

Local Government Insurance Trust

RISK MANAGEMENT BULLETIN

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UNDERSTANDING WORKPLACE HARASSMENT

It is imperative that local governments recognize that workplace harassment is a form of discrimination. It is equally imperative that local governments understand the potentially devastating effects of workplace harassment, including the erosion of employee confidence and the exposure to civil liability.

In general, unlawful harassment is a form of discrimination that violates Title VII of the Civil Rights Act of 1964 and other federal and state authority. Essentially, harassment can be defined as *unwelcome* verbal or physical conduct based on race, color, religion, sex (whether or not of a sexual nature and including same-gender harassment and gender identity harassment), national origin, age (40 and over), disability (mental or physical), or retaliation (sometimes collectively referred to as “legally protected characteristics”). Harassment becomes unlawful when:

1. The conduct is sufficiently severe or pervasive to create a hostile work environment; or
2. A supervisor’s harassing conduct results in a tangible change in an employee’s employment status or benefits (for example, demotion, termination, failure to promote, etc.).

Hostile work environment harassment occurs when unwelcome comments or conduct based on sex, race or other legally protected characteristics unreasonably interferes with an employee’s work performance or creates an intimidating, hostile or offensive work environment. Anyone in the workplace might commit this type of harassment – a management official, co-worker, or non-employee, such as a contractor, vendor or guest. The victim can be anyone affected by the conduct, not just the individual at whom the offensive conduct is directed.

Examples of actions that may create sexual hostile environment harassment include:

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- Leering, i.e., staring in a sexually suggestive manner
- Making offensive remarks about looks, clothing, body parts
- Touching in a way that may make an employee feel uncomfortable, such as patting, pinching or intentional brushing against another's body
- Telling sexual or lewd jokes, hanging sexual posters, making sexual gestures, etc.
- Sending, forwarding or soliciting sexually suggestive letters, notes, emails, or images

Other actions which may result in hostile environment harassment, but are non-sexual in nature, include:

- Use of racially derogatory words, phrases, epithets
- Demonstrations of a racial or ethnic nature such as a use of gestures, pictures or drawings which would offend a particular racial or ethnic group
- Comments about an individual's skin color or other racial/ethnic characteristics
- Making disparaging remarks about an individual's gender that are not sexual in nature
- Negative comments about an employee's religious beliefs (or lack of religious beliefs)
- Expressing negative stereotypes regarding an employee's birthplace or ancestry
- Negative comments regarding an employee's age when referring to employees 40 and over
- Derogatory or intimidating references to an employee's mental or physical impairment

Harassment that results in a tangible employment action occurs when a management official's harassing conduct results in some significant change in an employee's employment status (e.g., hiring, firing, promotion, failure to promote, demotion, formal discipline, such as suspension, undesirable reassignment, or a significant change in benefits, a compensation decision, or a work assignment). Only individuals with supervisory or managerial responsibility can commit this type of harassment.

Just as it is important to understand what harassment is, it is equally important to understand what it is not. The anti-discrimination statutes do not prohibit simple teasing, offhand comments, or isolated incidents that are not extremely serious. Rather, the conduct must be so objectively offensive as to alter the conditions of the individual's employment. The conditions of employment are altered only if the

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harassment culminates in a tangible employment action or is sufficiently severe or pervasive to create a hostile work environment.

To protect against the existence of workplace harassment, and to shield against civil liability, all local governments must have a strongly worded anti-harassment policy in place that expresses “zero tolerance” for harassing behavior. Such policy should include:

1. A clear explanation of prohibited conduct.
2. Assurance that employees who make a complaint of harassment or provide information related to such complaints will be protected against retaliation.
3. A clearly described complaint process that provides accessible avenues for complaints.
4. Assurance that the local government will protect the confidentiality of harassment complaints to the fullest extent possible.
5. A complaint process that provides a prompt, thorough, and impartial investigation.
6. Assurance that the local government will take immediate and appropriate corrective action when it determines that harassment has occurred.

In conclusion, eradicating workplace harassment begins with an understanding of what it is and what it is not. Having a policy in place that educates employees in this regard is critical. To be effective, however, each local government must ensure that its policy is enforced fully and fairly in response to each complaint of harassment.

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