

Growing Financial Awards In Sexual Harassment Cases Can Devastate Employers' Bottom Line



The combination of sex and power in the workplace still presents a challenge. Although women predominantly are the targets of this harassment, same sex harassment and that of men by women is rising.

If the harassment violates the Criminal Code (beyond thigh slapping and unwelcome neck massaging), the employer faces being brought before the Human Rights Tribunal and the individual could be charged after the ensuing police investigation.

Even if the conduct falls short of criminal, unanswered complaints against the "office hugger" leaves employers accountable before the Ontario Human Rights Tribunal. Employers have become more vulnerable than ever. If they are perceived by their employees as turning a blind eye to these emotionally loaded provocations, they could even be sued.

Historically, the amounts awarded against employers who were found to have violated the Human Rights Code were low (usually between \$7,000 and \$10,000). Employers primary fear has been the repercussions to the corporate image following a Tribunal decision, which is easily accessed by the public.

Recently though, the monetary awards have become significantly higher. A losing decision can now have a financial impact on a small employer – even put them out of business.

I find smaller businesses grapple with the appropriate manner with which to deal with an employee who makes a sexual harassment complaint. Their first step should be to take a sexual harassment complaint seriously.

Sometimes employers are virtually certain the complaint is fabricated and asks for my counsel as to how to quickly dismiss the complaint, not wanting to continue to employ a troublesome liar.

My advice is clear: Terminating the complainer is not an option, and ignoring his or her complaint even less so. Instead, have someone senior immediately investigate the complaint.

This summer, the Ontario Human Rights Tribunal released the decision of J.D. v.

Ultimate Cut Unisex, where it awarded three employees a total exceeding \$150,000 – a staggering amount for a small employer.

Salon co-owner, Rocco Valentini, was accused of harrassing female employees, while co-owner Paul Portelli, turned a blind eye.

The conduct was egregious: Valentini forced the women to quit after he massaged them, hugged them, asked them on dates, discussed sex with them, talked with them about having sex with other women, made sexual jokes, and suggested to at least one of them that she sleep with his rich friend for money because, “he likes sleeping with younger women.” The bulk of his interactions with the complainants were salacious. When the women complained, he fired them.

Part of the Tribunal’s award dealt with lost wages, but the much heftier portion was for financial compensation for the discrimination and harassment. Two awards were for \$40,000, and the third for \$25,000.

The Tribunal has raised the level of accountability for small employers, and expects them to handle prickly harassment complaints in the same manner as large companies – with clear-cut policies, workshops, training sessions and sophisticated bodies to investigate complaints. Your financial picture as a small employer is equally inconsequential.

Here are some tips to help you deal with a complaint of sexual harassment:

Conduct interviews with everybody involved. Be specific in your questions – dates, times, locations, what was said and were there any witnesses. Ask if there are emails, voicemails or other documented evidence. Try to be neutral and don’t draw any conclusions until the end.

Assure everyone you will be fair and keep that promise. The person who makes the complaint must be told he or she won’t be fired or disciplined for coming forward. Also ensure people don’t discuss the incident outside of the investigation.

Make a final decision and follow through on it. If the evidence strongly suggests the alleged harasser is guilty, move to discipline them (a warning for less serious conduct might sometimes suffice). If you learn that the incident relates to a consensual relationship between a manager and a subordinate that went awry, then implementing a policy prohibiting managers from dating employees might be an option.

Keep in contact with your lawyer about appropriate steps to take toward either the complainer and/or harasser. While there are rights associated with how to deal with the complainant, how you discipline or deal with the harasser is equally important.

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