

Use some respect and dignity

BY LAWRENCE R. LEVIN

The highly publicized lawsuit charging President Clinton with sexual harassment has once more raised the consciousness of employers and employees to sexual harassment issues. A recent poll found that 31 percent of female workers claim harassment.

Since the Supreme Court's recent Harris decision, which found liability without proof that harassment "seriously affected" the "psychological well being" of the victim, large damage awards have been almost common. In the King case, the plaintiff received \$300,000, including \$30,000 in punitive damages against her immediate supervisor and \$10,000 from a fellow employee who conspired to retaliate for her charge.

A harassing supervisor in a Massachusetts case was personally hit with \$750,000 in punitive damages, while a California case resulted in a whopping \$1,300,000 judgment against a male manager at AT&T. Failure to stop harassment resulted in a Pennsylvania supermarket chain being liable for \$140,000 in damages.

How to prevent liability

For liability the victim need only show a working environment that a reasonable person would find hostile or abusive. Under all of the circumstances, the test is whether the conduct unreasonably interferes with an employee's work performance. The Harris case's failure to set objective standards has been criticized for opening the floodgates to inappropriate lawsuits.

Rational business executives do not agree, however, believing the Harris case only requires modern business practices necessary to be cost-efficient—treating all employees with respect and dignity. If your company wants to avoid major damage awards, take five basic steps:

- 1) Establish a written policy prohibiting sexual and other harassment. In clear, common-sense language, the policies must make it the duty of all employees to treat each other with respect and dignity.
- 2) Provide employees with meaningful procedures to redress harassment claims. Unless the policies are actually carried out, liability is just around the corner.
- 3) Invest in programs to sensitize and train managers and supervisors. The cost of such programs is far less than the large judgments hitting the bottom line or even the cost of litigation itself.
- 4) Promptly and thoroughly investigate and document any harassment claims. Even if a perpetrator is found liable, the company that acts will avoid being held responsible.
- 5) Promptly redress inappropriate conduct and take corrective action.

By following these five common-sense steps, your company can make clear that a perpetrator's actions are the acts of the individual and not the employer.

Two recent cases—the Saxton case and the Caramon

case—illustrate how courts are reacting when sensitive employers act promptly and thoroughly to correct problems. In Saxton, an AT&T supervisor made several sexual advances to a subordinate over a 14-month period, including pulling her into a doorway and kissing her.

Acknowledging that Saxton might have experienced "significant discomfort and distress" due to her supervisor's uninvited and unwelcome advances, the court focused on AT&T's prompt response once the problem was reported.

Because AT&T followed the five basic steps to protect its employees, the conduct did not rise to the level of "pervasive harassment" with sufficient severity to create an objectively hostile or abusive working environment. No liability was found on AT&T's part.

The court in Caramon went even further. A 10-year employee, Caramon claimed she had twice been subjected to a hostile working environment. On the first occasion, a fellow employee used vulgar language and questioned her about her sexual activities. The court found the employer "immediately sprang into action" and completed the five basic steps. A year later, Caramon made a second complaint.

Again, the employer had implemented the five basic steps. Significantly, the court said, "Holding a company liable after it has taken such action would produce truly perverse incentives benefiting no one, least of all actual or potential victims of sexual harassment." The Caramon court sanctioned the employee and her counsel for prosecuting a meritless appeal.

Take all five steps

Failure to implement all five of the basic steps has resulted in just the opposite result. In Shope, for example, the employer's failure to investigate promptly and enforce its anti-harassment policy resulted in an award of over \$630,000 against the employer. Shope's supervisor was personally hit with \$25,000 in punitive damages for remarks that she was "too aggressive a woman" and a "stupid woman," and for pounding on a table in her presence as well as standing too close and shouting in her face.

Today, with damage awards regularly running from \$300,000 to \$1,500,000, taking the five basic steps to avoid liability not only makes sense, it is cost-effective management. Hands-on management is expensive; treating employees with respect and dignity is good business.

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It is cost-effective management.