



BY NANCY A. CHILLAG, ESQ.

## Avoiding Sexual Harassment Claims

Over the past several years, sexual harassment in the workplace has become a major source of lawsuits.

Many employers are concerned, not only because the definition of sexual harassment is difficult to understand, but because they are unsure how to prevent a problem from arising or correct a problem if it exists. With more women entering the industry, construction companies are coming face-to-face with this issue.

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Sexual harassment is a form of sex discrimination and is governed by both Title VII of the Civil Rights Act of 1964 and the Fair Employment and Housing Act. It can include a "hostile environment" where the employee is subjected to sexual advances, sexual favor requests or other verbal or physical conduct of a sexual nature which is unwelcome and sufficiently severe to adversely alter the victim's working environment. Sexual harassment can also include a situation where the employer, or employee at a management level, requires a subordinate employee to submit to sexual activities as a condition of employment. This latter conduct is known as "quid pro quo" harassment.

Under a quid pro quo form of

harassment, if the employer or his agent or supervisor sexually harasses an employee, the employer will be held strictly liable for any damages incurred by the victim. This means that the victim doesn't need to prove knowledge or intent on the part of the employer. If, however, one employee is sexually harassing another, the employer will be held liable if he/she failed to remedy or prevent the hostile environment which he/she knew existed. The employer will also be held liable if he/she, upon reasonable observation, had knowledge this environment existed and failed to prevent the harassment.

To determine whether sexual harassment has taken place, the courts evaluate the challenged conduct from the viewpoint of the victim. The standard used is whether a "reasonable person" subjected to the same conduct would perceive it as abusive. The courts do not consider the motivation of the offender in determining whether certain conduct is abusive.

### What to do

To comply with the requirements of the law, the employer should do the following:

1. Educate employees (and subs) about sexual harassment, defining what it is and what behavior will not be tolerated.
2. Establish an open-door policy allowing employees to express concerns about the work place or make suggestions for improvement.
3. Prepare a sexual harassment policy to be included in the employee manual or posted on the employee bulletin board.

(Contact your local attorney for help in developing a policy.)

4. Fully investigate any and all claims of conduct which could be interpreted as sexual harassment. Keep thorough documentation of your investigation, the conclusions reached and changes made, etc.

5. Conduct regular interviews of employees and/or clients to establish the environment on jobs, the interaction between certain employees and whether a potential for problems exists.

6. Implement remedies – such as suspension or termination – that are reasonably calculated to end the sexual harassment, not just mask the problem. This includes directly dealing with the offending employee.

7. Apply the remedies equally. Do not give "favored employees" chances to change their offensive behavior, while others are terminated immediately.

Sexual harassment claims can be devastating because of the punitive damages that can be imposed and the possible lack of insurance coverage for such claims. The success of such a claim will depend in large part on the business practices of your company in establishing and following policies and your responsiveness to complaints. ♦

**Next column:** Answers to readers' legal questions.

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