

# The top 10 harassment excuses ... and how to see through them



When you get wind of a potential harassment situation at work, one of HR's first steps is to talk to the alleged harasser.

It's highly unlikely you'll get a full confession in that first meeting. Your role is to sort through the explanations and justifications to identify the real truth. In doing so, be on the lookout for the following common excuses:

## 1. "I didn't mean it."

It's not enough for an employee to claim that he or she didn't *intend* to be offensive. Sometimes, the effect of the behavior outweighs the intent of the harasser. Even if the employee didn't intend to harass, if the target objectively and subjectively felt harassed, the employer could be held liable.

## 2. "I was just kidding."

A variation of "I didn't mean it." Here, the employee is claiming he or she was trying to be funny, rather than offensive. Humor, like beauty, is in the eye of the beholder. Again, the effect may outweigh intent.

## 3. "That's the way I treat everybody."

Illegal harassment must be based on sex, race or other protected characteristics. Employees may admit to harassment, but deny doing anything illegal because they are not picking on any one employee or class of employees.

However, court cases have shown that offensive conduct that is not sex-specific still may violate Title VII if there is sufficient evidence of differences in the harassment suffered by female and male employees.

## 4. "I didn't say anything sexual (or racial)."

Sexual harassment is often misunderstood to mean that behavior must be sexual in nature in order to be illegal. However, nonsexual behavior that occurs because of one's sex can also be considered illegal harassment.

So, for example, calling female employees names that are nonsexual, yet offensive, is a form of sexual harassment.

## **5. “I didn’t know.”**

Employees often claim ignorance due to the fact that the target never spoke up. That means the company did not do its job to educate and train employees on what constitutes harassing behavior, and management isn’t doing its job to keep an eye on employees.

## **6. “They’re no angels, either.”**

The fact that a target of harassment used foul language or told dirty jokes herself (or himself) does not mean he or she can never be a victim of harassment (*see box below*).

## **7. “I wasn’t talking about her.”**

In this case, the harasser tries to hide behind the fact that the complaining employee was not the actual target of the remarks. But several courts have ruled that employees may experience harassment regardless of whom the racist or sexist remarks were targeted toward.

## **8. “They weren’t supposed to see/hear.”**

In a similar way to No. 7, even if the intended audience of offensive pictures or jokes was a willing participant, anyone who accidentally sees the pictures or hears the jokes may have a harassment claim.

## **9. “She’s too sensitive.”**

In some situations, the alleged harasser is right, and the behavior is not as severe or pervasive as the target thinks it is. The court test is how a “reasonable person” would objectively and subjectively perceive the behavior. In all cases, the employer needs to get the facts to decide whether the behavior is inappropriate or innocuous.

## **10. “It’s just the environment around here.”**

Certainly, each workplace varies in the degree of civility expected and exhibited. However, heed the words of EEOC senior trial attorney R. Liliana Palacios-Baldwin, commenting on a case: “Even though a construction site may be viewed by some as a ‘rough and tumble’ workplace, discrimination is unlawful regardless of the job site—it doesn’t matter whether employees work behind a computer or behind a forklift.”

## **Courts don't like excuses from employers, either**

Several female support clerks who worked for Chase Bankcard Services filed sexual harassment claims, saying that male co-workers regularly called them “bitch” and much worse. Name-calling allegedly progressed to grabbing and kissing. HR investigated only after the women went to the EEOC.

Chase tried to defend itself by arguing that the women couldn’t have suffered much because their performance was never affected and because the remaining women never asked for a transfer (or they quit). Plus, the company noted that the women had, from time to time, discussed things like their menstrual cycles and expressing breast milk with the male employees. They may even have used curse words.

*Result:* The judge was not amused. He said Chase’s investigation was neither prompt nor effective. He observed that discussing menstruation or breastfeeding was not the same as the harassment the women described—and it didn’t mean the women welcomed the harassment. He also said employees don’t need to quit or request transfers to show they feel harassed. He ordered a jury trial. (*Powers, et al., v. Chase Bankcard Services*, SD OH)