

# Act immediately to remove sexually offensive graffiti and material from the workplace

Sexually offensive material appears all too often in some workplaces. When that happens, get rid of it! Immediately!

That way, there is less chance that someone will later be able to successfully allege that the graffiti or scribbles created a hostile work environment. Plus, by acting fast, you demonstrate your organization's commitment to a work environment that's harassment free.

These days more than ever, employees are sensitive about how employers react to sexual harassment. They expect fast action even for suggestive or sexual conduct that's borderline and not obviously hostile.

**Recent case:** A few months after Frank became a deputy fire chief, he went to his supervisor to complain about sexually explicit materials and conduct around the fire house.

For example, he reported that he found a jar that had two cartoon drawings of male genitalia scrawled on it. A nacho cheese machine with a similar drawing was in the kitchen. He also found two T-shirts in the gym with identical artwork. Finally, he reported finding an envelope that contained two pieces of pasta arranged to resemble genitalia.

After he complained, the items and drawing on the nacho machine were removed.

Four months later, Frank's supervisor reassigned Frank to a new position as deputy chief of safety, a demotion. He sued, alleging retaliation for opposing a hostile work environment.

But the fire department argued two things:

- First, that reporting the cartoonish and crude images was not protected activity
- Second, Frank's reassignment was part of a reorganization that affected 16 other employees, too, and therefore could not have been retaliation.

The court sided with the fire department. It concluded that Frank could not have been objectively offended by the cartoon images. Even if he were, the department took immediate action to remove them, and they did not reappear. Frank's lawsuit was dismissed. (*Cheatham v. City of Phoenix*, 9th Cir., 2017)

## How to respond to offensive materials

It's not just sexually explicit or potentially offensive material that can cause workplace problems. Racially hostile graffiti and objects designed to intimidate members of a particular race, religion or other protected classification are also potentially dangerous.

That's why you should have a plan in place to remove such materials and graffiti immediately after learning about it. Here's your action plan:

- Designate someone specific in HR to respond to complaints involving offensive materials. Name an alternate in case the first responder is unavailable.
- If a harassment report comes in (either directly, through a third-party hotline, via social media or the press), immediately launch an investigation. Have someone immediately check the report either in person or through direct contact with a trusted staffer on site.
- Immediately remove any questionable material. You can then assess whether it is offensive. Have graffiti removal tools ready at all times. Take photos of graffiti before scrubbing it off or painting it over. The key is quick action, even if you aren't convinced the material is offensive.
- Follow up with regular inspections. Hold live training sessions.
- Of course, if you do discover who is responsible for the material, suspend that person immediately and discipline appropriately.