

The SESCO Report

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Your "Human" Resource Since 1945

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Harassment Claims Continue to Plague Employers

It is almost daily that SESCO's consultants and attorneys receive a client call concerning an internal complaint of harassment or, even worse, an EEOC charge of harassment wherein the employer must respond in defending the charge. Statistically, complaints and formal charges of harassment continue to increase. As with our society and culture today, workplace cultures are wrought with poor language, nasty jokes, affairs, inappropriate behaviors, etc. It is, frankly, impossible to segregate today's societal culture from workplace culture. Additionally, employees tend to know their "rights" and aggressively pursue those, many times to protect their job, look for a windfall of money or in defense of their own inappropriate actions.

Employers of all sizes are affected. Consider the following:

- EEO sues McDonald's franchise for sexual harassment.
- EEO sues Res-Care for pregnancy and disability harassment and retaliation.
- EEO sues Jacobson Hospital in North Dakota for retaliation for reporting racial harassment.
- Clarksburg JATC to pay \$150,000 to settle EEOC sex harassment/discrimination case.
- UFP Ranson, LLC to pay \$215,000 to settle EEOC race and religious harassment suit.
- Exxon Mobile Corporation sued by EEOC for race harassment.

On September 29 of this year, the EEOC proposed updated workplace harassment guidance to "protect workers". The EEOC stated, "Preventing and addressing harassment in America's workplaces has long been a priority for the EEOC, and this guidance will provide clarity on new developments in the law and build on the Commission's previous work."

As such, it is critical that employers continue to remain on the offensive to include developing and implementing effective policy, training management as well as employees, aggressively looking into all complaints, directing frontline managers to be aware of and preventing or stopping inappropriate language. These and other measures are critical in any defense of an EEOC charge.

Guide for Determining What Constitutes Harassment

Some questions that can help assess whether the behavior (act, comment or display) constitutes harassment:

- Is the behavior unwelcome or offensive?
- Would a reasonable person view the conduct as unwelcome or offensive?
- Did it demean, belittle or cause personal humiliation or embarrassment?
- Is it a single incident?
- Is it a series of incidents over a period of time?

Examples of Directed Harassment

Offensive behaviors, gestures, comments, or conduct which are directed specifically at an individual are often quite obvious and consequently, readily detectable. Examples of this type of harassment may include:

- Written or verbal insults, abuse or threats. Includes threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviors;
- Racial or ethnic slurs, including racially derogatory nicknames;
- Unwelcome remarks, jokes, innuendos or taunting about a person's body, age, marital status, gender, ethnic/racial origin, religion, accent or disabilities;
- Practical jokes which cause awkwardness or embarrassment, endanger an employee's safety or negatively affect work performance;
- Persistent leering (suggestive staring) or other obscene/offensive gestures;
- Unwanted and inappropriate physical contact such as touching, kissing, patting, pinching, or brushing up against a person;
- Unwelcome sexually oriented remarks, invitations, requests, jokes, or requests – whether indirect or explicit;
- Inquiries or comments about a person's sex life, sexual orientation or preferences;
- Physical assault (including sexual assault); and/or
- Misuse of authority towards another person which is based on irrelevant factors (e.g., unfair delegation or assignment of work);
- Deliberate bullying of any kind.

Examples of Non-directed Harassment

Harassment may also include behaviors, conduct, comments, or activities which are

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not necessarily directed specifically at an individual, but which nonetheless create a degrading or offense work environment. Examples of this type of harassment are more subtle and may include:

- Displaying of materials which are sexually explicit or degrading, racist, ethnic, or religious in a degrading or derogatory manner;
- Displaying of graffiti which is sexually explicit or degrading, racist, ethnic or religious in a degrading or derogatory manner; and/or
- Patronizing behavior, language or terminology which reinforces stereotypes and undermines self-respect, or adversely affects work performance or working conditions.

Prevention is the best tool to eliminate sexual harassment in the workplace. That is why we are here today: To discuss taking our workplace beyond simply preventing harassment and moving toward an atmosphere of “Respecting Each Other”.

We’ll begin by taking a short quiz, move into a very good video, then end by discussing the company’s position on harassment prevention.

How Much Do You Know About Sexual Harassment?

1. The lack of sexual harassment complaints in your company is a good indication that sexual harassment is not occurring. True or False
2. An employer is not liable for the sexual harassment of one of its employees unless that employee lost specific job benefits or was fired. True or False
3. A supervisor can be liable for sexual harassment done by one of his or her employees to another. True or False
4. An employer cannot be liable for behavior exhibited by a non-employee (such as a customer or vendor) toward an employee. True or False
5. If I make sexual comments to someone at work and that person doesn't ask me to stop, then I guess that my behavior is probably welcome. True or False
6. If an employer trains employees about sexual harassment, it will create problems where no problems exist, and encourage employees to file false charges. True or False
7. To bring a lawsuit for sexual harassment, a victim does not need to show that he or she suffered a monetary or economic harm, such as being fired or demoted. True or False
8. A person who works in an office where sexual harassment occurs, but to whom sexual activity is not directed, may still charge the company of sexual harassment. True or False
9. Managers and employees can never be personally sued for sexual harassment. True or False
10. If a victim of sexual harassment asks a manager or supervisor not to tell anyone about the sexual harassment incident, the supervisor should not take further action. True or False
11. If I just ignore unwanted sexual attention, it will usually stop. True or False
12. If I don't mean to sexually harass another employee, there's no way my behavior can be perceived by him/her as sexually harassing. True or False
13. Some employees don't complain about unwanted sexual attention from a worker because they don't want to get the person in trouble. True or False
14. The victim, as well as the harasser, may be a woman or a man. The victim does not have to be of the opposite sex. True or False
15. A sexually harassed man does not have the same legal rights as a woman who is sexually harassed. True or False
16. About 15% of sexual harassment complaints in today's workplace are made by males. True or False
17. Sexually suggestive pictures or objects in a workplace don't create a liability unless someone complains. True or False
18. Telling someone to stop his or her unwanted sexual behavior usually doesn't do any good. True or False

Answers: 1. False, 2. False, 3. True, 4. False, 5. False, 6. False, 7. False, 8. True, 9. False, 10. False, 11. False, 12. False, 13. True, 14. True, 15. False, 16. True, 17. False, 18. False

Six Strategies to Reduce the Risk of Sexual Harassment in the Workplace

1. Develop a policy which states your company will not tolerate sexual harassment. Ensure policy explains complaint procedure and provides option to take concern to a member of management other than immediate supervisor.
2. Communicate company policy and procedure to all supervisory personnel and provide them training regarding sexual harassment behaviors, liability, and appropriate response to complaints.
3. Communicate company policy and procedure to all non-supervisory personnel via employee handbook, memo, and/or small group meetings. Provide employees with training regarding their responsibility to assist in ensuring a sexual harassment-free workplace.
4. When you see a potential harassment situation, use the three-step process to determine if it is welcome or unwelcome. If you think it is unwelcome, take a proactive stance in preventing sexual harassment by addressing the behavior before you receive a complaint.
5. In the event of a sexual harassment complaint, take immediate and appropriate action by investigating the complaint, imposing disciplinary action on the harassment if sexual harassment occurred, documenting and maintaining confidentiality to the extent possible. Follow-up to ensure the behavior has stopped and that there are no reprisal actions.
6. Be aware of trends which may be developing with supervisory personnel by giving employees regular opportunities to express concern over behavior which may constitute sexual harassment via

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anonymous employee opinion surveys, exit interviews, etc.

Preventing Sexual Harassment Mastery Test

1. Asking a co-worker out on a date is sexual harassment. True or False
2. Conduct of a sexual nature must be severely or pervasively offensive as perceived by the standard of a "reasonable person" in order to be judged as hostile environment sexual harassment. True or False
3. If a manager makes an employee's promotion conditional on sexual favors, this type of sexual harassment is called:
 - a. creating a hostile work environment
 - b. quid pro quo
 - c. supervisory misconduct
 - d. none of the above
4. One of the best ways to stop sexual harassment is to simply ignore the harasser. True or False
5. Under the Civil Rights Act of 1964 (Title VII), employment discrimination is prohibited on the basis of sex. True or False
6. Sexual harassment can only occur in the workplace during working hours. True or False
7. Howie, facilities service supervisor, posts calendars featuring nude women in his office. The calendars:
 - a. can be left up unless someone complains
 - b. can contribute to a hostile working environment
 - c. are protected as freedom of expression under the First Amendment
 - d. are nobody's business but Howie's
8. The laws prohibiting sexual harassment provide protection against retaliation, but only for those found to have been victims of sexual harassment. True or False
9. The federal Equal Employment Opportunity Commission has issued guidelines which explain that sexual harassment is a type of discrimination based on sex. True or False
10. Under the 1998 U.S. Supreme Court decisions, every employer should have a policy against sexual harassment and a complaint procedure. True or False
11. Rod is the life of the lunchroom and loves to tell dirty stories to his friends and co-workers. He does not intend to offend anyone by telling his jokes. Rod's behavior:
 - a. is unprofessional but no cause for concern
 - b. should be encouraged since it builds morale, and no one has complained
 - c. cannot be sexual harassment, since he does not intend to offend
 - d. could contribute to a hostile and offensive working environment
12. Sexual harassment only occurs when the harasser is male. True or False
13. It's sexual harassment to tell a co-worker of the opposite sex that he/she looks nice. True or False
14. In some circumstances, a single isolated incident of harassment may create a hostile and abusive environment. True or False
15. Helen, VP of Finance, is dating Jonathan, an accountant working in her department. Their relationship may not be against company policy. It also: (choose the best answer:
 - a. can lead to legal problems for both Helen and her organization
 - b. is legal
 - c. is not prudent
 - d. all of the above

Answers: 1. False, 2. True, 3. b, 4. False, 5. True, 6. False, 7. b, 8. False, 9. True, 10. True, 11. d, 12. False, 13. True/False, depends on delivery, 14. True, 15. a

SESCO Client Feedback

"This is very impressive Adam. Thank you for your quick work. I would enjoy meeting you soon." ~ Kent Gladish, Vice President - Technology & Manufacturing Association (TMA)

"I have truly appreciated the continued support through the unlimited email consulting. It has been amazing (huge thank you to Adam Kneisley)." ~ Dennis J. Empson, Manager, Human Resources - Euro-Composites

"Bill, I just wanted to let you know how much we appreciate all the help you and your team provide our members. I also wanted to tell you how much we appreciate the truly valuable and timely information you guys also provide. I always share it with our members and it is some of the most viewed communications we distribute. Thank you again." ~ Dennis G. LaComb, Executive Vice President & Chief of Staff - Technology & Manufacturing Association (TMA)

"Mr. Ford, we just wanted to reach back out and thank you again for an excellent presentation and topic this morning. We see a lot of businesses with a lack of understanding and "just roll with it" mentality. The awareness that you brought to many small businesses this morning was stellar and it was an absolute honor to be in the audience. We appreciate your time and appreciate the opportunity." ~ Melanie Gooch - Melanie L. Gooch CPA PC

Special Thanks to New SESCO Clients!

Virginia Automotive Association
Henrico, VA

Kendal-Crosslands Communities
Kennett Square, PA

Northeast Ohio Auto Dealers Association
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