

She's not our employee! Are we liable for subcontractor harassment?

Q. We recently received a complaint of harassment from an employee of one of the contractors we hire to do some work around our facility. I know, of course, all about our duty to prevent and stop sexual and other kinds of harassment of our own employees. But we don't have a duty to do the same for the employees of another company, do we?

A. Your company might, in fact, have a duty to prevent or remedy harassment of the contractor's employees in some situations.

The Minnesota Human Rights Act (MHRA) generally prohibits discrimination by an employer against an employee. But the MHRA also prohibits "business discrimination," in a business relationship and—what's potentially relevant here—in the terms, conditions or performance of a contract because of a person's protected class status.

A recent case at the Minnesota Court of Appeals established that the employees of the contractor would generally not have an MHRA claim against your company. However, their employer might, based on harassment of its employees by your employees.

Having received this complaint, you should assume there is a chance of your company having discrimination liability to the contractor.

That means you will need to conduct an investigation, just as you would for a complaint coming from one of your own employees.

Depending on the facts established by the investigation, you may have a variety of risks and options to assess at that point.