



**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

April 20, 2009

Lucinda Glinn, Appeals Officer  
Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

Re: Docket Nos. AP 2009-0083 and 105, Shine - Department of State

Dear Ms. Glinn:

Enclosed please find a Motion for Reconsideration in the above-referenced matter.

Sincerely,

A handwritten signature in cursive script that reads "Karen L. Cummings".

Karen L. Cummings, Assistant Counsel

c: Bryan Shine  
Arwilda Haynes, Dept. of State Open Records Officer

PENNSYLVANIA OFFICE OF OPEN RECORDS

In the Matter of Bryan J. Shine, :  
Complainant :  
 :  
v. : Docket Nos. AP 2009-0083 and 105  
 :  
Department of State, :  
Respondent :

MOTION FOR RECONSIDERATION

Respondent, the Pennsylvania Department of State, files this Motion for Reconsideration, pursuant to 1 Pa. Code § 35.241, of the Final Determination of the Office of Open Records that was issued in the above-captioned cases on April 13, 2009.

Respondent submits that the Final Determination errs: 1) in its conclusion that verbal harassment and threats are not sufficient for an agency to invoke the personal security exception under § 67.708(b)(1)(ii) of the Right to Know Law (RTKL), 65 P.S. § 67.101 *et seq.*; and 2) in finding that the Department does not qualify as a public protection agency under § 67.708(b)(2) of the Right to Know Law. Respondent respectfully requests that the Office of Open Records consider the following arguments.

**I. Verbal and written harassment and threats constitute substantial and demonstrable risk of physical harm or to the personal security of an individual.**

The Department denied the Complainant access to emails that: 1) reveal the identity of individuals that received certain emails; and 2) that identify witnesses to a verbal altercation the Complainant initiated at the Department's facilities. The denial was based on the personal security exception under the RTKL, which provides that a record is exempt from access if disclosure of the record "would be reasonably likely to result in a substantial and demonstrable risk of physical harm to *or* the personal security

of an individual.” 65 P.S. § 67.708(b)(1)(ii) (Emphasis added). In discussing § 67.708(b)(1)(ii), the Appeals Officer states that no facts indicate a physical threat and that “[v]erbal harassment does not rise to the level of substantial and demonstrable harm... .” (Final Determination at 8). Further, she states that the OOR finds it “unlikely that [Complainant] would do more than verbally harass” the other recipients of the emails and those identified as witnesses. Without discussing the nature of the verbal harassment and threats referenced in the supporting affidavits provided by the Department, the Appeals Officer concludes that the Department does not show a reasonable likelihood that the release of the emails would result in substantial and demonstrable harm.

This analysis focuses solely on physical harm and fails to consider that verbal harassment is very likely to cause substantial and demonstrable risk to a person’s personal security. Verbal harassment, especially in the form of perverse and sexually explicit emails such as those sent to Department staff by the Complainant, can and is extremely likely to cause harm to a reasonable person’s emotional health and create fear for their personal security and safety.

The Complainant has directed the following statements, either in writing or in person, to various Department staff:

- “F\*\*\* this Commonwealth” (Comment was repeatedly yelled at Ms. Misheck by Mr. Shine on March 23, 2007, see email attached hereto as Exhibit “1,” resulting in her e-mail on that date about her concerns for physical safety).
- E-mail to the Department Agency Open Records officer, dated January 10, 2009, attached hereto as Exhibit “2”:

“Have you not learned my dear that an employee of this Commonwealth is to forge state documents, harass Citizens, and violate the Constitution of the United States with inpuignant [*sic*] indifference? What do I pay taxes for if you are not going to learn to lye [*sic*] to me?”

“According to the customer service handbook of Judy the Jewish Dominatrix [Judy is a Department employee who is Jewish.] a ‘state employee is to impersonate and to forge each and every document that will suit her needs. One must impersonate Stalin and Hitler at All Times [sic]....

“According to the customer service handbook of Peter Mars [sic; Peter Marks is a Department employee] ‘a state employee is to cover for Judy in all circumstances. I don’t want Judy coming at me again with her full body leather outfit, red ball gag akin to that guy in Pulp Fiction, can of crisco [sic], leather whip, Kenneth Suter [a Department employee] and his dildos he uses with Debi, Beverly Brooks and Joe McGettigan [Department employee and two members of the Real Estate Commission]’ Yes Joe boy likes a big black dildo up his ass.

“...Of course you are a state employee and a member of a union that destroyed this Country. Of course I cannot honest [sic] except [sic] you to do your job.”

- E-mail to Patricia Ridley, Department employee, entitled “Last Chance,” dated January 14, 2009, attached hereto as Exhibit “3”:

“You know that your actions were false. You know that your ‘employment’ with this ‘Commonwealth must end [sic].

“Patricia, I am giving you one late [sic] chance. I have worked for banks too many years. Send \$14,500.00 via red sealed Federal Reserve Bank Certified.”

- E-mail to Terry Mutchler, dated February 27, 2009, attached hereto as Exhibit “4”:

“... Ms. Cummings [Department attorney], of course being a product of affirmative action in her admittance to law school [would therefore be unfamiliar with the Constitution]....Contrary to Ms. Cummings’ passport, my passport is issued by the United States of America. Her passport is, apparently [sic], issued by the People’s Republic of China.... Come on Karen ....you Cuban!”

Any reasonable person would find these ongoing statements by Mr. Shine, geared at Department employees who have interacted with him, to be offensive, perverse, ominous, and to create a substantial and demonstrable risk to the sense of personal

security of such Department employees. Mr. Shine's makes a point of being sexually explicit and gratuitously identifying specific Department employees, with denigrating and offensive remarks based on their religion, gender and what he perceives as their sexual preferences. These types of remarks are intended to be shocking and intimidating. They are threatening in nature, insulting and designed solely to harass the recipients. Public employees should be protected from such behavior and not be forced to be exposed to it as a result of the RTKL.

Mr. Shine's behavior falls squarely within the definition of criminal harassment under the Crimes Code, which provides that "[a] person commits the crime of harassment when, with the intent to harass, annoy or alarm another, the person...communicates to or about such other person any lewd, lascivious, threatening or obscene words... ." 18 Pa.C.S. § 2709(a)(4). The OOR, in ordering the release of additional names of Department staff to Complainant, is knowingly and recklessly creating a situation that is highly likely to subject those individuals to criminal harassment by the Complainant. In addition, in stating that "*only* a harassment charge was filed" (Final Determination at 8; emphasis added), the Final Determination implies that criminal harassment is not sufficient to invoke the personal security exception because no specific physical harm has been alleged.

The OOR conclusion that, "[v]erbal harassment does not rise to the level of substantial and demonstrable harm," should be reconsidered. (Final Determination at 8). If this were the case, why would the Pennsylvania General Assembly recognize verbal harassment as a crime and other activities, such as stalking, where physical harm is not demonstrated, but a climate of intimidation and fear is created that requires security protections?

The OOR further stated that the personal security exception would not apply as, “no specific harm is averred.” This conclusion ignores the demonstrated fact that Mr. Shine has created a climate of intimidation, based on his personal identification of Department employees in contexts of sexual and religious denigration. Had the Complainant not been viewed as a threat to the public safety and the personal security of Department employees, the Department would not have expended any funds to institute security measures.<sup>1</sup>

Mr. Shine’s vulgar and offensive personal attacks on Department employees constitute sexual harassment in the form of a hostile work environment and religious discrimination for which the recipient could be entitled to monetary damages. The Department could be held liable even though the harassment comes from a non-employee. (See EEOC summary of harassment under Title VII of the Civil Rights Act of 1964, attached hereto as Exhibit “6.”). In addition, punitive monetary damages can be allowed in tort cases for sexual harassment. These damages are allowable to make the victim whole and compensate for various harms, including emotional distress, pain and suffering. While none of the affected Department employees alleged the “specific” harm of emotional distress, pain and suffering, this does not preclude such harm on behalf of the individuals whose names have not been released to Mr. Shine. The Department withheld the names of certain individuals because of its concern for the personal security of its employees. Given the totality of the allegations and evidence presented to the OOR, there should be no need to allege some “specific” harm more than concern about

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<sup>1</sup> The Department has a duty to and takes extreme care in providing for the safety and security of its staff. The Final Determination fails to take into consideration the fact that the Department has repeatedly arranged for security services when it was known that the Complainant would be at its facility. Evidence in the form of invoices from the security agency was submitted to substantiate this fact. (See the invoices attached hereto as Exhibit “5.”).

verbal harassment, which the OOR recognized as likely for those whose names were redacted.

The Department's goal in denying the Complainant access to the names of additional employees is to ensure a harassment-free workplace and follow through on its duty to protect its employees. The rationale and result of the Final Determination undermines these goals and will only serve to place Department staff in harm's way. As such, the Department respectfully requests that the OOR reconsider the Final Determination and deny the Complainant's appeal.

**II. The Department's Bureau of Professional and Occupational Affairs and its Real Estate Commission is engaged in providing for the public safety or public protection activity and qualifies as an agency covered under § 67.708(b)(2).**

The Right to Know Law provides an exemption from access for records "maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety ... or public protection activity..." 65 P.S. § 67.708(b)(2) (Emphasis added). The Final Determination makes an erroneous assumption regarding the Department of State's public purpose. In discussing § 67.708(b)(2), the appeals officer mischaracterizes the Department's purpose in stating that "[t]he Department and its Real Estate Commission are not engaged in providing for the public safety, which is a prerequisite for this exception." (Final Determination at 9). On the contrary, the Department's Bureau of Professional and Occupational Affairs (BPOA), which administers the Real Estate Commission as well as twenty-six other licensing boards, is almost exclusively involved with public safety activity. The Department is responsible for administering professional licensing statutes.

In doing so, the Department inspects and regulate more than one million professionals practicing in the Commonwealth, ranging from doctors and pharmacists to accountants and realtors. The main purpose of professional licensing is to protect the health, safety and welfare of the public from dangerous, fraudulent and unethical practitioners.

In addition to the initial licensing of professionals, the Department is charged with the duty to ensure that licensed professionals practice in accordance with the standards set forth in the licensing statutes in order to ensure that consumers are protected and that licensed individuals are not jeopardizing public safety. As part of this process, the Department has investigatory and law enforcement powers. The Department employs over one hundred investigators that receive and investigate complaints from the public and over thirty-five prosecutors that enforce the licensing statutes by bringing formal charges against licensees. The Department works closely with local and state police, as many of the licensure violations also amount to criminal activity. The Department also employs hearing examiners and regularly holds disciplinary hearings to determine whether licensees have violated the law and whether sanctions are warranted.

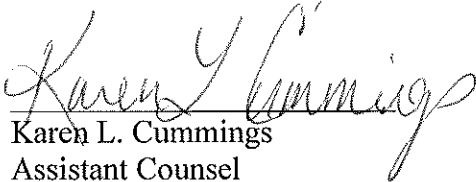
These duties clearly place the Department under the purview of an agency involved in “law enforcement or other public safety activity” contemplated by § 67.708(b)(2) of the Right to Know Law. The Department maintains that the records sought in the instant case are maintained in connection with the public protection activity of the Department in that they were generated as a result of Mr. Shine’s application for licensure. In addition, the records would “be reasonably likely to jeopardize or threaten public safety ... or public protection activity” as required for the § 67.708(b)(2) exception to apply because releasing the records would place Department employees in

danger of being harassed by the Complainant and undermine the Department's duty to protect its public employees and members of the public that are present in the Department's facilities.

### CONCLUSION

In light of the foregoing arguments, the Department respectfully requests that the Office of Open Records reconsider its Final Determination and deny the Complainants appeals based on the §§ 67.708(b)(1)(ii) and 67.708(b)(2) of the Right to Know Law.

Respectfully submitted,



Karen L. Cummings  
Assistant Counsel  
Department of State  
301 North Office Building  
Harrisburg, PA 17011  
(717) 783-0736

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**From:** Misheck, Deborah  
**Sent:** Wednesday, May 23, 2007 12:19 PM  
**To:** Vessella, Mark  
**Cc:** Ridley, Patricia  
**Subject:** Bryan J. Shine - IMPORTANT  
**Importance:** High

Hello Mark:

I just came back from speaking to an applicant in the lobby. He was VERY loud and rude. He is saying that someone from this office stated that we could review convictions in this office. Everyone in this office knows that we can review the conviction documents; however, if it is not something we can approve, it will go to the meeting.

This guy was screaming and cursing in the lobby. He demanded to be put on the agenda. Of course, the agenda was completed yesterday and the staff out there indicated that to him. I explained that we could get him on the addenda. He was screaming very rude comments (he even said Fxxx the Commonwealth, I know how this place works). I told him I wanted to take the time to review the application to which he responded "everything is f'en there". I explained that I was taking the time to do this so we can tell him that we had the documents and he would not have to return to the office. He said "I did not kill someone sweetheart. And, if I would come back here it would be with my attorney". As we were leaving, he screamed across the lobby desk (he was by the door) I DEMAND a call by 10:00 a.m. tomorrow. I told him under NO terms am I promising he will get called by 10:00 a.m. tomorrow morning. I told him it would be sometime tomorrow. As we were walking out, he once again screamed "Fxxx this Commonwealth".

He is still on probation so if he would have given the total details to the person on the phone, I know he was not told that we could review/approve here.

I gave him my e-mail address and asked him to forward the e-mail to me. He literally yanked (very hard) the piece of paper from my hands. I do not feel threaded easy; however, with his language and body language toward me I do believe he is a very loose canon and could do physical harm to someone that is sitting in the lobby.

The witnesses to this is [REDACTED] (who was at the reception desk).

When Patty returns tomorrow I will make sure she puts this on the agenda; however, he will have to come in for an informal since he is still on probation. When he does come in, I think the enforcement committee should be aware of his actions.

*Deborah A. Misheck*  
Division Chief  
Real Estate & Vehicle Licensing Division  
P.O. Box 2649  
Harrisburg, PA 17105-2649  
717-772-8377 (telephone number)  
717-787-0250 (fax)

[REDACTED]  
[www.dos.state.pa.us/estate](http://www.dos.state.pa.us/estate) (Real Estate Commission)  
[www.dos.state.pa.us/vehicle](http://www.dos.state.pa.us/vehicle) (Vehicle Board)

Exhibit "1"

-----Original Message-----

From: Bryan J. Shine [mailto:bryanjshine@verizon.net]

Sent: Saturday, January 10, 2009 8:50 PM

To: ST, RTK-DOS

Cc: Marks, Peter; Schulder, Judith; Smith, Gary (DOC CCB); Merenda, Basil

Subject: Your letter

Ms. Haynes:

I am in receipt of your letter. Hopefully since my writing Judy has not continued to forge our formerly grand state's documents. Further, I'm quite amazed by your "disparaging remarks" comment. Have you not learned my dear that an employee of this Commonwealth is to forge state documents, harass Citizens, and violate the Constitution of the United States with impugnant indifference? What do I pay taxes for if you are not going to learn to lye to me?

According to the customer service handbook of Judy the Jewish Dominatrix a "state employee is to impersonate and to forge each and every document that will suit her needs. One must impersonate Stalin and Hitler at All Times. This IS Pennsylvania. TIP."

According to the customer service handbook of Peter Mars "a state employee is to cover for Judy in all circumstances. I don't want Judy coming at me again with her full body leather outfit, red ball gag akin to that guy in Pulp Fiction, can of crisco, leather whip, Kenneth Suter and his dildos he uses with Debi, Beverly Brookes and Joe McGettigan" Yes Joe boy likes a big black dildo up his ass.

With Regards to your sheer incompetence. Hopefully, you can fulfill my request and have each and every email from them captured from May 23, 2007 to the present. Of course you are a state employee and member of a union that destroyed this Country. Of course I cannot honest except you to do your job.

With Disgust,

Bryan J. Shine  
Candidate for Governor 2010  
9 Lake Drive  
Spring City Pa 19475-2722  
484.366.7370

Exhibit "2"

-----Original Message-----

From: Bryan J. Shlne [mailto:bryanjshlne@verizon.net]  
Sent: Wednesday, January 14, 2009 2:10 AM  
To: Ridley, Patricia  
Cc: pmckenna@gawthrop.com; Schulder, Judith; Marks, Peter  
Subject: Last chance

Dear Ms. Ridley

I am writing you in hopes of settling this matter between us without involving the courts. As you know you write a letter to me under your capacity and that of this Commonwealth on June 7, 2007. You know this letter to be false. I did not.

Because of your actions I retained the services of Patrick M. Mckenna of Gawthrop Greenwood, PC for a cost in excess of \$4,3,00.00. Further because of your actions I failed to enjoy my family's vacation to Walt Disney World. Because of your actions I will never be able to enjoy my nephew's nor niece's experiences at WDW in the summer of 2207. Because of your letter I was in absolute fever of receiving a letter from the state that I was "violation of some felony" that you pretended existed. I thought that some deputy would arrest me at the terminal at Philadelphia International Airport.

You know that you actions were false. You know that your "employment" with this "Commonwealth must end.

Patricia I am giving you a late chance. I have worked for banks too many years. Send \$14,500.00 via red sealed Federal Reserve Bank Certified. I will not accept any other payment. Money order, "certified" check or personal check will not be accepted.

With honor,

Bryan J. Shlne

9 Lake Drive

Spring City PA 19475-2722

Exhibit "3"

February 27, 2009

Terry Muchler, Executive Director

Commonwealth of Pennsylvania

Office of Open Records

Commonwealth Keystone Building

400 North Street 4<sup>th</sup> Floor

Harrisburg, PA 17120-0225

Re: Docket #AP 2009 – 0083

Dear Mr. Muchler:

I hereby respond to Ms. Cummings contrived and contorted remarks in her letter dated February 24, 2009 to which I only received today.

First and foremost as a member of the State Bar Ms. Cummings should and must be reminded that intentionally submitting false documents to a state body is a grave offense. Will she please substantiate her purported knowledge of a confidential complaint that was or was not submitted to the Supreme Court of this Commonwealth against Ms. Schulder.

Secondly, Ms. Cummings remarks as to a criminal investigation (case 2009 02 00431) would be laughable if not being so serious. Perhaps, Ms. Cummings, of course being a product of affirmative action in her admittance to law school, would bother to read the first amendment and fourteenth amendments of the United States Constitution. My speech in the attached "exhibits" are nothing more than political motivated expressions of Free Speech and my right to redress grievances with my Government. The Harrisburg police have not and cannot "investigate" me. The Commonwealth has never "obtained additional security for the BPOA facility". Ms. Cummings remarks in her brief are nothing more than official misconduct by a member of the bar designed to dissuade me, and furthermore initiate and harass me in my filing of a federal civil rights law suit against her.

Exhibit "4"

I live some 2 hours drive from Harrisburg. There has never been a documented report of my "harassment" against any member of the BPOA nor any instrumentality of this Commonwealth. Ms. Cummings, as an official of this Commonwealth, as committed a grave injustice by filing the document that she did with your office.

There is no proof, no evidence, no forged documents from the Commonwealth yet, that can possibly prove that I mean any harm to any individual within the employ of this Commonwealth.

The fact remains that my application for licensure was denied under false pretenses. Ms. Misheck's email and her testimony was "supposedly" dismissed by the commission. To be blunt why in hell is the Commonwealth hiding her emails and the true basis for my denial with such vigor?

Perhaps because employees of this Commonwealth are lying in state documents, perhaps they do not want the truth to be revealed.

There is no proof, no evidence that I could ever do harm to unnamed individuals. Ms. Cummings, as is usual of a product of our state bureaucracy and affirmative action, is lying to you. She is purposefully hiding the names of individuals who could be named and/or called as defendants/witnesses in the matter of Shine v. Merenda to be filed with the United States District Court of Pennsylvania in Philadelphia seeing that the courts of this Commonwealth have no interest in justice.

There is no "investigation" into my "vulgar behavior". Contrary to what Ms. Cummings learned no police force in the United States can harass or intimidate an American for invoking his constitutional rights to due process and the First amendment. Contrary to Ms. Cummings' passport, my passport is issued by the United States of America. Her passport is, apparently, issued by the People's Republic of China. Come on Karen file a criminal complaint about the last sentence. Abuse your bureaucratic powers and the police powers of this state to suppress my rights as an American you Cuban!

I hereby demand a hearing to be conducted in this matter at a place and time convenient to myself and this honorable office.

Sincerely,

Bryan J. Shine – Via EMAIL

CITY OF HARRISBURG - TREASURY INVOICE

INVOICE NO:	4283
	06/08/2007

PAYABLE TO:  
 CITY TREASURER  
 CITY OF HARRISBURG  
 10 N 2ND ST SUITE 103.  
 HARRISBURG, PA 17101

\*\*\* PLEASE SEND AN INVOICE COPY WITH PAYMENT \*\*\*

MAILING ADDRESS:

DEPARTMENT OF STATE  
 DIANE GOOD  
 BUREAU OF FINANCE AND OPERATIONS  
 308 NORTH OFFICE BUILDING  
 HARRISBURG, PA 17120

RE: COMPANY'S ACCOUNT NUMBER:

ACCOUNT NUMBER	DUE DATE	AMOUNT DUE	CHECK NUMBER
	07/07/2007	91.62	

QUESTIONS REGARDING THIS INVOICE?  
 CONTACT: ALFREDO RIVERA  
 AT: (717) 255-3010

ACCT-CODE	AMOUNT	ACCOUNT CODE TITLE
0144-00-416-000	76.35	OVERTIME   EXPENSE
0100-00-342-090	15.27	OTHER PUBLIC SAFETY REVENUE
* FOR SERVICES RENDERED BY THE HARRISBURG POLICE WHO WORKED		*
* SECURITY AT THE DEPARTMENT OF STATE, 2601 N THIRD STREET,		*
* FOR A REAL ESTATE COMMISSION MEETING ON 6/6/07 FROM 0800-1000.		*
* PO GARRETT MILLER 2 HOURS	76.35	*
* 20% OTHER PUBLIC SAFETY REVENUE	15.27	*
* TOTAL		\$ 91.62 *

CITY COPY

Exhibit "5"

CITY OF HARRISBURG - TREASURY INVOICE

INVOICE NO:	4480
	09/27/2007

PAYABLE TO:  
 CITY TREASURER  
 CITY OF HARRISBURG  
 10 N 2ND ST - SUITE 103  
 HARRISBURG, PA 17101

\*\*\* PLEASE SEND AN INVOICE COPY WITH PAYMENT \*\*\*

MAILING ADDRESS:

DEPARTMENT OF STATE  
 DIANE GOOD  
 308 NORTH OFFICE BUILDING  
 HARRISBURG, PA 17120

RE: COMPANY'S ACCOUNT NUMBER:

ACCOUNT NUMBER	DUE DATE	AMOUNT DUE	CHECK NUMBER
	10/25/2007	81.76	

QUESTIONS REGARDING THIS INVOICE?

CONTACT: ALFREDO RIVERA  
 AT: (717) 255-3010

ACCT-CODE	AMOUNT	ACCOUNT CODE TITLE
0142-00-414-900	77.87	SALARIES/WAGES - EXTRA DUTY
0100-00-342-090	3.89	OTHER PUBLIC SAFETY REVENUE
* FOR SERVICES RENDERED BY THE HARRISBURG POLICE WHO WORKED		*
* SECURITY AT A HEARING AT 1 PENN CENTER, 2601 NORTH THIRD STREET		*
* HARRISBURG, PA FROM 0845-1045 HOURS ON SEPTEMBER 26, 2007.		*
* PO GARRETT MILLER 2 HOURS X \$38.9363	77.87	*
* 5% OTHER PUBLIC SAFETY REVENUE	3.89	*
* TOTAL	\$ 81.76	*
* SEND TO: PO ALFREDO RIVERA JR, 123 WALNUT STREET,		*
* SUITE 215, HARRISBURG PA 17101.		*

CITY COPY

*The U.S. Equal Employment Opportunity Commission*

## Harassment

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

Harassment is unwelcome conduct that is based on race, color, sex, religion, national origin, disability, and/or age. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats,

## Need more information?

The law:

- [Title VII of the Civil Rights Act](#)
- [The Age Discrimination in Employment Act](#)
- [The Americans with Disabilities Act](#)

Enforcement guidances and policy documents:

- [EEOC Compliance Manual Section 15, Race and Color Discrimination, Section VII\(A\), April 19, 2006.](#)
- [EEOC Compliance Manual Section 13, National Origin Discrimination, Section IV, December 2, 2002.](#)
- [Policy Guidance on Current Issues of Sexual Harassment](#)
- [Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors](#)
- [Questions & Answers for Small Employers on Employer Liability for Harassment by Supervisors](#)
- [Enforcement Guidance on Harris v. Forklift Sys., Inc.](#)
- [Policy Guidance on Employer Liability under Title VII for Sexual Favoritism](#)

You may also be interested in:

Intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference

with work performance. Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
- Unlawful harassment may occur without economic injury to, or discharge of, the victim.

- [How to File a Charge of Employment Discrimination](#)
- [Mediation at EEOC](#)
- [Training and Outreach](#)
- [Information for Small Employers](#)

## Have a Question?

Prevention is the best tool to eliminate harassment in the workplace. Employers are encouraged to take appropriate steps to prevent and correct unlawful harassment. They should clearly communicate to employees that unwelcome harassing conduct will not be tolerated.

They can do this by establishing an effective complaint or grievance process, providing anti-harassment training to their managers and employees, and taking immediate and appropriate action when an employee complains. Employers should strive to create an environment in which employees feel free to raise concerns and are confident that those concerns will be addressed.

Ask us! Contact us by [phone \(toll free\)](#) or [email](#), or [check our FAQs](#).

Employees are encouraged to inform the harasser directly that the conduct is unwelcome and must stop. Employees should also report harassment to management at an early stage to prevent its escalation.

## Employer Liability for Harassment

The employer is automatically liable for harassment by a supervisor that results in a negative employment action such as termination, failure to promote or hire, and loss of wages. If the supervisor's harassment results in a hostile work environment, the employer can avoid liability only if it can prove that: 1) it reasonably tried to prevent and promptly correct the harassing behavior; and 2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

The employer will be liable for harassment by non-supervisory employees or non-employees over whom it has control (e.g., independent contractors or customers on the premises), if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action.

When investigating allegations of harassment, the EEOC looks at the entire record: including the nature of the conduct, and the context in which the alleged incidents occurred. A determination of whether harassment is severe or pervasive enough to be illegal is made on a case-by-case basis.

If you believe that the harassment you are experiencing or witnessing is of a specifically sexual nature, you may want to see EEOC's information on [sexual harassment](#).

## Statistics

In Fiscal Year 2006, EEOC received 23,034 charges alleging harassment as an issue. EEOC resolved 22,408 charges alleging harassment in FY 2006 and recovered \$59.8 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

- [Charge Statistics: Harassment](#)