



GRAY REED

GRAY REED & MCGRAW, P.C.

Sexual Harassment

Who, What, Why . . .

Who does it apply to: Any business with more than 15 employees.

What is it: Everyone has a broad sense of what sexual harassment is, but most do not understand what it is from a legal stand point. Under the law, Sexual harassment falls into two categories: “quid pro quo” and “hostile work environment.” Quid pro quo translates loosely to “this for that” and in this context it usually means demanding sexual favors for advantages in the work place. Hostile work environment does not usually involve sexual advances, but rather unwanted sexual comments that make the work environment untenable.

Who can be affected: Though sexual harassment is primarily thought to affect females, anyone can be a victim – including males, homosexuals, and possibly transsexuals.

Who is liable: Harassing acts may be carried out by individuals, but the business will be liable for harassment when a claim is made.

What is required for quid pro quo harassment:

- Unwelcome advances or requests for favors by an employee in a position to control some aspect of the victim’s employment; and
- Submission to the request is an express or implied condition of receiving an employment benefit OR that employee refusal results in significant change in employment status such as hiring, firing, failing to promote, significant reassignment, or other significant change in benefits.

What is required for hostile work environment harassment:

- Unwelcome harassment of any kind whether in a single incident or accumulating over time;
- The harassment affects a term, condition, or privilege of employment; and
- The harassment is severe or pervasive so as to alter the conditions of the victim’s employment and create an abusive working environment. To be severe or pervasive, the harassment must be offensive such that both the victim and a reasonable person would perceive the harassment as hostile and abusive.

Common Situations:

Vendor Harassing Receptionist: A vendor who regularly sells to your company sexually propositions your receptionist each time he comes to your facility and your receptionist complains of the harassment. An employer can be liable for the harassment of non-employees toward employees if the employer is aware of the harassment and takes no action to prevent it.

Unintentional Hostile Work Environment: In every office there are individuals who are not easily offended and those who are more sensitive. If a group of employees, who are not offended by sexual jokes or comments, make those jokes or comments in ear-shot of an easily offended employee, the employer can be liable for a hostile work environment claim even though the comments were not in any way directed toward the easily offended employee.

Indirect Quid Pro Quo Harassment: A supervisor over the shipping department requests that a lower level employee in the purchasing department engage in a sexual relationship. When the employee refuses the advances,

the supervisor uses his influence with the purchasing supervisor to have the employee demoted. Even though the harasser did not have direct control over the lower level employee, the supervisor's use of influence results in quid pro quo sexual harassment.

Homosexual Hostile Work Environment Harassment:

A group of straight employees jokingly place pictures of naked women in the locker of a known homosexual employee on a regular basis and make jokes about homosexuals toward the homosexual employee. If the homosexual employee perceives the attacks as hostile and abusive and a reasonable person would agree, the conduct can be sexual harassment actionable by the homosexual employee.

What should I do:

Good: Have a sexual harassment policy which: (1) precludes supervisors propositioning direct subordinates for sexual relationships or sexual acts of any kind to protect against quid pro quo sexual harassment; and (2) does not allow employees to make sexual jokes or harass others on the basis of sex.

Better: Have a more stringent sexual harassment policy which continues to preclude harassment, but does not allow employees in any type of supervisory position, whether specifically titled as a supervisor or not, to

proposition anyone within the company who might be considered a subordinate to that employee. Implement a reporting system as part of your policy by which employees report alleged sexual harassment to a single person who understands the significance of such a claim and can take steps to stop the harassment immediately.

Best: Add a more stringent policy which precludes dating or sexual relationships of any kind between any employees. This guarantees no quid pro quo sexual harassment. Implement a more aggressive reporting system where employees may report harassment to either an assigned male or female employee so that they do not feel obligated to report to a person of the opposite sex. Maintain back up for reporting in the event the harasser is a person to whom harassment is reported.



Michael Kelsheimer focuses his practice on the employment law needs of Texas businesses and executive employees. He recognizes that the cost and expense of litigation make resolving employment disputes challenging. To help avoid these concerns, he utilizes his experience in and out of the courtroom to prevent or quickly resolve employment disputes through proactive employer planning and timely advice. When a dispute cannot be avoided, Michael relies upon his prior experience as a briefing attorney for the United States District Court and his extensive experience in employment and commercial lawsuits to secure favorable resolutions for his clients.

This guide is one in a series. For more information, or to receive the entire collection contact Michael Kelsheimer by email at mkelsheimer@grayreed.com or by phone at **469.320.6063**