

# Employment Practices

## UPDATE

## Workplace Harassment: *Reason for Concern*

The public expects “the best” from emergency services organization (ESO) employees and volunteers. Workplace harassment lawsuits or allegations place ESOs directly in the media and thus in the public spotlight. This is why ESO leaders must understand the words and behavior of employees and volunteers will be harshly scrutinized when a harassment claim is made.

that you won’t be subjected to a stuffy corporate environment.” While it is true the emergency services industry offers a unique work experience, there is still a legal “line” that should not be crossed in terms of harassment.

### What Conduct “Crosses the Line”?

Generally, it is an unlawful practice to harass or otherwise discriminate against an individual because of race, color, religion, sex, national origin, disability, or other protected class status. ESO leaders must be on the lookout for verbal or physical conduct that affects an individual’s employment or membership, unreasonably interferes with work performance, or creates an intimidating, hostile, or offensive work environment.

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This article explores the unique challenges facing ESOs regarding workplace harassment prevention and resolution.

### Not Your “Stuffy” Work Environment

Working in emergency services provides an experience different than any other business. As a way of coping with work-related stresses and incidents, members’ satirical humor is a common byproduct.

One ESO leader said, “If you’re looking for a work environment dominated by political correctness, emergency services is not the industry for you. Part of the appeal is believing

Offensive words or behaviors must not only be unwelcome to the complaining member, but also considered offensive by most reasonable people. Thus, conduct may not constitute unlawful harassment if the complaining member is offended, but most reasonable people wouldn’t consider the conduct to cross the legal “line”. This helps address scenarios where a hypersensitive worker is offended and complains of harassment, but in general the conduct wouldn’t be considered unlawful harassment. Under these circumstances, the conduct should still be addressed even if the unlawful “line” hasn’t been crossed.

On the other hand, there may be a scenario where most reasonable people believe certain

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Write to:  
Editor  
Employment Practices Update  
P.O. Box 2726  
York, PA 17405  
epupdate.opinion@vfis.com



## WORKPLACE HARRASSMENT:

### Reason for Concern

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conduct would constitute unlawful harassment, but the complaining member of an ESO must also prove that he or she was actually offended. This helps deal with a member who is the “worst offender of harassment,” yet makes a formal charge that he or she is offended by another’s conduct. When analyzing what behavior constitutes a hostile work environment, the law holds people accountable for their own past actions.

### “Downtime” While on Duty

Long shifts are part of working in the emergency services industry. As opposed to a typical “9 to 5” job, ESO workers may have “downtime” available while on shift. This provides opportunities to watch television, surf the Internet, or simply converse with coworkers. Downtime can lead to problems for ESOs regarding unlawful harassment.

During one harassment prevention training session, firefighters were asked whether the following scenarios of downtime could be construed as creating or contributing to an unlawful hostile work environment:

- Watching a *Jerry Springer* television show that focused on transvestite sex; or
- Viewing on television *The Man’s Show*, which ends each episode with girls jumping on trampolines in their lingerie.

The vast majority of ESO members at the training determined the scenarios given were “no big deal” and advised, “If you can’t handle those situations, you should get out of the fire service.”

The author of this article doesn’t suggest watching single television episodes of *Jerry Springer* and *The Man’s Show* would necessarily lead to a finding of unlawful harassment. However, it is important to note most American workers don’t have the option of watching television while “on the clock” and most CEOs or Human Resources Directors would not tolerate the viewing of *Jerry Springer* or *The Man’s Show* in the corporate lunchroom.

*Language or conduct that some in emergency services may consider “commonplace or acceptable” may not be viewed as appropriate or acceptable by those outside of the industry.* Remember, judges and jurors likely have never worked in emergency services and may not share the same understanding of what workplace behavior or language is “commonplace or acceptable”. Instead, judges and jurors expect utmost professionalism and ethics from ESOs and likely won’t be very compassionate in the event of a harassment lawsuit.

### Probationary Members

In some ESOs a probationary member is regarded as one who must not only meet operational and procedural standards, but also put up with a healthy dose of ridicule for being the “new kid on the block”. ESO leaders are tasked with respecting tradition in handling probationary personnel, while at the same time recognizing potential hazing or even unlawful harassment. Certain behaviors can be interpreted as unlawful harassment even though we might say, “That’s what has always been done at our Agency in regard to probationary members.”

### Dating Coworkers

A gender-diverse workforce presents opportunity for dating and/or sexual relationships among coworkers, which can lead to serious sexual harassment liability concerns for an ESO. Once advised of a current or terminated dating relationship among coworkers,

ESO leaders should take steps to ensure workplace harassment or retaliation hasn’t occurred nor will occur in the future.

### “Nowhere to Turn”

Many ESOs are considered paramilitary, thus very dependent on a chain-of-command organizational and reporting structure. This fact presents one of the greatest challenges facing ESOs in terms of harassment prevention and resolution.

Members may allege they had “nowhere to turn” within the ESO to report harassment and consequently have it investigated and stopped. These members may cite the strict chain-of-command reporting structure as the reason why they felt forced to confront the alleged harasser and were afraid to report within the ESO. A member may believe hiring an attorney is the only safe place to turn.

Clearly and periodically communicate to ESO members that:

- Multiple avenues of internal complaint are available
- Members are not required to confront the person who is the source of the complaint or closely affiliated to the person who is the source of the complaint
- A conflict of interest check will be conducted to ensure neutral members of the ESO will investigate the harassment allegation; and
- The ESO reserves the right to utilize an outside third-party investigator to bring neutrality to the resolution of the complaint.

### Practice Risk Management

Take time to educate all ESO members about the unique risks associated with workplace harassment. ESO leaders must set high professional and ethical expectations for its workers, as society certainly does.

*Michael McCall J.D. provides personnel litigation avoidance training and consultation to ESOs nationwide.*

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