

Protecting your business and employees from sexual harassment

High-profile sexual harassment claims have been making headlines recently, implicating celebrities like Harvey Weinstein, Matt Lauer, Charlie Rose, Al Franken and Bill O'Reilly, to name a few. These bombshell allegations have spurred the #MeToo movement, revealing the prevalence of sexual harassment across industries and pay scales. The steady barrage of sexual harassment and misconduct claims detailed in media accounts has empowered victims of sexual harassment to speak up and report allegations of misconduct in the workplace.

Due to what is being called "the Weinstein effect," law firms are seeing a spike in inquiries about sexual harassment cases, and the Equal Employment Opportunity Commission (EEOC) website has reported seeing the number of visits to its harassment web page double. What steps should an employer take to ensure that its work environment is safe and that instances of sexual harassment or misconduct do not fester or result in legal action? With education and training, proactive employers can foster a safe working environment and protect themselves and their employees from becoming EEOC statistics.

Cognitive behavioral scientists have identified three categories of sexual harassment: (1) sexual coercion; (2) unwanted sexual attention; and (3) gender harassment. Each of these categories is recognized in Ohio and federal case law. The most common understanding of sexual harassment usually fits into the first category, a *quid pro quo* interaction, *e.g.*, "If you do this sexual act for me, you may get a promotion." Or, conversely, "If you do not do this sexual act for me, you may lose your job." However, a sexual harassment claim is not limited to a sexual coercion type of situation between a manager and his or her employee or co-worker, and the second and third types of encounters are often more convoluted and difficult to identify. For instance, leaving sex toys on an employee's desk is clearly not okay (as in the accusations against Matt Lauer), but what about mutual flirtation around the water cooler, or a well-meaning compliment?

Confronting and preventing sexual harassment in the workplace comes down to three main areas:

- Workplace policy;
- Enforcement; and
- Reporting structure and procedures.

We have been working with local businesses to provide on-site presentations and training services that walk employers and employees through the legal pitfalls and best practices in handling workplace sexual harassment claims. The majority of issues that lead to these claims stem from the subjective nature of social interactions, coupled with the employer's failure to respond appropriately once it becomes aware of a possible harassment situation. Proper training of staff and supervisory employees can be critical for an employer to prevent sexual harassment claims from arising.

To review your employee policies and practices relating to sexual harassment, or to schedule a presentation or training, please contact me at (216) 621-7227 or at the email below, or your lawyer at Nicola, Gudbranson & Cooper.

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