



Fine Print

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THE SEVEN "HABITS" OF HARASSMENT-FREE COMPANIES

By Thomas H. Barnard

It seems like a no-brainer. Why would anyone in today's workplace sexually intimidate or harass a co-worker? It certainly couldn't happen at your business!

Your employees may not always agree with or approve of one another, but at least they treat each other with respect.

Right? It is, until you overhear a racy joke, see an inappropriate e-mail, watch a supervisor crowd a subordinate's space - perhaps even manhandle him or her - or hear through the grapevine that an employee won't take another's "no" as final.

Then you start to get a bit nervous. How liable is your company for the sexual harassment actions of your employees? As an employer, you can defend yourself in a lawsuit by proving that:

- You exercised reasonable care to prevent and correct any sexually harassing behavior.
- The complainant unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

With apologies to Stephen Covey,

here are seven "habits" you, as an employer, should develop to protect your company against sexual harassment:

1. Write it down. Adopt a written policy prohibiting sexual harassment. The policy should define harassment, clearly state that it is prohibited, set forth a complaint procedure, and make it clear that persons properly following the policy will be protected against

retaliation.

2. Pass it around. Post the policy, include it in personnel manuals and train employees about the policy and how it will be enforced. Periodically distribute a copy of the policy with employees' paychecks so no one can later claim he or she was unaware of it.

3. Protect the accuser.

Make sure that an employee can file a complaint without it being handled by the accused harasser. The com-

plaint procedure must not be directly or indirectly controlled by the accused.

4. Protect the accused. The accused's rights should be fully respected, and he or she should be given the opportunity to prove or explain his or her actions.

5. Take complaints seriously. Your response must be prompt, but give yourself enough time to thoroughly investigate. When the complainant feels physically threatened, he or she should be protected while the investi-

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How liable is your company for the sexual harassment actions of your employees? As an employer, you can defend yourself in a lawsuit.

HOPE FOR THE BEST; PLAN FOR THE WORST

Workplace violence carries high price

By James Ferber

Rate customers snap.

An abusive partner stalks an employee at work.

A volatile co-worker unleashes his or her anger.

Whatever the cause - when violence erupts in the workplace, the employer pays a high price.

Nonfatal workplace violence costs employers \$4.2 billion each year in lost work, legal expenses, security costs, property damage, higher absenteeism rates, and production losses, according to Northwest National Life Insurance Co.

Lawsuits claiming that the employer failed to provide a safe workplace, or was negligent in hiring or supervising the violent employee, add to an employer's burden.

To protect both your workers and your bottom line:

- Assess your company's existing se-

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gation is being conducted.

6. No retaliation. The complaint procedure should make it clear that there will be no retaliation against the individual making a good-faith complaint, even if the complaint is found to be without merit. The employer should, however, reserve the right to discipline employees knowingly making false complaints.

7. Give it teeth. You must take appropriate disciplinary action for the circumstances and the complainant should be informed as to what action, if any, is taken. This might range from a written warning or reprimand to termination.

Throughout the process, keep the investigation as confidential as is reasonably possible - on a "need to know" basis.

Your attorney can probably provide you with sample sexual harassment policies, review a draft or existing policy you have, or provide you with additional information on your liability in sexual harassment cases.

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curity. Do you need additional security measures? Does everyone at work know and follow existing procedures? Is all security equipment working properly?

■ Establish a program for job safety and security. Incorporate the program into your company's overall safety and health program. Teach employees security measures and how to recognize the signs of potential violence.

■ Adopt an employee assistance program (EAP) that includes professional counseling. Employees and their immediate families require help in dealing with actual or threatened violence in the workplace.

■ Designate and train a "crisis intervener." The company's human resources office can direct employees to the company's EAP, to appropriate support groups and to legal authorities for assistance in cases of both actual or threatened violence.

For more information contact your attorney, or your local bar association's lawyer referral service can direct you to legal resources in your area.

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Teach employees security measures and how to recognize the signs of potential violence.

TAXING MATTERS

Topic: Independent contractors or employees?

Q: I've saved money by using more independent contractors to perform services for my business - no withholding or employer taxes, less legal liability - but I don't want to get in trouble with the IRS. When is a contractor an employee?

A: The Internal Revenue Service is looking much more closely at the status of "independent contractors."

The IRS considers three main areas to determine the difference:

Behavioral control: An employee generally is subject to the business' instructions about when, where and how to work. Independent contractors usually aren't as controlled.

Financial control: How does the business pay the worker? An employee generally is paid by the hour, week, or month. An independent contractor usually is paid by the job. However, it is common in some professions, such as law, to pay independent contractors hourly. The IRS also examines the extent to which the worker can realize a profit or incur a loss. An independent contractor can make a profit or loss.

Type of relationship: The IRS reads written contracts describing the relationship the parties intended to create and looks at whether the business provides the worker with employee-type benefits such as insurance, a pension plan, vacation pay, or sick pay. If the IRS determines your independent contractors are actually employees, you could be forced to pay back taxes, benefits, interest and penalties.

Your attorney or tax advisor can help you set up contracts which comply with IRS rules.

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justice
is hard work

IN THE HOPPER

Pending state legislation which could affect small business

From the OSBA Office of Government Relations

Legislation before the Ohio General Assembly which could affect small businesses includes House Bill 78, a change in the general corporation laws. The bill changes several of the rights and responsibilities of directors and shareholders, and eliminates the requirement that articles of incorporation say why the corporation is being formed. The bill passed the House of Representatives and is pending before the Ohio Senate.

The House has also passed House Bill 312, which changes Ohio's Limited Liability Corporation Law. If passed by the Ohio Senate and signed by the Governor, the bill would eliminate the requirement that a limited liability corporation be dissolved when one of its members withdraws.

House Bill 292, which is also pending in the Ohio Senate, would regulate the recovery of attorney's fees under certain commercial contracts of indebtedness - such as a note, bond, mortgage, conditional sale contract, retail installment contract, lease, or security agreement - only if the contract exceeds \$250,000.

For further information on this legislation, or other legislation affecting small businesses, contact your trade association or the General Assembly website at www.state.oh.us/ohio.