

Sexual Harassment

Staying out of the legal Quagmire

Employment Liability refers to a group of exposures including workplace-based wrongful termination, discrimination, harassment and retaliation that arise from the employment process. The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate at work or during the employment process based on an individual's personal characteristics, including sex. Employees can also present charges to state human rights commissions.

EEOC reported that total charges for all types of discrimination across the nation dropped 6% from 2017 to 2018 with sex-based charges (unfavorable treatment based on a person's gender) decreasing 4%. This decrease does not show the entire picture; the EEOC reports a 13.6% increase in sexual harassment charges in 2018 as well as a large increase in financial recoveries for victims of sexual harassment. The 7,609 charges in 2018 was the highest in the past eight years, stopping a downward trend that began in 2012.

Characteristics of Risky Workplaces

- ✓ Historic lack of diversity
- ✓ "Rough and tumble" or single sex-dominated workforce cultures
- ✓ Cultural and language differences
- ✓ Younger staff
- ✓ Presence of "high-value" employees (e.g. the Harvey Weinstein case)
- ✓ Isolated or decentralized workplaces
- ✓ High amount of alcohol consumption
- ✓ Power disparities

Employers Liability

Prevention is the key

Besides the risk of claims and lawsuits and the negative and detrimental effect on victims, employers face other exposures:

- Lost staff time needed for investigations, depositions and interviews
- Reputational risk
- Uninsured damages – such as fines and penalties
- Effect on morale – especially if discrimination or harassment is prevalent
- Employee turnover

Employers can reduce the likelihood of sexual harassment claims. Recommendations from the EEOC and best practices include the following:

Ensure that employment decisions are not based on sex	Make certain supervisors know their responsibilities to prevent and stop harassment	Maintain accurate employment records
Stop illegal harassment when it occurs	Promptly respond to employee complaints	Check in with staff – in the office and on jobsites
Train staff	Investigate complaints fairly	Treat staff evenly - equal pay, benefits, perks

Sexual harassment and other employment-based claims occur in every industry. Juries are sympathetic to claimants with credible claims and damages and seven-figure verdicts are not uncommon. Developing and implementing a workplace anti-harassment program that trains and engages staff, treats everyone equally and promptly responds to and fairly investigates complaints is the best way of preventing incidents of discrimination and harassment.

To see how we can improve your risk profile and insurance program, contact David Mocklow at 516 962 4618 or dmocklow@gramercyrisk.com