

SEXUAL HARASSMENT PREVENTION - LIABILITY

The EEOC guidelines state that management is responsible and liable for the actions of its agents (supervisors) who might engage in sexually harassing behavior, regardless of whether the employer knew or should have known of their occurrence - such as a situation where management was informed or knew that the harasser had a well established reputation, but management had not intervened.

Management also is responsible for the acts of sexual harassment between co-workers and even non-employees, if it knew or should have known of the problem. Non-employees would include anyone with whom an employee comes in contact with at work, such as vendors, the public, or clients.

Simplified, management is responsible for:

- o Their supervisor's actions,
- o co-worker's actions, and
- o the actions of non-employees.

Under the new Civil Rights Act of 1991, victims of sexual harassment are entitled to damages for pain and suffering, as well as to any lost pay. If the victim wins, they also may recover legal fees.

The problems with sexual harassment are those of perception and recognizing it. In essence, it is the individual employee who decides if the work environment is intimidating, hostile or offensive. It is up to the courts to decide if they agree with the individual.

Having a policy statement and a complaint procedure in place does not automatically protect an employer from being liable for supervisory employees' offensive behavior. It also does not stop an offender from offending, nor does it always give victims the confidence to come forward and file a complaint.

The EEOC guidelines state that prevention is the best method for eliminating sexual harassment in the workplace.

UNDERSTANDING THE SCOPE AND RANGE OF SEXUALLY OFFENSIVE BEHAVIOR

- o Supervisors are held to a higher standard because of their control and power over the situation.
- o What may be acceptable social behavior outside the workplace is not always appropriate in the work environment.
- o We want to create an environment that is free from sexual behaviors.
- o We have gone too far, now we must control our behavior.

Sexual Harassment Preventive Training

The following are steps you can take to prevent sexual harassment:

When sexual advances from another individual are unwanted:

- o **Say No Clearly.** Inform the harasser that his/her attentions are unwanted. Make it clear that you find their behavior offensive. If the harassment continues, write a memo to the harasser asking them to stop; keep a copy.
- o **Document the Harassment.** Write down each incident including date, time and place. Detail what happened and include your response. Keep a copy at home. This information will be useful if you need to take legal action.
- o **Get Emotional Support** from friends and family.
- o **Document Your Work.** If the harasser is your Supervisor/Manager, keep copies of performance evaluations and memos that attest to the quality of your work. The harasser may question your job performance in order to justify their behavior.
- o **Look for Witnesses and Other Victims.** You are probably not the first person who has been mistreated by this individual. Ask around; you may find others who will support your charge. Two accusations are much harder to ignore.
- o **File a Complaint.** If you need to pursue a legal remedy, contact your Equal Employment Officer within your agency. You may also file a complaint with the Equal Employment Opportunity Commission, the New York State Division of Human Rights and the NYC Commission on Human Rights.
- o **Attorneys.** You do not need an attorney to file a claim, but you may want to speak with a legal service or private attorney specializing in employment discrimination.

We hope you are never in a situation where you need to take these steps in order to stop sexual harassment from happening to you. Please call Diane Witek at (212) 240-3420 if you would like to speak to someone (in confidence) or if you have any questions regarding EEO matters.