

Legal Perspective – Harassment

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INTRODUCTION

- 32 years ago the Supreme Court held that sexual harassment is a violation of federal civil rights law
- Doug mentioned the Chronicle survey regarding sexual harassment in your industry
- Another study found that **non-profit** employees filed 1,100 harassment complains with EEOC from 1995 - 2016

SEXUAL HARASSMENT CAN LEAD TO LEGAL ACTION

- A person can file a charge with EEOC or with a state/local civil rights agency
- In 2016, 90k charges filed with EEOC – 1/3 included harassment
- After an investigation, EEOC or the individual can file suit
- Individuals can also file suits under state law for assault & battery & can press criminal charges for assault
- **BE AWARE:** many harassment claims/suits include retaliation

KINDS OF HARASSMENT PROHIBITED BY FEDERAL LAW

- Sex, race, color, religion, national origin, age, disability
- Sex harassment includes sex stereotyping, pregnancy, gender identity and sexual orientation

DEFINITION OF HARASSMENT

Objectionable behavior which:

- Is sufficiently severe or pervasive AND
- Significantly affects a “term, condition, or privilege” of employment:
 - Relating to a significant change in employment status, e.g., promotions, firing, etc. OR
 - By creating a hostile work environment

SEVERE OR PERVASIVE

- EEO statutes don't impose a general civility code that covers "run-of-the-mill boorish, juvenile or annoying behavior"
- Violations can be established if conduct is severe (one-time offense) or pervasive (lower level but over long period of time)

EXAMPLES OF SEVERE CONDUCT

- Sexual assault
- Sexual touching of an intimate body part
- Physical violence or the threat of physical violence

TYPES OF SEXUAL HARASSMENT

- **Unwanted** sexual attention imposed on an employee
- **Hostile behavior** imposed on an employee because of his/her gender

WHICH EMPLOYERS DOES THE LAW COVER?

- Generally, employers with more than 15 employees for at least 20 weeks in the year

WHICH WORKERS ARE COVERED?

- Employees but **NOT** independent contractors
 - Legal test is to what extent does the employer control the means/manner of the work?
- Not volunteers
- Not partners, officers, members of boards of directors, major shareholders
 - However, courts have held some types of partners are employees
- Apprentices/trainees
- Applicants

LIABILITY RULES

- Courts impose liability on employer depending on who harasser is and type of harassment
- Employer may not be liable if it has followed an effective harassment policy
- Summary of complicated rules:
 - Owner or high-level officer – employer automatically liable
 - Supervisor – depends on the type of harassment
 - “Significant change in employment status” – liable
 - “Hostile work environment” – it depends
 - Nonsupervisory employee and non-employees – it depends

ELEMENTS OF AN HARASSMENT POLICY

- EEOC *PROPOSED Enforcement Guidance on Unlawful Harassment, Section VI* (<http://src.bna.com/zxz>)
- Five core principles:
 - Committed and engaged leadership
 - Consistent and demonstrated accountability
 - Strong, comprehensive harassment policy
 - Valid complaint procedures, including investigations
 - Training tailored to the organization/audience