



# Make Your No-Harassment Policy Less Sexy

Insights

8.01.13

## (Labor Letter, August 2013)

In recent years, many high-profile workplace-harassment lawsuits have grabbed headlines, complete with lewd and salacious allegations. Sexual harassment is indeed a form of gender discrimination and courts have issued many important opinions in handling these cases. But for both practical and legal reasons, it would be a big mistake to focus your workplace “no-harassment” efforts strictly upon sexual harassment.

In fact, you should review your policies and practices to ensure that everyone in the workplace understands that “no harassment” is much more than a “sexy” topic. A recent \$2.9 million verdict by a Houston jury illustrates this point clearly.

### No Sex Involved

Although the damages award is likely to be adjusted, the Pottery Barn in Town and Country Village will still feel the sting of the verdict, which resulted from the termination of a 65-year-old assistant manager who claimed she was the victim of age discrimination. Before being terminated, the manager was allegedly singled out for criticism and subjected to comments such as, “How old are you, 102?,” and “Let’s see if we can teach an old dog new tricks.” Sadly, this entire situation might have been avoided.

Federal and state laws prohibit discrimination and harassment based not only on sex, but also based on characteristics such as age, race, color, national origin, pregnancy, religion, and disability. Unfortunately, defense lawyers find that many employer policies, especially those that have not been updated for a few years, focus too narrowly on sexual harassment, without making it entirely clear that the company prohibits *all* such harassment.

As illustrated by the Pottery Barn case, this can be a critical mistake. An *effective* policy that included appropriate training, reporting, investigation, and enforcement provisions, might have stopped this train wreck before it occurred. Effective policies make supervisors aware of their responsibilities, inform employees of various options for reporting suspected harassment, ensure follow-up and prohibit retaliation against anyone involved in reporting or providing information about an investigation.

Would such policies have made a difference in this case? No one can say with certainty, but they could have helped Pottery Barn weed out noncompliant managers; given the victim a chance to be

heard before she lost her job; and given the company a chance to identify and correct problems before they mushroomed into a costly, ill-fated lawsuit.

### **What The Statistics Show**

As the workforce ages and other demographics change, it's critical for companies to ensure that their no-harassment policies explicitly reach well beyond sex harassment. Statistics from the U.S. Equal Employment Opportunity Commission (EEOC) bear this out. Last year, less than one third of all charges filed included allegations of *any form* of sex discrimination. More charges included allegations of race discrimination. About one fourth of all charges alleged age discrimination and another 25% included allegations of disability discrimination. (A single EEOC charge may include allegations of discrimination on more than one basis.)

A well-written and effective no-harassment policy – which the company effectively practices – can provide a potent legal defense when charges or lawsuits are filed. More importantly, it can help prevent illegal discrimination or harassment in the workplace, which is the intent of the law in the first place.

Our advice? Review your policies and practices to ensure that they are not too “sexy,” but are instead, effective.

---

*For more information contact the author at [KTroutman@fisherphillips.com](mailto:KTroutman@fisherphillips.com) or (713) 292-0150.*

### ***Related People***



**A. Kevin Troutman**

Senior Counsel

713.292.5602

Email