

HARASSMENT - HOW TO PROTECT YOUR COMPANY AND YOURSELF

“I think I’m being harassed.” These words, spoken by an employee, strike fear into the hearts of most employers. Fear no more. This article will answer some common questions about harassment in order to provide you with the knowledge you need and empower you to properly react to a harassment situation.

What is harassment? While sexual harassment receives most of the attention, harassment claims based on other protected categories (such as religion, age, race, national origin or disability) are prevalent. For example, immediately after 9/11, claims of harassment on the basis of religion and national origin increased. Wisconsin law also recognizes sexual orientation as a protected characteristic. Employers and their managers must understand that it is not just about sex and that complaints of non-sexual harassment must be treated as seriously as sexual harassment claims.

Generally the courts refer to two types of harassment: “quid pro quo” or “hostile work environment.” Quid pro quo (this for that) refers to the obvious harassment such as a supervisor demanding sexual favors from a subordinate in order for the subordinate to keep his job. Hostile work environment is more nebulous and includes unwelcome physical or verbal conduct that is so severe or pervasive that it creates an intimidating hostile or offensive work environment. Examples of conduct that can constitute hostile work environment harassment are sexual advances, epithets, slurs, negative stereotyping, threatening or intimidating acts, physical assault or written or graphic materials that denigrate or show hostility toward an individual or group based on a protected characteristic (sex, race etc.). In addition to hostile work environment and quid pro quo harassment, Wisconsin law also defines an additional type of sexual harassment: any type of unwelcomed verbal or physical conduct of a sexual nature by an owner, supervisor or manager. Under Wisconsin law, even one instance of inappropriate conduct by a manager in a position of authority can create liability for an employer.

I can’t control my customers or vendors, can I? You can and you must. It is your responsibility as an owner to protect your employees from harassment, even if by outside parties. For example, if a restaurant’s regular customer is sexually harassing a waitress, the restaurant must stop the harassment even if that means barring the patron from the restaurant. Similarly, if a truck driver who delivers to a company constantly refers to a warehouse worker using a racial epithet, the employer should contact the truck driver’s employer and demand that the conduct cease or that another driver be assigned. If the trucking company refuses, the employer may have to cease doing business with that company.

If no one complains, I can ignore it, right? No. Because the law requires an employer to provide a harassment free environment, even if no one complains, you may need to take action if you observe harassing conduct in the workplace.

How should I protect my company from harassment claims? Create a compliance program. A compliance program sends a message to employees that you take harassment seriously and allows you to be prepared to handle harassment complaints. Your program should include:

- A written policy that prohibits harassment based on all protected categories, not only sex, and prohibits retaliation against anyone who complains about harassment
- A reporting mechanism by which individuals can report any harassment observed by or directed toward them. The reporting procedure must give employees at least two different people to whom they can report harassment (in case one of the people is the harasser)
- A training program for managers in which they learn about inappropriate behavior, their responsibility to comply with and enforce the policy and how to handle a harassment complaint
- Prompt response to all claims of harassment that includes an investigation procedure to be followed with all harassment complaints and provides follow up to the complaining party as to the outcome
- Consistent discipline for those who have committed harassment and for managers who fail to report or address harassment.

The Supreme Court has stated that these types of programs are a way for employers to protect themselves against employment claims. While you may not be able to stop harassment from occurring, you must be able to deal with it in a prompt and effective way to end it.

How can I protect myself from third party harassment? As a business owner, you cannot sue another business for harassment. You can, of course, take your business elsewhere, demand to deal with someone different in the organization or “fire” the client or vendor. If the conduct rises to the level of an assault or battery, you would have legal recourse.

While harassment is a frightening issue for most employers, being prepared to address it is the best protection you can have for you and your company.