

Sexual Harassment in the Workplace:

A Legal Analysis

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Abstract

Employers are responsible for anything that happens within their organizations. They are held liable under several important provisions and acts that were implemented throughout history to hold employers responsible for their negligent actions and bring justice to the victims of the employer's unfair behavior. One of the leading complaints that the Equal Employment Opportunity Commission receives is sexual harassment claims against their employers (Cassey, 2024). The EEOC enforces the rules and investigates claims based on discrimination of protected characteristics. These protected categories are used to prevent discrimination that leads to tangible losses and adverse employment actions against employees that have faced unfair treatment within the workplace. We will evaluate what constitutes sexual harassment, the damages and remedies that plaintiffs may be entitled to, effects on the employer and workplace, and defenses that employers may be able to use in the instance that a complaint is filed against them. We examine the proper procedures, policies, and steps that are involved in sexual harassment cases.

There are many topics that employers should consider when analyzing liability factors that would have a significant impact on them and their employees. Harassment is one of the leading topics in employment lawsuits. The worst of these for an employer to impose is sexual harassment. “Victims of sexual harassment may experience severe emotional anguish, physical and mental stress, frustration, humiliation, guilt, withdrawal, and dysfunction” (Cihon et. al, 2020). Employees experiencing this type of behavior in the workplace will have other issues such as attendance problems, a high turnover rate, and it can lead to litigation against the employer. Paying expenses and damages will become an expensive price to pay if an employer does not take the proper steps to address these issues. Mitigating the damage and effectively dealing with the issue at hand can help employers avoid dealing with this type of lawsuit against them.

Title VII of the Civil Rights Act of 1964 covers equal employment opportunities within the workplace. This means that anything such as discrimination based on sex, race, religion, color, and national origin are protected for workers. Retaliation, pay, promotions, and terminations are all covered areas that the EEOC will investigate if they receive a complaint against an employer. They enforce the provisions and ensure that employers are held liable for any violations that cause an employee to suffer an adverse effect based on discrimination. Sexual harassment falls within this category because it often stems from discrimination based on sex (EEOC, 2024).

There are many remedies for sexual harassment available to plaintiffs under Title VII. They may include injunctions, lost wages and benefits, compensatory damages, punitive damages for intentional misconduct, reinstatement, and legal fees. Compensatory damages cover emotional trauma and medical treatment, while punitive damages are intended to punish the employer and hold them liable when litigation arises (Cihon et. al, 2020). Sexual harassment is considered intentional by the federal government. Statutory limits depend on the size of the employer under Title VII. State laws, federal and state constitutional provisions, and tort claims also protect employees dealing with sexual harassment in

the workplace. Between 1997 and 2021, approximately 305,000 sexual harassment complaints have been filed with the EEOC (Cassey, 2024). It has become all too common the workplace and women are often the ones sexually harassed at work. To limit liability, employers must take the proper steps to address complaints properly. Employers can still be held liable if they knew about the complaints and did nothing to address them.

It is crucial that an employee that feels that they are experiencing sexual harassment are informed and understand their rights as a worker. Documenting their experiences will help with the process of providing the burden of proof in the case of a litigation claim against their employer. Sexual harassment includes conduct of sexualized nature and includes unwanted conduct, sexual attention or coercion, rape, sexual assault, and displays of visual depictions of sexual acts or remarks (EEOC, 2024). If unwelcome conduct creates a hostile work environment or if it creates unreasonable interference with the employee's job or work conditions therein, then it is considered a violation of Title VII.

Both men and women are covered under the two main categories of sexual harassment according to the EEOC. There is sexual harassment that creates a hostile work environment, and then there is quid pro quo sexual harassment. Hostile work environment harassment is where an employee is subjected to any unwelcome conduct, including comments, jokes, or propositions pertaining to a sexual nature. It creates a decrease in morale, productivity declines, and performance is affected in a negative way. "To create a hostile work environment, courts have held that the harassing conduct must be so severe or pervasive that it changes the conditions of the workplace and an abusive working environment is created" (AAUW, 2019). Hostile work environment cases use the reasonable person standard to determine if the unwelcome conduct was in fact so severe and offensive that it interfered with the employee's performance.

The EEOC has also addressed the courts to consider the perspective of the victim in these cases. In other words, they consider what behaviors would be acceptable or unacceptable to the person of a specific gender (Cihon et. al, 2020). This caused the courts to adopt a reasonable victim, or reasonable woman standard. This is because men and women may perceive sexual comments or other unwelcome conduct differently than a women would. Therefore, the reaction from a male would differ from the perspective and reaction from a female. The effects of dealing with such behavior are subjective to the reasonable victim standard and objective to the reasonable person standard.

In one scenario, Theresa Harris was employed at Forklift Systems Inc. and had filed a complaint against Hardy stating that his unwelcome sexual conduct was traumatizing and was going to create the adverse effect of her resigning. The Supreme Court of the United States determined that she was in fact a victim of sexual harassment due to the crude and vulgar nature of his sex-based derogatory behavior (APA, 1993). Hardy apologized and stated that he was joking. Harris felt as though the conduct would not let up because Hardy was not taking her complaints seriously. To him, it was only kidding, and he considered it to be harmless. After a complaint was filed with EEOC, a U.S. magistrate judge determined that Hardy's conduct would have been offensive to a reasonable person.

Despite those conclusions, the courts did not see that Harris suffered severe psychological injury, so Hardy's conduct did not actually create a hostile work environment. Harris appealed and the district court affirmed the decision. A unanimous decision outlined that Title VII is not violated in the behavior is offensive. After this instance, the reasonable women and reasonable victim standard was proposed. It is important to note that discriminatory sexual harassment in the workplace can be characterized differently depending on the victim's perspective. The conduct must be severe and pervasive enough to modify the conditions of employment (AAUW, 2019). Hostile work environment harassment has become a complex issue that requires a thorough evaluation to determine liability. The courts created a document that helps employers protect themselves from vicarious liability.

Quid pro quo harassment is considered a violation under Title VII of the Civil Rights Act of 1964. To establish the case, the plaintiff must show the burden of proof that this was the case. They must demonstrate that they belonged to a protected group, that the harassment was based on sex, the job conditions depended on the acceptance of the harassment, whether the conduct was appropriate, and if there is any basis to hold the employer liable (Cihon et. al, 2020). The conduct must explicitly or implicitly modify the conditions of the employee's job. The EEOC views an employer that rewards an employee for engaging in a sexual relationship and other employees are denied that same award, then quid pro quo harassment is considered. Any violations of gender discrimination and sexual harassment must be taken seriously to avoid litigation. Quid pro quo harassment is enforced through Title VII and is considered sexual harassment because the behaviors often come directly from the supervisor or manager.

The EEOC has guidelines that state that employers are liable for sexual harassment if coworkers or nonemployees conductively act in such a manner. However, that depends on the circumstances and is used on a case-by-case basis. Supervisors and managers are held liable for sexual harassment in most cases. This is because they act as an agent of the employer. They represent the company and common-law agency principles have determined that managers are explicitly in charge of the actions that occur within that establishment. An agency relationship is created when the employer accepts, tolerates, ratifies the behavior, and becomes aware of the conduct and fails to follow the appropriate steps to stop it (EEOC, 2024).

Employers can prevent being sued for sexual harassment if they take the proper steps to address complaints. A best practice to ensuring that liability will be limited or removed is to first have a harassment policy that addresses sexual harassment in their employee handbook or otherwise noted. The employee should be made aware of the policy within the first few days of hire, and the policy should be fully known and understood. It is a good idea that employers have employees acknowledge the policy,

preferably in writing. The policy should inform the employee of the proper outlined process and procedures for filing a complaint. It should define harassment, outline penalties, and it should state that employees are protected from retaliation if they do file a complaint. It is important that the complainant is aware of what is legally constituted as sexual harassment so that employers can address the issues in the proper manner (MCAD, 2021).

There are some defenses that employers would be able to use to limit liability. The first defense is the employer claiming that the conduct was an isolated incident. They would have to specify that the conduct was not frequent, severe, or pervasive enough to cause the employee's work performance to decline (Cihon et. al, 2020). The second defense involves the employer claiming that the employee did not express dissent or explicitly state that the behaviors were in fact unwelcome by the victim. The last claim that an employer could use as a defense in a sexual harassment complaint is to state that the complainant provoked the harassment through their own actions. "It is imperative that employers analyze all available defenses to a claim of sexual harassment to ensure the strongest defense possible" (Weitzman, 1999).

If an employee files a complaint about sexual harassment, it is crucial that employers take the proper steps to protect themselves in case of litigation. They will be held liable under Title VII of the Civil Rights Act of 1964. The EEOC will enforce the provisions outlined by the federal government. Some states have stricter policies, so employers should ensure that they are well-informed on what can happen if a complaint is filed against them alleging sexual harassment. Sexual harassment can create a hostile work environment, lower employee morale and performance, and it can cost the company money in numerous ways. Employees should also do their part in ensuring that they are tracking and documenting any instances they felt violated their rights. Having that burden of proof will help them seek justice if an employment lawsuit arises.

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