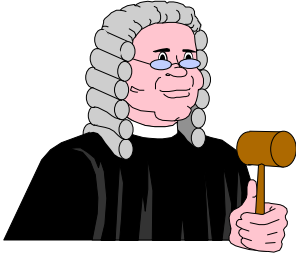
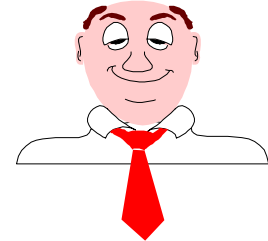


“Working with the human side of business”



Can Management be Held Personally Liable for Sexual Harassment ??



When will a corporation be liable for the sexual harassment of an employee by their co-workers? Under what circumstances will senior management be personally liable for the losses suffered by the victim? A Human Rights Board of Inquiry has recently considered these issues

The Facts

- * Patti worked at a paint and varnish plant in Ontario. She made boxes for cans of paint and paint remover. When Bill and Ben were hired to fill the cans of paint and paint remover, working conditions for Patti took a turn for the worse.....
- * Bill and Ben took turns coming into the women's working area several times a day to collect the boxes for packing the cans. They began to start 'bugging' Patti. Bill and Ben made crude, sexual comments of a personal nature which Patti found offensive and intimidating. They also began touching Patti inappropriately and laughed at her objections. On one occasion when Bill touched her breasts, Patti struck him. Bill reacted by hitting Patti in the face with a plastic jug - breaking her glasses. Patti complained about their behaviour to the owner of the company, but he ignored her concerns.
- * A few days later both Bill and Ben again touched Patti inappropriately. Patti struck back at them and an argument ensued. As Patti walked away, Ben dipped his gloved hand in the paint remover and grabbed her arm - inflicting a second degree chemical burn. Patti reported the incident to the police who laid sexual assault charges against both Bill and Ben. The next day Bill and Ben were arrested at the plant.
- * Patti was off work for 2 weeks. When she returned, she was required to work with Bill and Ben, even though the police had informed the owner that sexual assault charges were pending against the two male employees. Neither the owner nor the senior manager took any disciplinary measures against Bill or Ben.
- * Two months later Patti was dismissed following a disagreement with the senior manager about the way she was stacking boxes Patti filed a sexual harassment complaint with the Ontario Human Rights Board.

The Decision

- * The Ontario Human Rights Board ruled that the evidence established a pattern of harassment and discrimination on the basis of sex, for which both the company and Bill and Ben were liable.
- * The Board noted that it is the law in Ontario that management employees are required to take appropriate steps to prevent discriminatory harassment in the workplace once they know - or should know - it exists. If they fail to take such action, they may be found to be personally liable for the infringement of the employee's rights to a harassment-free working environment.
- * In this case, it was clear the owner knew of the allegations of harassment, since Patti had spoken to him several weeks prior to the burn incident..... and he refused to discuss it with her. It was evident that the owner had no appreciation of his responsibility and felt that harassment was a matter for the police. The senior manager had been aware of the problems since the day after the burn incident when the police arrested both Bill and Ben.
- * Although both the owner and senior manager stated that they spoke with Bill and Ben, and told them to stay away from Patti, they made no attempt to change the working arrangements to facilitate this. They also neglected to put a process in place for other female employees to bring forward any evidence of continuing misconduct by Bill and Ben.
- * The Board concluded that the owner's failure to address the harassment allegations was a contributing factor to Patti's increasing sense of frustration - and the outburst which led to her dismissal. On this basis the Board ruled that the owner was personally liable for Patti's losses arising out of the sexual harassment - including damages for dismissal.

* * * * *

Q. Does harassment occur if employees don't help other employees in the workplace i.e. too busy to train them; won't talk to them; only provide them with partial information to work questions; and won't greet or be civil to them?

- * This is border-line on harassment in most workplaces but definitely crosses the line if 'safety' is an issue. More and more case law refers to an expectation of 'civility' from employees regardless of who that employee likes or dislikes.
- * Employers don't care if an employee likes everyone they work with - but 'civility' is expected. People practicing non-civil behaviour in the workplace are stretching themselves close to..... or over the line..... into harassment. Employers should identify *this type of behaviour as unacceptable in the workplace* - and address the issue - before harassment occurs!



Q. When safety becomes an issue in a harassment investigation, does an employer only have to worry about the physical safety of the Complainant or Respondent?

- * No! Emotional safety can also be an issue the employer is required to deal with. For example, in *abuse of authority* cases, the Complainant may work for the Respondent and 'words' become the weapons rather than fear of physical safety.
- * Employers who separate employees in *abuse of authority* situations are wise - and tend to reduce the risk of further incidents and/or possible liability by doing so.

Q. Who determines if safety is an issue in a harassment investigation?

- * Usually the Investigator determines this - based on discussions with the parties and observations during interviews, as well as the knowledge of the content of the complaint.
- Q. Don't you have to investigate first before you determine if safety is an issue?
 - * No! Safety may be an issue right at the beginning before an investigation. For example, the complaint refers to physical violence or threats; or during the investigation the parties meet, clash, and threats are issued; and family members get involved in threatening the other party, etc.
 - * At the end, sometimes the 'findings' of the case can spark threats. Safety is an issue throughout the investigative process, and paying attention to it may reduce the employer's risk of incurring liabilities.

Managing Workplace Change

Change in the workplace has become the norm because of:

- * **increasing use of technology**
- * **reorganization, growth or downsizing**
- * **physical moves**
- * **changing markets**
- * **changing gender roles**

Strategies for successful adaptation to change include:

- * **accepting your feelings in the face of change - anger, worry, confusion, frustration, sadness, fear, excitement and curiosity;**
- * **finding safe places and ways to express your feelings;**
- * **recognizing that everyone will not adapt to change in the same way;**
- * **recognizing what is ending - grieving and letting go of what will be left behind;**
- * **finding ways to transfer useful aspects of what is ending - to what is beginning;**
- * **finding ways to focus on things that provide structure, support and sense of control in a time of uncertainty;**
- * **getting clarity about the new goal or direction; and**
- * **capitalizing on advantages and benefits of the change.**



Special thanks go out to Cynthia Meinhardt at Worker's Compensation Board in Yellowknife, NWT. You did a great job of organizing the Conflict/Awareness and Prevention workshops for all employees also the Resolving Workplace Conflict and Awareness/Prevention workshops for managers!

* * * * *

We continue to enjoy our frequent visits to Ft. McMurray, Alberta to conduct our various training sessions for Syncrude Canada Ltd. Thank you very much to Donelda Patterson for coordinating the Harassment Investigation and Resolution workshops; and the Harassment and Discrimination Awareness/Prevention sessions with Syncrude leaders.

* * * * *



"Glad to hear that so many of our workshop participants enjoyed the actors and had a lot of fun.....while attending our training sessions!"

1999 Public Workshop Schedule (revised)

"Harassment Investigation" (3 days)
"Harassment Resolution" (2 days)

April	26 - 30	Saskatoon	SK
June	21 - 25	Yellowknife	NT
Oct.	25 - 29	Calgary	AB
Nov.	15 - 19	Halifax	NS

"Resolving Workplace Conflict" (2 days)

May	3 & 4	Saskatoon	SK
June	28 & 29	Yellowknife	NT
Nov.	1 & 2	Calgary	AB
Nov.	22 & 23	Halifax	NS

(Register early and save \$\$\$)

Watch for our new Workshops T.B.A. in the fall!!

EARLY BIRD SPECIALS

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Even though Cam Hill & Associates are constantly on the move - you can always get in touch with us!!

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