

HARASSMENT IN THE WORKPLACE - ARE EMPLOYERS ON THE HOOK?

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Employer liability for employee misconduct in the workplace has generally been recognized in many contexts, most recently in the area of sexual harassment. Sexual harassment has been characterized as a form of discrimination on the basis of sex or gender and an employer will generally be liable for the discriminatory actions of its employees vis-a-vis other employees within the workplace. This liability on the part of the employer exists whether or not the employer, through its senior staff or supervisors, is aware of the discriminatory conduct. The basis for such strict liability is to remove discrimination from the workplace. It is not necessarily intended to punish or penalize the employer. Liability in this situation typically arises in the context of a human rights complaint.

Employee misconduct that is considered to be harassment on the basis of one of the other protected grounds against discrimination set out in the human rights legislation, such as the use of racial slurs by one employee against another, would also be considered discrimination and may also result in employer liability in the human rights context.

Unlike harassing conduct which may be characterized as discrimination, the legal obligations of employers for non-discriminatory worksite harassment or abusive behavior by employees is not as clearly defined. There have been some cases which have held that in appropriate circumstances, an employer will be liable for worksite harassment where the misconduct of the employee amounts to an "actionable wrong" in the course of the employee's job duties. Examples include assault, battery or intentional infliction of mental suffering by a supervisor in the course of overseeing other

employees in the workplace. In these situations, liability of the employer may arise in the course of a civil action brought by the aggrieved employee. These types of issues often arise in conjunction with wrongful dismissal suits in particular where the "victim" is forced to resign as a result of the abuse.

In addition, an employer may also be liable in negligence for failing to provide a safe work environment and failing to use reasonable care to prevent injury or harm to others from foreseeable danger. For example, an employer that is aware of a mentally abusive supervisor could face liability in negligence if it fails to immediately rectify the situation and provide a safe work environment to all employees. An employer is obligated to ensure that employees who are in a position of trust and authority conduct themselves appropriately. In addition, occupational health and safety legislation obligates employers to ensure a healthy and safe workplace. Breaches of this legislation may give rise to prosecutions and resulting fines.

As the law is generally demanding higher levels of responsibility from employers in this area, any employer that becomes aware of harassing or abusive conduct within its workplace should take immediate steps to resolve the situation. Such steps may necessitate removal of the person with the inappropriate behavior or otherwise taking proactive steps to ensure that the conduct ceases and the individuals subjected to the conduct are not harmed any further. The implementation of a policy for dealing with harassment complaints beyond those of sexual harassment should also be considered

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as a proactive step to limit employer liability in this area and show due diligence in attempting to achieve a healthy and safe work environment.

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