

Tip of the Week

P•A•S ASSOCIATES

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Is Your Harassment Training Too Risqué?

Harassment training is always tricky—Discuss the behaviors of harassing managers, and you may be creating an uncomfortable environment just with your training. Here are a few scenarios that should get discussions going without offending.

Gayla's Dress is "Provocative"

Gayla G's job took her all around the facilities of Business Consulting Inc. She thought of herself as a very with-it dresser, but some of her co-workers thought her wardrobe was "a little suggestive." True, her skirts were short, and her tops were low-cut, but she worked out at the gym every day to keep herself in shape, and why not show it off?

Gayla had a rather "flirty" way with the men in the company. She liked to come up close to them and make a provocative comment. One day, when no one was around, she approached co-worker John P. in her usual way. He hugged her, pressed himself against her, and grabbed her buttocks.

Unfortunately for John, Gayla had taken the rape avoidance training her gym offered, and she left him somewhat shocked and more than a little in pain.

Gayla reported the incident, and when John was confronted, he said, "Well, she's been asking for it with her sexy clothes and come-on comments."

Was this harassment?

Well, it might be a little more like attempted rape than harassment, but it's surely not appropriate. Courts have consistently held that provocative dress or behavior does not excuse aggressive actions such as John P's.

Is the case any different if John is the flirting sexy dresser and Gayla is the one who grabs him?

No. People tend to stereotype harassment as something men do to women, but it applies equally to women harassing men. Or to same-sex interactions, for that matter.

Matt Won't Date Jackie

Sales manager Jackie J developed a fondness for Matthew M, who was one of her best salespeople. She kept trying to get him to go out with her after work, but he refused. "No, thanks," he answered. "I don't like to date people from the office." Eventually, Jackie gave up

her quest, and all seemed to have returned to normal. Not too long afterwards, however, when the quarterly sales awards meeting was held, for the first time, Matthew wasn't selected for the "President's Circle." When he asked Jackie about it, she said, "Well, your 'performance' has been slipping a little. Perhaps this will get your juices flowing again."

Is that sexual harassment or retaliation?

Of course, we don't know, but it has the taint of retaliation. If Jackie can document the business reasons for her decisions concerning the President's Circle, then maybe she can avoid the charge of retaliation. If she can't, it might be retaliation.

William P Courts Janet R

Janet R enjoyed her position as administrative director at Eastern Healthcare. She worked with great people, with the possible exception of her boss, William P, whose interest in her clearly extended beyond the workplace. For months, in fact, he had been casually asking her out. Occasionally, she'd have a drink with him after work, maybe dance a few dances, but she never let things go any further than that.

Then Janet became eligible for a promotion, and things moved to a new level. "That promotion that you've been hoping for? Well, I imagine that if we spent a weekend in the country talking about it, I'd be a lot more likely to recommend you for it," William said. Janet didn't go and she didn't get the job.

Is this harassment?

Yes, this appears to be the most blatant form of harassment, called quid pro quo (this for that). That's when an employment action is conditioned on a subordinate's acquiescing to a supervisor's sexual desires.

Janet R Says Yes

Take the same situation as the last scenario. William P, the boss, keeps asking Janet R, his subordinate, to go out with him. But let's say that Janet has been secretly hoping for an invitation to go on a weekend. The two of them go to the country for the weekend and enjoy it wholeheartedly. The next week, Janet gets the promotion. She and William continue to find mutual enjoyment on their weekends in the country.

Any problems?

Not for Janet and William. Not yet. But what about the other employees who didn't get the promotion? If they perceive that Janet is getting promoted over them because she's having sex with the boss, they are going to sue.

Now let's say that Janet and William's relationship cools off at some point in the future, as many relationships do. They stop seeing each other. They maintain a pleasant relationship at work and

things seem back to normal for everyone involved. A few months later, however, Janet suffers some type of job detriment, for example, she gets demoted or fails to get a bonus.

Any problem now?

Janet may claim that William coerced her into a relationship and is now retaliating against her for breaking it off. Because of the boss/subordinate relationship, it will be hard to prove she wasn't coerced and retaliated against. William will need some good documentation to back up his action against her.

Jake P Scares Penny R

Penny R's job as receptionist for ABC Enterprises was "pretty cool," she thought. She got to greet everyone when they came in and she enjoyed the daily visits from the various service people who came by. Except for Jake P, one of the computer consultants. Whenever he came in, he'd look her up and down and make some comment about her attractiveness. Then he'd come up to her counter and lean over and whisper some pretty rude line about what he'd like to do with her.

Once, Penny got up the courage to say to her boss that Jake was annoying her, but the boss laughed it off, saying, "Oh, Jake, he doesn't mean any harm. And, besides, what can we do—Jake's not an ABC employee." Soon after, Jake's attentions became more offensive, and he began to touch Penny. Suddenly she didn't feel very safe in her isolated area. Among the many visitors to her reception desk were attorneys, and she had developed a friendly relationship with one of them. So she called him.

Was Penny subject to sexual harassment? Is ABC going to be liable?

It appears to be harassment or at least inappropriate. If the manager knew about the behavior—it appears he did—and didn't act, that will be a problem.

What about the fact that Jake isn't an employee?

That may make it harder to stop the behavior, but it doesn't lessen the employer's burden to do so.

Joan T Works the Bar

Bart L managed the operations of the three bars in the sprawling Downtown Hotel. At one bar, Joan T, one of the cocktail waitresses, was subjected to some pretty rowdy talk and some occasional drunken pinching and hugging from a few regulars at the bar. She complained to Bart, but he said, "Hey, it's a bar. When they get a little tipsy, they get a little frisky, but you get great tips, and keeping the regulars happy is part of the territory."

Joan complained again, to no avail. One night, the pinching and hugging started to be a bit more like groping, and Joan headed for the EEOC to file a complaint. The hotel manager called Bart

in. “Why am I on the carpet?” Bart asked. “I didn’t do anything.” “That’s just it,” said the hotel manager. “You didn’t do anything. You should have.”

Was sexual harassment occurring at the bar?

It sure seems like it.

What about Bart’s “Hey, it’s a bar” theory?

Supervisors and managers have a duty to take action when they receive a complaint (or find out harassment in some other way). Inaction is seen as condoning the behavior. In this type of environment, there may well be a large gray area as far as a spicy comment here and there, but there is no gray area when it comes to intimate touching.

They say there are three keys to preventing sexual harassment: training, training, and training. Come to think of it, the same three keys apply to most manager and supervisor challenges. And training is especially critical for supervisors who are new to the job. They don’t know how to handle harassment, they don’t know how to handle basic tasks like hiring and firing, and that’s to say nothing of intermittent leave or accommodating a disability.

It’s not their fault—you didn’t hire them for their HR knowledge—and you can’t expect them to act appropriately right out of the box. But you can train them to do it.

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