

A hand is shown hovering just above the keyboard of a silver laptop. The background is a blurred office environment with windows and other equipment. The text is overlaid on the upper right portion of the image.

We've Adapted to Remote Work — and So Has Sexual Harassment

Prepared by:
Christina Hynes Mesco
The Prinz Law Firm, P.C.



Lorman Education Services is a leading provider of online professional learning, serving individuals and teams seeking training and CE credits. Whether you're looking for professional continuing education or an enterprise-wide learning and development solution, you will find what you need in Lorman's growing library of resources.

Lorman helps professionals meet their needs with more than 100 live training sessions each month and a growing collection of over 13,000 ondemand courses and resources developed by noted industry experts and professionals.

Learn more about Lorman's individual programs, economical All-Access Pass, and Enterprise Packages:

www.lorman.com

WE'VE ADAPTED TO REMOTE WORK — AND SO HAS SEXUAL HARASSMENT

By Christina Hynes Mesco

Our work lives have been irreparably transformed as a consequence of the global pandemic. While that means our work habits and schedules have adapted, more sinister aspects of the workplace have also changed, such as workplace harassment and discrimination. As many of us are working remotely, workplace hostility has gone remote as well, transforming what used to be an in-person phenomenon into a digital problem. This reality has been exacerbated as remote work has blurred the lines between our personal and professional lives.

While physical distance from the office seemingly insulates employees from coworkers who discriminate and harass, these negative behaviors persist, although in modified forms. Initial data suggest that online sexual harassment occurs while working remotely and is even on the rise, a trend likely to continue as many employers maintain a remote workforce, some even permanently. One survey conducted in late 2020 by the UK organization Rights of Women found that of women who experienced sexual harassment in the workplace, nearly 50% encountered some form of online harassment and approximately 15% reported an increase in online harassment while working remotely.

Respondents shared anecdotes that illustrated the novel (and abhorrent) ways in which harassers operated: sending sexual messages via email and text or harassing others during online group meetings (such as via Teams or Zoom). One woman reported that the director of her company took screenshots of her and her female colleagues during Zoom meetings and circulated them among his friends, pairing them with derogatory and sexually explicit statements implying that his female coworkers were engaged in sexual acts. Another respondent felt as though compulsory video meetings, which provided her colleagues with a view of her personal space at home, invaded her privacy and only provided more “ammunition” with which to harass her.

Little data exists yet to quantify the magnitude of this issue, but online discrimination and harassment is, at least anecdotally, a problem. It is therefore imperative that employees and employers alike have an understanding of how these behaviors look when carried out in the remote workplace and how to respond.

What Constitutes Online Sexual Harassment in the Remote Workplace?

Generally, state and federal laws recognize that a hostile work environment can be created for employees when sexually-tinged workplace behavior is *severe* (extreme harassing conduct, such as physical contact) *or pervasive* (several instances of harassing conduct over time, such as months of sexually suggestive commentary).

Online sexual harassment in the remote workplace can look similar to in-office harassment, but it is conducted through a variety of remote technologies. Online sexual harassment can include the following behaviors:

- **Statements or questions of a sexual nature during conference calls or video meetings.** This can include unwanted flirtatiousness or romantic advances, even if not sexually explicit. For example, commentary on a co-worker's appearance or sound during a remote meeting could cross the line: "Wow, you look really good in that top!" or "Your voice sounds super sexy this morning!"
- **Subjecting viewers or listeners to sexual content during remote meetings.** This can include sharing pornographic images and/or audio, showing intimate body parts, or engaging in sexual activity, even if it is accidental. Legal analyst and writer **Jeffery Toobin was fired from his job** with *The New Yorker* recently after he exposed himself in a Zoom meeting with colleagues, despite alleging he did so inadvertently, believing that he was not sharing his video.
- **Digital messages that are sexually suggestive or explicit.** Emails, chats, or text messages that contain comments, requests, jokes, pictures, GIFs or even emojis (**yes, even emojis can be evidence of harassment**) that include sexual content, including unwanted flirtatiousness or romantic advances. Of course, harassment between workers is not limited to that

conducted over work-issued devices or on company platforms. Explicit texts sent to a coworker's personal cell phone can constitute sexual harassment just as much as those sent to a work device.

- **Messages or posts sent via apps.** Popular apps, such as Facebook, Instagram, Snapchat, and even online dating platforms, like OkCupid and Tinder, present opportunities for conduct that can constitute sexual harassment in the remote workplace. As workers connect (seemingly) out of the office on these platforms, inappropriate contact and conduct between workers in these spaces can also constitute sexual harassment in the remote workplace.
- **Any other unwelcome behavior of a sexual nature.** Whatever the form of communication, if it creates a hostile environment for the recipient, it has become a vector of harassment.

How Can Employees Combat Online Sexual Harassment?

Say "Stop!"

The best response to any unwelcome contact of a sexual nature is to clearly and unmistakably direct the actor to stop and state that the conduct is unwelcome. This may mean sending a private message to the actor during or after the conduct. A DM reading, "Please stop making comments about my appearance. It makes me very uncomfortable," or "Please do not send me any more personal messages" can suffice. If you believe that a

coworker is engaging in inappropriate behavior during a live meeting, you may need to interrupt the meeting to address the conduct in front of the other virtual meeting attendees (“That joke was offensive—let’s keep it G-Rated going forward.”), which can help deter such behavior.

Speak Up for Others

It takes great courage (and is sometimes downright impossible) for a person who is subjected to harassment to speak out directly against the harasser. Therefore, it is very important for bystanders to intervene if they witness harassing behavior. Call out the behavior publicly in real-time if possible (“Hey Jay, please leave Marcy alone—that’s not appropriate.”) Send the harassed coworker a message directly to see if he or she is ok or needs assistance. Even consider direct messaging the harasser to ask that the behavior cease.

Report Misconduct Internally

Conduct that could create a hostile work environment should be promptly reported to a manager or to your employer’s human resources department. If possible, record or screenshot inappropriate conduct or content and share this evidence as part of the report. Most importantly, do not be silent: as with in-person harassment, online harassment can only be eradicated by concerted employee effort.

How Can Employers Prevent and Combat Online Sexual Harassment?

Set Your Workforce up for Success

Though the lines between home and work have all but been erased, remind employees to bring their best professional selves to virtual work meetings and calls by setting standards for conduct during remote work. Remind employees that standards for conduct during remote work periods are no less important than those required for in-person work. Set a dress code for remote work meeting attendance. Encourage employees to conduct virtual meetings from common/public spaces in their homes (e.g., living rooms, dining rooms, or home offices) rather than bedrooms or other private spaces. Consider requiring the use of a standard virtual background for virtual meetings—perhaps one with your business’ logo—so as to protect employee privacy as well as mitigate distractions. Provide whatever reminders are necessary for employees to remember that they are expected to act professionally while working from home.

Provide a Policy Reminder

Remind employees of your policies prohibiting sexual harassment in the workplace and the ways in which they may report such misconduct. Also, ensure that your business’ expectations regarding electronic communications are clear: if your business has not done so already, consider adopting policies that prohibit sharing sexually suggestive or explicit content in workplace settings and on company devices and communication channels.

Train Employees and Managers

Provide training to help employees identify and report online sexual harassment, train bystanders to intervene to stop harassing behavior, and remind all employees that retaliation for reporting alleged sexual harassment or participating in an investigation is illegal. All Illinois employers are required to provide sexual harassment prevention training on a yearly basis: take the opportunity to focus this year's training on online sexual harassment.

Investigate Complaints and Take Action

Employers receiving complaints about online sexual harassment must take immediate action to determine an appropriate response. Ensure that the complainant is protected from further behavior (such as suspending the alleged aggressor pending review of the conduct). Determine whether an internal investigation is necessary (it likely is) and take appropriate action based upon the results of that investigation, which may range from a simple policy reminder to termination of the aggressor's employment. Ensure that all employees are reminded of your workplace policies and that the complainant is protected from any retaliation for having raised the issue.

Online sexual harassment is not going away, and by all indications will increase. Employers and employees working collaboratively can help ensure that all workplaces—including virtual spaces—are free from harassment for all employees.



LORMAN[®]

📍 2510 Alpine Road Eau Claire, WI 54703

💻 www.lorman.com ☎ 866-352-9539 ✉ customerservice@lorman.com



The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.