violates Title VII of the Civil Rights Act of 1964 and other federal regulations.

The Equal Employment Opportunity Commission (EEOC) defines harassment as unwelcome verbal or physical behavior that is based on race, color, religion, sex (including pregnancy), gender/gender identity, nationality, age (40 or older), physical or mental disability, or genetic information. Harassment becomes unlawful when:

1. Enduring the offensive conduct becomes a prerequisite to continued employment, or
2. The conduct is severe or pervasive enough that a reasonable person would consider the workplace intimidating, hostile, or abusive. Also, if a supervisor's harassment results in an obvious change in the employee's salary or status, this conduct would be considered unlawful workplace harassment.

### Historical view of harassment

#### A Short History of the Long Fight Against Workplace Sexual Harassment<sup>5</sup>

We owe our current "moment of reckoning" to women like Eleanor Holmes Norton, a civil rights icon who held the first public hearings on sexism and discrimination in the US. Broadly spoke to Norton about how we got from there to where we are today.

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<sup>4</sup> <https://definitions.uslegal.com/h/harassment>

<sup>5</sup> [https://broadly.vice.com/en\\_us/article/evaz8k/a-short-history-of-the-long-fight-against-workplace-sexual-harassment](https://broadly.vice.com/en_us/article/evaz8k/a-short-history-of-the-long-fight-against-workplace-sexual-harassment)

Carmita Wood's boss wouldn't leave her alone. He touched her under her shirt, cornered her in the elevator and kissed her, and pushed her up against her desk with his body. The stress got to be too much, so in 1975 she quit her job as an administrative assistant at Cornell University. Afterwards, she was denied unemployment because her reasons for leaving were deemed "personal."

Cornell professor Lin Farley caught wind of the woman's situation and, while preparing for a speak out with a group of other woman professors, came up with a term for us to talk about what had happened: sexual harassment. Later that year, Farley traveled to New York City to testify in a public hearing on women's issues in the United States, planned by the NYC Commission on Human Rights. There, she publicly used the new language for the first time: "Sexual harassment of women in their place of employment is extremely widespread. It is literally epidemic," she said. The *New York Times* **quoted** her in a headline, and the term stuck.

This development came after years of legal work: In March of 1970, 46 women who worked at *Newsweek* magazine filed an official complaint against the publication's owners that read, "We allege that women at *Newsweek* are systematically discriminated against in both hiring and promotion and are forced to assume a subsidiary role simply because they are women."

The magazine had just published a cover story on the emergence of the feminist movement titled "Women in Revolt," which was written by female freelancer because its own management had an unwritten policy of keeping women in researcher roles and leaving the reporter jobs for men. So, Eleanor Holmes Norton, then the assistant legal director of the ACLU, encouraged the women to issue a complaint with the Equal Opportunity Employment Commission, which grew into the United States' first lawsuit suing for gender discrimination under Title VII of the Civil Rights Act of 1964. The statute basically says that employers cannot discriminate against their workers based on race, religion, or sex—although sex was only **famously added** at the very last minute. Until then, it had primarily been used in lawsuits concerning race.

## Some States and Companies Have Broader Definitions<sup>6</sup>

Some states have statutes that prohibit discrimination or harassment on the basis of whether a person is a smoker. A handful of states, including Wisconsin and New York, along with some private companies have laws or policies that prohibit discrimination and harassment based on arrest records or convictions.

A few others prohibit discrimination in relation to a person's receipt of public assistance. The District of Columbia prohibits discrimination on the basis of marital status, personal appearance, family responsibilities, matriculation, or political affiliation.

## Components of Workplace Harassment

Harassing conduct may include offensive jokes, slurs, name-calling, physical assaults or threats, intimidation, ridicule, insults, offensive pictures, and more.

Workplace harassment isn't limited to sexual harassment and doesn't preclude harassment between two people of the same gender. The harasser can be your boss, a supervisor in another department, a co-worker, or even a nonemployee. Interestingly, the victim doesn't necessarily have to be the person being harassed; it can be anyone affected by the harassing behavior. To file a valid harassment claim, you have to show that your employer tried to prevent and correct the harassing conduct and that the employee unreasonably rejected the employer's corrective efforts.

Some states have broad definitions of what constitutes harassment. For instance, a court in Florida determined that "fat jokes" made about an obese employee violated the Americans With Disabilities Act.

A New Jersey court ruled that a person could bring a claim for disability harassment based upon two remarks made about their diabetic condition.

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<sup>6</sup> <https://www.thebalance.com/types-of-harassment-in-the-workplace-2060886>

## Harassment at Job Interviews

In addition to harassment occurring in the workplace, harassment can also take place during a job interview. During an interview, employers should not ask about your race, gender, religion, marital status, age, disabilities, ethnic background, country of origin, or sexual preferences.

These are discriminatory questions because they are not relevant to your abilities, skills, and qualifications to do the job.

## The Boundary for Acceptable Behavior

Sometimes it's hard to tell whether if a situation qualifies as workplace harassment. Some common situations which count as workplace harassment include:

- Pedro was a victim of workplace harassment when his boss repeatedly referred to him with reference to his country of origin and characterized his work negatively based on his heritage.
- Ellen filed a claim with the EEOC because her boss restricted her to a receptionist role based on her appearance despite receiving her college degree and possessing the skills for an inside sales job. He repeatedly said that customers liked "having a looker up front."
- Bonnie was subject to workplace harassment when her supervisor asked her out for drinks on many occasions and told her that she could go a long way if she played her cards right with him.
- Jane was uncomfortable with references to the sexual conquests of co-workers in the break room. She responded to this workplace harassment by mentioning her discomfort to one of the perpetrators with whom she had a rapport. He spoke to the others, and their behavior ceased.

## The Law and Options

Laws regarding workplace harassment are enforced by the Equal Employment Opportunity Commission. Any individual who believes that his or her employment rights have been violated may file a charge of discrimination with the EEOC.

However, prior to doing so, victims should usually make an effort to resolve the situation internally. One option is to reach out to the offending individual directly. Describe your feelings and the unacceptable language or behavior and request that it stop. Another option could involve contacting your supervisor for assistance if you are uncomfortable confronting the offender directly.

In cases where the perpetrator is your supervisor or if you are uncomfortable approaching her/him, you can contact either the Human Resources department or your supervisor's boss and request redress. In addition, many organizations have designated an EEO or workplace complaint officer specializing in these issues who can be contacted for a confidential consultation.

Job applicants and other harassment victims may choose to consult a labor/employment attorney if other measures have not resulted in a satisfactory resolution. If so, be sure to select a lawyer with extensive experience and or a certification in employment law. Your local bar association will usually provide information about state certifications or ways to identify specialists.

Historically, some employers have urged victims to sign confidentiality agreements as part of the resolution process. Consult an attorney before relinquishing your rights.

## Three Types of Workplace Harassment & Examples<sup>7</sup>

### Verbal/Written

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<sup>7</sup> <http://www.workplaceanswers.com/resources/blog/types-workplace-harassment/>

Verbal or written is probably the most obvious form of workplace harassment—and the one you come across most often. Here are some examples:

- Sending emails with offensive jokes or graphics about race or religion
- Requesting repeatedly for dates or sexual favors in person or through text
- Asking about family history of illnesses or genetic disorders
- Making derogatory comments about someone's disability or age
- Imitating someone's foreign accent behind their back

The biggest thing to watch out for nowadays is technology. For example, if one employee forwards an email with a pornographic image, it can circulate to the point where everyone in the office sees it—even if that's not what the original sender was intending.

### **Physical**

Physical harassment might be a little harder to recognize because it can sometimes be very subtle.

- Lewd hand gestures or other gestures meant to convey curse words
- Unwanted touching of a person or their clothing
- Frequently following or standing too close to a person on purpose
- Making sexually suggestive facial expressions
- Playing music with offensive or degrading language

Many times it doesn't even have to be directed at the person to be harassment. So for example, if two coworkers are joking around and one makes an inappropriate hand gesture and someone else sees it, they might feel uncomfortable and even harassed.

### **Visual**

Visual is probably the hardest to spot because it's the most subjective and really requires you to put yourself in the shoes of the reasonable person.

- Wearing clothing with offensive or vulgar language
- Displaying posters or pictures of a sexual nature
- Showing other people sexually suggestive text messages or emails
- Watching pornographic or violent videos
- Drawing violent or derogatory images

For example, someone might have a comic strip displayed at their workstation and while most people might find the joke funny, someone else might find it offensive and say that it's creating a hostile work environment.

"Quid pro quo" is Latin for "something for something." It is a trade. When the trade is an exchange involving race, sex, gender identity and expression, color, national origin, religion, creed, age, sexual orientation, political affiliation, veteran status, disability or genetic information, it is impermissible. Most people relate quid pro quo to only sexual harassment. However, it can cross into other forms of harassment as well.

### Hostile Environment

A hostile work or learning environment is one in which the employer, an employee (administrative, faculty, staff), a student, a visitor, or a contractor, does or says something discriminatory that unreasonably interferes with an individual's work or educational experience or creates an intimidating or offensive environment based on that individual's race/ethnicity, color, sex, gender identity and expression, genetic information, religion, creed, national origin, age, sexual orientation, political affiliation, veteran status or disability. Hostile environment is determined by looking at all of the circumstances, including whether the alleged conduct is unwelcome and unsolicited, the frequency of the conduct, its severity, its pervasiveness, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance or with a student's academic progress and access to the University's resources and opportunities.



### Retaliation

Federal law, state law and university policy prohibit retaliation against anyone who complains about harassment, is accused of harassment, or assists in an investigation. Any interference, coercion, restraint, or reprisal directed against any person opposing or complaining of harassment is prohibited and, if proven, subject to disciplinary action.

### Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains. This form of discrimination may be inadvertent or intentional, and it can be obvious or subtle; regardless, it is unacceptable at Appalachian and, in many cases against the law.

### Unlawful Harassment

Some behaviors that might be considered harassment are not unlawful or impermissible.

### **ARE MEN VICTIM OF HARASSMENT <sup>8</sup>**

A growing number of men report being sexually harassed in the workplace, by both male and female co-workers and managers.

For most people, when they think of sexual harassment in the workplace, their mind immediately jumps to an image of a woman being harassed or propositioned by a male coworker, supervisor or boss. While most cases of workplace sexual harassment do involve female victims, a growing number of cases of both men and women harassing male employees have emerged.

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<sup>8</sup> <https://www.plbsh.com/yes-men-can-be-sexually-harassed-in-the-workplace/>

While the vast majority of sexual harassment cases filed with the EEOC are filed by women, an increasing number of men are filing their own claims. In 2015, 6,822 sexual harassment claims were filed with the EEOC. 17.1 percent of those cases were filed by men.

There are a number of cases involving female on male workplace sexual harassment that have resulted in significant awards for the male employee. These include instances of retaliation for refusing sexual advances, unwelcome touching and caressing, and being subjected to offensive sexual comments and jokes. Male on male workplace sexual harassment claims are becoming more common, starting with a 1998 ruling from the United States Supreme Court that held that men are protected from workplace sexual harassment under Title VII of the Civil Rights Act of 1964. These cases may include both sexual advances from male co-workers and supervisors and sexual-based hazing that can be equally damaging.

### **WHY THEY HESITATE TO REPORT?<sup>9</sup>**

There are no exact statistics on how many men are sexually harassed at work, and how many of these men actually file claims for sexual harassment. However, it is likely that the cases filed with the EEOC represent just a portion of the total number of men who are sexually harassed at work.

Some men may not report their harassment or file a claim with the EEOC because they are afraid of being mocked by coworkers. They may believe that men can't truly be sexually harassed by a woman, or that being harassed by another man implicates their own sexuality. They may fear being embarrassed if details of the harassment were leaked, particularly if they believe that they should be able to handle the issue themselves. Whatever the reason, it is evident that many men are simply not filing claims of sexual harassment.

### **CRIMINAL HARASSMENT VERSUS CIVIL HARASSMENT<sup>10</sup>**

Criminal harassment should not be confused with how "harassment" is often used in contexts such as workplace discrimination lawsuits. Federal and state laws ban discrimination against

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<sup>9</sup> <https://www.plbsh.com/yes-men-can-be-sexually-harassed-in-the-workplace/>

<sup>10</sup> <https://criminal.findlaw.com/criminal-charges/harassment.html>

certain types of people in certain situations, such as at work or in housing decisions. In these non-criminal contexts, the victim can sue the harasser in a private civil lawsuit, alleging that the harassment constitutes discrimination.

On the other hand, *criminal* harassment is usually confined to state law. States vary in how they define criminal harassment. Generally, criminal harassment entails intentionally targeting someone else with behavior that is meant to alarm, annoy, torment or terrorize them. Not all petty annoyances constitute harassment. Instead, most state laws require that the behavior cause a credible threat to the person's safety or their family's safety.

Though state harassment laws vary, they often take different levels and methods of harassment into account. Separate penal statutes or a general harassment statute may list various ways to communicate harassment, including telephone calls, emails, and other forms of communication. Whether there was any legitimate reason for the communication becomes a factor under many states' harassment laws.

Harassment charges can range from misdemeanor to high level felony charges. In many states, people charged with harassment will receive a higher level charge if they have previously been convicted of harassment, of communicating a threat, or of a domestic violence offense. Harassment by someone in violation of a restraining order may also draw a higher level charge. Some states elevate the charge if the harassment targeted someone based on race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation

### **Stalking and Menacing**

In some states, "stalking" is specified as a separate offense from harassment. Other states include both harassment and stalking under a single general statute. Stalking generally refers to a clear pattern of conduct through which the perpetrator causes the victim reasonable fear for their safety or their family's safety.

Interstate stalking is a federal crime.

Some states punish stalking as a form of "menacing." Menacing can often include ongoing actions, such as stalking someone, which cause reasonable fear in the victim. Menacing also often includes single acts which are purposefully intended to create a reasonable fear in someone, such as brandishing a weapon.

Whether and how states draw lines between harassment, menacing and stalking varies greatly. For more specifics, see state stalking laws.

### **Cyberstalking**

Some states have enacted specific laws against stalking someone online. "Cyberstalking" generally refers to stalking someone through the internet, email, text messages, or other means of electronic communication. Many states have revised their harassment and/or stalking laws to explicitly include harassing electronic communications. Some states also punish actions akin to cyberstalking under laws aimed at improper uses of computers or electronic communications networks.

Federal law makes it a crime to "transmit in interstate commerce" (which includes the internet) a communication containing a threat to kidnap or physically harm someone.

### **Harassment and Restraining Orders**

While prosecutors can charge someone with criminal harassment, victims of abuse or harassment may also petition the court for an order of protection or restraining order to prohibit someone from engaging in harassing behaviors.<sup>11</sup>

Orders against harassment and restraining orders frequently come into play in situations involving domestic violence.

Such orders come from civil courts, but violation of these court orders may constitute a separate criminal offense and/or contempt of the civil court. Violating a protective order may also increase the severity of a harassment, stalking or menacing charge.

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<sup>11</sup> N.N.S. Rana vs Union Of India (Uoi) And Ors. on 24 October, 2003

## IS HARASSMENT DIFFERENT FROM SEXUAL ASSAULT?

Yes, harassment is different from sexual assault, which can be a serious crime. Sexual assault involves unwanted sexual contact as a result of force, coercion, or incapacitation.

If a victim of sexual harassment has suffered unwanted sexual touching, they should contact the police. Particularly if the unwanted touching was forceful, contacting the police is the first step in having a person charged with sexual assault.

## CIVIL HARASSMENT<sup>12</sup>

### Domestic Violence

Domestic violence is abuse or threats of abuse when the person being abused and the abusive person are:

- Married or registered domestic partners,
- Divorced or separated,
- Dating or used to date,
- Living together or used to live together (but more than just roommates), OR
- Closely related (like parent, child, brother, sister, grandmother, grandfather, in-law).

The domestic violence laws say “abuse” is:

- Physically hurting or trying to hurt someone intentionally or recklessly;
- Sexual assault;
- Making someone reasonably afraid that he or she or someone else is about to be seriously hurt (like threats or promises to harm someone); OR
- Behavior like harassing, stalking, threatening, or hitting someone, disturbing someone’s peace, or destroying someone’s personal property).

Keep in mind that abuse and domestic violence do not have to be only physical. Abuse can be verbal (spoken), emotional, or psychological. You do not have to be physically hit to be abused.

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<sup>12</sup> <http://www.courts.ca.gov/1258.htm>

Often, abuse takes many forms, and abusers use a combination of tactics to control and have power over the person being abused.

If you are being abused in any of these ways or you feel afraid or controlled by your partner/spouse or someone you are close with, it may help you to talk to a domestic violence counselor, even if you do not want (or are not sure if you want) to ask for legal protection.

### **Elder or Dependent Adult Abuse**

Abuse of an elder or a dependent adult is abuse of:

- Someone 65 years old or older; or
- A dependent adult, who is someone between 18 and 64 that has certain mental or physical disabilities that keep him or her from being able to do normal activities or protect himself or herself.

The law says elder or dependent adult abuse is:

- Physical abuse, neglect, financial abuse, abandonment, isolation, abduction (taking you out of the state against your will), or other behavior that causes physical harm, pain, or mental suffering; OR
- Deprivation by a caregiver of things or services that the elder or dependent adult needs to avoid physical harm or mental suffering.

### **Civil Harassment**

In general, civil harassment is abuse, threats of abuse, stalking, sexual assault, or serious harassment by someone you have not dated and do NOT have a close family relationship with, like a neighbor, a roommate, or a friend (that you have never dated). It is also civil harassment if the abuse is from a family member that is not included in the list under domestic violence. So, for example, if the abuse is from an uncle or aunt, a niece or nephew, or a cousin, it is considered civil harassment and NOT domestic violence.

The civil harassment laws say “harassment” is:

- Unlawful violence, like assault or battery or stalking, OR
- A credible threat of violence, AND

- The violence or threats seriously scare, annoy, or harass someone and there is no valid reason for it.

“Credible threat of violence” means intentionally saying something or acting in a way that would make a reasonable person afraid for his or her safety or the safety of his or her family. A “credible threat of violence” includes following or stalking someone or making harassing calls or sending harassing messages (by phone, mail, or e-mail) over a period of time (even if it is a short time)

### **Workplace Violence<sup>13</sup>**

For a workplace violence situation, the harassment is defined in the same way as for civil harassment. The difference is that the harassment happens primarily at work AND it is the employer of the harassed employee who asks for protection for the employee (and, if necessary, for the employee’s family).

For an employer to get a workplace violence restraining order on behalf of an employee, there needs to be reasonable proof that:

- The employee has suffered unlawful violence (like assault, battery or stalking) or a credible threat of violence;
- The unlawful violence or the threat of violence can reasonably be construed to be carried out or to have been carried out at the workplace;
- The conduct is not allowable as part of a legitimate labor dispute; and
- The person accused is not engaged in constitutionally protected activity.

### **Sexual harassment of a child<sup>14</sup>**

Adolescent Sexual Behavior and the Law 7 Although “statutory rape” is rarely used in the language of the laws, the term is typically recognized as encompassing the intent of several other named laws such as sexual assault, sexual assault of a minor, rape of a child, corruption of a minor, carnal knowledge of a minor, unlawful carnal knowledge, sexual misconduct, or child molestation, to name a few. The predominant rationale of

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<sup>13</sup> Supra 9

<sup>14</sup> [http://www.crimevictimsinstitute.org/documents/Adolescent\\_Behavior\\_3.1.11.pdf](http://www.crimevictimsinstitute.org/documents/Adolescent_Behavior_3.1.11.pdf)

statutory rape laws is to protect minors who are said to be incapable of consenting to sexual intercourse or other sexual activities, due to their lack of experiences to make mature, informed decisions.<sup>4</sup> It is believed that youth below the age of consent are less likely to understand and consider the potential consequences of sexual activities, such as sexually transmitted diseases, and pregnancies. These minors are also argued to be unequal to adults, socially, economically, and legally. Because of this, statutory rape laws have been introduced to reduce the power adults may have over minors. These laws do consider that minors will consent to sex. It is the basis for the laws that even if minors consent, adults cannot engage in sexual activities with them because of the power they have over minors. What the laws do not consider is that minors are consenting to have sex with other minors or slightly older peers who do not have power over them. The wording of these laws encompass teenage relationships making it equally illegal for, say a 17 year old to be sexually intimate with a 16 year old boyfriend or girlfriend. However, because the laws were not originally written to prosecute such cases, the law was rarely enforced among teen couples. In 1995, however, a study was published that caused many states to toughen their statutory rape laws, widening the net to include more teen romances. Landry and Forrest (1995) , found that half the teenage pregnancies of girls aged 15-17 were the result of teenagers having sexual relationships with men who were 20 years of age or older. Thus, statutory rape laws took on a dual function: protect minors from being taken advantage of sexually by adults, and helping to prevent teen pregnancies.

The latter however, may be a misguided attempt in light of additional research that shows these laws have little effect on girls who actually become pregnant.<sup>6</sup> Figure 1. Current Age of Consent per State <sup>8</sup> The Crime Victims' Institute Due to the number of jurisdictions that began to more aggressively prosecute close-in-age offenders, a backlash was created, based on the belief that it was unfair to punish these sexually active teenage relationships in the same way sexual predators were punished.<sup>7</sup> Some argued that the sentences given to some statutory rape offenders were tantamount to cruel and unusual punishment. Media coverage would often highlight cases that created strong public opinions as to the fairness of these laws and the repercussions they had on offenders. Genarlow, a 17 year old high school senior, was arrested for engaging in



oral sex with a consenting partner who was two years younger than he. Those two years would prove to be crucial in this case, since the victim was below the age of consent which is set at 16 in Georgia where the incident took place. On New Year's Eve, 2003, Genarlow attended a party in a hotel room with a number of friends. During the night, several sexual activities among partygoers were video recorded.

There were two females involved in the acts, one, a seventeen year old and the other, 15. Even though the 15 year old participated willingly, since she was below Georgia's age of consent, the males who engaged in oral sex with her had committed a crime as described by Georgia law. The mother of one of the girls contacted authorities to report that her 17 year old daughter had been raped. Evidence from the hotel room was confiscated, including the video tape. While the tape showed that the 17 year old girl was a willing participant in the sexual activities she partook in, determining that she had not been raped, it did convict six of the male partygoers, including Genarlow, of Aggravated Child Molestation for the acts they participated in with the 15 year old female. Eventually, five of the males charged in this case chose to accept a plea bargain which required them to register as sex offenders, but would reduce their prison stay from the mandatory 10 years. Genarlow did not accept the plea bargain and was given the minimum sentence. He was sentenced to prison for 10 years after which he was to be put on probation for a year and made to register as a sex offender for the rest of his life. This case made national headlines, and there was an outcry that the court sentencing was unjust.<sup>8</sup> This case and others like it prompted the Georgia legislature to amend their Aggravated Child Molestation Laws which would thereafter classify cases like this as a misdemeanor with a maximum sentence of one year in jail, and would not require the offender to register on the sex offender registration list. However, the bill specifically stated that the new amendment would not apply retroactively. As a result, Genarlow remained in jail. After many failed appeals, he was released from prison in 2007. The Georgia State Supreme Court ruled in his favor, finding that this teenager's sentence was cruel and unusual punishment. He was able to return home to his family, which under his original sentence he would not have been able to do as a registered sex offender since his sister was a minor.

- <sup>15</sup>Incident is from Malda, where a 13 years school girl belonging to a village called Barampur, was molested inside her school campus by a group of youths who often used to tease her once she was outside the campus. Just because she turned down the proposal of one of them, all three of them conspired against her to take revenge of their insult. So one day while leaving the school campus, she was slapped and molested by the youth and his friends right in front of her friends and all other students. The accused identified as Sahjahan Sk, Tafizul Ska and Vikan Sk, all in their early twenties, field from the voice when the other girls protested. While two of them have been arrested, the third one is still absconding.
- In another sad incident, a hearing impaired student studying in a reputed Prabhadevi school for the deaf and aphasic was molested by the school's principal, aged 42 along with a teacher, aged 37. The victim had named six other students who had gone through the same horrible ordeal. According to an officer handling the case the student who had passed her SSC said in her statement that the principal, under the pretext of giving her chocolates, would behave indecently and touch her inappropriately, while the teacher would show her obscene pictures. Later, both the accused were booked for molestation and under various sections of Prevention of Children from Sexual Offences Act.

### **Child labor as a harassment<sup>16</sup>**

Child labor is a problem worldwide, but it particularly affects children in developing countries. Child labor is characterized by full-time work at too early of an age, and too many hours spent working. The work often exerts undue physical, social, or psychological stress, hampers access to education, and may be detrimental to social and psychological development. The ILO's Statistical Information and Monitoring Program on Child Labor recently estimated that 211

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<sup>15</sup> <https://www.indiatoday.in/education-today/news/story/top-10-cases-of-school-molestation-in-india-202738-2014-08-04>

<sup>16</sup> <http://www.uniteforsight.org/gender-power/module4>

million children, or 18 % of children aged 5-14, are economically active worldwide. 60% of these working children live in Asia, and 23% live in sub-Saharan Africa. Most economically active children are employed in agriculture. For example, in Nepal, 85% of economically active children are in agriculture. In Cambodia, the rate is 73% while in Morocco it is 84%.<sup>17</sup>

The type of child labor is the most important determinant of the incidence of work-related injuries. An estimated 6 million work-related injuries occur among children annually, which results in 2.5 million disabilities and 32,000 fatalities every year. In developing countries, children often work under hazardous conditions in the manufacturing and agricultural sectors. For these children, crushing accidents, amputations, and fractures account for 10% of all work-related injuries. Working children are not only at risk of physical injury, but are vulnerable to workplace toxins and chemical hazards as well.<sup>18</sup> Specific hazards vary according to the industry type. Child workers may be exposed to high temperatures, and a high risk of accidents caused by cuts and burns if they work in the brassware and glass-bangle industry. Children who work in matches and firebox shops may be exposed to chemical hazards and a risk of fire and explosion. Children who work in the carpet industry are exposed to repetitive movements, chemical hazards, inhalation of wool dust contaminated with biological agents, and inadequate working postures. Lastly, children who work in the shoe industry are often exposed to glue.<sup>19</sup> “Using data derived from the Global Burden of Diseases Study (GBDS), estimates of child occupational mortality rates by region were found to be comparable with adult mortality rates, indicating that the conditions in which children work are as dangerous as, or more dangerous than, those in which adults work.”<sup>20</sup>

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<sup>17</sup> Edmonds, E., and Pavcnik, N. “Child Labor in the Global Economy.” *Journal of Economic Perspectives*. 19.1 (2005). Accessed on 9 February 2011.

<sup>18</sup> Graitcer, P., Lerer, L. “Child Labor and Health: Quantifying the Global Health Impacts of Child Labor.” *World Bank* 1998. Accessed on 10 February 2011.

<sup>19</sup> Yadav, S., and Sengupta, G. “Environmental and Occupational Health Problems of Child Labour: Some Issues and Challenges for Future.” *J. Hum Ecol.* 28.2 (2009). Accessed on 10 February 2011.

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