

CALIFORNIA EMPLOYMENT
LAW CORNER *By Jessica A. Braverman, Esq.*

Raising Awareness About Sexual Harassment is Important to Avoid Potential Claims: Know the Law

Recently I read a news flash from Associated Press that Mexico City started “Women Only” bus routes. Apparently these new rules were in direct response to sexual harassment complaints from women in Mexico. I read, “In response to women complaints of unwelcome fondling, leering, and touching, Mexico City has gone to Women only buses or “pink buses” as they are now called.”

Sexual Harassment Lawsuits are on the rise in the United States. And when the economy goes down and gas prices go up, it seems more and more of these types of lawsuits are filed. Just ask John Burton in San Francisco. And although it appears recently that these lawsuits are only filed by women, look again. Many of the seminal US Supreme Court cases actually involved accusations of men sexually harassing men.

California took this topic so seriously that in January 2006, the California Legislature passed Assembly Bill 1825. This requires employers with 50 or more employees to do mandatory sexual harassment prevention training. But, for employers with less than 50 employees, the risk for lawsuit is still very high.

What is Sexual Harassment and how does it show up at the business site?

The law states that Sexual Harassment may show up in one or in two ways. The first theory is what is called, “Quid Pro Quo” sexual harassment. The actual Latin translation is “This for That”, and shows up in the form of, “If you have sex with me, I will promote you to manager...” It is unlawful at the workplace for anyone to engage in Quid Pro Quo sexual harassment.

The reverse Quid Pro Quo is also prohibited by law, which is “If you don’t have sex with me, you’ll be fired or demoted.” Believe it or not, recent quid pro quo lawsuits have been filed by third parties who are not sleeping with the boss on the theory that because they did not get that opportunity (to sleep w/ the boss), they have been denied better or preferential treatment.

The second theory of sexual harassment is “Hostile Work Environment” sexual harassment. Under this theory, the behavior must be unwelcome, severe or pervasive with an element related to gender that materially affects that person’s ability to do his or her job. The Hostile

Work environment is not “I do not get along with my boss so I am working in a hostile work environment.” The hostile work environment can show up in visual, verbal, environmental and physical ways. For example, screen savers. Although valentine’s day just passed, a screen saver at work of the “chip and dale” male strippers would likely cause a hostile work environment at work.

Making sexual jokes, talking about your sex life where other people can overhear, and hugging and whistling at all the women in the office will likely lead down the sexual harassment path. Even flirting at work could come back to haunt you. Overbearing perfume or cologne is definitely a no- no, and holding your company holiday party at the local strip club, is not a good financial idea.

Why we care is that many if not all of the lawsuits filed for sexual harassment cost the average business owner over \$100,000 in legal fees and costs, not to mention the often high jury verdicts that normally exceed a million dollars. Owners of business and managers are also both professionally and personally liable for sexual harassment claims.

What can the business owner do to protect against sexual harassment claims?

First, check and make sure your business has Employment Practices Liability Insurance or EPLI. Many business policies actually exclude sexual harassment or sexual discrimination claims. Do you know if your insurance covers this type of situation or not? You can call the San Ramon Chamber for more information about this, or email Jessica@CAELTC.com.

Next, Have a policy that states that your business has a zero tolerance for sexual harassment and/or gender discrimination and follow it. Do a careful self assessment and keep your ears and eyes open for potential gaps for problems.

Third, have an established policy to follow if someone does come forward with a complaint. I think it is best to have a neutral person set up in advance to call in case who can respond and do an immediate investigation. For example, if you are a small coffee company called XYZ Coffee, you might ask another business owner of ABC Yogurt shop to be your neutral person and you be theirs. Place on your website your policy and your process. That way you are more likely to hear directly from a customer, an employee or a vendor that there is a problem before they call their attorney.

For example: XYZ Coffee shop is an equal opportunity employer. We adhere to those laws as they pertain to unlawful discrimination with a zero tolerance for sexual harassment or gender discrimination. If anyone has a good faith complaint in any of these areas, we ask that you call a neutral party, such as Brenda Smith at ABC Yogurt Company at: 800-345-2235. Brenda will listen to



your complaint and will investigate all sides immediately so that an appropriate and quick remedy can be achieved. XYZ Coffee shop follows the no retaliation laws for anyone bringing a good faith complaint. (have an attorney review before using)

Next, take a sexual harassment prevention training class and have ALL of your employees trained regardless of how many employees you have. The US Supreme Court has allowed training to be raised as an affirmative defense in a lawsuit. This doesn't necessarily mean that you will prevail, but showing that your company, regardless of size, does preventative training can help. Business owners and Board members should update their certificates of completion of this course at least every 2 years.

Currently the San Ramon Chamber is offering Sexual harassment prevention classes the first Friday of every month. The next one will be held on April 11 from 2pm to 4pm at the San Ramon Chamber office. Check out: www.SanRamonChamber.com. The cost for members is \$50 per person (or \$75 for non members) for the 2 hour course plus a certificate of completion. So far, the class has been well received by those who attended the one last month.

Finally, if you see someone acting inappropriately speak up and remind them Sexual Harassment Lawsuits are not a myth. They are time consuming, expensive and devastating to all businesses and organizations. Unfortunately or fortunately there are no "pink buses" in the United States and certainly not here in California which means we all have to do our part to make sexual harassment a thing of the past. Remember the standard is what a reasonable person would find offensive or harassing at the work place.

If you have any questions about sexual harassment, please email your question to Jessica@CAELTC.com or if you have any experience with sexual harassment or have an opinion about it, please email that too.



This is a regular column being brought to you by California Employment Law Training Center, a member of the San Ramon Chamber of Commerce. This column is for informational purposes only and is not intended to provide legal advice. Each month, Jessica will address employment law related topics and all members are encouraged to submit questions or topic ideas to Jessica directly at Jessica@CAELTC.com.

DISCLAIMER: This article is not intended as legal advice and that all readers should consult with their attorneys.

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