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445 Broad Hollow Road • Suite 25 • Melville • NY • 11747  
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Spring 2018

## ***Legal Trends Update***

### **10 Steps Your Business Should Take to Eliminate Sexual Harassment**

by James Henry Dunne, Esq.

We are all well aware of the recent sexual harassment claims in Hollywood, the tech sector, politics and more. Remember that more sexual harassment claims in the United States are filed in hospitality than in any other industry, where as many as 80+% of women and 50+% of men in low-level positions report experiencing some type of harassment. From managers, to coworkers, to guests, all are far too frequently accused of harassing hospitality staff.

Why is the issue so pervasive? With most service employees being female (71% of servers), working in an alcohol charged and 'social' atmosphere, and working primarily for gratuities, these employees tend to feel the need to accept harassment as an unfortunate part of the job.

Remember that your business is responsible for cultivating a harassment-free environment; free from harassment by managers, coworkers and customers. Customer-based sexual harassment is arguably the biggest challenge operators face. Managers tend not to want to confront a guest when such issues arise. If you do not address the matter, you are potentially legally culpable for condoning and promoting harassment.

Suits against a business can be filed under Title VII of the Civil Rights Act, NYS Human Rights Law, and the EEOC. Sexual Harassment refers to sexually directed actions which are unwanted and subject the worker to adverse employment conditions, or create a hostile work environment.

The critical term that you need to note is "unwanted". Flattery is acceptable, if it is welcomed. A proposition for a date is acceptable, if it is welcomed. Off-color jokes, comments and vulgarities are acceptable, if they are welcomed. Flirting is acceptable, if it is welcomed. But, the moment an employee expresses their uneasiness, it potentially becomes an issue of sexual harassment the next instance any of these words are stated or actions taken. For years, the way I have explained this is to say that, "Harassment is in the eyes of the beholder." What you feel or perceive as appropriate does not matter, because what constitutes harassment lies in the eyes of the employee, not in you, as owner or manager, or the alleged harasser.

**Sexual Harassment comes in two forms:** Quid Pro Quo and Hostile Work Environment

**Quid Pro Quo** (this for that) is harassment where a supervisor or employer links specific employment

outcomes to an employee granting sexual favors. In other words, submission is made a condition of employment. For example, a manager linking sexual requests to hiring, a promotion, keeping one's job, a raise, a better work schedule, a better evaluation, or a better work station all fall under Quid Pro Quo. The link between sex and the specific outcome does not have to be explicit, it can be subtle, and simply hinted at or merely implied.

**Hostile Work Environment** is harassment which unreasonably interferes with an employee's work performance, or creates a hostile, intimidating or offensive work environment. This type of harassment is not as clear cut. An employee does not necessarily have to feel physically threatened. Instead, they might feel uncomfortable working in a climate where they are offended and uncomfortable with foul language, persistent flirtation, suggestive gestures, touching and groping, off-color jokes, a pin-up in the office, comments about their appearance or attire, comments about gender, or repeated requests to go out with them after work. Such a climate makes it difficult for a reasonable person to do the job they were hired for. They might dread coming to work each day because of what they must face from their co-workers and/or management and/or guests.

**Here are 10 steps your business should take to eliminate claims of sexual harassment:**

- 1- Be proactive and have a clearly articulated anti-harassment policy;
- 2- Implement a periodic training program for staff and management (required in many states – though not in New York – but highly recommended to establish that you are making reasonable efforts to eliminate such issues);
- 3- As an owner or manager, set the tone, lead by example, and have a zero-tolerance policy;
- 4- Refuse service of alcohol to intoxicated guests or patrons acting inappropriately towards your staff;
- 5- If a guest harasses an employee, offer to have another employee (or a manager) serve that guest. If the guest asks why, tell them as tactfully as possible;
- 6- Take all such matters seriously;
- 7- Train staff on how to be effective and observant bystanders so that employee witnesses know how to identify harassment and support its prevention;
- 8- Since managers are often the alleged harassers, be sure to provide your staff with a third party outside of day-to-day operations to report issues to;
- 9- Never retaliate against an employee who claims harassment;
- 10- Take all claims seriously. Investigate, document, and take action.

*\* The 10 steps suggested above should not be taken without the guidance and counsel of your attorney.*

Remember that the reputation of your business is at stake. Monetary loss, reputational capital, and lowered employee morale can all cripple a business. When you cultivate a rewarding and positive place to work, where staff feel that you are there to support them, turnover is reduced, and liability is

limited, both improving your bottom line.

James Henry Dunne, Esq. can review your current practices and customize an anti-harassment training program for your organization.

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My thanks and regards for your valuable time and thoughtful consideration.

A handwritten signature in black ink, appearing to read "James Dunne". The signature is fluid and cursive, with a large initial "J" and "D".

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**James Henry Dunne, Esq.**  
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445 Broad Hollow Road • Suite 25

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