

Sexual Harassment: Be Aware of Questionable Conduct in the Workplace

By Debra Hart, Oregon League of Cities with permission

At some point in their careers, most city officials or city employees have likely been through training on sexual harassment. More than likely, it all made sense, and the participants realized the importance of recognizing harassment, discrimination and retaliation. In addition, managers or supervisors were made aware of their heightened responsibilities to prevent those actions and to address them quickly and effectively when they do happen.

Most information, if it's not referenced on a regular basis, tends to be forgotten. It is important to review the information on at least an annual basis, especially for those in supervisory positions. What follows is a brief refresher on sexual harassment, and management's responsibilities.

Simply stated, sexual harassment is unwelcome conduct of a sexual nature. It can be verbal; physical (a look, a touch); in person; or by phone, mail, email or other communication. It could be flirting, or even the way an employee dresses. Policies requiring business-appropriate dress and conduct can help employers avoid some of this behavior. Sometimes employees are not sure whether their behavior "crosses the line" or is acceptable. If employees maintain a level of professionalism in their workplace conduct, they are less likely to do or say something to violate harassment policies.

It's easy to forget that the offended person might not be the person to whom a comment or action is addressed; it might be a coworker who is a witness to the action or comment. Similarly, it may not be just one of the city's employees who is the harasser; it could be a delivery person, sales person, or anyone else with whom employees deal with in the workplace. Regardless of who is the victim, or who is the harasser, management has the responsibility to investigate, document, and take appropriate remedial action.

There is no "majority rules" for determining if something is offensive. If an employee tells a joke to 10 coworkers and only 1 of the 10 is offended, that doesn't mean that telling the joke was acceptable. There is, however, a reasonable-person standard involved. If the conduct could offend a reasonable person, given the situation and the context, and someone did find it offensive, the conduct has met the test and needs to stop.

Perhaps most familiar to employees is the concept of "quid pro quo" harassment, wherein the employee may receive a promotion in exchange for sexual favors, or may be demoted or worse for refusing sexual advances. The common form of harassment is the "hostile work environment," a term which is used loosely, and frequently incorrectly, by employees who are unhappy with aspects of their job or work environment.

What constitutes hostile work environment harassment? To be illegal, the behavior has to be ongoing, pervasive, or severe, and it must unreasonably interfere with an employee's work performance or create an intimidating, hostile, or offensive working environment. What does this mean? Basically, a minor incident like a joke, which only happens once, will not create a hostile work environment. A much more serious incident, for example, a sexual assault, meets the definition of severe and would not also need to occur more than once.

Employees need to know that it is not their burden to determine whether conduct meets the legal definition of harassment. If an employee is uncomfortable or feels that something is inappropriate, they should report it. Harassment policies should provide information not only on what employees need to do – report the conduct – but also should suggest several people (by job title) with whom it would be appropriate to talk to.

Management must quickly respond to any complaints about, or reports of, misconduct. An investigation needs to be conducted. To create a record for the employer's protection, all information gathered should be documented, along with steps taken to resolve issues, and any discipline imposed. It is also advisable for management to review what, if anything, could be done to prevent future problems, and whether it is time for refresher training for all staff.

Beyond the harassment, investigation, documentation, and action taken, employers need to ensure that there is no retaliation against the victim, witness, or anyone else involved. Retaliation, which could be in the form of adverse employment actions or mistreatment by coworkers, is just as illegal as harassment.

Management needs to follow up with victims not only to ensure no further harassment, but also that no retaliation has occurred. The follow-up should be documented as well.

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