

Avoiding Harassment by Residents

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A recent lawsuit filed by the U.S. Equal Employment Opportunity Commission ("EEOC") against a healthcare facility in Virginia highlights a legal liability to which nursing homes and other long-term care facilities are particularly vulnerable: harassment of employees by residents. The lawsuit in question was filed under Title VII of the Civil Rights Act and it alleged that a female receptionist was subjected to a "sexually hostile work environment" on the basis of harassment by a resident. The lawsuit further alleged that the employee made numerous complaints to her supervisor about the harassment yet the employer failed to take proper corrective action.

Sexual harassment is a difficult issue in any employment setting, but perhaps nowhere more so than in the resident care arena. A number of different nursing home employees have regular, physical contact with non-employees - primarily the residents for whom they care (and the family members of those residents). Under Title VII, nursing home employees are protected from harassment by residents just as they are from co-workers and supervisors. Hospitals, nursing homes, assisted living facilities and other patient-care entities are responsible for providing a workplace free of sexual harassment, regardless of whether the harassment is perpetrated by a co-worker or by a paying resident.

Most nursing home employers have experienced episodes in which a resident acts out in an inappropriate manner. Often, the inappropriate behavior is due to the resident having a deteriorated mental condition such as dementia or Alzheimer's. As a result of this condition, residents may not understand that their actions are inappropriate. However, this mental condition does not act to shield nursing home employers from liability.

While it is critical for an employer to respond meaningfully to a complaint, it is just as important that the response does nothing to permit an employee to argue that he or she was retaliated against for making the complaint. Retaliation claims have increased within all industries in recent years and the long-term care industry is no exception. An employer should not take any action that is "materially adverse" to the employee -such as transferring the employee to a position that has more onerous job duties.

The most effective way to minimize the risk of harassment in your long term care facility is to conduct regular training on your policies or to implement policies now if they do not exist.

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