



Elimination Strategies

Solid policies protect against potential sexual harassment and limit liability

by Pamela V. Rothenberg

Owners and managers must take affirmative steps to protect their businesses from the potentially devastating legal actions associated with sexual harassment claims. Title VII of the Civil Rights Act of 1964 prohibits sex discrimination and specifically, sexual harassment, which includes any unwelcome sexually oriented conduct, intended or not, that creates a work environment that is hostile, offensive, intimidating or humiliating. Employers can be held liable for sexual harassment damages even if the harasser is a co-worker (not a supervisor), the same sex as the victim or is a customer, vendor, supplier or other independent contractor. This includes existing or prospective tenants. Liability also exists when a supervisor does not pursue an investigation out of respect for the victim's request for confidentiality.

Owners and managers must be able to demonstrate they exercised reasonable care to prevent or promptly correct any sexually harassing behavior. A formal policy can be established to satisfy this "reasonable care" standard.

A sexual harassment policy should contain the following provisions:

- A definition of what constitutes sexual harassment. For example, a policy might provide the company "prohibits any form of

sexual harassment, including, without limitation, offensive or unwelcome touching or other physical contact; sexual advances or propositions, specifically including dealings with any existing or prospective customers (including tenants) or independent contractors; unwelcome flirtations; obscene or sexually suggestive gestures, comments or jokes; the display of sexually explicit pictures, cartoons or

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other items in the workplace; and any 'stray comments,' which include offhand references or jokes, even in jest, of a lewd or sexually suggestive nature."

- A statement that the company strictly prohibits all inappropriate conduct of a sexual or sexist nature that could create, suggest or contribute to a hostile or abusive work environment.
- The establishment of a "zero tolerance" policy.

- A clearly articulated procedure for reporting sexual harassment that includes: a diverse group of people to whom employees can report inappropriate behavior, and a variety of routes to report such actions; prompt investigation of reports; prompt remedial action when justified and a statement that employees will not be retaliated against for good faith reporting of violations.
- A statement that any employee found to have violated the policy will be subject to disciplinary action, including termination.

Consider conducting annual sexual harassment training sessions for management staff. Recent Supreme Court decisions make it more difficult for a company to be shielded from liability when its managerial-level personnel engage in sexual harassment.

To minimize risks associated with sexual harassment claims, vigilantly pursue investigations of any allegations, whether they involve actions taken exclusively by personnel or claims of improper conduct engaged in by existing or prospective tenants. □

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