Is Off Duty Sex Harassment Just Cause to Terminate? – Quiz

Workplace harassment can occur away from the office and after work hours.

Consider the following scenario.

SITUATION

Four female employees are the victim of offensive and highly inappropriate conduct at the hands of their male supervisors. In each case, the supervisor gropes the employee's breasts without her consent. But the conduct happens in different settings.

1. Ally is groped in the office break room
2. Beverly suffers the same treatment during the company's holiday party
3. It happens to Clare during a business trip
4. Dawn is victimized during the birthday party of a mutual friend who doesn't work for the company.

QUESTION

For which of the above groping incidents would the employer have just cause to discipline the supervisor for committing sexual harassment?

ANSWER

All of the above

EXPLANATION

You don't need decades of experience in HR to understand that your organization has a legal duty to protect its employees against sexual and other forms of workplace harassment. However, what can be confusing is just broad the scope of that duty is. The term "workplace harassment" is deceptive. The duty to prevent harassment isn't limited to the office or any other physical place but extends to any venue where employees perform their work responsibilities, and perhaps even beyond that. The best way to explain that is to go through each of the listed incidents one by one.

Ally: Employers' disciplinary authority clearly extends to any inappropriate conduct targeting an employee that occurs in a break room or any other part of the physical workplace.

Beverly: Holiday parties and other company functions that employees are expected or invited to attend are deemed an extension of the workplace where the protections against harassment continue to apply. This is also true of informal and unofficial parties and gatherings. **Example:** An employer had just cause to terminate an employee for rubbing his body against a co-worker and engaging in other forms of physical and verbal harassment at an offsite bar during a happy hour gathering organized by an office worker.

Clare: Employers may also be held liable for and are thus responsible for preventing sexual harassment that occurs during business trips. **Example:** The BC Human Rights Tribunal rejected an employer's denial of liability for a supervisor's sexual harassment of a subordinate during business trips because it occurred away from the office and "after hours" [*McGregor v. McGavin Foods Ltd.,* 1990 CanLII 12479 (BC HRT)].

Dawn: Although the incident involving Dawn occurred away from work at a non-company social gathering where 2 employees of the same company happened to be present, the non-consensual groping of an employee by another employee is discipline-worthy sex harassment, especially when it's committed by a superior against a subordinate.

TAKEAWAY

Sex harassment committed by one employee against another can create a toxic workplace regardless of how and where it takes place. Thus, the employer's duty to prevent and discipline those who engage in such conduct is limited to neither office locations nor office hours.