

Sexual Harassment Hypotheticals: Chuck and Mary Sue

Chuck and Mary Sue are both custodians. They are assigned to work the same night shift in the same academic building, five nights per week. They are both supervised by the same person, Jason, who works in the administrative building. All of the custodians across campus communicate with each other, and with Jason, by using university-issued walkie-talkies that they carry with them at all times during their shifts. Each custodian must clock in and out at the administrative building before reporting to their assigned building.

Mary Sue believes that Chuck may be sexually harassing her. She relays the following facts. At what point, if any, do you believe that sexual harassment has occurred, and why?

1. Chuck asks Mary Sue out on a date after a shift. Mary Sue says no.
2. Chuck brings flowers to work and asks Mary Sue out on a date again. Mary Sue says no again.
3. Chuck asks Mary Sue out on a date over the radio. Mary Sue says no again.
4. Jason informally warns both Chuck and Mary Sue not to discuss personal matters on the radio.
5. Chuck corners Mary Sue in the break room at the beginning of shift to ask her why she won't date him, and he won't let her leave until she says yes. (She gets away.) Jason writes them both up for starting their shifts late that day.

Changing it Up

Sexual Harassment Hypotheticals: Baldwin Hall

Hypothetical #1

Fran Yeager is a First-year student and a resident of Baldwin Hall, a co-ed, all First-year residence hall. Baldwin Hall is co-ed by room, meaning that residents are paired by the same gender identity as roommates on a hall with two single-gender bathrooms. Fran has an extremely positive body image and is comfortable walking to and from the bathroom wearing nothing but a very small towel.

Some of the male-identified residents are uncomfortable with Fran's conduct and come to Sarah Overton, the Second-year (but not sophomore) resident advisor, to request that Sarah intervene. The residents state that Fran's conduct has created a hostile environment under the Title IX Policy and they want Fran to be removed from the hall.

Questions:

- x Does Fran's conduct meet the definition of sexual harassment? Why or why not?
- x What questions would you ask to determine if Fran's conduct meets the definition of sexual harassment under your policy?

Fran is walking to the bathroom and Bryan, one of the residents, yells out, "Fran! You sexy beast! Work it!" Fran proceeds to turn toward the resident and slowly and seductively removes the towel. Fran smiles and walks to the bathroom wearing only the fuzzy slippers. Some of the other residents see Fran and, again, go to Sarah insisting that Fran be removed. They share with her that some of the residents are now using the bathrooms on other floors of the building to avoid Fran.

Questions:

- x Does Fran's conduct meet the definition of sexual harassment now? Why or why not?
- x Does Bryan's conduct meet the definition? If not, what other facts would you need?

Bryan and Fran go to a party. Both have been drinking heavily and are visibly intoxicated, but are coherent and laughing loudly in the hallway. The laughter wakes up Sarah and she opens her door to see Bryan and Fran in the hallway. She sees Bryan's hand on Fran's buttocks and overhears him saying, "Just kiss me you sexy beast!" Sarah observes Fran push Bryan away. Fran walks unsteadily past Sarah to exit the hall. Sarah observes that Fran appears to be "upset" and the next day confirms that Fran was angry with Bryan for "making a move."

Questions:

Hypothetical #2

- x If Max does not want to move forward with a formal investigation, do your policies permit that to happen under these circumstances? What are your tests or considerations in determining whether or not the case would move forward with a formal investigation?

- x Assuming that your policy covers harassment on the basis of gender identity, are these facts sufficient to create a hostile environment? If not, why not? If so, why?

Is the Playwright Discriminating?

Professor Gene O'Neill is a well-regarded scholar and playwright at your institution. He is a respected teacher and for the last 25 years has received nothing but exceptional feedback from his students. He is well connected to the Broadway community and runs an intensive two-week summer class in New York City. Students vie to get into this intensive program because of the opportunities it provides to interact with playwrights and performers.

Professor O'Neill is scrupulous about gender balance in his class. He works with the Registrar to ensure that all genders are well represented in his classes.

In recent years, Professor O'Neill has decided to not meet alone with female students without his office door being open. His colleagues have noted that he is uncomfortable in social settings with female students. They have commented that he appears to make sure that he is never alone with female students in social settings (e.g., departmental functions, dinners during the New York trip, etc.).

Understanding Consent: Mini-Hypotheticals

Hypo #1: Charlie and Andy are dating. Charlie tells Andy, "I've always thought it would be nice to wake up to oral sex." A few days later, Andy wakes Charlie up with oral sex.

Did Charlie consent to the oral sex?

Hypo #2: Remy and Sage are kissing. Remy asks Sage if it is OK to have sex. Sage says it is OK, "but only if you use a condom." Remy puts on a condom and penetrates Sage. Halfway through the sexual encounter, Remy removes the condom without telling Sage and continues to penetrate Sage.

Did Sage consent to the sexual intercourse?

Hypo #3: Alex and Chris are kissing. Alex asks Chris if it is OK to have sex. Chris agrees. They have sex. Chris doesn't realize that Alex has hidden a friend in the closet to watch.

Did Sage consent to the sexual intercourse?

Hypo #4: Quinn is giving oral sex to Riley after Riley gives verbal consent. After a minute, Riley lays hands on Quinn's shoulders, pushing Quinn back somewhat but not totally away. This keeps Quinn from being able to push as hard, but still allows Quinn to continue. Quinn continues for a few more moments, then stops and the two go on to do something else.

Did Riley consent to the oral sex for the entirety of the act?

Hypo #5: Angel threatens to post pornographic pictures of Jordan on Facebook if Jordan does not have sex with Angel. Jordan has sex with Angel.

Did Jordan consent to sex?

Hypo #6: Kai and Dylan have been in a relationship for the past semester. Dylan tells Kai that if Kai loves Dylan, Kai would have sex with Dylan. Kai reports feeling pressure to have sex or lose the relationship. Kai has sex with Dylan, although Kai is reluctant to do so.

Did Kai consent to sex?

Hypo #7: Hunter and Jayden have been in a relationship for nearly two years. Jayden has been experiencing serious mental health issues and has recently attempted suicide after Hunter stated that their relationship was over. After Jayden attempted suicide, they reconciled. Hunter reported that Jayden threatened to commit suicide if Hunter did not engage in sexual contact with Jayden, so Hunter did so.

Did Hunter consent to sex?

Hypo #8: Cameron and Nova met at a party. They have both been drinking and they return to Nova's apartment. When they arrived, they went to Nova's small bedroom in the apartment. They hook up briefly and Cameron decides to leave the room. Nova blocks the door to the room and tells Cameron that Cameron needs to kiss Nova before Cameron can leave. Cameron kisses Nova, then heads to the bathroom.

Did Cameron consent to the kiss?

Keys to Consent Analysis

Consent and Incapacitation Mini-Hypotheticals

Work together in small groups to determine whether the conduct was non-consensual in each of these situations.

#1: Casey and Jessie go to Casey's apartment. Both are sober. Casey asks Jessie if they can have sex. Jessie says yes. They proceed to have sex. Both Casey and Jessie actively participate in the sex.

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Why or why not? _____

#2: Dakota and Harper don't know each other. Harper is sleeping in the student lounge when

#5: Quinn takes sleeping medication and drinks a wine glass full of vodka, intending to sleep for twelve hours or more. Parker, Quinn's friend, stops by to see Quinn before bedtime and convinces Quinn to go to a party. Quinn and Parker walk down two flights of stairs, out the door, down a hill, and across campus to the party. While at the party, they dance and talk. Parker kisses Quinn. Quinn then kisses Parker. They walk back together. The next morning, Quinn remembers nothing about being with Parker.

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Incapacitation Scenario

Our scenario facts have been established as indicated below. For purposes of this scenario, you may assume that each drink constitutes one standard serving of alcohol.

Kevin and Caden are roommates. Kevin is gay. Caden is questioning. One night, they go to a party together.

10:00 p.m. - They arrive at the party and split up at the door. Kevin goes to the basement. Caden goes to the third floor. Kevin has two beers with a group of friends. Caden has a glass of wine and a cup of vodka and punch with a separate group of friends.

11:00 p.m. – Kevin climbs the stairs to the third floor. Kevin asks Caden if he’s ready to leave. Caden takes a shot of vodka and announces that he is “good to go.” Kevin leads the way down the stairs. Caden stumbles on the last step but catches himself on the handrail. He is laughing. On the way back to their room, Caden texts with a friend:

James: You going out tonight?

Caden: with kevin coming home

James: Stop over to my place to say hi.

Caden tells Kevin that he wants to stop on the floor below where they live to see James. They take the elevator to the fourth floor where James lives.

11:15 p.m. -- James is in his room with his girlfriend, Amanda, and his friend Pat. They have purchased three different types of whiskey and are making their own flights (one shot of each type). James doesn’t drink. Kevin tries one sip of whiskey but doesn’t like it. Caden finishes a flight while they talk.

12:30 a.m. – Amanda, Pat, and Caden finish off Kevin’s flight by each taking one shot.

1:15 a.m. – Caden starts an argument with Pat about whether the “new Browns” are the real deal or whether next year will be the same old Browns. Caden can’t choose a position, then begins to get depressed.

1:30 a.m. – Kevin announces that it’s time to take Caden back to their room. Caden leads the

Coercion Hypotheticals

Hypothetical No. 1: Complainant has reported that the Respondent has naked pictures of the Complainant and threatened to post them publicly if Complainant refuses to engage in sexual intercourse with Complainant.

Is this coercion? Yes No Need more information?

Hypothetical No. 2: Complainant and the Respondent have been in a relationship for the past semester. Respondent tells Complainant that if Complainant loves Respondent, Complaint would have sex with Respondent. Complainant reports feeling pressure to have sex or lose the relationship. Complainant decided to have sex although Complaint is reluctant to do so.

Is this coercion? Yes No Need more information?

Hypothetical No. 3: Complaint and the Respondent have been in a relationship for nearly two years. Respondent has been experiencing serious mental health issues and has recently attempted suicide after Complainant stated that their relationship was over. After Respondent attempted suicide, they reconciled. Complaint reported that Respondent threatened to commit suicide if Complainant did not engage in sexual contact with Respondent.

Is this coercion? Yes No Need more information?

Hypothetical No. 4: Complaint and the Respondent met at a party. They have both been drinking and they return to Respondent's apartment. When they arrived they went to Respondent's small bedroom in the apartment. They hook up briefly and Complainant decides to leave the room. Respondent blocks the door to the room and tells Complainant that Complainant needs to kiss Respondent before Complainant can leave.

Is this coercion? Yes No Need more information?

Definition #1:

Coercion is compelling another individual to participate in sexual activity in a manner that makes the participation involuntary. Consent for sexual activity must be clear, knowing, and voluntary. The reasonable person standard is used to establish whether participation was voluntary. Coercion contains a wide range of behaviors which override the voluntary nature of participation. Such acts include, but are not limited to, threatening to disclose personal sexual information, or threatening to harm oneself if the other party does not engage in the sexual activity. Coercing an individual

Definition #2:

An individual cannot consent who has been coerced, including being compelled by force, threat of

how I never listened and was always late. When I tried to respond, Charlie started playing with a phone. I got mad because Charlie was accusing me of not listening, but now Charlie wasn't listening. I told Charlie it was time to head back to the car, and we didn't talk most of the way back. Once we got to the residence hall, I wasn't in the mood to talk anymore so I pulled up outside the door and said "Good night." Charlie said, "Figures you don't want to talk. You don't want to hear anything bad about yourself. Why do I keep dating you? I think it's time for me to leave." Then I felt guilty for brushing Charlie off, so I said, "Oh, don't be like that. Let's talk after your exam," and leaned over to kiss Charlie good night. Charlie leaned away from me so I missed the kiss, then got out of the car. Later I snapped Charlie, "I love you. I'm sorry. Let's talk tomorrow." The next day, I was waiting for Charlie outside the exam room and we talked it through. There's no way I bruised Charlie's arm. If I touched Charlie's arm, it was just to get my balance when I leaned over for the kiss.

Whitney's story

Charlie lives next door to me, and we have bio together. Charlie came home around midnight the night before our exam in a huff. Charlie had borrowed my winter coat for a date and stopped by to drop it off. I asked Charlie what was wrong. Charlie told me about an argument with Jesse and said that the relationship was getting to be too much. I told Charlie to get some sleep for the exam tomorrow, and Charlie left, talking about wanting to gorge on chocolate and go to bed. The next day, Jesse was waiting for Charlie outside the exam room. I never saw any bruises on Charlie's arm. I left for home a few days later.

Other information

- x Security footage shows the car pulling up to the residence hall at 11:44 p.m. and Charlie exiting approximately one minute later. The camera can't see the inside of the car.
- x Card swipes show Charlie entered the residence hall at 11:45 p.m., then again at 12:08 a.m. through a different door; security footage could not be obtained for the later swipe.

Questions for discussion:

- x Do you believe that Jesse grabbed Charlie's arm? Why or why not?
- x Do you believe that Jesse bruised Charlie's arm? Why or why not?
- x Did Jesse violate the policy regarding IPV? Why or why not?

Editing Samples

Brief Samples for Editing:

1. Respondent engaged in sexual intercourse with Complainant from behind.
2. Complainant couldn't explain why she was sitting on the couch by herself.
3. Complainant stated that Respondent jacked himself off, then gave him a blow job.
4. Respondent visibly winced when Complainant said "no."
5. John stated that Alice told him to "knock it off."
6. On a scale of 1 to 10, the witness described the Respondent as being a "level 4 kind of drunk."
7. There was no evidence to support Complainant's assertion that the activity was without consent.
8. During the mediation, Respondent admitted to the misconduct and promised not to do it again.
9. Professor Clark indicated that he had never known Respondent to commit sexual misconduct at 2:00 in the morning in the back of a bar before.
10. Respondent stated that Complainant was diagnosed with bipolar disorder and that the complaint was "all in his head."
11. When Respondent asked if Complainant wanted oral sex and Complainant said, "That's OK," that was indication of the Complainant's consent.

Sample 1:

The investigators interviewed the following witnesses:

- x Rod Stewart;
- x Paul McCartney;
- x John Lennon;
- x Ringo Starr;
- x John Denver;
- x Kermit the Frog; and
- x Fozzie Bear.

The respondents' witnesses (Gonzo, Ms. Piggy, Ralph, and the Chicken) were not interviewed.

Comments

Sample 2:

When reviewing Alice's credibilities when compared to John's, we find that Alice is more credible than John. Therefore, we must adopt Alice's factual allegations as true and discount John's for the sake of analyzing whether or not a policy violation was committed.

Comments

Sample 3:

Complainant went to a party that night. When he arrived, he had a cup of beer, quickly followed by a glass of wine. Later in the evening, he had another glass of beer and a shot of whiskey. Before he left the party, Complainant had another shot of whiskey. By the time that Complainant arrived

Decision Matrix

Question 1: Did the complainant and respondent engage in sexual activity? ____ Yes ____ No
(If no, respondent is not responsible for violation. Proceed no further.)

What facts support that sexual activity occurred?

What facts support that sexual activity did not occur?

What facts (if any) are disputed that are relevant, and how do you resolve each?

Is the Respondent responsible for Non-Consensual Sexual Intercourse?

Yes No

For the sake of argument, how would you argue that the opposite is true?