



# Do You Think “Sex”



## When You Hear “Harassment”?

If so, you may be opening your organization to other forms of harassment lawsuits.

By John Myers

When nonprofit executives hear “harassment,” they tend to think “sexual harassment.” Many anti-harassment policies go into exhaustive detail prohibiting sexual harassment but only mention other forms of harassment in passing.

That’s a mistake. Employees have argued in court that an anti-harassment policy that doesn’t give the same weight to other

An employee needn’t establish a pattern of offensive behavior to win a harassment lawsuit.

types of harassment as it gives to sexual harassment is evidence that the employer doesn’t take those other sorts of harassment seriously.

### Mistakes that Can Ruin an Organization

Here are just a few harassment suits waiting to happen:

- A manager makes demeaning comments about a worker’s learning disability.
- Employees post cartoons making fun of older people.
- A bookkeeper forwards e-mails containing distasteful Helen Keller jokes.

**Walking around the workplace and seeking input from employees can help prevent harassment before it occurs.**

- A supervisor wonders casually if an older employee “still has what it takes to do the job.”

There's strong evidence that employers must address all forms of harassment. For example, when Congress enacted the Americans with Disabilities Act (ADA), it estimated that about 43 million people in America had a disability covered by the ADA. Disabilities range from obvious physical impairments to less conspicuous conditions such as chronic depression, dyslexia, and HIV infection. Courts have interpreted the ADA to require employers to protect qualified disabled workers from harassment. Employers should therefore make sure they're not leaving themselves exposed to claims for disability harassment.

Employers need to protect themselves from age-based harassment claims too. According to the Bureau for Labor Statistics, the median age of the labor force will be 40.7 by 2008. Thus, a high percentage of the workforce will soon be covered by the Age Discrimination in Employment Act (ADEA), a statute that protects workers aged 40 and older.

Any unwelcome comment or conduct on the job can be construed as harassment based on age, disability, or some other protected status if it creates an intimidating working environment. An employee needn't establish a pattern of offensive behavior to win a harassment lawsuit. A single incident of harassment, if serious enough, could result in liability unless you've taken precautions.

**An ounce of prevention is worth a pound of legal defense.**



**A single incident of harassment, if serious enough, could result in liability.**

### Steps to Guard against Lawsuits

Here's how to reduce the risk of being sued for harassment and increase the chances of winning a harassment lawsuit:

- **Adopt a clear anti-harassment policy.** In your policy, define all forms of prohibited harassment, including harassment based on race, ethnicity, religion, gender, age, and disability. Emphasize that harassment won't be tolerated and that harassers will be disciplined or discharged. Provide a clear procedure for filing harassment complaints. State that all complaints will be investigated and that employees won't be subjected to retaliation for making a harassment complaint in good faith. Distribute the anti-harassment policy to all employees, and post it at strategic locations in the workplace. In addition, require all employees to sign an acknowledgment form to prove that they received copies of the policy.

- **Train employees.** During orientation, be sure new employees learn about your anti-harassment

**Require all employees to sign an acknowledgment form to prove that they received copies of the policy.**

policy. Hold sessions periodically to clarify what harassment is, outline the complaint procedure, and remind employees that they have a right to a harassment-free workplace. Train supervisors separately, detailing how to investigate harassment complaints and how to spot and prevent all types of harassment.

- **Monitor the workplace.** Keep an eye out for offensive material and improper conduct. Walking around the workplace and seeking input from employees can help prevent harassment before it occurs.

- **Respond promptly to complaints.** Take all harassment complaints seriously, and begin a thorough investigation at once.

An ounce of prevention is worth a pound of legal defense. Employers who adopt comprehensive anti-harassment policies and are vigilant in enforcing them can reduce their risk of liability. ■

### The Next Step on the Road to Avoiding Risk

For more on reducing the risk of harassment lawsuits, check out these *Nonprofit World* articles ([www.snpo.org/members](http://www.snpo.org/members)):

**How to Avoid Age-Discrimination Lawsuits** (Vol. 15, No. 6)

**The Most Likely Lawsuits – and How to Protect Yourself** (Vol. 19, No. 1)

**The Need for Anti-Bias Policies** (Vol. 22, No. 5)

**Your Duty to Investigate Workplace Complaints** (Vol. 19, No. 3)

*John Myers is chair of the Employment and Labor Law Department at Eckert Seamans Cherin & Mellott, [jmyers@eckertseamans.com](mailto:jmyers@eckertseamans.com).*