SEXUAL HARASSMENT
ME, TOO!
(Frequently Asked Questions with Answers)

Handling issues related to Sex Harassment is a dreaded management requirement. This advisory was designed to supplement what you may know from training, reading, or the media, as there is a flurry of ME TOO cases drowning the airways. This is not a legal advisory and should never be viewed as a substitute for competent legal services. It is a conversation with a Human Resources executive, who has worked in this field for more than 40 years, and who has handled more than 300 harassment issues. The best way to avoid a charge is to be informed.

Q. *Is there a special law that managers can read and will help me understand sex harassment?*

A. Sex harassment is a form of sex discrimination. The sex harassment victim was selected because of gender and subjected to objectionable treatment. Sex discrimination is covered under The Civil Rights Act of 1964 in the United States and the Canada Human Rights Act. It is a huge law that addresses discrimination in education, housing, employment, etc.

Q. *My company owner told me that I am under more strict rules about sex harassment than other employees because I am a supervisor at my company. Why is that?*

A. Supervisors have considerable power over what happens to employees. They can give and take away jobs, promotions, raises, etc. If a supervisor abuses that power to gain sexual favors, the company can be held libel and the result can be very expensive. For this reason, many companies remind supervisors about what they call "vicarious liability" often. It just means the company is responsible for the actions of their employees.

Q. *One of our employees filed a sex harassment charge in our HR Department against her supervisor for an incident that happened at a bowling alley when they were both away from work. Can she do that?*

A. Yes, she can. The smartest thing to do is to remind supervisors they are never off from work. No matter where they are, it is very important for them to conduct themselves accordingly whenever they are in a setting where they are interacting with those over whom they have control in the workplace. Social settings, such as the bowling alley or a sports bar can be a setting for a potential problem between a supervisor and a subordinate.

Q. *My Distribution Center Manager has a bad habit of using casual profanity as part of his regular vocabulary and I was told that certain employees find it offensive. Are we at risk of being charged with sex harassment?*

A. It is possible. Many profane remarks are sexual. If so, you may have what is commonly called a *"hostile and offensive work environment."* Using profanity is a bad habit, just like biting your fingernails. Tell that Manager to develop a new habit that is less risky. Make sure he understands that his conduct can cause you (and him) a lot of trouble.

Q. *If I ask another employee for a date, is that sex harassment?*

A. I don't know. If you are a supervisor and you ask a non-supervisor for a date, I don't think that it is sex harassment, but I never recommend it. Your company should have a no-fraternizing policy. If you are not a supervisor and the other employee is not a supervisor, then there should be no problem, unless you are rejected and you keep asking. Then, your behavior could be called harassment.

Q. *When I give a female co-worker a compliment about her clothes or her hairstyle, could she say I am "harassing" her?*

A. Maybe. Some women will say, "*Thank you very much.*" Other women will say, *"How dare you?"* The most difficult aspect of understanding sex harassment is to recognize that *"hostile and offensive behavior"* is defined by the individual receiving the behavior. If the recipient of your compliment finds your remarks offensive, she may label it as harassment. Some people have learned to phrase their remarks carefully. Example: *"That is a pretty dress"* instead of *"You look pretty in that dress."* In my opinion, it is the difference between being "flirtatious" and "complimentary."

Q. *Recently, one of my employees asked to tell me something "in confidence." She made me promise I would not tell anyone. Then she told me she is the victim of sex harassment by her supervisor? Should I break my promise to her and say something to the man who is harassing her?*

A. You have no choice but to act, if you are a member of management (supervisor, manager, director, officer). The moment the employee told you about the harassment, your company was placed on "official notice." The sex harassment regulations state that we have to take immediate corrective action when an employee reports sex harassment. It is always wise to say to any employee who wants to tell you something in confidence, *"I will be happy to keep your confidence, unless you are about to tell me something that is illegal, immoral or unethical."*

Q. *We had a sex harassment claim and I think we did everything we should have done to make sure it was handled correctly. The person who filed the complaint came to my office and told me she was not happy with the way we handled the problem because we did not ask her what discipline the offending employee should have gotten. She said she has a right to decide what we should do to him. Is that correct?*

A. Please keep in mind that it is your duty as a manager to "manage." Although you may ask the employee what he/she would like you to do about the problem, the employee is not the person who should make a discipline decision. I know of no requirement that states (or even suggests) that you ask the victim of a sex harassment claim to decide on the resolution. I think the smart thing to do is to say to the victim, *"The issue has been resolved and I want to make sure that you have no further problem. I will be checking with you often to make sure there is no further problem."* That should do it.

Q. *My Office Manager has suggested that we have a training session on Sex Harassment. We have never had a problem and I am reluctant to bring up this subject, because it is an uncomfortable topic. In the absence of a problem, should I schedule a training program?*

A. The suggestion from your Office Manager may have been a subtle way of telling you there is a problem. It is also important to know that the Equal Employment Opportunity Commission (the government enforcing agency in the U.S) reminds us that management must take all steps necessary to prevent sex harassment from happening. Some states actually mandate sex harassment training. If you have a charge filed against your company, you can be certain the EEOC will want to know what preventive steps you have taken to prevent sex harassment from happening. Sex Harassment is not a subject that should be ignored until a problem happens. Schedule some training and document employee attendance. You may need the documentation later.

Q. *I have two employees who are involved in a personal relationship. One is the supervisor of the other employee. Both are single and they have given me a written statement that their relationship is voluntary and consensual. My wife, the HR Director of a local company, says that paper is worthless and the employee can still claim sex harassment. Do you agree?*

A. I do. We have No-Fraternizing policies to discourage situations like this. If the relationship ends, the subordinate employee may say that she (or he) felt forced to write the statement because the

supervisor with whom she was involved would retaliate against her. People do strange things when love goes bad. I recommend you establish a No-Fraternizing policy that prohibits personal relationships between two people of **unequal** power.

Q. *I have a smart, beautiful wife and I am very proud of her. Photos of our vacation at the beach are on my office credenza and include many pictures of my wife in swimsuits. My Administrative Assistant told me the Warehouse Manager called the pictures "sexual, offensive, and suggestive." I think he is just jealous but I am a little concerned about this. My question is, "Can family photos be the subject of a sex harassment claim?"*

A. You sound like a great husband but you must also be a smart manager. Take the photos home and replace them with others that are more appropriate for display on your office credenza. Although you view the photos as beautiful, graphic images (photos, drawings, calendars, cartoons) that are sexually suggestive may be viewed as offensive. I actually handled an issue exactly like this one and everyone ended up unhappy with the outcome because ego was in the room and drove the decision.

Q. *The Sales Manager we hired last year calls our women employees "Honey Bunny." When he forgets a name he just says, "Here you go, Honey Bunny." I mentioned that it could be offensive to some of the women and his response was that he is a "Southern Gentlemen" and does not think he discriminates. He uses that term with all of the women regardless of their age or race. Should I put this issue lower on my stress scale?*

A. Your Sales Manager sounds a little confused but at least he knows something about the topic of discrimination. Unfortunately, he does not recognize that selecting out all members of one gender (women) and treating them differently can cause a problem. I am sure he would never call the men employees *"Honey Bunny."* You are correct in your assessment of this situation. Sex harassment is not about race and age; it is about gender. Some of the women may call him an outdated "old dude;" the Millennials may call him a stone-ager, and some may ignore him; but there is a risk that some may say his comments are *"sexist and offensive."* He needs to learn that terms of endearment should be reserved for those who are part of our personal lives. Please acknowledge to him that language has strong regional influences, where calling people "honey" or "sweetie" is part of the dialect, but the sex harassment regulations apply to everyone in the country and you are encumbered to enforce them.

Q. *The Key Account Sales Representative informed me today that she will no longer call on our largest customer. She said the purchasing agent is guilty of touching her inappropriately and said he has made it clear the she will not get a good order from him unless she is willing to be "more personal." I have urged her to be diplomatic and tell him she is married and not interested in him, but she refuses. Is there any chance of solving this without losing the business? They are a huge customer and I can't afford to lose this business.*

A. Your problem is every business owner's nightmare. You are responsible for the behavior of your vendors and customers toward your employees. Once your employee has told you about this problem, you are on official notice and must take action. You cannot require or expect the employee to manage this problem. If you have an HR Manager, then your HR Manager may talk with the HR Manager of the customer and get it handled. If not, and you are acquainted with the manager (owner) of the business where this purchasing agent works, I suggest you call that person and ask to talk about an urgent business problem that is important to both of you. Then, describe what is going on. Be aware that retaliation against your employee can lead to serious problems for this purchasing agent. Let's hope the manager where this purchasing employee works is a smart businessperson and together you can solve this problem.

If this approach is not practical, then you may want to call the purchasing agent and say this, *"I am Mary Ann's boss. Is there anything going on between you and Mary Ann that might lead to a charge of sex harassment?"* When he gets up off of the floor and unties his tongue, he will say, *"Of course not!"*

Just say, *"Good, I was really worried about that and I will be even more worried if you retaliate against her because I have tipped you off about this problem."* That approach should work. Remember, you must stay close to this problem and make sure that Mary Ann is not the victim of retaliation after you address it. You can find out about how she is treated by saying to her, *"The problem has been handled; please let me know if there are any further issues that trouble you."* Then, follow up often.

Q. *One of my active employees filed a sex harassment charge at our local Human Rights office. She never talked to anyone here at our company about that. Can an employee do that without talking to me first?*

A. Employees may always exercise their rights. There are government agencies that exist to make sure that employee rights are preserved. However, her complaint is not an automatic indictment. The EEOC or Human Rights Office will investigate and make a determination about the merit of the charge. My hope is that you have a well-written policy on sex harassment in place. Your policy must be in writing. It should have these parts: a statement that your company prohibits sex harassment; a clear definition of what sex harassment is (including examples); a complaint procedure that tells employees how to file a complaint; a commitment to conduct a complete investigation and that you will take remedial action; plus a statement that you will not allow retaliation. Give every employee a copy and make sure they sign for it. The investigating agency will expect you to take the Sex Harassment regulations seriously and do everything you should be doing to comply. If you have a complete policy in place and available to the employee, you can be sure the EEOC/Human Rights Commission will ask the employee why she did not follow the company policy before she came to their offices? Bypassing company policies does not look like good faith to me.

Q. *Please solve an office argument for us. One group says that an employee cannot file a sex harassment complaint until they tell the person to stop. The other group says there is no such requirement. Who is right?*

A. Group Two wins! I am not aware of any requirement to tell a person to STOP before filing a sex harassment complaint. I have heard many employees say, *"I am not guilty because he never said anything!"* WRONG. Please make sure you have a written policy that describes how the employee can file an internal complaint and then respond to the complaint immediately. Don't expect the victim to solve the problem.

Q. *We have many young people working in our Shipping Department. They have a boom box that plays all day long near the loading dock. It is tuned to a music station that plays mostly rap music. Two employees in Traffic have complained that the content of the music is profane, sexual, violent and offensive. They are demanding that the boom box be silenced. It has created an internal problem in the distribution center. What should I do?*

A. The problem is environmental. It is very important that you remove the source of the offensive condition. An EEOC/Human Rights Officer told me that employers are liable if they know or should have known about the offensive condition in their work environment and took no action to stop it. Once the problem is solved, that is the end of it. Music can be offensive and profane in the same way as any other form of communication. I heard a manager tell a group of employees, *"If it offensive to say it, then it is offensive to sing it."* They did not like it but they were okay because he reminded them that their company is liable for what happens there and has no choice but to require the boom box be tuned to something less sensational.

Q. *I have a small business and no HR Manager. I have a letter from a lawyer stating that he represents our Accountant, who resigned to accept another job. The letter says our CFO was guilty of sex harassment and she was the reason the Accountant resigned. He wants me to call him to "discuss a reasonable settlement." My CFO says she is innocent and the letter sounds like extortion. I really don't a lot of money to pay a lawyer. Should I call him?*

A. I grew up in the same town with the GREAT ONE - Muhammad Ali, and only a fool would get in the ring with him unless he was a skilled boxer. Don't take on a lawyer unless you are a lawyer. Since you do not have an internal person with the expertise to handle this matter, call your legal counsel and get professional help.

Q. Our IT person brought me a DVD she found in an employee's laptop computer. It is labeled as an XXX Rated Adult Entertainment Movie DVD. The employee left his laptop to be upgraded and apparently forgot that he left the DVD in the drive. Our policy states that employees cannot have anything in their computer that would be offensive to a "reasonable person." The IT person said she did not open the DVD and view it but thinks it is offensive and knows it violates policy. I do not want a sex harassment complaint. The employee has been with me for 15 years. He is an excellent salesperson and has never been a problem. Should I fire him?

A. The offending employee has a sound employment history and no problems in the past. Firing an employee is a big deal. Make that decision last after you have considered all of the facts. The IT employee did not file a sex harassment complaint. She did you a favor by bringing the DVD to you first. There is obviously a violation of your technology policy as the objectionable material was in a company-owned computer.

I would bring this employee into the office, present the employee with the DVD and tell him what happened. If he is the kind of employee you describe, he will be mortified. I would remind him that he has violated the technology policy; his lapse in judgment has created an embarrassment for him, and it may have created a potential problem for the company. Then, I would tell him this must never happen again. Put a notice in his file that you have had this "one time" conversation regarding objectionable material in a laptop. We call this a "first and final notice." If he was our employee and had no other problem for two years, I would take the notice out of his file. It was a very unacceptable act on his part but it should not be a career-breaker for an employee with no history of problems. This is one of those problems where the company culture, value systems, and personal feelings may collide. Most importantly, you must protect the company and take appropriate action that you can defend and is acceptable to your culture.

Q. Our Inventory Planner is a woman. Employees say she is an exhibitionist. She wears very low-cut sweaters, short-short skirts and often has her midriff exposed. Both male and female employees have talked about it with me. I am not sure this is a sex harassment problem, but my gut tells me I should do something. Am I being old-fashioned, out-of-date, or too conservative to be worrying about this?

A. Good taste is timeless. It never goes out of style. Your gut feeling is the sum total of your past experiences telling you a potential problem exists. Yes, you need to have a conversation with the employee. Tell her that you are uncomfortable with her manner of dress and that it is not consistent with what you think is appropriate for your workplace. Identify an employee (or more than one) with a manner of dress that is consistent with your company's image. Then, tell the offending employee that these employees are examples of what you expect employees to wear. Remind this employee that what employees do, say, and wear, are reflections on the company. Don't be apologetic for the culture of your business and the image you expect for your company. By the way, could an employee file a sex harassment charge regarding the manner of dress of another employee? The answer is "Yes." It is called a "hostile and offensive work environment."

Q. I have a huge problem. My Vice President of Distribution had an affair with his Administrative Assistant, which seems to have ended. Apparently, he confessed to his wife. The Administrative Assistant came to me and said the wife of this VP called her and said, "I know you had an affair with my husband and if you charge him with sex harassment, I will kill you. We have four kids and he can't afford to lose his job." The Administrative Assistant said she does not intend to file a sex harassment charge because the relationship was consensual but she is not very afraid of the wife after this

disturbing conversation. I have no clue what I should do. We do not have a policy that prohibits supervisor-employee relationships. I am very angry but I do not want to do the wrong thing here and make matters worse.

A. The situation you describe is the primary reason I urge every client to have a No-Fraternizing Policy and a zero tolerance for violence. Workplace homicide is the number four cause of death on the job and the number one target is a domestic partner. There is a huge potential for violence that could put innocent employees at-risk. Be sure to tell the Administrative Assistant that she should use her own judgment regarding the phone call, as threatening people is a legal issue. She may decide to seek legal help because the caller was threatening. Although we cannot advise the employee about her legal issue, there is an HR issue here and it must be handled. Yes, you could fire the VP and you may want to do that. If not, you should have a very serious conversation and remind your employee that he has called his own judgment into question and has put employees at-risk. I would tell him that the company will have absolutely no tolerance for any behavior of this kind and you will hold him fully accountable for the behavior of his wife. His reaction will be based on his personality, relationship with you, and his own value system. Be prepared for a tearful apology, denial, quiet resignation, anger, even a resignation. Who knows?

My advice is to have this conversation in a neutral place. I control the potential for outbursts by having conversations with executives in a public place, such as a quiet restaurant or a coffee shop. If that does not allow for the level of privacy you need, then use a conference room. Do not have this conversation in your office. You want to exit the room immediately after you finish this conversation and do not want to put yourself in a place where you are cornered in your own office by an angry executive. These can be emotionally charged conversations and you need to leave the building as soon as possible.

Finally, remind your VP that he may not retaliate in any way against this Administrative Assistant. Retaliation violates the sex harassment regulations and the EEOC (the government agency) has no patience for any employer who retaliates when employees exercise their rights.

Some or all of these examples may be useful to be sure employees understand the Sex Harassment and other discrimination issues are potentially serious workplace problems and your company wants every employee to be aware of the potential consequences.

This management advisory was prepared by Nancye Combs. It was not created to replace the services of a competent legal advisor and is not specific to the laws of any specific state. Nancye Combs provides training resources on-site and online on Sex Harassment Avoidance and many other important management topics. Nancye has more than four decades of practical experience in human resources. A recognized authority, she is a trusted advisor, a remarkable speaker and outstanding educator. She is a University instructor for human resources professionals seeking to become nationally certified by the Society for Human Resource Management. You may reach her at:

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