

Commitment to Change

Sexual harassment in the workplace is a real problem, with real—and costly—implications for your business.

One thing is clear: Sexual harassment carries a high price.

- The cost of investigating an employee's complaint: \$20-\$30,000
- The average jury award to sexual harassment plaintiffs: \$350,000
- Total litigation costs for defending against a claim: up to \$1 million.

And these are just the direct costs. After adding in the employee-related losses due to lowered morale, stifled productivity, and stepped-up absenteeism, Klein Associates, Inc., a Cambridge-based consulting firm, found that the typical Fortune 500 company can lose \$6.7 million annually because of sexual harassment. “The liability is “great...overwhelming,” says Cheryl Yannello, president of Human Resource Services, a Raleigh North Carolina-based consulting firm, “and the publicity is probably even worse than the payments.”

Know your vulnerability

Your business is not immune. More than 80% of the men and women responding to a survey of hospitality-industry managers perceived gender discrimination and sexual harassment in the workplace as an ongoing problem. According to Robert H. Woods, coauthor of the survey and associate professor at Michigan State University's School of Hotel, Restaurant and Institutional Management, “If the harassment is this bad at the management level, we can only assume that it's worse at the employee level. Having worked in restaurants a lot,” he concludes, “I think it's almost second nature.”

Restaurants are particularly vulnerable, says Donna Lenhoff, general counsel for the Women's Legal Defense Fund in Washington, D.C. “A lot of things about the structure of the work make sexual harassment extremely prevalent in the restaurant industry,” she cautions. The opportunities for harassment, by co-workers, by managers, even by customers, are plentiful.

Employees interact constantly, often in places like kitchens or supply rooms, that may be fairly isolated. Waitresses feel a lot of moment-to-moment pressure to get the order back out to the customer; their hands may be loaded with trays of dishes and/or hot food, so they can't stop to deal with an offensive incident. Many restaurants are small, with no personnel director or human resource advisors to monitor the work envi-

ronment. “Some restaurants,” says Lenhoff, “are begging to be sued. Management needs to be extremely aware of the liability it is potentially bringing on itself by setting up a work environment” that does not discourage sexual harassment.

How do you build a work environment that is harassment-free? By starting at the top, say the experts. “People at the very senior levels (in the organization) must be committed to the idea that there will be no harassment,” says Yannello. “Commitment must come from the top down.”

It's your restaurant; you provide the workplace in which these problems can occur. And developing and demonstrating that commitment is an important part of your role as a franchisee or manager. Besides being the right thing to do, “harassment-proofing” your establishment decreases your risk and lowers your exposure to possible high-profile, potentially business-threatening lawsuits.

Let's evaluate the sexual harassment potential and the managerial attitudes illustrated in the following scenarios. (Names, places, and specifics are fictional, but the situations are based on real-life restaurant industry cases.)

Scenario 1. Mike, owner of a small suburban restaurant, hires local teenagers for his high-turnover counter positions, giving many of them their first “real job” and requiring them to report to a shift supervisors describes himself as an “outgoing, fun-loving, and friendly” guy who likes to “kid around with the kids.”

When asked about the possibility of problems with sexual harassment at his establishment, Mike says, “We don't have that kind of hassle here. The workers and supervisors all get along and enjoy their work. The kids all have a great time, and we've never had a complaint.”

Does Mike have a problem?

Scenario 2. Paul owns three restaurants in a mid-states region, with each location run by a general manager who is responsible for overseeing all operations in his store. As owner, Paul says, “We have a clear policy on sexual harassment. My managers and I keep close tabs on what happens at each location. If there's any hanky-panky, any offensive behavior, the manager will talk with the employees involved and take appropriate action.

Has Paul covered all the bases?

by

JUDITH
HARPER

Scenario 3. A mid-sized big-city restaurant serves a clientele consisting mainly of workers from a nearby mill. Lunch hours are busy, loud, and chaotic, with employees working at an almost frenzied pace to keep up with orders. Waitresses complain about one group of obnoxious customers and compete for the opportunity to avoid waiting on the group. "They talk dirty," says one. "They need to have their hands cut off," says another. "They're dirty old men," says a third.

Frances, the owner/manager, allows the waitresses to rotate the unpleasant task among them, but advises them that "it's all part of the job. Let it slide." When asked about sexual harassment at the restaurant, she says, "We don't put up with it. Our sexual harassment policy is posted so that every employee has to see it at least twice a day. I don't tolerate unacceptable behavior from the people who work for me."

Does Frances have a potential liability?

MOVING AWAY FROM HARASSMENT

To take the first step toward a harassment-proof restaurant, a manager must understand what kind of behavior qualifies as sexual harassment.

In Scenario 1, Mike's complacency and lack of understanding about the legal definition of sexual harassment may cost him big-time. Recently, a fifteen-year-old former employee and her mother filed a lawsuit against the restaurant in federal court. The complainants charged that the girl found herself in a sexually charged atmosphere that included leering, tickling, patting, vulgar language, and offensive jokes, with the "friendly, outgoing supervisor" as the principal offender.

Here's what Mike—and you—need to know about sexual harassment. The law recognizes two general types of sexual harassment defined in Equal Employment Opportunity Commission (EEOC) published guidelines:

The first, *quid pro quo* ("this for that"), occurs when the benefits of the job, such as wages, promotions, or continued employment, are conditioned on the employee's submission to unwelcome sex-

REALITY STRIKES

What to do when a harassment complaint hits home

If you're hit with a sexual harassment complaint, go by the book, says consultant Cheryl Yannello. Here is the plan she recommends for a business owner to follow in coping with the accuser, the accused, the investigation, and the disposition of the complaint.

1. Be prompt and thorough, following the procedure outlined in your policy.
2. Have the complainant complete and sign a statement that specifies the nature of the complaint. Find out what type of redress or remedy he or she is seeking. (It's important to understand what the charging party is looking for.)
3. Interview each party who witnessed the actionable behaviors and/or comments; document their statements.
4. Present the charges to the accused harasser and document his or her response.
5. After the data have been gathered, evaluate what you have. Assess the credibility of the witnesses; judge the severity (outrageousness and frequency) of the offenses; determine an appropriate penalty.
6. Inform the complainant of the action you have taken to punish the offender.
7. Retain all documentation in a file that is completely separate from the complainant's personnel file, to avoid any possibility of future retaliatory action.

Some important points to remember during the investigation and resolution of the charge:

- Courts want to see punishment that fits the severity of the offense. Thorough investigation, complete documentation, and reasonable punishment for the offender all tend to mitigate a court's finding of liability. In such cases, Yannello says, "Most courts say 'the company is trying,' and won't hold it liable."
- Be very careful not to retaliate against the complainant. However, if the charge proves to be fictitious, malicious, and without merit, disciplinary action can be taken against a false accuser.

ual conduct or favors.

The second type of harassment, which is sometimes harder for an employer to spot, is the creation of a hostile working environment. "Hostile-environment" harassment occurs, Yannello says, when an employee "feels that her ability or performance is hindered by sexual connotations, with people making comments or innuendoes" of a sexual nature. The supervisor's "joking and teasing" had created an employee's "hostile and abusive work environment."

No news is not necessarily good news;

in sexual harassment situations, silence does not necessarily imply consent. "You don't want that hostile environment," says Yannello. Your current employees may tolerate it without complaint, but new hires in high-turnover positions may not be so tolerant. And an employee who has had it "up-to-here" with joking and teasing has no problem finding a lawyer to handle her case.

WHO GUARDS THE GUARDIANS?

A comprehensive company policy on sexual harassment is "fundamental," says Yannello. "It must be posted in every work location; that's the law." The policy you establish must contain five essential elements.

First, the policy must define sexual harassment, in clear and unambiguous terms. Second, it must describe the procedure employees are to follow in making a complaint. It is especially important to specify the party or organization to whom a complaint should be made and to offer alternatives other than the employee's direct chain-of-command.

In Scenario 2, Paul's failure to establish an alternate line of communication could make him liable for the actions of his general manager. John Sherry, professor of law at the Cornell University School of Hotel Administration, explains the dilemma: "When [the business] has set up a system to report [sexual harassment], what does the employee do when the person to whom you would report this incident is the problem?"

"The courts," he emphasizes, "don't like this situation."

A cook at one of Paul's locations filed suit, testifying that she was subjected to ongoing sexual

harassment by the general manager, including comments on her and other female workers' breasts, buttocks, and physical appearance. When the cook complained to her immediate supervisor, the general manager had her transferred to another location and cut off her eligibility for benefits. Finally he recommended that she be fired. A jury awarded her a judgment of \$125,000 in general damages and \$500,000 in punitive damages against Paul.

"If people are afraid to challenge the boss," Sherry says, "everyone will treat the sexual harassment policy as a cynical

window dressing exercise. That's where you expose yourself to major liability. "There has to be someone—an ombudsman, an ethics officer, or even a third-party hot line—with the authority to deal with the issue."

Finally, the policy must define the investigation that will follow up on the complaint (see sidebar), guarantee that no reprisals will be taken against the complainant, and specify that the complainant will be notified about the results of the investigation.

TURNING COMMITMENT INTO ACTION

Having a written policy is not enough. If all you do is "post the policy and walk away from it," says Yannello, "you're still running a great liability risk."

Business owners need to have a formal system set up so that the policy can be communicated, so that people can ask questions about it and make sure they understand it, says Euneata Payne, training consultant for Columbus, Ohio-based Image Makers Training. "You want to educate your workforce: show them typical situations, demonstrate through video, or role playing, or case studies. This brings it home and makes the policy more real to the employees."

In Scenario 3, despite the written policy proscribing sexual harassment, neither Frances nor her employees understood the extent to which an owner is liable for third-party harassment. According to Professor Woods, "There have been several judgments lately awarded to employees, specifically in restaurants, because employers allowed customers to come in and harass them. A manager must educate employees" to report third-party harassment.

It's important for franchisees, operators, managers, and team members to understand clearly the nature of harassment. "Most people still do not understand the seriousness of sexual harassment," says Payne. "They take it very lightly."

Vigilance is the low price of harassment-proofing your restaurant: new employee orientations, yearly postings, and periodic training sessions are part of the drill. According to Yannello, "You must be able to show that the company has gone the extra mile to do everything possible" to educate and protect its employees.

In your restaurant, the buck stops with you. Develop plans and policies now to make your workplace harassment-free. ■