Understanding and minimizing sexual harassment in the workplace

ASSIGN BUSTER

The year 1964 was a year of great legislative advancement when speaking of employment laws. This was the year the Civil Rights Act becomes law, which prohibits employment discrimination on the basis of race, color, religion, national origin and sex. Although this act made a significant impact in providing for equality in the workplace, there still was no mention of sexual harassment within the boundaries of the law.

In fact, it wasn't until 1974 that the judicial system sees its first encounter with sexual harassment in the case of Barnes v. Train, where a female employee claims that she was unfairly retaliated against for rejecting her superior's sexual advances. However, at that time, the court decides, " the male supervisor merely solicited his subordinate because he found her ' attractive' and then retaliated because he felt ' rejected'" (Equal Rights Advocates). This case was later appealed in 1977 and Barnes v. Train was reversed, deciding that the supervisor's actions were a violation of sex discrimination under Title VII of the Civil Rights Act.

Before going further into the subject of sexual harassment, it is important that we first understand what constitutes sexual harassment, the development of sexual harassment laws, and what implications it has in the workplace. Defining Sexual Harassment Upon completion of Title VII of the Civil Rights Act, a new government entity was formed known as the Equal Employment Opportunity Commission (EEOC), and it was their sole responsibility to enforce Title VII. In 1980, the EEOC issues several guidelines for interpreting the Civil Rights Act to " forbid sexual harassment as a form of sex discrimination" (Equal Rights Advocates).

In Fiscal Year 2008, EEOC received 13, 867 charges of sexual harassment. Of those charges, 15. 9% were filed by males. EEOC resolved 11, 731 sexual harassment charges in FY 2008 and recovered $47. 4 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation)” (EEOC, 2010).

The EEOC also at this time defines sexual harassment as “ unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature… hen any of the following conditions are met: (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such an individual, (3) Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment” (Tyner & Clinton, 2010).

The courts later simplified this definition of sexual harassment by implying that there are two basic types of unlawful sexual harassment. Quid Pro Quo The first type is referred to as quid pro quo, which is known to be the most direct way to prove a sexual harassment case. Here, the rejection of a supervisor’s sexual advances “ adversely affects what the EEOC calls a ‘ tangible employment action’ such as hiring, firing, promotion, demotion, undesirable assignment, benefits, compensation, and/or work assignment” (Dessler, 2008).

It is important to understand that quid pro quo can be ommitted only by someone who is in the position to effectively influence these types of employment actions. Hostile Work Environment The second type of sexual harassment is known as hostile environment. Although a quid pro quo can only be imposed by a supervisor, a hostile environment can result from any supervisor, co-worker, customer, vendor, or other whose actions are unwelcome by the victim. Some of these actions may include discussing sexual activities, displaying sexually suggestive pictures, engaging in hostile physical conduct, etc.

Determining whether a case of sexual harassment creates a hostile environment is not always as cut and dry as that of a quid pro quo case. Thus, it is useful to understand when an environment is considered sexually hostile. “ To create a sexually hostile environment, unwelcome conduct based on gender must meet two additional requirements: (1) it must be subjectively abusive to the person(s) affected, and (2) it must be objectively severe or pervasive enough to create a work environment that a reasonable person would find abusive” (Equal Rights Advocates).

However, again we are left with some ambiguity and must further discuss when behavior is severe or pervasive. To determine this, we will look through the lens of a court or jury who will most certainly consider the frequency of the behavior in question, how severe the conduct was, if it was physically threatening or humiliating, if the conduct interfered with work performance, and the effect that the behavior had on the employee’s psychological well-being.

In 1981, “ for the first time a U. S. ourt endorsed the EEOC’s position that Title VII liability can exist for sexual insults and propositions that create a ‘ sexually hostile environment,’ even if the employee lost no tangible job benefits as a result” (Equal Rights Advocates). There after, many cases were won regarding sexually hostile environments including the 1991 case of Robinson v. Jackson. Here, “ women were a small minority of the work force and crude language, sexual graffiti, and pornography pervaded the workplace” (Equal Rights Advocates).

Because defining a hostile environment can be a subjective issue, courts have ruled that “ sexual harassment is perceived by the victim and is subjective because what one person finds as sexually harassing behavior may be acceptable by another person” (Tyner & Clinton, 2010, p. 37). One of the first places in judicial history where we see the notion of reasonable person put to the test is a 1986 case Rabidue v. Osceola Refining.

This case was ruled in favor of the defendant claiming that “ vulgar language and the sexually oriented posters did not result in a working environment that could be considered intimidating, hostile, or offensive under the guidelines” (Bennett-Alexander & Hartman, 2006, p. 317). However, in the 1991 case of Ellison v. Brady, the judge did not did feel that the hostile environment that was being created by pin-up posters and misogynous language was having only a minimal effect on female employees, thus the idea of “ reasonable victim” was born.

That is to say that the “ Supreme Court ruled that it is unreasonable to use a ‘ reasonable person’ standard since the rules were established by men”

(Tyner & Clinton, 2010, p. 38). Therefore, if the victim is a woman the courts and or jury use a reasonable woman standard, and if the victim is a man, it's a reasonable man standard. Implications of Sexual Harassment

Regardless if one finds them self in a hostile environment or a quid pro quo, the bottom line is that sexual harassment is illegal and can have a tremendous impact on employees and " can create physical and psychological difficulties for victims and, if left unmanaged, can also result in high costs (in terms of absenteeism, turnover, and reduced productivity)" (Perry & Kulik & Field, 2009, p. 817). Therefore, it is not only moral and ethical for an employer to protect their employees from sexual harassment, but it is also in the best interest to the companies bottom-line to be proactive about stopping sexual harassment in the workplace.

Although the law does not mandate the specificities of how employers protect employees of such cases, most companies satisfy this requirement by creating policies that disallow for sexual harassment in the work place. It is not enough to just create the policy, informing employees of the policies created is as important, and many organizations approach this through company-wide training. In fact, " a number of states require employers to provide sexual harassment training" (Martucci & Lu, 2005). Effects on Employees

Sexual harassment can have long-term psychological effects on an employee of a company. In fact, " experiences of gender harassment were related to physiological measures of cardiac and vascular reactivity consistent with a stress response" (Rospenda, 2005, p. 98). Relating from personal

experience, I know that when a person feels stress on the job, this can lead not only to severe physical effects, but also poor performance, injury, and illness. All of which create significant costs for employers. The effects of sexual harassment are not isolated to the timeframe of the incident.

Instead, research shows that such experiences still influenced job satisfaction and psychological conditions two years after the said incident. Additionally, “ sexual harassment at one time point predicted self-reported use of health or mental health services one year later” (Rospenda, 2005, p. 99). Furthermore, sexual harassment was also found to be a greater and more valid predictor of risk for illness, injury, or assault than any other job related stressors including workload, and decision latitude.

Effects on Employers Although it would seem that the effects of a sexual harassment encounter would spread no further than the victims themselves, a company can also suffer a tremendous amount. “ Harassment may be hazardous not only to targets’ health, but also to organizations’ bottom lines in the form of costly worker’s compensation claims” (Rospenda, 2005, p. 107).

“ From 1992 to 2005, the monetary award for all claims of sexual harassment ranged from $12. 7 million to $50. 3 million” (Tyner, 2010, p. 6), bearing in mind that these amounts do not reflect any damages that may have been paid in private court after a statement of no reasonable cause. Additionally, the average monetary award per claim has increased during that 14 year period as well. In 1992, the average award was $1, 205,

whereas in 2005, the average award was $3, 777 (see Appendix 1 for charts: Total Monetary Awards for Sexual Harassment).

Employer Liability As mentioned above, it is in the best interest of employers to protect their employees from sexual harassment, but furthermore it is their legal esponsibility. " Title VII makes employers liable to prevent and stop sexual harassment of employees. Under Title VII, covered employers must (1) take reasonable care to prevent sexual harassment; (2) take reasonable care to promptly correct sexual harassment that has occurred" (Equal Rights Advocates). An employer should have a defined policy that prohibits sexual harassment in the workplace and also provide for a way for employees to make a complaint. Once a complaint has been made, the employer should make every effort to investigate and rectify the situation.

If the employer does not do so, a court may determine that the company is not taking reasonable care, and therefore they would be held liable for the damages. Responsibilities of Employees Even though the burden to control sexual harassment in the workplace lies on the shoulders of the employer, employees still must play a significant role in the process. An employer cannot be held liable if they were not made aware of the situation where harassment was being experienced. This makes it imperative that employees follow the grievance procedures that have been set up.

It seems to me that many times sexual harassment is not reported because the victim feels embarrassed about the incidence or even worse, feels as though it was their fault. However, sexual harassment is unacceptable and must be reported to the employer, as it is their responsibility to protect the

employee from the behavior taking place. An individual may also choose to file a discrimination complaint with a government agency. “ If you want to file a lawsuit in federal or state court, you must first file a formal sexual harassment complaint with the federal Equal Employment Opportunity Commission (EEOC)” (Equal Rights Advocates).

The Equal Rights Advocates website also provides some basic information for what an employee should and/or shouldn’t do: * Admit that a problem exists. * Tell the offender specifically what you find offensive/the behavior is bothering you. * Say specifically what you want or don’t want to happen. * Don’t blame yourself for someone else’s behavior. * Don’t ignore the behavior, unless it is truly inoffensive Non-Employee Sexual Harassment There is yet another situation in regards to hostile environments that employers may not be able to control as easily, but may be just as liable.

I am speaking of situations where sexual harassment is caused by a third-party non-employee. This becomes a difficult situation because said persons are not agents who fall under the umbrella of the companies’ sexual harassment policy, and are certainly not subject to sexual harassment training through the company. However, “ The courts have ruled that employers are liable for harassing conduct by non-employees where the employer either ratifies or acquiesces in the harassment by not taking immediate and/or corrective actions when it knew or should have known of the conduct” (Hoft & Thomson, 2007, p. 87).

Furthermore, the EEOC has set up guidelines for situations that may arise from third-parties by saying, “ An employer may also be responsible for the

acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action" (Hoft & Thomson, 2007, p. 88). Because employers have little control in preventing the creation of a hostile environment by a non-employee, the courts have applied a negligence theory to these situations.

That is to say that the employer must make every possible effort to remedy or prevent offensive situations in which management knew about or should have known about by reasonable standards. Failing to do so could be seen as negligence by the court and will result in sexual harassment liability. Demographic Incidence Rates of Sexual Harassment Because much of the work I do is international, I wanted to research the cross-cultural differences that existed in the perception of sexual-harassment. Whenever I go to a new country, it's important to learn about the culture and conduct myself in a way that is consistent to their customs.

Being as we know that sexual harassment is responsible for " psychological conditions such as stress, depression, and anxiety that result in declines in organizational performance and productivity" (Merkin, 2007, p. 277), thus, it is necessary to determine which actions would be perceived as sexual harassment in other cultures. Research indicates that in Latin American countries, where there is the greatest risk for experiences with sexual harassment, there are many differences between regions; Chile is found to be the most risky, followed by Brazil and Argentina.

What was more interesting and helpful from my research were the universal demographics that seemed to increase or decrease the prevalence of sexual harassment. In regards to marital status, “ reports of actual sexually-harassing experiences were greater among single than among married women in the US” (Merkin, 2007, p. 279). Also, age seems to play a factor as well; “ the younger the respondents, the more vulnerable and, consequently, more likely they were to experience sexual harassment… sexual harassment was reported most by persons between 25 and 35” (Merkin, 2007, p. 80).

Also, as a person’s education level increases sexual harassment decreases, however this could be related to the fact that as a person gets older they are also gaining a higher level of education. It’s also important to acknowledge that there are cases of sexual harassment where males are the victims; however, “ adult women remain the most frequent targets of typical sexual harassment behaviors such as unwanted touching and invasion of personal space” (Merkin, 2007, p. 281).

It is also interesting to note that females in the workplace typically perceived other female and male initiators as sexually harassing while males typically perceived male initiators as sexually harassing and women initiators as less harassing for the same behaviors. This information can be vital when looking at the makeup of your company and assessing ways to minimize sexual harassment in the workplace. I believe that it begins with good education and training, both from a male and female perspective. Minimizing Sexual Harassment in the Workplace

There is an obvious advantage to all parties involved to minimize sexual harassment in the workplace, but how? Not only are there economic impacts to employers but “ sexual harassment can create physical and psychological difficulties for victims and, if left unmanaged, can also result in high costs (in terms of absenteeism, turnover, and reduced productivity)” (Perry & Kulik & Field, 2009, p. 817). Not to mention there are many ethical reasons why an employer needs to implement steps to decrease the probability of the occurrence of sexual harassment.

I believe that if you want to make a change within any group dynamic, it simply begins with education. This is why I feel sexual harassment training is the most effective way to combat sexual harassment. In fact, “ a number of states require employers to provide sexual harassment training”. ” (Perry & Kulik & Field, 2009, p. 818). Some employers go a bit further and implement a ban on workplace relationships, or a legal concept known as “ love contracts;” we will discuss these safeguards in the following paragraphs.

Sexual Harassment Policies/Training There are many schools of thought on what is the best way to implement sexual harassment training in an organization. It seems that voluntary training may have a more positive effect on a person’s intrinsic motivation to learn rather than a training that is mandated by the company. Also, “ sexual harassment training may have greater long-term impact when organizations show trainees how they can apply what they learn to their current jobs” (Perry & Kulik & Field, 2009, p. 826).

Many training programs have had limited assessment opportunities and thus results in limited knowledge of the most effective material for offering such training. There are many commercial computer programs on the market today which will assess individual needs, increase training effectiveness and reduce the legal concerns of employers. The most important aspect of sexual harassment training is to make sure the training is high quality; “ implementing sexual harassment training of unknown quality could ironically make organizations more vulnerable to legal action” (Perry & Kulik & Field, 2009, p. 827). Banning Workplace Relationships

The controversy of whether or not workplace relationships are healthy for the work environment and if such relationships increase the prevalence of sexual harassment claims are questions that remains active today. Interestingly enough, I do have experience with a workplace relationship as my wife and I lived and worked together at an orphanage in the Dominican Republic for two years. Although I believe that it is healthy and normal to engage in workplace relationships, without proper education, the opportunity for retaliation which may be construed as sexual harassment is possible when a relationship goes sour.

In my case, my wife and I were living under fairly strict guidelines regarding public displays of affection, as the orphanage we were working at was run by a Pentecostal presence. It may have been these preexisting guidelines that saved us from any misunderstandings amongst the community and colleagues with whom we were working. It is for these reasons that “ love contracts” are becoming more and more popular in larger businesses, which we will discuss further in the next section.

That still leaves the question of whether banning workplace relationships is a solution to minimizing sexual harassment claims. The employer who bans dating is primarily afraid of sexual harassment claims arising from and established dating relationship rather than from any relationship that has not started yet” (Boyd, 2010, p. 328). This fear arises from the notion that if a romance in the workplace was to breakdown, then if one of the partners makes an attempt at reconciliation, this could be seen as harassment. A second catalyst to the fear of sexual harassment claims is of a situation where the workplace relationship is between a superior and a subordinate.

This opens up the doors to co-workers to sue for sexual harassment because of real or perceived favoritism. It’s difficult to speculate whether such workplace relationships would increase sexual harassment claims, however, “ 95% of HR professionals cited ‘ potential for claims of sexual harassment’ as a reason to ban or discourage workplace romance” (Boyd, 2010, p. 328). The reality comes to light when the research is finally done, and the issue becomes more about ethics and morality.

There are 10 million new workplace romances a year in the US compared to an average of 14, 200 sexual harassment claims per year, an incidence of one harassment case per 704 romances… 44% of workplace romances led to marriage, which another 23% led to a long-term relationship. ” Given these statistics, it is my personal belief it is not right to ban workplace relationships. The effort to monitor the dating activity in the office is far greater than the 1 in 704 chance of a sexual harassment case.