

## **Sexual harassment isn't my problem (until it is): Guest view**

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Many owners of small- and medium-sized businesses see the news regarding sexual harassment claims from Hollywood and Washington and say, "Thank goodness I don't have those problems." But that's just not true.

And no matter how tight the culture among the employees may seem in a locally owned or family business, it takes only one employment situation to throw the carefully planned equilibrium of your office completely off-kilter and create months and years of litigation.

Federal civil rights laws, which prohibit discrimination in employment, include Title VII of the Civil Rights Act (applies to employers with 15 employees), the Age Discrimination in Employment Act (20 employees) and the Americans with Disabilities Act (15 employees). In addition, many states have companion laws that address the same issues and have a lower threshold of coverage (for example, the Pennsylvania Human Relations Act applies to employers of four or more).

Unless you're a company of one, you're probably covered by anti-discrimination laws. If you're covered, you could be liable for the bad acts of your employees, which means you should be considering ways to lessen your liability. Think of it this way: A business owner would do everything necessary and reasonable to reduce workplace injuries in order to reduce the cost of health care and lost time. Why would you treat the potential liability for HR claims differently?

So, what can the small-business person do to ensure that they've taken the right steps to protect against claims of sexual harassment?

- You need to have an anti-harassment policy. Without a policy, you can be held strictly liable for claims against your company. In other words, without a policy, you will have no defense.
- That policy must be plainly written and must contain an understandable and accessible complaint procedure.
- The policy must be disseminated — employees must receive it and acknowledge receipt.

But wait — you're not done yet. Having a policy and passing it out is helpful to a point, but unless your supervisors are trained on how to address issues arising from your anti-harassment policies, the policy itself will do little good.

Train your supervisors to gather facts and make appropriate reports. You are liable for what your supervisors knew and did not tell you. Many bad sexual harassment cases have arisen from supervisors who fail to report, try to handle it themselves or promise confidentiality to someone who has made a report to them but asked them to take no action.

- When a complaint is made, take it seriously, no matter who is involved or how unlikely the facts might seem at first. An employer's best defense is that they took prompt remedial action to address any good faith complaints.
- Understand that a person who has made a good faith claim of sexual harassment has engaged in legally protected conduct and cannot be subsequently retaliated against for making a claim, even if those claims are in error. An employee can be completely mistaken about their claims of sexual harassment and still be protected (unless they are lying) against retaliation. That means that an individual who reports sexual harassment cannot have the terms and conditions of his or her employment changed because of the report of harassment. Many claims are successfully defended on the harassment claim but lost on the retaliation claim because after the complaint was made the employee was punished for making a report.

They say that it takes a lifetime to build a reputation and a second to lose it. Change is tough and there will be employees and supervisors who push back. They will accuse you of changing the culture and making a loose environment overly regimented. Of course, your employees' approval of a looser culture is not a defense to a complicated sexual harassment case when everyone's actions — and the company's culture — will be on trial.

When a sexual harassment claim is made against a company it can have a massive impact on the people who work there. And the smaller the company, the bigger the impact can be. The best defense that a company has is a good set of predictable, fair — and fairly implemented — employment policies. The rules form your best defense and every minute invested in devising, disseminating and training regarding these expectations will return value to your company as you avoid the pitfalls and costs of needless litigation.

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