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Sexual Harassment

Kenneth Satin, JD

Now that we have all suffered through the Clarence Thomas confirmation proceedings, I began reminiscing about a case involving a doctor of chiropractic which had sexual harassment overtones.

With the public's enlightened perception that sexual harassment is actionable against an employer, the doctor of chiropractic must be ever vigilant against even the most innocent comments or he may find himself embroiled in a lengthy and expensive lawsuit with a former employee.

A chiropractor with whom the author is personally acquainted was sued a number of years ago for sexual harassment by his front office receptionist claiming that his sexual comments and innuendos caused her emotional distress.

We must realize that even though the questions asked of Anita Hill may have proved embarrassing to her, and even though some would argue that she "lost," the recently televised hearings have made potential victims of sexual harassment more aware of their rights, and with that awareness comes the danger of suits being brought not only to legitimate claims, but to those which are marginal and those which may have little or no merit.

Clearly, sexual harassment claims are on the rise.

To determine whether or not a sexual harassment claim has merit, the trier of fact may have to decide whether or not the conduct complained of is welcomed or unwelcomed, invited or uninvited.

Where is the line drawn?

Do unwelcomed sexual comments constitute harassment?

There are few who would argue that uninvited physical touching is sexual harassment, but what about flirtation, innuendo or even vulgar language? Is this simply annoying or does it actually constitute harassment in the legal sense?

With respect to that which was asked of Anita Hill, those questions were not asked in a court of law. The rules governing courts of law were, essentially, inapplicable.

In the classic sexual harassment lawsuit scenario, there would be extensive "discovery" long before the case ever reached the courtroom.

In most states there would be limitations on how far the questioning of the alleged victim might proceed with respect to questions concerning the victim's sexual conduct with individuals other than the alleged perpetrator.

While the decisions may vary from state to state, the consensus is that discovery as to the sexual aspects of the lives of the plaintiffs have the potential to discourage people making claims for sexual harassment and to also annoy and harass litigants themselves. For this reason, most states

afford protection against "discovery" of the sexual aspects of the lives of the alleged victim.

The lesson to be learned is that if you, the doctor of chiropractic, wish to avoid protractive and extremely expensive litigation (which in all likelihood would not be covered by errors and omission insurance), keep your office operating like an office on a professional level. Set the level of conduct at a professional level to the point that it would discourage anyone's conduct which could ever be remotely interpreted as being sexually harassing in nature.

Kenneth Satin, J.D.
Newport Beach, California

Editor's Note:

Mr. Satin's law firm is located at 4000 McArthur Street, Suite #950, Newport Beach, California 92660 (714) 851-1163. We thank Mr. Satin for providing this series of articles for our readers.

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