

More than **1.5 MILLION** global subscribers use QuickBooks Online.

AdChoices

THE BLOG

# Sexual Harassment: Know Your Rights

© 04/17/2013 12:56 pm ET | Updated Feb 02, 2016



Like 84



Jincey Lumpkin  
Founder and Chief Sexy Officer, Juicy Pink Box



ALAMY

**Disclaimer:** Nothing below should be considered legal advice and as such should not be relied upon. Furthermore, this may constitute Attorney Advertising under the New York Rules of Professional Conduct. Each case must be evaluated on the basis of its unique facts and circumstances. Prior results do not guarantee a similar outcome.

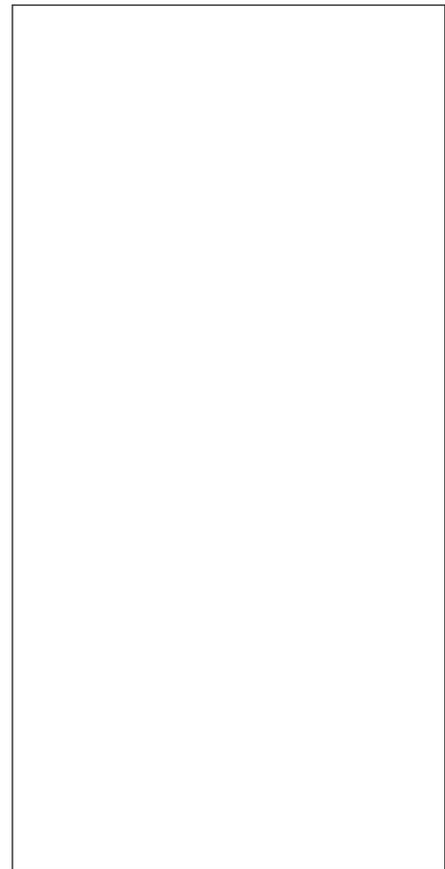
The bedroom is the only place where I like to lose control.

I was [raped](#). I've been [sexually harassed](#). I was [afraid to speak out](#), because I was taught that good girls don't make a fuss.

The office is one place where sexual nonsense should not be tolerated. You don't have to put up with lewd comments from your boss. You don't have to suffer in silence while being objectified. You have legal protections!

That's why I invited a special guest to give us a lesson in sexual harassment

## H Sexual Harassment: Know Your Rights



AdChoices

TRENDING

Latino Trump Supporter  
Marco Gutierrez Warns

clients in sexual harassment suits. He grew up in New Jersey and currently lives in New York City. Mike excelled at math and science and parlayed his Vanderbilt engineering degree and St. John's law degree into a stint as a patent litigator. After several years of working as an associate at two big firms where he developed and sharpened his litigation skills, he realized that what he longed to do was to be a voice for the disenfranchised and stand in the underdog's corner, pushing for victory. In 2009 he opened his firm, Pospis Law, to accomplish this goal.

**Jincey Lumpkin:** Mike, what is sexual harassment?

**Mike Pospis:** It's a form of sex discrimination. There are generally two types of sexual harassment.

The first type, known as "quid pro quo" harassment ("quid pro quo" is Latin for "this for that"), occurs where an employee is subjected to unwelcome sexual conduct, such as requests for sexual favors or sexual advances, and the employer uses the worker's reaction to that conduct as a basis for decisions affecting the employee. An example is where an employee is fired because she refused to sleep with her boss.

The second type, known as "hostile work environment" harassment, occurs where unwelcome sexual conduct creates an abusive, hostile, offensive or intimidating work environment. This is usually accomplished through the use of sexually offensive remarks, jokes or comments, profanity, crude humor, displays of pornography or sexual graffiti, touching and/or repeated requests for dates.

**Lumpkin:** What is the most common complaint from your female clients about sexual harassment?

**Pospis:** Without discussing particular cases or clients, I can generally say that a recurring allegation is that the client has been forced to endure demeaning sexual comments and remarks, has been propositioned by her boss or both. A common concern is that bringing the harassment to the employer's attention will result in adverse consequences (such as being fired), or that the client won't be believed, will be perceived as an opportunist and/or will suffer reputational harm. These are valid concerns, and I make it a point to discuss them with my clients. Contrary to what many seem to believe, rushing off to court is not always the best option. The most important question is what is best for the client, given her unique circumstances.

**Lumpkin:** I've absolutely had the fear that no one would believe me if I told the truth. Feeling trapped by fear is awful, suffocating, even. Why do you think sexual harassment is so prevalent?

**Pospis:** In my view it is the perfect storm of sexist attitudes towards women and preconceived notions of women's roles in our society, the inherent power imbalance in the employer/employee relationship coupled with the temptation for those in power to exploit it and disincentives for victims to report the

'Taco Trucks On Every Corner'

He Filmed The Death Of Eric Garner. Now He's Getting Ready To Spend 4 Years In Prison.

Grown Adults Are Calling Blue Ivy Ugly On The Internet

 Jia Wertz Founder & CEO of @Studio15NYC  
www.shopstudio15.com

Watch Amy Schumer Destroy A Heckler Who Asked Her To 'Show Her Tits'

Once You Watch How Gummy Candy Is Made, You'll Never Eat It Again

## SUBSCRIBE AND FOLLOW

Get top stories and blog posts emailed to me each day. Newsletters may offer personalized content or advertisements.

[Learn more](#)

address@email.com

**Subscribe Now** →

 340 K

 249 K

 420 K

 Podcast



Add us on Snapchat

on the job, feelings of shame, the concern that no one will believe them and the concern that they will suffer professional repercussions.

**Lumpkin:** How can women in the workplace stand up for their rights and protect themselves?

**Pospis:** I think that a victim should immediately and explicitly tell the harasser that the offending conduct is unwelcome and unacceptable and report the harassment, ideally in writing, in accordance with the company's discrimination/harassment policy. Also, it's important to keep detailed notes and records, including dates and times, of what happened.

If the company does not have a discrimination/harassment policy, the incident(s) should be reported to the employee's immediate supervisor (or that person's superior or counterpart, if the victim's supervisor is the harasser), and to the company's human resources department. If addressing the issue internally is not effective, a victim may seek one or more remedies through formal legal channels, such as filing a charge of discrimination with the EEOC (the United States Equal Employment Opportunity Commission, which is a federal agency responsible for enforcing federal laws against sexual harassment) or in a state agency, such as the New York State Division of Human Rights, or by filing a complaint in court.

**Lumpkin:** How much is too much? When has the line been crossed?

**Pospis:** It really depends on a variety of things, including the nature of the harassment and all of the facts bearing on the work environment.

For example, in the "quid pro quo" situation, where an employee's reaction to unwelcome sexual conduct is used as the basis for decisions affecting her employment, the line has clearly been crossed when an employee is fired or demoted because she refused to sleep with her boss.

In the "hostile work environment" situation, however, the "line" is less clear, because the focus is on a course of conduct over a period of time. Under federal and New York law, the victim must show that harassment was either "severe" or "pervasive," but there is no such requirement under the New York City Human Rights Law.

Factors bearing on whether the harassment is "severe or pervasive" include (1) how often the bad conduct occurred, (2) its severity, (3) whether it is physically threatening or humiliating and (4) whether it unreasonably interferes with an employee's work performance. Even a single incident, if sufficiently severe, can be enough.

Courts have found that the following may amount to sexual harassment: (1) the presence of pornography in the workplace, (2) sending emails with sexually explicit content and making comments regarding plaintiffs' bodies, (3) making remarks about a female employee's sex life, (4) touching breasts and (5) smacking an employee on the rear end in the presence of her co-workers.

**Lumpkin:** Oh, dear, I hope that anyone who works for me understands that by the nature of the business, there will be porn hanging around! But back to the issue at hand. When is the right time to find an attorney?

**Pospis:** I don't think there is one "right" time, because each case is different. That said, and by way of example, I think you should seriously consider contacting an attorney once unwelcome sexual conduct makes you uncomfortable or interferes with your work, and certainly after your employer has taken a negative action against you, such as firing or demoting you because you rejected your boss' sexual advances.

Even if the case is not ready for litigation, your lawyer can work with you behind the scenes to write to your boss or HR, or write on your behalf. This gives your employer the opportunity to correct and address the problem and can, if necessary, later support a lawsuit.

If you decide that you want to file a formal complaint of discrimination, it is advisable to have a lawyer at your side. Employment law is complex, and your lawyer can make sure that nothing is missed and that you present the strongest case possible.

It is, however, important not to wait too long. The law imposes strict filing deadlines, and you should allow as much time as possible to conduct pre-filing negotiations or prepare the necessary papers for filing. I also think it is a mistake to wait until you are fired to speak with a lawyer. Even a good sexual harassment case may be viewed skeptically if harassment allegations are made for the first time after you are let go.

**Lumpkin:** I know a lot of women are afraid to report sexual harassment because they fear retaliation by the harasser. Are there any protections for this?

**Pospis:** Yes. Retaliation for opposing or protesting sexual harassment is specifically prohibited by various laws.

An employer engages in unlawful retaliation when it takes an "adverse employment action" against an employee because she engaged in "protected activity." An "adverse employment action" generally means anything that may dissuade a reasonable worker from making or supporting a charge of discrimination, such as termination, demotion, loss of title, loss of benefits, undesirable work assignments or diminished responsibilities.

"Protected activity" refers to a broad range of actions that a victim might take in order to protest or oppose discrimination, including making complaints to management, writing letters, expressing support for co-workers, filing a charge of discrimination or participating in an investigation, proceeding or hearing under the anti-discrimination laws.

**Lumpkin:** How can someone find a good lawyer?

and the New York County Lawyers' Association maintain lawyer referral services for a variety of legal matters.

\* \* \* \* \*

*Toot, toot! Get your first-class ticket on the baby train! Next time I'm taking you along on the journey of making my baby. As always, if you have questions to ask or stories to share, you can tweet me [@juicyjincey](#) or reach out to me at [Facebook.com/JinceyLumpkin](#).*

Follow Jincey Lumpkin on Twitter: [www.twitter.com/juicyjincey](http://www.twitter.com/juicyjincey)

More: [Gender Equality](#) [Mike Pospis](#) [Gender Discrimination](#) [Quid Pro Quo](#)

[Sexual Harassment](#)

Next Story:

## 'Christian' College Gives Heave-Ho To Professor For Supporting LGBT People

 John-Manuel Andriote Journalist and author, 'Victory Deferred: How AIDS Changed Gay...

### YOU MAY LIKE

Sponsored Links by Taboola

**The 10 best balance transfer credit cards of 2016**  
NextAdvisor

**Precious is Skinny Now and Looks Gorgeous!**  
Detonate

**New York: This Meal Service is Cheaper Than Your Local Store**  
Home Chef

**30 of Frank Sinatra's Lovers That You Probably Forgot About**  
Womens Forum

**Forget Yoga Pants - These Are What You Should Be Wearing This Summer**  
American Giant | Refinery29

**Find Out Why Sleep Experts Are Raving About Lull**  
Lull.com

### Around The Web

Powered By ZergNet



7 Hopes for 'Game of



The Sketchv Double Life of



Catching Up With Meat

# MOST SHARED

SPORTS — POLITICS — ARTS & CULTURE — GREEN — PARENTS —

**Colin Kaepernick National Anthem Protest Continues As Other Players Join**

**Mexican President Enrique Peña Nieto And Donald Trump Are Now In A Twitter Fight**

**Photographer Chronicles Her Husband's Depression Through Intimate Portraits**

**Hurricane Hermine Slams Into Florida, Leaving Thousands Without Power**

**43 Photos That Show The Incredible Strength It Takes To Give Birth**

# CURATED FOR YOU

Generated from related, personalized and trending articles. [View your news ho](#)

# WHAT'S HOT

GREEN — POLITICS — COMEDY — WEDDINGS —

**South Carolina Accidentally Kills Millions Of Honeybees With Zika Spraying**

**Melania Trump Sues Tabloid For \$150 Million Over 'Escort Service' Report**

**Stephen Colbert Is Terrified While Watching Trump's Immigration Speech**

**19 Tweets About Married Life That Hit The Nail On The Head**

POLITICS — CRIME — WORLDPOST — SPORTS —

**Here's Who Will Moderate The Presidential And Vice Presidential Debates**

**Jared Fogle Blames Victim's Parents In New Court Motion**

**One Year Ago, Alan Kurdi's Body Washed Ashore And Shocked The World**

**ESPN Radio Host Paul Finebaum Says Black People Aren't Oppressed**

[Advertise](#) [RSS](#) [Careers](#) [FAQ](#)

[User Agreement](#) [Privacy](#) [Comment Policy](#) [About Us](#) [About Our Ads](#) [Contact Us](#) [Archive](#)

