



Preventing Sexual Harassment Claims

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of sex, race, color, religion, and national origin. Employers with 15 or more employees fall under the provisions of Title VII. The Equal Employment Opportunity Commission (EEOC) is the federal agency which investigates violations of Title VII. The complainant can also file a claim with the state or local agency which oversees discrimination in the workplace.

Sexual harassment is a form of sex discrimination under federal and state law. The EEOC defines sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature” ... which “explicitly or implicitly interferes with an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment.” See: <http://www.eeoc.gov/eeoc/publications/fs-sex.cfm>.

In 2009, 12,696 charges of sexual harassment were filed with the EEOC and/or state and local Fair Employment Practices agencies. Sixteen percent of those charges were filed by men. See: http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm

The U.S. Supreme Court held that an employer may avoid liability for harassment that does not involve an adverse employment action such as termination or demotion if the employer can demonstrate (1) it took reasonable steps to prevent and promptly correct sexual harassment in the workplace; and (2) the employee unreasonably failed to take advantage of the employer’s preventative or corrective procedures. See *Faragher v. City of Boca Raton*; *Ellerth v. Burlington Industries, Inc.*

Preventative actions should include:

- Having a sexual harassment policy in place which defines sexual harassment, states that it will not be tolerated in the workplace, sets out a clearly understandable procedure for filing complaints, states that any complaints will be fully investigated, and prohibits retaliation against anyone who reports sexual harassment. The policy should be disseminated to employees, and employees should sign an acknowledgement that they have received a copy of the policy, read it, and understand its provisions including their duty to promptly report harassment as set out in the policy.
- Training sessions should be conducted on an annual basis for all employees and as needed for follow-up. Each employee should leave the training knowing what sexual harassment is, his/her reporting responsibilities, and the procedures for reporting sexual harassment.
- Supervisors should be trained separately from other employee trainings to ensure that supervisors know what steps to take for prevention of harassment claims and the procedures for responding to harassment complaints. The law is clear that an employer has a duty to promptly and thoroughly investigate any complaint of perceived discrimination, harassment, or retaliation.

This tip is only a quick overview of issues pertaining to Preventing Harassment in the Workplace. For further information and guidance, contact your attorney. Further information can also be found on the EEOC website: <http://eeoc.gov/>