

Employment Practices

UPDATE

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Sexual Harassment Lawsuits: *Not a Joking Matter*

The regional newspaper reports the fire chief is accused of committing sexual harassment. A local television station reports that the executive director of your ambulance corporation allegedly allowed a sexually charged, hostile work environment to exist. Nothing grabs headlines or racks up legal bills like a sexual harassment lawsuit against your Emergency Services Organization (ESO). This article explores some of the reasons sexual harassment lawsuits continue to harm the reputations, morale, and financial health of ESOs nationwide. More importantly, it includes tips to help prevent sexual harassment incidents and lawsuits, and to poise your ESO to respond appropriately to employee/volunteer complaints.

Sexual Harassment Does Occur

Unfortunately, sexual advances and innuendos have been and will continue to be present in environments where people work together. It is arguable whether behavior that would constitute sexual harassment is more or less prevalent today as compared to the work environment 25 years ago. Certainly, workplace rules and laws have changed, and society's increasingly lenient "acceptable standards" have made compliance more difficult. As the saying goes, "sex sells." Movies, television programming, and magazines underscore this point. As leaders of ESOs, it is difficult to enforce more stringent workplace rules while society

condones and encourages sexually related conversations and behaviors.

People Know Their Rights

It was 1991 when the Anita Hill/Clarence Thomas controversy dominated media coverage and brought awareness of sexual harassment to an all-time peak, right? Wrong! While the Hill/Thomas hearing certainly increased public awareness of sexual harassment, technology has elevated that awareness to a whole new level. Via the Internet, anyone can quickly access plenty of willing plaintiff attorneys as well as books and articles with detailed instructions on "how to sue your employer." I recently spotted a billboard while driving on a rural Midwestern highway, whose only scenery was cow pastures, with the simple question, "Have You Been Sexually Harassed at Work?" The billboard drove home the point that no organization, regardless of size or location, is immune from litigation.

No "Incident" Required for a Claim

Generally, an incident is required to file an insurance claim. An auto claim cannot be made, for example, without some type of accident or incident. A property claim cannot be filed without actual property damage. Sexual harassment claims are different. Virtually any employee or volunteer can allege harassment occurred, often leading to a "he said, she said" claim. Most sexual harassment incidents involve behavior that allegedly occurred with no witnesses present. ESOs, like other organizations, could face sexual harassment allegations that are very difficult to disprove.

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We welcome comments, suggestions and questions from our readers.

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Sexual Harassment Lawsuits

(Continued)

Put the Spotlight on Your ESO

How should an ESO respond in the event of such allegations? Rather than attack the accuser's credibility in a sexual harassment claim, a better response is to "shine the spotlight on itself" to demonstrate that every reasonable measure was taken by the organization to prevent and promptly respond to any incidents of sexual harassment. The truth is, most organizations will not stand up to scrutiny, should the "spotlight" expose risk management steps were not taken.

RISK MANAGEMENT TIPS

Update Your Policy – A qualified employment attorney and human resources professional should review and update the policy annually to ensure all employee/volunteer protections are in place.

Multiple Avenues of Complaint – ESOs should provide several avenues of internal complaint to its members. The sexual harassment policy should articulate that an alleged victim of harassment is not required to confront the alleged source of harassment or anyone closely associated with the source. Members need to be made aware that other internal avenues of complaint are available to them. If a member fears going through the traditional chain of command, the ESO should consider offering the board as an alternative.

Investigation Procedures – A member may ask, "Why should I make a complaint of harassment if the organization is not prepared to investigate the incident?" Another



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member may suggest that any internal investigation would be biased. To address these types of concerns, and to communicate to all members that the organization takes sexual harassment complaints and concerns seriously, it is recommended that your ESO train those designated to investigate allegations of sexual harassment. The sexual harassment policy

should state that a third-party investigator may be retained to investigate harassment allegations, should any real or perceived conflicts of interest exist with an internal investigation.

Periodic Training – Employees, volunteers, and board members of your ESO should attend mandatory sexual harassment prevention training on a periodic basis. Effective training sessions, led by credible and knowledgeable professionals, lower incidents of harassment, improve response to allegations of harassment, and can be helpful in the event of litigation.

Establishing a Harassment-free Culture – "Who doesn't like a funny 'dirty joke' every now and then?" and "ESO's face constant life and death situations, so sexual jokes and banter help ease tensions." These sentiments are not uncommon in ESOs. As an ESO leader, you must balance what has always been accepted behavior with the economic and legal ramifications of allowing harassment to

occur. Jurors will likely not find the humor in sexual comments or banter that may be an accepted element of the work environment at fire departments, ambulance districts, or 911 emergency dispatch centers. In the eyes of a judge or jury, ESOs are held to the same strict standards for sexual harassment as any other organization.

Know Your Resources – Who would your ESO call upon to address a sexual harassment allegation? Is there an established relationship with an attorney experienced in investigating or helping to resolve harassment complaints? Attorneys who practice as generalists are not likely as knowledgeable about the sexual harassment specialty as labor and employment specialists. Even if the ESO's legal counsel serves as the third-party investigator, that attorney may not be able to represent the ESO in subsequent litigation. Therefore, your ESO may exercise the option of hiring an outside third party investigator who is not retained as legal counsel, but as a human resources consultant.

ESO's must be aware of the harsh business realities that come with exposure to sexual harassment litigation. Take steps to implement clear harassment prevention policies and procedures to protect all members of your ESO. Without proper risk management, the joke will be on you.

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