

You Raise the Issue

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Question: I'm working at a new job and my supervisor is making all sorts of sexual innuendoes and invitations. I'm really uncomfortable with his advances, but I don't want to lose my job. Any advice?

First, you should make it clear to him that his comments are not welcome and are making you uncomfortable, even though you may find that difficult to do. If that doesn't stop the conduct, then you should go to the human resources department and let them know what's happening. If your supervisor is "the boss" and there is no one else to complain to, you may be forced to leave and file a complaint with the Human Rights Commission. If you take the latter option, make it clear that you're not leaving voluntarily, but because of the conduct.

Question: We have been notified of a complaint by the Human Rights Commission that a former employee who had quit wants some money as a result of being subjected to sexual harassment by another former employee. We have a sexual harassment policy in place, and I don't think we should have to pay, especially since she quit, and it was the individual who did it, not us. Do we have any liability?

Unfortunately, if the allegations prove to be true, you very well could be liable, even in the face of your policy. Human rights legislation is designed to compensate the victim, not punish the wrongdoer. Under existing legislation, only the employer can be found liable for such improper conduct. There is no statutory method by which an employer can seek reimbursement from the actual wrongdoer, although it might be possible to sue him. As far as the victim quitting, if it is found that she felt she had to quit because of this conduct, it will probably be termed a "constructive dismissal", and will still result in your liability.

Question: Our organization recently investigated a sexual harassment complaint involving a male manager and a female worker. The complaint appears to have merit. The worker wants us to "solve it". What are our options?

The Manager: The manager should be called in and confronted with the allegations, and asked for his explanation. If he admits the allegations, you should decide whether or not to fire him, depending on his explanation, attitude and other factors. If you decide that he won't be fired, you should make it absolutely clear that this type of conduct will not be tolerated in the future, and any future occurrences of a like nature will result in termination. The factors that would go into that decision are too complex to detail here, and you should consult your legal advisor before making a decision.

If the manager denies the allegations, you will have to make an informed decision as to whether this denial is more likely to be true than that of the

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complainant, and run with that decision. If you believe the complainant, then you should probably fire the manager.

If the manager were to sue you for wrongful dismissal, you should win that lawsuit, based on recent jurisprudence, as long as the complainant was believed over the manager.

If the manager was believed, you would probably lose the case, in the same way you would lose any dismissal case where an employer cannot prove its allegations of cause.

The Employee: The employer has a legal duty to ensure that employees work in an atmosphere free from sexual harassment.

It may go so far as to fire the manager, as detailed above, or reprimanding him with an admonition to not do this again. It may involve transferring one or the other, although if you transfer the employee, it must not be done in such a way that it could be construed as punishing her for complaining (such as putting her in a lower paying or less desirable job). If the employee was to complain to the Human Rights Commission, you may not take disciplinary action against the employee for complaining.

Hopefully, if you can take both corrective and preventative measures, no complaint will result. The most important thing is making sure that the employee knows that they will not be subject to this type of conduct again.

DISCLAIMER this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

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