

**13-H | FEDERAL RULE OF EVIDENCE 412**

Rule 412(a) of the Federal Rules of Evidence generally bars evidence “offered to prove that any alleged victim engaged in other sexual behavior” or to show the “alleged victim’s sexual predisposition.” However, in civil litigation, the evidence may be admissible “if it is otherwise admissible” and its probative value outweighs any danger of unfair prejudice and harm. Rule 412(b). Rule 412(c) governs the procedure for admissibility of such evidence and generally requires, among other things, the party seeking to use it to submit a motion “specifically describing the evidence” and the purpose “for which it is offered[.]” Should a lawyer seek to have such evidence admitted, it will be necessary to comply with Rule 412(c).

Whether the evidence is admitted is within the trial court’s discretion. Considerations may include but not be limited to the following: 1) what the other behavior is and when it transpired; 2) whether the other behavior is probative; 3) whether the other behavior took place in the workplace or outside the workplace; 4) whether the other behavior was known in the workplace regardless of where it occurred, and if so, who knew about it; 5) whether the other-behavior evidence may result in confusion, may be a waste of time, and/or may cause a trial within a trial; and 6) whether the probative value of such evidence otherwise outweighs the prejudicial effect.

*(American Bar Association // Section of Labor and Employment Law  
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