

DON'T LET A SEXUAL HARASSMENT CLAIM RUIN YOUR BUSINESS

In 1996, The United States Supreme Court held that sexual harassment in the workplace is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, and the Court's decision puts a lot of responsibility on the employer to protect employees from harassment from other employees and supervisors. Additionally, many states have enacted specific laws of their own. For example, California requires employers with 50 or more employees to provide sexual harassment prevention training to supervisory employees. However, whether you have less than 50 or 15 employees, you need to be thinking about how a sexual harassment claim could adversely affect your business. Here are some things you should know.

Sexual harassment claims can have a big financial impact on an employer. In fiscal year 2006, The Equal Employment Opportunity Commission ("EEOC") received 12,025 charges of sexual harassment. 15.4% of those charges were filed by males. EEOC resolved 11,936 sexual harassment charges in FY 2006 and recovered \$48.8 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

According to the EEOC, "sexual harassment" includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. Sexual harassment can occur in a variety of circumstances:

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.

The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.

The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

Unlawful sexual harassment may occur without economic injury to or discharge of the victim.

The harasser's conduct must be unwelcome.

In order to avoid liability for a sexual harassment claim, all employers should, at a minimum, have a written policy that prohibits sexual harassment and spells out a procedure for confidential reporting of problems. At least two individuals should be named to receive confidential complaints. All complaints should be carefully investigated, and where improper harassment has occurred, disciplinary action should be taken. We have posted a sexual harassment policy on our web site that illustrates the type of policy that may work for your business.

Employers in the HVACR business face an additional concern, because some of its employees have a great deal of contact with customers, not only outside of the supervision of the employer, but actually inside the customer's home. Claims of sexual harassment by a customer can be even more damaging to a business than claims between employees. Many employers now undertake criminal background checks of all new hires in order to avoid accusations of negligent hiring.

You may wish to consider talking to your employees about the risks they face if accused of sexual harassment and the steps that they can take to avoid any such problem. For example, employees should be instructed to avoid conversations with clients about any sexually related topics, since such conversations can be easily misconstrued. Employees should also be told to avoid any type of conduct that may be considered flirtatious. Even harmlessly intended remarks can be misunderstood.

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