



Let's Talk About Sex(ts) – High Tech Sexual Harassment

Publication

8.02.13

Anthony Weiner. Brett Favre. Tiger Woods. Ken Kratz, a District Attorney from Wisconsin. Your workplace? You may be asking yourself what does a former United States Congressman accused of tweeting his private parts, a former professional football player accused of sending sexual texts to a game day hostess, a professional golfer accused of sending sexual texts to various paramours, and a D.A. who admitted to sending over 30 sexually explicit text messages to a domestic abuse victim have to do with your workplace? Everything. Because Anthony Weiner, Brett Favre, Tiger Woods, or Ken Kratz, in a figurative sense, could be your employee.

We live in an age when technology is changing daily. Your employees can now be reached anywhere, anytime, and by anyone as people become more dependent than ever on their mobile and smart phones. Now, virtually every mobile phone has a built-in camera, video recorder, and audio recorder. Landlines are becoming a technology of the past. Employees surf social networking sites such as Facebook, Twitter, MySpace, and Pinterest while at work using company property. Employees with mobile phones can send a message within a matter of seconds. Although the new developments in phone, internet, and mobile technology are truly ground-breaking, the developments create risks for you as an employer never before imagined.

With the advent of new technology, a new liability with respect to sexual harassment law has emerged – the “sext.” “Sexts” or “sexting” has been coined to refer to the act of sending or receiving sexually explicit messages, videos, or photos, and courts are now recognizing sexually explicit text messages, social network messages, and emails as forms of what is now being called “textual harassment.” There are a number of problems with sexting and other forms of social network communication for human resources professionals, namely that it can occur surreptitiously, in a matter of seconds, can occur outside of the workplace, and yet still be considered severe and pervasive workplace harassment.

What Should Employers Do?

- Make sure you have a sexual harassment policy in place and update it to address electronic harassment.
- Update your company’s electronic communications policy.
- Review your company’s record retention and data storage policies.
- Train your employees on the above policies.

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- Take allegations of sexual harassment or sexting seriously.

If you do what is outlined above – revise your policies to reflect the changing harassment law; train your supervisors and employees on your policies; and promptly and fully investigate all allegations of sexual harassment, including taking appropriate action at the conclusion of the investigation, then you have taken the reasonable steps to protecting your employees and your company against the Brett Favres, Anthony Weiners, Tiger Woodses, and Ken Kratzes.

This article appeared in the August 2013 issue of *HR Professionals of Greater Memphis*.

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