



New Year, Same Old Mistakes? Avoid Sexual Harassment At Your Dealership In 2017

Insights

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Our last several Dealership Update newsletters have focused on new developments in dealership employment law, from heightened scrutiny of dealership arbitration agreements and employee handbooks, to the union threat in the retail automotive industry, to the always evolving world of wage and hour law. However, just because new issues arise that demand your attention doesn't mean you can ignore the old ones. And one of the oldest and most common claims your dealership can face is a sexual harassment allegation.

The U.S. Supreme Court first recognized a cause of action for sexual harassment under Title VII of the Civil Rights Act in 1986. Over 30 years later, it would stand to reason that all employers, including dealerships, would have taken measures to prevent such violations at their businesses.

Recent Dealership Sexual Harassment Cases

However, a quick review of employment cases from recent years shows that allegations of sexual harassment remain prevalent within the dealership industry. Those dealers that have not implemented clear and effective policies against harassment, supplemented by meaningful anti-harassment training for employees and managers, have paid the price. Here is a summary of some of the more notable – and costly – cases:

- A New Mexico dealership reached a public settlement with the Equal Employment Opportunity Commission for \$2 million following allegations that the dealership's Lot Manager subjected male coworkers to shocking sexual comments, frequent solicitations for oral sex, and regular touching, grabbing, and biting of male workers on their buttocks and genitals.
- A Texas appellate court upheld a jury award of over \$625,000 for an Aftermarket Sales Manager who alleged that her Finance Director repeatedly asked her out on dates, hugged her, and made sexually suggestive comments. On one occasion, the Finance Director purportedly forced her hand onto his groin. The Aftermarket Sales Manager also alleged that other salespersons regularly grabbed her buttocks and made comments regarding her appearance and dress. When she complained, she alleges management told her to "just ignore it." The dealership subsequently terminated her employment for theft before being hit with the costly claim.
- A Massachusetts jury awarded \$540,000 to a Finance Manager who alleged that her Finance Director made repeated comments about her genitals, asked to sleep with her, touched her

Director made repeated comments about her genitals, asked to sleep with her, touched her buttocks, and attempted to throw coins down her shirt. To make matters worse, the Finance Director purportedly made sexually suggestive jokes during a sexual harassment training.

As these cases demonstrate, allegations of sexual harassment remain prevalent within the dealership industry, and the resulting penalties are steep. When dealerships cannot show they conducted a thoughtful and thorough investigation into the employee's allegations and then took prompt and appropriate remedial action to correct any potential wrongdoing, they can expect six-figure (and sometimes seven-figure) jury verdicts. And the raw numbers fail to tell the whole story, as these dealers also suffer decreased employee morale, poor employee retention, and the inability to recruit new talent.

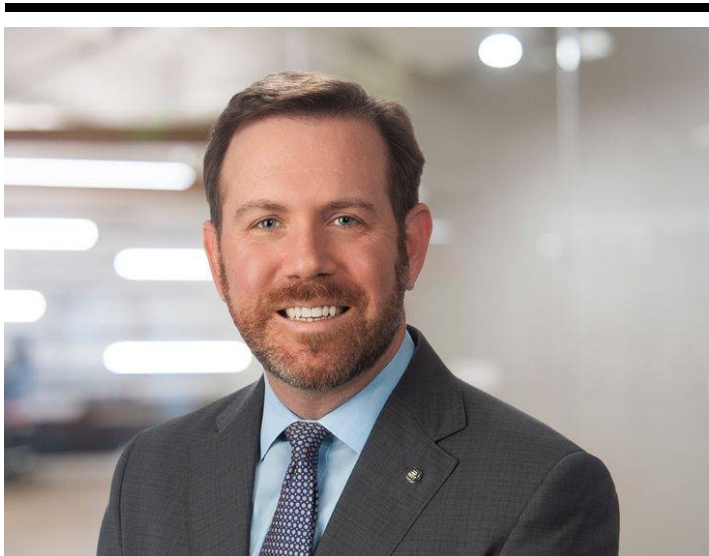
The Simple Four-Step Solution

But there is a solution. You can mitigate against the potential for runaway verdicts by implementing policies and procedures at your dealership designed to prevent harassment from occurring in the first place. These policies should also correct and cure any instances of harassment before your employees feel they must seek solace at the courthouse.

First, you should retain human resource consultants or legal counsel to prepare compliant equal employment opportunity and no-harassment policies designed to provide your dealership as much legal protection as possible. Second, invest resources to train your managers to quickly identify and correct workplace harassment. Third, educate your employees regarding your dealership's equal employment opportunity and no-harassment policies. Finally, you should retain well-trained professionals to immediately investigate and respond to any allegations of harassment as soon as they arise.

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