

Sexual Harassment Definition from 106.30

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" ..., "domestic violence" ..., or "stalking" as defined in ... [the Violence Against Women Act].

For the sexual assault, dating violence, domestic violence, and stalking references, I strongly recommend your policy include the actual definitions, and not just cites to federal code. The definitions from federal law are included below.

Sexual Assault

20 U.S.C. 1092(f)(6)(A)(v) – defines sexual assault as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

The FBI uniform crime reporting covered offenses are (each of these should be listed in your policy):

Sex Offenses, Forcible—Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

Forcible Rape—(Except Statutory Rape) The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

Forcible Sodomy—Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault With An Object—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because

of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Forcible Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sex Offenses, Nonforcible—(Except Prostitution Offenses) Unlawful, nonforcible sexual intercourse.

Incest—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape—Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Dating Violence as defined in 34 USC 12291 means violence committed by a person--
(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
(i) The length of the relationship.
(ii) The type of relationship.
(iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence as defined in 34 U.S.C. 12291(a)(12) means The term “domestic violence” includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who--
(A) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
(B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
(C) shares a child in common with the victim; or
(D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

Stalking” as defined in 34 U.S.C. 12291(a)(36) means engaging in a course of conduct directed at a specific person that would cause a reasonable person to--

- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress.