



Preventing Sexual Harassment Claims

by Pat Cook

The U.S. Department of Labor estimated that as of 1990, only about 2% of workers in construction trades, including painting and wallpapering, were women. Since sexual harassment most often occurs in work environments where there are more men than women, construction companies are prime candidates. This is especially true because the most likely targets of sexual harassment are women working in jobs that are traditionally done by men.

The cost to an employer of a successful sexual harassment claim can be staggering. Besides high attorney fees to defend against a claim, a loss in court can force payment of back wages, damages for emotional distress, and the victim's attorney's fees. The nonmonetary costs are equally expensive. In addition to the far-reaching effects of sexual harassment on victims, including severe psychological problems, physical ailments, and increased problems with alcohol and drugs, sexual harassment leads to a less-productive job site. Victims consistently report that their job performance is adversely affected. And certainly the harasser is not being productive while engaged in harassing behavior.

Defining Harassment

Broadly speaking, the courts recognize two kinds of sexual harassment. In the type with which most people are familiar — called *quid pro quo* (literally, "this for that") by the courts — there is a demand for sex as a condition of employment or advancement. The other type of harassment, which is just as pervasive in the workplace, involves the creation of what the Equal Employment Opportunity Commission calls "an intimidating, hostile, or offensive work environment." Behaviors that can constitute this type of sexual harassment range from unwanted touching, pressure to engage in sexual activity, sexual teasing or jokes, and personal questions about sex to actual attempted rape.

To prove either type of claim against an employer, a claimant must show:

- Subject to unwelcome sexual advances, derogatory remarks, or vulgar language
- Harassment occurred because of the victim's sex
- Employment status or performance was affected
- The employer either knew or should have known about the harassment and did not take effective measures to stop it.

In *Hall v. Gus Construction Co.*, for example, a construction case dealing with a hostile work environment complaint, three women who worked as flag holders at road construction sites sued for sexual harassment. Vulgar language and explicit sexual references from male coworkers prompted the women to complain to the job foreman. After an attempt to control the men's behavior, the verbal abuse soon resumed, and even escalated: The men on the site began grabbing and touching the women, exposing themselves, showing obscene pictures, and even monitoring the women with surveying equipment during bathroom breaks. The court found that all of these activities occurred with knowledge of the foreman.

In awarding the women a judgment of \$55,000, plus attorney fees, the court also found no defense in the fact that rough language and coarse humor are historically found on construction sites. The court concluded that, even though the women had anticipated hearing profanity on the job, they did not expect "the unrelenting pattern of verbal, physical, and psychic abuse to which they were ultimately subjected." And because the women gave "fair notice" to their employer of the conditions at the work site, the women were "entitled to protection."

Staying Out of Trouble

To protect against sexual harassment

claims, take the following steps:

Send a clear message to employees by including the subject of sexual harassment in employee manuals and in company training programs. Your policy statement should clearly state that you will not tolerate such behavior. If you treat sexual harassment as a joke, they will, too.

Put in place a procedure for reporting and resolving sexual harassment claims. Document all complaints and your response to them, and provide confidentiality for both parties.

Devise appropriate sanctions for participating in sexual harassment, and carry them out even-handedly. The lack of corrective action is the basis for most successful sexual harassment lawsuits.

Take immediate corrective action on every complaint. In many cases, employers are found liable for sexual harassment because they were told of unacceptable behavior and took no action to protect the victim.

Never punish the person reporting sexual harassment. A demotion or firing shortly after a complaint of sexual harassment is a recipe for legal disaster.

The best defense against claims is to prevent sexual harassment from happening in the first place. Train yourself and your supervisors to look for these signs of sexual harassment:

- Posting or distributing lewd cartoons or pictures at the workplace
- Pranks with sexual overtones
- An environment in which sexual comments, vulgar language, touching, and so on, is deemed acceptable
- Any retaliation against an employee who reports sexual harassment
- Arguments or obvious tension between male and female employees
- Undesirable work assignments given regularly to women
- Unwanted flirting, small talk, sexual propositions, or innuendos
- Rumors or graffiti about female employees
- Requests from female employees that they not be assigned to work with particular crews or individuals. ■

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