

# Avoiding Sexual Harassment Lawsuits

by Quenda Behler Story

**T**he recent rash of sexual harassment charges among military personnel has reminded all of us of the kinds of problems that can occur when men and women work together. While men can also be victims of sexual harassment, in construction it's usually the other way around.

But if you've been lying awake nights worrying about how the million-dollar sexual harassment lawsuits that have filled newspaper headlines lately might affect your company, take heart. While the construction industry is far from immune to this kind of liability, avoiding sexual harassment problems is not as difficult as some political pundits seem to think. If you take some simple steps to ensure that your company is in compliance, you will be free to occupy your valuable lying-awake time with other worries — about whether or not your subs will show up, for instance.

Antidiscrimination laws have enabled more women to enter the trades, which historically have been populated exclusively by men. With more women on the job site, the opportunities for sexual harassment have increased.

The most obvious cases of sexual harassment occur when continued employment or job advancement is offered in exchange for sexual favors. We're all grown-ups and we all understand why this constitutes sexual harassment that can subject the offending employer to huge penalties.

But some situations are not so cut-and-dried, particularly on construction sites. Many men worry, for instance, about getting into trouble because of

unintentionally offensive remarks made to a female on the site. To them, I offer the following advice: If you wouldn't say it to a woman on the church steps while the pastor was listening, don't say it to a woman at work.

## Employer Liability

More troublesome situations arise when male employees make sexual advances to female employees. Construction company owners should be concerned about this kind of behavior, since employers could be liable for the actions of an employee who harasses another employee. It's not the act of harassment that generates an employer's potential liability, it's what the employer does or doesn't do about the harassment

that creates the problem.

If you are aware of the harassment but wait to act until someone makes a complaint, you're asking for trouble. Don't assume that because nobody has made a fuss, it's not a problem. Sexual harassment complaints are different from workers compensation claims, where employees could lose their rights by not reporting the injury. A harassment charge can be made at any time, even years after the actual incident. If you hear anything about harassment occurring on your job site, investigate immediately. Once you've got the facts, call the offending person in and make it clear that the job site is not a social club or a dating service. If the offensive behavior continues, take stronger action, includ-



ing suspension or firing. Don't delay, because no matter how valuable the employee in question appears to be, a harassment suit could cost you dearly.

### **Hostile Work Environment**

The other kind of sexual harassment liability is what the law calls a "hostile working environment." What that means is the kind of working situation, for example, where catcalls, offensive language, lewd behavior, or crude "jokes" create an atmosphere in which a woman simply cannot work without feeling demeaned. This is similar to a working environment in which racial slurs or attacks are common.

Sometimes it's easy to recognize behavior that creates a hostile working environment. For example, it's clear to everyone that sexually explicit pictures left in a woman's locker or constant remarks about a woman's sexual habits or appearance are likely to make that woman uncomfortable. Sometimes, however, complaints about a hostile working environment can be triggered

by the sort of "locker room" atmosphere that is common on some sites. In these cases, the offending behavior may not be directed at a particular individual. The key fact is that such behavior takes place on the site where it can affect other employees. For example, if male workers tell off-color jokes during lunch break, a female worker sitting there eating her lunch may be offended. It's no defense to claim that she can take her lunch break somewhere else on the site. Even if the site were big enough to permit this, the fact that she had to avoid the behavior of her male coworkers could constitute a hostile work environment.

### **Protect Yourself**

The first step to avoiding a sexual harassment complaint is to pay attention to what happens on your job sites. While you're monitoring safety practices, productivity, and quality, keep an eye out for harassment.

Second, make your position on sex-

ual harassment clear to your employees. It is appropriate for you to demand that your employees conduct themselves professionally while they're on your job site or in your office. Include clear policies in your employee handbook so new hires will know where you stand.

Third, do not tolerate violations, and keep a record of your reprimands and enforcement actions. Do so consistently so that everyone in the same situation is treated the same way. If you receive a complaint, investigate thoroughly, then act quickly and decisively.

Finally, check with your insurance agent to confirm that your liability policy covers harassment. In recent years, the trend has been to exclude this kind of coverage from a standard contractor's package.



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