

SEXUAL HARASSMENT CLAIMS: AN OVERVIEW *

By John P. Mahoney, Esq., Partner, TULLY RINCKEY, PLLC, Washington, DC[†]
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Under the Civil Rights Act of 1964, as amended, employers may be found liable for sexual harassment of their employees. There are generally two types of sexual harassment claims. Traditionally, the first type is *quid pro quo* harassment, which occurs when a supervisor demands sexual activity in exchange for some workplace benefit. The second type, which traditionally referred to as "hostile work environment" harassment, is defined as unwanted conduct of a sexual nature that is severe and pervasive enough so as to alter a term or condition of the employment or result in the creation of a hostile work environment. Employees who engage in such unwanted conduct like sexual comments or gestures that interfere with the victims' ability to do their jobs, may be guilty of sexual harassment. Same gender sexual harassment is also prohibited by the Act.

Employers are strictly liable for sexual harassment by their supervisory employees whenever the victim employee suffers some tangible employment action due to the harassment. Tangible employment actions include such concrete personnel actions as terminations, demotions, suspensions, or adverse changes to working conditions. If the harassment does not result in a tangible job action, the employer is still liable for supervisory harassment unless it can show that it used reasonable care to prevent and correct any harassment; and that the victim employee unreasonably failed to take advantage of the employer's harassment complaint procedure.

The keys for liability are whether the complained of conduct was unwelcome and whether it was severe and pervasive. Isolated incidents, unless they are extremely serious, will not suffice to establish liability. Occasional use of abusive language, gender-related jokes, or teasing, standing alone, is not sufficient to prove actionable sexual harassment. The conduct must be both severe and pervasive, so the frequency of the alleged misconduct is relevant to establishing liability.

Employers must realize that they can also be liable for sexual harassment by their non-supervisory employees, and even by customers of the employer, if the employer had knowledge of the harassment and failed to take necessary steps to correct the harassment. Necessary steps may include promptly removing the harasser from the victim's workplace, by disciplining the harasser, or by taking other actions to put the victim back to where they were, in terms of working conditions, before the harassment began.

Employees who are the victims of sexual harassment or other actionable discrimination may be able to obtain awards of compensatory damages, and, in some cases, punitive damages, in either state or federal court. Another important lesson for employers to keep in mind is that it is also unlawful under the Act to retaliate against any employee who files a complaint or otherwise opposes discriminatory or harassing conduct. Harassment claims can also be brought under the Act for harassment based upon the victim's race, color, national origin, religion, disability, age, or prior EEO activity. Harassment claims must be taken seriously by employers, as they risk significant liability for ignoring or failing to correct such misconduct.

Workplace harassment can result in severe damage to the victim in terms of emotional distress, and even physical symptoms. In addition to discrimination claims, workplace harassment cases can also lead to actionable workers' compensation claims. Many states have anti-employment discrimination statutes that provide for unlimited damages awards in harassment cases. To support claims of compensatory damages, it is important for the victim to seek proper medical attention. Training employees and supervisors is a very effective way for employers to reduce and hopefully avoid workplace

harassment claims. Promptly investigating and correcting harassment may save a company lots of money, as well as the bad publicity that often results from meritorious workplace harassment claims.

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† John P. Mahoney, Esq. is a Partner in the Washington, DC Federal Employment Law Firm of TULLY RINCKEY, PLLC. (www.fedattorney.com). Mr. Mahoney specializes in representing federal government agencies and officials, as well as federal contractors, in all facets of federal employment law, including sexual harassment cases.