

Don't be swayed by the top 9 excuses for harassment



When managers witness or hear about a possible sexual harassment situation at work, it's important for them to take the situation seriously. Harassment lawsuits can spiral into multimillion-dollar lawsuits if not dealt with immediately ... and employees' personal bank accounts are at risk, too (*see box below*).

That's why it's vital for managers to contact the appropriate company officials in any potential harassment situations. Don't be swayed by these common excuses you'll hear from employees:

1. "I didn't mean it." It's not enough for an employee to claim that he or she didn't intend to be offensive.

Sometimes, the effect of the behavior outweighs the intent of the harasser. Even if the employee didn't intend to harass, if the target objectively and subjectively felt harassed, the employer could be held liable.

2. "I was just kidding." Humor, like beauty, is in the eye of the beholder. Again, the effect may outweigh intent.

3. "That's the way I treat everybody." Illegal harassment must be based on gender, race or other protected characteristics. However, court cases have shown that offensive conduct that is not gender-specific still may violate sexual harassment law if there is sufficient evidence of differences in the harassment suffered by female and male employees.

4. "I didn't say anything sexual." Sexual harassment is often misunderstood to mean that behavior must be sexual in nature in order to be illegal. However, nonsexual behavior that occurs because of one's sex can also be considered illegal harassment.

So, for example, calling female employees names that are nonsexual, yet offensive, is a form of sexual harassment.

5. "They're no angels, either." The fact that a target of harassment also used foul language or told dirty jokes herself (or himself) does not mean he or she can never be a victim of harassment.

6. "I wasn't talking about her." In this case, the harasser tries to hide behind the fact that the complaining employee was not the actual target of the remarks. But several courts have ruled that employees may experience harassment regardless of whom the racist or sexist remarks were targeted toward.

7. "They weren't supposed to see/hear." In a similar way to No. 6, even if the intended audience of offensive pictures or jokes was a willing participant, anyone who accidentally sees the pictures or hears the jokes may also be able to file a sexual harassment claim.

8. “She’s too sensitive.” In some situations, the alleged harasser is right, and the behavior is not as severe or pervasive as the target thinks it is. The court test is how a “reasonable person” would objectively and subjectively perceive the behavior.

But don’t shrug off any complaints. In all cases, the employer needs to get the facts to decide whether the behavior is inappropriate or innocuous.

9. “It’s just the environment around here.” Certainly, each workplace varies in the degree of civility expected and exhibited. However, the EEOC has said, “Discrimination is unlawful regardless of the job site. It doesn’t matter whether employees work behind a computer or behind a forklift.”

Be aware of conduct that could spark a harassment lawsuit

1. Repeated sexual innuendo, obscene or off-color jokes, slurs, lewd remarks and language, and other offensive sexual comments.
2. Sexually offensive content in email messages, notes and workplace graffiti.
3. Sexual propositions, insults, threats, leering, whistling or other suggestive sounds.
4. Persistent unwanted sexual or romantic overtures.
5. Displays of pornographic pictures or other sexual material at work.
6. Coerced or unwelcome touching, kissing or other sexual activity.
7. Subtle or overt pressure for sexual favors.

Can harassers be personally sued?

When employees sue for sexual harassment, they usually name not only the employer in the lawsuit, but also the individual harasser. While lawyers typically spend more effort going after employers, all managers should be aware that they could be paying for harassment out of their own wallets.

This is also a good point to make to employees who have demonstrated borderline harassing behavior in the past. They’ll back off quickly if they know that their personal fortunes are at stake, not just their employers’.