Sexual Harassment or Workplace Dalliance?
By Carol Ruth Bonebrake

Adding employees to a business certainly adds to the challenges faced by the entrepreneur, who must embrace the task of continuously monitoring employee interactions with customers, vendors, and each other.

Employees interact with each other for many reasons. They certainly interact to discuss work-related issues, but they also interact on a personal level as relationships and friendships evolve in the workplace.

So how can an employer determine whether an employee interaction is a harmless dalliance or harassment? Sexual harassment does not include an occasional compliment that would be considered acceptable if made in a social setting in front of friends and family. Instead, it involves blatant gestures that can manifest themselves in one of three ways:

- *Verbal* (in person, by telephone, or by voice mail): Harassment expressed verbally includes sexual innuendoes, sexual propositions, sexual jokes, suggestive comments, whistles, and threats.

- *Non-verbal* (in person, on paper, or in e-mail): Harassment expressed in a nonverbal manner may involve sexually suggestive pictures or objects, leering, obscene gestures, graphic e-mail, or printed material, and suggestive or insulting sounds.

- *Physical*: This type of harassment includes unwanted physical contact, including touching, kissing, patting, pinching, brushing the body, or coerced sexual intercourse.

As an employer, Title VII of the Civil Rights Act of 1964 places you under legal obligation to protect employees from unlawful harassment, of which there are two types:

- *Hostile environment*, which requires employers to protect employees from anyone who may create a hostile work environment based upon sex, including co-workers, off-site employees, supervisors, customers, vendors, and independent contractors.

- **"***Quid Pro Quo***,"** which involves "giving something for something," such as giving a raise or promotion to an employee in exchange for sexual favors or "companionship."

Instances of sexual harassment can mean big trouble for an employer, especially if one of the players involved supervises the other. But how does an employer find out about instances of harassment? These steps might assist should you

find yourself counseling staff involved in such a situation:

- If you suspect harassment, or if it is reported to you by an employee, follow up immediately by asking one of the employees involved about the relationship. In cases involving a supervisor and a subordinate, talk to the subordinate first.

- Listen carefully to how the employee describes the relationship. Is he or she participating freely and willingly? Is the attention gladly received or grudgingly tolerated? Are the interactions pleasurable and satisfying or stressful and anxiety producing?

- Assuming the conduct is welcomed and no policy violations are reported, the best course of action is to ask the employee to sign another copy of the sexual harassment policy, noting your conversation at the bottom of the signed page and asking the employee to initial the note. The document should then be placed in the employee's personnel file.

- Once you have talked to one party, you must quickly engage the other party in a similar conversation before they have a chance to interact. If one employee supervises the other, you should bluntly explain to the supervisor the ramifications of violating the company's policy and the not-so-pretty picture that may evolve if the relationship "goes south."

Often employers do nothing as they watch a relationship develop between staff hoping for the best. The risk in letting a relationship "run its course" is a potential harassment complaint. Once a complaint is made by an employee, it must be investigated quickly.

An investigation can be a highly charged activity that can cost your organization dearly in terms of time and resources. Many harassment complaints can require any or all of the following:

- An internal investigation to determine the facts of the situation, which can be disruptive to staff involved.
- A potential complaint to the U.S. Equal Employment Opportunity Commission (EEOC) and your state office of human rights.
- A lawsuit.
- Parting ways with one or both employees, which usually carries with it the expense of severance pay in exchange for full waivers and releases of all legal claims.
- Recruitment and training of replacement employees.

Employers who have dealt with harassment issues know that an ounce of prevention is worth a pound of cure. Following are some steps that you can put in place to help keep you, your employees and your company protected from

sexual harassment in your workplace:

- Put a sexual harassment policy in place in your company containing reporting options for your business. If you operate "24/7," employees must have a clear outlet for reporting sexual harassment on all shifts.

- Review a written copy of your company's policy with each employee during new hire orientation and again at each performance review. Ask the employee to sign the policy and place it in the employee's personnel file.

- Train supervisors on how to handle potential violations of the sexual harassment policy.

- Expect stellar workplace behavior and appropriate boundaries from all employees and model good workplace behavior yourself.

Even with preventative measures in place, a sexual harassment claim can occur. When an employee alleges sexual harassment, Title VII of the Civil Rights Act of 1964 requires the employee to exhaust administrative remedies before filing a law suit. The employee must first file a complaint with the EEOC. In some states, a complaint can be filed with their specific fair employment practices agency (FEPA) and it will be deemed filed with the EEOC as well.

Within a jurisdiction with a FEPA, the employee has 300 days from the time of the alleged violation to file a claim. If the alleged violation arose in a state or locality that does not have a FEPA with authority to grant relief, then the charge must be filed with the EEOC within 180 days of the violation. Once a complaint is filed you as an employer can expect the following:

- You will receive notice of the filing. Prior to investigation by the EEOC or FEPA, parties have an opportunity to mediate. If mediation is unsuccessful, the charge is investigated.

- Once the investigation begins, EEOC will make written requests for information and interview people identified as possible witnesses.

- A charge can be dismissed at any time if the investigator determines that further investigation will not establish a violation of the law.

- Once an investigation is completed, a notice is issued with a "probable cause" or "no probable cause" finding. In cases where no probable cause is determined, the employee has ninety days to file a lawsuit. During the investigation, the employee also has the option of requesting a notice of "right to sue" from the EEOC 180 days after filing the charge (if the investigation is not yet completed) and then bring suit within ninety days after receiving the notice.

- If EEOC is of the opinion that the evidence establishes the charge of discrimination, the EEOC will attempt a process called “conciliation,” which is essentially a dialog with the employer to develop a remedy. If mediation or conciliation is successful, the employee may not go to court to file a lawsuit.

As you can see, when a sexual harassment claim is made by an employee, the process can severely strain an organization. It can result in disruption in the work place that diverts attention from the organization’s mission and costs the company and its staff valuable time, money, and goodwill.

A few simple steps, put in place at the time employees are hired, can go a long way in helping ensure employees an environment that allows for productivity and healthy professional relationships.