

Preventing Sexual Harassment Suits

By Dave Goldberg in Northwest Technology Transfer Center Bulletin

Sexual harassment complaints, charges and suits have been filed against transportation-related employers. Some understanding of the nature of the problem and the employer's liability, along with a determination of positive steps, can lessen or prevent the potential for sexual harassment in the workplace. Achieving this understanding is just as important as doing scheduled maintenance, or taking action to prevent equipment breakdown.

Guidelines on sexual harassment were adopted by the Equal Employment Opportunity Commission (EEOC) in 1980. These guidelines state that sexual harassment constitutes "discrimination because of sex" as defined under Section 703, Title VII of the Civil Rights Act of 1964, as amended. Courts have given great credence to these guidelines. They list two major types of harassment: "quid pro quo" and "hostile work environment."

Quid pro quo ("this for that") occurs when an implicit or explicit request for sexual favors is made in exchange for job benefits. The job benefits would be a term or condition of employment or the basis used for employment decisions; for example, hours of work, overtime, job location, etc.

A hostile work environment is created when verbal or physical conduct of a sexual nature unreasonably interferes with work performance or creates an "intimidating, hostile or offensive working environment." It has been further defined by some states that the conduct must be unwelcome, must be sexually intended, and must affect the terms or conditions of employment.

In addition, the EEOC and the courts recognize two other frequent situations: "injured party" and "non-employee harassment."

Injured Party: Even if a supervisor and subordinate agree to exchange job benefits for sexual favors, a third employee who is "injured" as a result (loses job, promotion, assignment, etc.) may bring charges against the employer.

Non-employee Harassment: An employer has an obligation to protect employees from sexual harassment by non-employees (passengers, contractors, etc.) to the extent possible and legal. The employer may be charged for not intervening.

Transportation agencies are particularly vulnerable to harassment charges. They tend to fit a profile defined by a study for the U.S. Department of Transportation in the 1970s. The study indicated the likelihood of harassment when women work in traditionally male jobs. Work groups in this profile: (1) are predominately male; (2) include the majority of women in low-paying/low-status jobs subordinate to men in positions of power/authority; (3) have poor communication between employees and supervisors; and (4) exhibit indication of pressure to flirt, make sexual jokes and "be one of the guys."

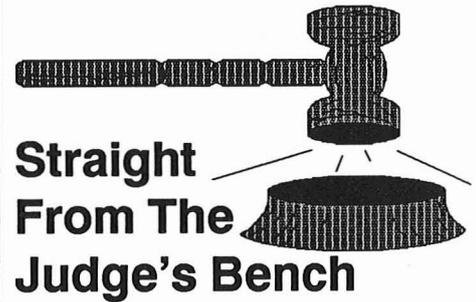
Employers are held to strict liability in "quid pro quo" harassment cases since these involve supervisors harassing subordinates. Courts have held that employers should have known about such situations. Employers are liable in "hostile work environment" harassment if they knew of the situation, or if the harasser was a member of top management. In either case, the employer is required to act immediately and effectively to halt the harassment.

Many transportation agencies' employees are worried that they may be unintentionally doing or saying something that may bring charges of sexual harassment. By observing some simple guidelines and discussing any questionable areas with personnel representatives, affirmative action staff, or supervisors, charges can be avoided. Examine your present behavior by using the following brief checklist:

Sexual Harassment Checklist

- Due to its sexual nature, would I object if someone said or did this to my wife/husband or daughter/son?
yes no
- Do I base decisions on employment and benefits for my subordinates on their granting or denying of sexual favors?
yes no
- Are sexual jokes, comments, pictures, or horseplay occurring on the job?
yes no

For The Record



Straight From The Judge's Bench

The U.S. Supreme Court last week turned away an appeal by Missouri officials who were found guilty of sex discrimination. The case involved the hiring of women as highway maintenance workers. The high court also refused to hear an appeal by women who said remedies ordered by lower courts against the Missouri Highway Department -- a general order against discrimination instead of hiring quotas -- were inadequate.

USA Today, April 26, 1988, cited by: American Road & Transportation Builders Association Newsletter, Vol. 32, No. 13. ■

- Am I persistent in making sexual advances or comments even when someone says "no," "draws the line," or clearly signals my advances or comments are unwelcome?
yes no
- Do I use terms like "baby," "honey," "sweetie" when referring to fellow workers of the opposite sex?
yes no
- Do I say or do things just to get someone of the opposite sex "riled," or "aggravated?"
yes no

If the answer to any of the previous questions is "yes," you have been given a warning sign. You need to examine and re-evaluate what you're doing, and possibly seek advice from your supervisor or personnel office.

Remember that common sense, good taste, and good manners are just as important at work as they are at home. Rules for preventing sexual harassment can help to create a better work environment for all of us. Good judgment is just as important as the details of the law. ■