



## Workplace Sexual Harassment Prevention Training: Cases & Discussion Guide 2021

Presbytery of Genesee Valley | May, 2022

### Our context as citizens of New York

New York State law mandates that all employers, including churches, adopt a *workplace sexual harassment prevention policy*. Employers are also mandated to provide annual training which meets or exceeds New York law's minimum standards. By State law, all church staff members must complete the church's annual training by December 31. Compliance with State law fulfills a church's legal fiduciary duty as a religious corporation to protect the corporation.

### Our context as followers of Jesus Christ

Providing annual training is more than checking a box for legal compliance. For us as disciples of Jesus Christ, this can be a witness to our calling, an act of faith. By educating ourselves, we declare our standard: our congregations shall be places of safety where we affirm the dignity and personhood of all who participate in our mission and ministry. By practicing prevention, we promote healthy relationships which support and nurture each other, and hold each other accountable. While vital and legally necessary for staff, this training is also an opportunity for adult education and therefore appropriately open to all in the congregation.

### The cases & this Guide

Presbytery's Committee on Ministry offers these five cases and this Guide as a resource to stimulate discussion. Cases are a catalyst to explore how we understand and respond to various situations and issues. Four cases are based on actual incidents in congregations in our Presbytery. (The message? Yes, sexual harassment can, and does, happen in our midst.) These cases and Guide supplement other available training materials. This resource is unique because it is based on experiences in our congregations. **We encourage you to use this Guide with your church's employees and your congregation's leaders, including Session, Deacons, and Trustees. Include your key volunteers, as well. We recommend its use in a group discussion setting.**

- In a group discussion, the essential document is your church's *workplace sexual harassment prevention policy*. In light of your policy, use this Guide to explore the following cases.
- If your policy does not provide sufficient guidance, it's a signal. The policy may need revision.

*We pray that God's Spirit may accompany your discussions and grant you wisdom.*

## Highlighting Several Core Themes

As we discussed the following cases, our anecdotes and observations kept returning to core themes. Several deserve to be highlighted due to their significance and relevance for congregations in all circumstances. Keep these in mind as you work through the cases.

### Intent versus Impact

New York law is very clear that if the impact of a person's actions, whether behavior or speech, unreasonably interferes with an employee's work performance or create an offensive work environment, the impact is not excusable because the intention was friendly. Overzealous hugs, risqué banter, and intimate gifts may be defended as well-meaning, but actions of a sexual nature or which are based on sex or gender (e.g., gender identity, sexual orientation, gender expression) and are experienced as unwelcome interference constitute illegal sexual harassment. Declaring "I was only trying..." does not excuse an unwanted result.

### Who by Role is Responsible for Receiving Complaints

Case 4 calls into serious question a practice of many Sessions – designate the pastor as the one to whom employees shall submit complaints of harassment. A variation of this case is a scenario in which the pastor is the person who commits the harassment, a scenario which has occurred in our Presbytery. We endorse using a Personnel Committee as the designated recipient of complaints. Because so many small PGV churches do not have a standing Personnel Committee, it's vital to remember that the Session is always ultimately responsible. Under New York law and the *Book of Order* at G-4.0101, it is the Session, unless there is a separate Board of Trustees, which functions as the legal trustees of the church as a religious corporation. If there is no Personnel Committee, the Session is the best recipient of complaints.

### Current & Up-to-Date

Secular culture changes and so does New York State law. Don't assume that your church's *workplace sexual harassment prevention policy* is current. Check the State website: <https://www.ny.gov/combatting-sexual-harassment-workplace/employers> [accessed 11/03/21].

### "What if the person being harassed doesn't want...?"

Case 1 raises the problem of the one who is harassed being uncomfortable with church leaders intervening. Interventions are uncomfortable, even when essential. See also Case 5. (Jesus' parable in Luke 10:25-39 is abundantly clear as to who the neighbor is. It is the Good Samaritan, the one who intervened.) The issue for us isn't whether we act, but how we do it.

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## Case 1. Sexualized behavior committed by a layperson

Tom, a male member of the choir, makes sexually-related comments to Sarah, the choir director, which is a small, part-time, paid position. She is also a church member. Tom does this at rehearsals in front of others. Sarah finds this unwanted and unwelcome. It detracts from fulfilling her musician role. She discloses his behavior and its impact to her spouse. Later, she informs the pastor of Tom's behavior because it's a stressor in her life. (Based on information obtained confidentially, the pastor connects Tom's actions to a medical condition.) While uncomfortable with the sexualized behavior, Sarah is more upset at possible action by church leaders. She fears that intervention could elicit a hostility from Tom or his spouse. Spiritually, Sarah does not see it as Christian to provoke conflict. Her spouse affirms her position.

1. Based on your church's policy, and from the perspective of NY State law, what is the role of:  
a.) the pastor? b.) the church's Personnel Committee? c.) the church's Session?
2. Are there any limits on what information the church's pastor may disclose?
3. How should church leaders take into account Sarah's desire to avoid conflict?
4. What are the principles to apply regarding: a.) documentation; b.) risk management; c.) privacy vs. confidentiality (need to know); d.) disclosure to the congregation?

### Key points

#### Question 1.

This scenario does not identify who by role the policy designates to receive reports of harassment. Ensure your staff know who is to be informed of incidents.

#### Question 2.

The scenario does not state that the pastor has consent to disclose Tom's medical condition. HIPAA rules about health information do not legally obligate the pastor to obtain consent. The information has relevance, but maintaining confidentiality is important to consider. There may be legal factors to weigh, e.g. privacy laws.<sup>1</sup>

#### Question 3.

▪ The reality is that conflict – tension, discomfort, fear of escalation, stress – is already present. And becoming more public. ▪ If the Session does not implement its policy and protect Sarah as an employee, it will be in conflict with NYS law.

#### Question 4.

It is vital that your staff understand what the policy says about how incident information will be handled in relation to confidentiality.

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<sup>1</sup> See the Cleveland, OH, case of *Mitnual v. Fairmount Presbyterian Church*: General Council on Finance and Administration, The United Methodist Church. (2004). Memorandum: HIPAA Privacy Rule and Local Churches, pp. 9-10. <http://churchadminpro.com/Articles/HIPAA/HIPAA%20-%20Privacy%20Rule%20and%20Churches.pdf> [accessed 11/03/21]

## Case2. *Physical actions by a layperson who has an impairment*

Robert, an adult, likes to approach other adults at worship on Sundays and hug them in a full-body embrace. He does it without seeking permission. Some find this innocent and friendly, others tolerate it, and some experience this as intrusive. Some refer to his embraces as overly familiar and too physically intimate.

Because Robert has an intellectual impairment, people are unsure if the hugs are intended to be sexual or not. He is at the margins of the congregation. No one knows his story, let alone the nature of his impairment. Thus far, no employees have experienced these embraces, but some members in lay leadership positions have. Some leaders feel it's time to act.

1. From the perspective of NY State law, does Robert's behavior constitute sexual harassment? Why or why not? At what point is the NY State line crossed?
2. Should church leaders factor-in Robert's intellectual impairment? If so, how?
3. What are the legal obligations of the church leaders?
4. Who is responsible for addressing the situation? The individuals whom Robert embraces? The church's pastor? The Session?

### Key points

#### Question 1.

At the heart of this question are 4 factors in the law: behaviors which are legally defined as *sexual harassment*, outcomes of these behaviors on people who experience the behavior, who by role is experiencing the behavior as harassment, and who by role is designated as responsible for acting.

#### Question 2.

To ponder: Is Robert's impairment linked to why no one has spoken to him about his behavior? No one knows his background. Are people hesitant to relate to Robert due to their lack of knowledge or uncertainty or fear?

#### Question 3.

Because no employees have experienced Robert's behaviors, no violation of a *workplace* sexual harassment policy has occurred. In terms of risk management and care for all parties, now is the time to intervene in a preventive way.

#### Question 4.

To ponder: Could this situation be addressed educationally and pastorally? How would learning more about his background assist leaders' responses? Could Robert be personally befriended by a church member in an ongoing relationship – one who could mentor and help him learn to honor appropriate physical boundaries and help him become more a part of the congregation?

### Case 3. *A minister's sexualized behaviors and minors*

The youth group's annual spring break mission trip took them out-of-state to the site of an agency which conducts Habitat for Humanity-type building projects. The agency director, Rev. Anderson, is a Presbyterian minister (not a church pastor). During the build, he repeatedly used his hands, without permission, to touch portions of the bodies of youth who are female. E.g., he was quick to position himself to steady a ladder as a minor climbed it, and used the opportunity to caress her lower body as she passed him. His actions looked circumstantial and innocent, but some of the girls felt violated and reported Rev. Anderson's actions to Lisette, an adult chaperone from the church. Lisette's minimized the nature of his actions, instructed the girls to ignore what had happened, and offered no advice.

It is only after returning home that William, the Session's designated Elder for youth ministry and the head of the mission trip, learns of the incidents. He discovers the girls' accounts from their parents. The parents have come to William because they are upset.

1. Did Rev. Anderson's behavior constitute sexual harassment? Why or why not? According to whose definition?
2. What do you recommend William do? Name relevant factors he should consider.
3. Had they been in place before the trip, what measures or best practices could have led to better outcomes?

#### Key points

##### Question 1.

Though this was an off-site event, it was a church-sponsored program and therefore constitutes a workplace environment. It was extension of the church.

##### Question 2.

- Some girls who were targeted were minors.
- The applicable law is that of the state where the incidents occurred. State law may have been violated.
- Rev. Anderson works for a secular agency, and is accountable to his employer.
- As a member of a presbytery, he is accountable as a minister and subject to that presbytery's discipline.
- The church's insurance agent needs to be notified.

##### Question 3.

- As part of pre-trip preparation, chaperones are trained on how to recognize sexual harassment and how to respond.
- The pre-trip orientation with youth, parents, and chaperones covers incidents which are to be reported, who is expected to report, to whom the report is made, how soon the report is to be made, in what way information is to be reported, and who will intervene.
- Trip leaders conduct daily check-ins with youth and chaperones.
- Leaders inform parents of incidents.
- Leaders conduct a post-trip evaluation which involves all who were part of the trip.

## Case 4. *Whose problem is this?*

The Session had designated Rev. Jean, church pastor and head of staff, with the authority to hire and terminate employees. (A longstanding practice in this church, it's a carryover from prior pastorates.) When the Session adopted its workplace sexual harassment policy, it was natural to designate the pastor to handle complaints of harassment. Now, in advance of her annual performance review of Cleve, a paid staff member, Rev. Jean finds herself in a dilemma.

For months, Cleve has acted toward her in ways which violate the harassment policy. The Personnel Committee is not aware of his actions or Rev. Jean's discomfort. She has not disclosed his targeting her. She's younger than Cleve, relatively new to being a pastor, and likes to avoid conflict. To inform the Committee will break new ground. Since the policy took effect, not a single complaint has been voiced. In addition, Cleve's work performance has not met reasonable job expectations, which the Committee will recognize when informed. Rev. Jean is weighing another factor. Cleve and his family are all church members, and one is an influential lay leader. She does not know what action to take and seeks your advice.

1. What are the issues to consider? Which is the issue of greatest priority?
2. Whose problem is this? Whose problem should this be?
3. What advice do you offer? And what is your rationale?

### Key Points

#### Question 1.

The pastor has a right to be free of sexual harassment in her job. From NYS law's perspective, the problem of an employee being sexually harassed is the priority.

#### Question 2.

Rev. Jean's dilemma is a symptom of the structural arrangement. The pastor is caught in multiple role conflicts. ■ Her role as a target of harassment conflicts with her role as the designee to receive reports of harassment. ■ Her role as pastor to Cleve and his family as congregants conflicts with her role as head of staff with the power to terminate his employment. ■ Cleve being a church member and also a paid employee is another in the set of conflicting roles.

#### Question 3.

Advice ■ Rev. Jean goes directly to the Personnel Committee and reports the harassment. ■ She recuses herself as the designated responder so Personnel can assume responsibility for implementing the policy. ■ She keeps her role as staff supervisor and works with Personnel and Session to reassign the power to hire and terminate employees to Personnel, and to designate Personnel as responsible for receiving and acting on information about harassment. ■ She requests the Session to reflect on the practice of hiring congregants to fill paid positions.

Rationale End the pastor's overlapping role relationships: 1.) Let the pastor be the pastor; it's her primary role, and no one else can fill it. 2.) Empower the Personnel Committee to act.

### Case 5. *An issue about appearances* (adapted from NYS training materials)

Leonard works part-time as the church secretary. He performs basic functions like preparing worship bulletins and the newsletter. He likes to wear jewelry, and frequently wears earrings and necklaces. A church member, Margaret, calls it “weird” that, as a man, Leonard wears jewelry and enjoys “clerical work.” She often comments to other members about his appearance, expressing concern that it will scare away visitors to the church. Margaret tells Leonard that he needs to look “more normal.” Margaret also speculates that Leonard is gay, which she says she “doesn’t mind.” She asks personal questions, such as “Are you married?” “Do you have a partner?” “Do you have kids?” Leonard tries to respond politely but is becoming annoyed. Increasingly offended by her remarks, he asks the pastor to confront her.

1. By your Session’s workplace policy, do Margaret’s actions constitute sexual harassment? Describe why her behaviors are or are not sexual harassment.
2. As an employee, does Leonard have the right under New York law to be protected from harassment by Margaret who is not an employee?
3. If Leonard is not an employee but a member of the church who volunteers as the secretary, he is not legally protected by a workplace sexual harassment prevention policy. As a member, is he protected by your Session’s sexual misconduct policy?

#### Key Points

Question  
1.

Search your workplace policy for definitions of harassment. Do you have enough detail of Margaret’s actions to reach a conclusion? Do you need more information? If your policy uses the State model, see “Examples of sexual harassment.” <https://www.ny.gov/sites/default/files/atoms/files/SexualHarassmentPreventionModelPolicy.pdf> [accessed 04/18/22] Among “strictly prohibited” types of acts, see the 4<sup>th</sup> example: “Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people’s ideas or perceptions about how individuals of a particular sex should act or look.” Do you have enough detail about the impact on Leonard? If so, what do you need?

Question  
2.

If your policy is based on the State model, the answer is yes. Use the link above, start on p. 2, and go to the section, What is “Sexual Harassment”? Go to the subsection on p. 4, Who can be a target of sexual harassment? The last sentence states: “Harassers can be... anyone in the workplace including... [a] client, customer or visitor.” Margaret’s status meets this criterion. The church Session as his employer is legally obligated to protect Leonard.

Question  
3.

Each Session is required by the *Book of Order* at G-3.0106 “to adopt and implement a sexual misconduct policy.” Does yours prohibit sexual harassment by members? Do its definitions apply to Margaret’s actions and the effect on Leonard? How does your policy guide the steps church leaders will take? How will Margaret be held accountable? How will Leonard find relief? How will the integrity and well-being of this body of Jesus Christ be restored?

## Appendix: Commentary on Case 5 by Rev. James Evinger

The heart of [Case 5](#) is about a.) the nature of Margaret's actions, b.) the impact on Leonard, and c.) the responsibility of the church. Here is how the case is presented.

- Question 1 focuses us on Margaret's actions. Words are actions! Key Point 1 adds the concern for how her behaviors affect Leonard. Not only is the effect important in New York law, for us as people of faith this is about recognizing Leonard's personhood. People are affected in differently by sexual harassment. It's crucial that we appreciate and understand the experience of the person who was targeted.
- Question 2 focuses on Leonard's legal status as an employee, a question which inherently involves Session's legal obligation as his employer. Key Point 2 is based on the New York State sample employer policy because most PGV Sessions use that document as the model for their policy. (The PGV employer policy uses this model.)
- Question 3 changes Leonard's legal status. Now, he is no longer an employee, but a volunteer who participates in his church's mission and ministry. This context leads us back to the responsibility of the Session as the church's governing body. This is no longer an employer/employee matter. This is now about how we structure our relationships as followers of Jesus Christ (e.g., guided by God's leading, scripture, the *Book of Confessions*, and the *Book of Order*). Key Point 3 points us to the Session's sexual misconduct policy as the relevant document to apply.

There are two ways [Case 5](#) can quickly become entangled and unnecessarily muddled.

- One way is at Question 3 when the context shifts from Leonard as employee to Leonard as volunteer and part of his church. The shift requires us to turn from the Session employer policy to the Session sexual misconduct policy. The problem is that many Sessions' sexual misconduct policies do not address sexual harassment to the degree that the employer policy does. The result is inconsistencies which can create conflicts. It is in everyone's best interest when the provisions in both policies are aligned. If the Session sexual misconduct policy for Leonard and Margaret's church is consistent with its employer policy, it will be simpler to make the necessary decisions and then intervene.
- A second way is also at Question 3. Some in PGV have interpreted the State sample employer policy as giving Leonard the status of an "unpaid employee." (link is in [Case 5](#) at Key Point 2) This reading is based on text in the Introduction section on p. 1, under the Policy subsection, in the first sentence in the first entry. The clause "whether paid or unpaid" is interpreted as adjectives which modify the preceding noun "employee." This interpretation concludes that he is protected under the employer policy. No other support for this reading is offered. A careful review of the rest of the State sample employer policy reveals that the clause "paid or unpaid" is used every time to refer to the category of "interns." Sexual harassment of "unpaid interns" is prohibited under another recent State law. Also note that the *Book of Order (2019-2023)* does not contain the category of "unpaid employee" or "unpaid staff."