

## TIPS ON A VOIDING SEXUAL HARASSMENT LIABILITY

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The construction industry is traditionally a "men-only" arena, with very few women workers. Given this, you may think that your company is not at risk for a sexual harassment lawsuit or complaint. The United States Supreme Court has broadened the field in recent years, however, so that even same-sex harassment cases are commonplace - you could thus face a complaint even if you have no women on your payroll. We are also seeing more and more women in the construction industry, working in various roles, from the office to the field.

In short, any company has the possibility for sexual harassment liability in today's litigious society. Here are some tips on how to protect your company.

### ***Have An Anti-Harassment Policy***

In some situations, you can completely avoid liability if you have an internal anti-harassment policy with an avenue for reporting complaints. The general reasoning is, if you have such a reporting system, and the alleged harassment victim does not use it, the company should not be liable for what happened between two co-workers. And if the victim *does* use the reporting system, and you take appropriate responsive action, the company can also often avoid liability.

Your anti-harassment policy should prohibit all types of harassment (such as age, disability, and race), not just sexual harassment. The policy should have a clear avenue for reporting complaints, naming at least two specific persons to whom the complaints should be

reported. If possible, one of these people should be a woman.

The policy should indicate that the company will investigate complaints, keeping the complaints confidential to the extent possible. The policy should also assure potential victims that there will not be retaliation for bona-fide harassment complaints. It should also state that appropriate disciplinary action will be taken against the alleged harasser if the investigation supports the allegations.

If you have an employee handbook, you should include the policy there. Otherwise, you can simply provide all employees with a copy of the policy and post it with other employee information. Every employee -man or woman - should sign an acknowledgement form indicating that he or she read and understood the policy. The signed acknowledgement should be kept in the employee's personnel file. This avoids after-the-fact claims of ignorance regarding the prohibition of harassment, or regarding the existence of the reporting scheme.

### ***Take Complaints Seriously***

One of the biggest mistakes employers make is to ignore seemingly informal or minor complaints. This can lead to big trouble later, if the employee claims that this informal conversation put the company on notice of a problem.

If you have a complaint procedure like the one discussed above, make sure to train your "reporting" persons to identify complaints. Also, make sure

that all management-level employees are trained to be in tune with these issues, so they will recognize improper behavior and properly-channel any complaints that they receive. In the end, it is much better to *get* an internal complaint, and deal with the situation, than to ignore a problem inadvertently so that it festers

### ***Handle Investigations And Discipline Consistently***

If you get an internal harassment complaint, it is important to act quickly and consistently. You should also be careful not to do anything that could be construed as retaliation against the alleged victim

You may have to transfer the alleged harasser to a different department or shift during the investigation, or give the alleged harasser a paid leave of absence. If the alleged victim requests it, you may need to provide him or her with a leave of absence or transfer as well. And you should not provide special treatment for an alleged harasser who is highly ranked in the company. If anything, a high-ranking harasser must be treated more severely than the rank-and-file -after all, such people set the tone for your company

You should investigate the internal complaint, first by talking to the complainant, then the alleged harasser, and then interviewing all potential eyewitnesses. You should document the interviews, your conclusions, and any disciplinary action that was taken. Some employers hire outside companies to conduct such investigations. If you do this, you should consult with counsel regarding possible reporting requirements under the Fair Credit Reporting Act.

### ***Beware Of City Requirements***

If you contract with municipalities, you should become familiar with the applicable city or town code. Many cities have their own anti-discrimination requirements. For example, while federal and state law do not; prohibit discrimination against employees on the basis of sexual orientation, the City of Phoenix does have such a prohibition in its Code.

### ***Bottom Line***

Any employer can face sexual harassment claims. The best way to protect against liability is to implement protective measures *before* a lawsuit arises. If you follow the tips in this article, you should be in a better position to defend a possible claim, or to avoid the lawsuit altogether.