

Sexual Harassment

Resource Type: Articles

Topic: HR Risk and Employment Practices

Nonprofits are not exempt from sexual harassment claims like those recently in the news for business firms and public agencies. For example, a legal secretary in California received a multimillion dollar verdict against a law firm. A trial in the District of Columbia revealed grotesque and pervasive harassment in the D.C. Department of Corrections.

Hostile Environment

The most common type of sexual harassment involves the concept of a hostile work environment.” This concept extends beyond an abuse of official authority. The harasser may draw his or her power to intimidate from the size and characteristics of the staff. The facts and circumstances of the specific incident determine whether the individual was subjected to a “hostile” environment. For example:

- Explicit pornographic graffiti taken from a popular song, or posters or pictures of barely clad women, may be found to be unlawful where one woman works in a large department of men. On the other hand, the graffiti or posters may be construed as free expression by a younger, more gender-balanced workforce.
- It may be impermissible for a supervisor to give frequent hugs to his female coworkers because the hugs last a little too long, are too tight, and because they are not prompted by jubilation or excitement. But hugs given to everyone to bolster self-esteem or to offer congratulations (though it may create management and other problems) will probably not constitute sexual harassment.
- While a compliment, by itself, is not unlawful, it may become harassment if it is designed to hide otherwise improper conduct. When it is known that someone is dieting, “congratulations, you look great” can be encouraging and appropriate. Whispering to the person that he or she looks “sexy” or “hot” while reading over his or her shoulder is not likely to be construed as a mere “compliment” — especially when it is accompanied by other harassing behavior.
- A supervisor’s greeting of “cutie on duty” or anatomical remarks to subordinates could easily go beyond the boundaries of acceptable flirtation.

A nonprofit can be held liable for a hostile work environment if it knew, or reasonably should have known, of the conditions or activities and failed to take corrective action. For instance, a young clerk complains that she is uncomfortable with her supervisor’s off-color jokes. The executive director ignores the complaint because “that’s just the way Joe is.” Another clerk sues the next year, alleging that Joe repeatedly showed her pornographic pictures and followed her home.

The jury will consider whether it was reasonable and appropriate to ignore the first complaint without an investigation. With the benefit of hindsight, the jury may find that, had the executive director investigated the initial complaint, the off-color jokes were just the tip of the iceberg. The jury may impose liability because the organization reasonably should have known of the harassment and taken corrective action.

“Any harassment, whether directed at paid staff or volunteers, minimizes productivity, scares away volunteer support, garners bad publicity, and erodes community (and donor) good-will.”

Protecting Your Organization

Policies and procedures can shield your organization from liability. They can establish a forum for open communication at an early stage so that a misunderstanding or insensitivity can be corrected before it explodes into a legal complaint. Not only may policies avoid costly litigation, they may prevent escalation to more serious assaults. In one case, after a supervisor disregarded a serious sexual harassment complaint, the alleged harasser attacked a coworker after an office party and was later convicted of attempted rape.

The policies, however, must be effective. If a victim does not complain, or delays in complaining, the court may scrutinize the victim's reasons in order to determine whether the organization permitted or condoned the behavior. The suggestions offered here can help you develop appropriate policies and procedures. The box below lists critical items for inclusion in the rules you develop. Details are up to you.

Start at the Top

The board of directors plays an important role in eliminating sexual harassment. It can create a healthy workplace by emphatically stating a commitment to creating and maintaining a harassment-free workplace — regardless of the rank or position of the alleged harasser. The board can demonstrate its commitment by supervising the implementation of the organization's policies and procedures, rather than merely asking the executive director to write something down to "please the lawyers." A "zero tolerance" policy will set the tone, discourage inappropriate behavior, and encourage open communication.

Policies and Procedures

Policies should prohibit both harassment and malicious accusations of misconduct. Violation of the policies should result in appropriate disciplinary action. The policies should be backed by a procedure for investigating allegations that protects the privacy of all parties.

Commit the Policies to Writing

Written policies are easily distributed in a variety of ways (e.g., in the staff handbook or on the lunchroom bulletin board). Supervisors can be required to sign an agreement stating that they have read the written policies and will adhere to them. Written policies can be referred to as needed and used to document your organization's position should an allegation be made.

Spread the Word

Policies and procedures that go no farther than the written page are of limited value. Cover your organization's policies at staff orientations and provide ongoing communication, through written memos or training sessions, to make the policies widely known.

Supervise for Compliance

Require notification of the executive director, or other top manager, of any and all complaints and ask the board of directors to hold that individual accountable for the resulting investigation and course of action.

Make Changes as Necessary

Solicit staff feedback, through interviews or surveys, in order to assess the adequacy and effectiveness of your organization's policies and procedures. Review your policies and procedures periodically to ensure that your organization is still in compliance with applicable laws.

Although most laws address only "employees," there is no reason to so limit your policies. Any harassment, whether directed at paid staff or volunteers, minimizes productivity, scares away volunteer support, garners bad publicity, and erodes community (and donor) good-will. Volunteers may still be able to sue (e.g., for negligent

infliction of emotional distress), and, if an employee later sues for similar unwelcome conduct, a jury may perceive the volunteer's complaint as notice of a problem. While drafting your organizational policies and procedures, you can include the young high-schooler who volunteers every Saturday morning — even though the law may not specifically require it.

You can protect your organization from sexual harassment claims by enhancing communication, taking each claim seriously, investigating each allegation thoroughly and fairly, and taking appropriate disciplinary action. Specific policies and procedures may prevent inappropriate behavior in the first place, and they can guide staff response to allegations, ensure fair and equal treatment, and document the reasonableness of your action if you still end up in court.