



Sexual Harassment Claims: The Stakes Continue To Be Raised *Written by Beverly Purtell, Principal Consultant, HRValue Group, LLC*

Sexual harassment is a subject that won't go away. The amazing thing we see as HR professionals is how much sexual harassment is still alive and well in so many organizations. In all the sexual harassment workshops we have collectively presented, we rarely leave a session without someone in the audience discussing a sexual harassment situation.

Many times, these claims would fall into a "hostile work environment" category. Hostile environment involves a gray area of conduct, however, examples we have heard are not so gray! They include stories of offensive pictures being passed around a lunchroom, a member who made continuous and suggestive comments to a member service representative, off-hour business meetings where sexual innuendos were not so subtle, and e-mails sent to co-workers filled with vivid sexual jokes. In many cases, senior management was unaware of the situations and was shocked. Not knowing, however, does not excuse the inappropriate—maybe illegal—behavior or the consequences.

Then there are charges that seem frivolous or even false to complicate an already complex landscape. Regardless of whether you, the employer, or the employer's representative believes the complaint is not valid, once the complaint is articulated, there is a mandated process that a credit union must follow. This is one area where the stakes are raised. An employer may **not** pick and choose which complaints to pursue. *All must be pursued with discretion and as much confidentiality as practically possible.*

Some states have very specific and rigid requirements with which employers are expected to comply in their sexual harassment policy and procedures. A credit union needs to be sure it knows what is required at both the state and federal level. Check with your state to see if it has a model sexual harassment policy. If it does, be sure your employee handbook and supervisor's guide incorporates that language.

In defense of sexual harassment laws, many employers have done a poor job of providing an environment that is free from sexual harassment. Requests for sexual favors exist; promotions are granted on the basis of a romantic relationship; and scenarios that create a truly hostile environment still linger in some organizations. The ever-expanding sexual harassment laws continue to put new stakes in the ground to curtail sexual harassment in the workplace. Some might argue that the pendulum has now swung the other way.

For those who have never had to deal with a sexual harassment claim, the process is difficult, lengthy, emotional, and expensive. If you believe the claim is a false allegation, you will add anger to the process which carries its own additional baggage. It cannot be overstated how disruptive and time-consuming it is to defend a sexual harassment claim. One thing that makes this process less painful is having your policies, procedures, documentation trail, and training in place.

We have talked with credit unions who feel they have very limited exposure because of employer practices liability insurance. Don't be lulled into a false sense of security. Insurance will not protect you if



you have willfully violated the law. And, insurance is small consolation as you go through hours of preparation for the discovery process and then days of depositions.

The Civil Rights Act of 1991 not only allows the complainant to a jury trial but also allows compensatory and punitive damages to employees who prove intentional discrimination. With increasing awards to complainants, the stakes again rise. New changes in sexual harassment laws appear subtle but sometimes pack a wallop. These could include expanded timelines to bring forward a complaint and expanding the definition of sexual harassment outside the workplace. In some cases, individual supervisors, managers, board members, and even an employee may be personally liable for sexual harassment. Nothing is as sobering to a supervisor as looking at a sexual harassment complaint and knowing you could be personally liable.

How does a credit union protect itself? Be sure your sexual harassment policy is comprehensive and up-to-date. Identify several individuals to whom an employee may bring a complaint. Create an effective complaint procedure. Have a thorough investigation process in place. Insure that your policy articulates a prohibition against retaliation. Once the policies and procedures are in place, communicate and enforce these standards. Include Board training in your sexual harassment training. If the credit union has had a sexual harassment complaint in the past, insist on sexual harassment training as a remedial step. And document, document, document.

Above all, don't assume that sexual harassment is yesterday's news. Not only is it alive and flourishing, the stakes continue to be raised.

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