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Q&A

Sexual harassment prevention training prudent for Connecticut employees

Brenda Eckert and Vaughan Finn, attorneys with Shipman & Goodwin, discuss the nuances of workplace sexual harassment

By Teresa M. Pelham

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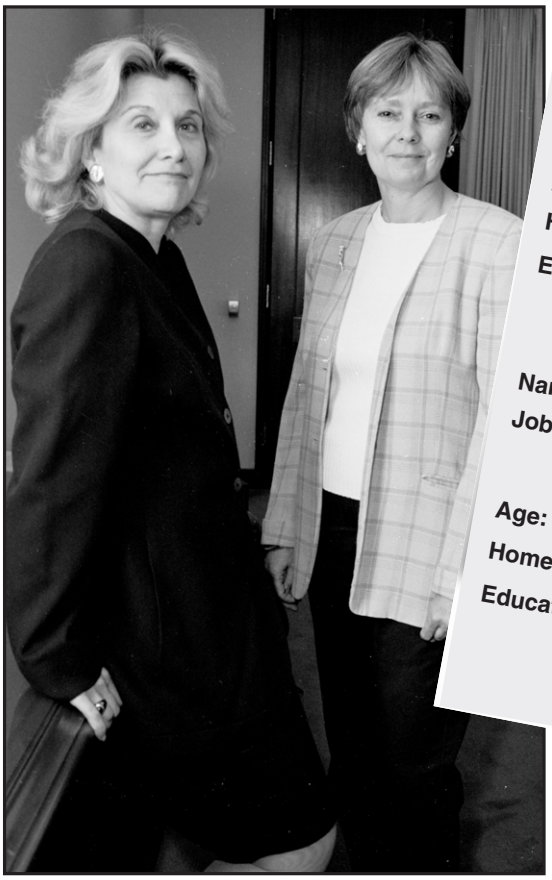

Brenda Eckert, left, and Vaughn Finn

Resumés

Name: Brenda Eckert
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There are many areas of the law that are pretty much cut and dried — tax law, for instance. Technical, yes, but you're usually either guilty or not guilty. In the area of employment law — specifically sexual harassment law — it's very often "he said, she said" (or "he said, he said"; "she said, she said.")

To help us better understand this sticky subject, Shipman & Goodwin's Brenda Eckert and Vaughan Finn — both attorneys with extensive litigation experience in federal and state courts — explain the nuances in plain English.

Hartford Business Journal: **What should employers do to ensure they are not at risk for sexual harassment litigation?**

Eckert: Three things: Have a written policy that spells out that sexual harassment is forbidden in the workplace and identifies the types of conduct that are not tolerated under the policy; provide sexual harassment prevention training to anyone who is in a supervisory position; and set up and publish throughout the workplace a user-friendly complaint procedure for the reporting, investigation and resolution of sexual harassment complaints.

The policy prohibiting sexual harassment should be in writing and distributed annually with the written complaint procedure to all employees. The employer should keep records to demonstrate that such distribution has occurred. Use the policy and the complaint procedures as a basis for the training of supervisors and managers. Make sure everyone understands the complaint procedure and that the procedure allows multiple options for reporting complaints. Take care that all employees know that there is someone they can go to with concerns of this nature who is both neutral and in a position of influence. Such actions are strong preventative medicine if an employee later accuses the employer of not protecting him or her from sexual harassment.

Finn: An increasing number of cases are being resolved in favor of employers if they can show that they have a written policy prohibiting sexual harassment with effective complaint procedures that require prompt and thorough investigations and the imposition of appropriate corrective action to end any sexual harassment.

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Do all types of businesses need to provide sexual harassment training?

Eckert: In Connecticut, employers of three or more individuals can be liable for sexual harassment. This legal exposure means sexual harassment prevention training would be a prudent course for most Connecticut employers. However, under Connecticut law, only businesses with 50 or more employees are required to conduct such training. Sexual harassment prevention training must be done within six months after a person is hired into or promoted into a supervisory position. Most legally sophisticated companies provide such training to all supervisory and non-supervisory employees. That's the smart thing for small and large employers to do to minimize their legal exposure to such claims.

What changes are in the works with regard to new sexual harassment laws?

Finn: There have been significant changes in the past few years regarding employer liability for sexual harassment by executive, managerial and supervisory employees. The U.S. Supreme Court ruled that if the sexually harassed employee can show that he or she has suffered a tangible employment loss after refusing the unwanted advances of an executive, managerial or supervisory employee, the employer is liable for any damage to the victim, even if it did not know of or did not have reason to know of the harassment. Tangible employment loss could include such things as transfer to a less desirable position, not getting to work on a good project, or receiving a bad evaluation.

What qualifies as sexual harassment in the workplace?

Eckert: Sexual harassment is defined as unwelcome, unwanted conduct of a sexual or sexually demeaning nature directed at someone because of his or her gender. It includes conduct ranging from any kind of unwanted sexual touching, comments, sexually explicit pictures or jokes, sexual propositions, put-downs directed at someone because of gender to inappropriate sexual banter between employees. And, by the way, there is no such thing as an equal opportunity harasser, that is, someone who says "my unwelcome or unwanted sexual conduct was directed at both men and women, so I'm not discriminating on the basis of sex." Such unwelcome or unwanted sexual conduct can still be sexual harassment even if the harasser is directing it toward male and female employees.

What are some of the more noteworthy types of cases out there today?

Finn: We're seeing more cases involving same-sex harassment where a female employee or male employee is accused of sexually harassing another female or male employee, as well as an increasing number of cases involving harassment by female managers against male subordinates. There are also more cases in which sexual harassment is being directed up the organizational ladder.

By this we mean cases where a female supervisor is complaining that a male subordinate is sexually harassing her. In these cases, the female supervisor has the greater authority but can't effectively exercise it due to sexual harassment. Male supervisors are filing similar claims against their female subordinates. These trends point out that any employee can be a victim of sexual harassment and any employee can be a sexual harasser, regardless of his or her gender or rank in the employer's organization.

Are we becoming too sensitive and politically correct as a society?

Eckert: We don't hear this concern as much now as we used to. One of the benefits of increased sexual harassment prevention training in the workplace is that more people now understand that conduct that is truly sexual harassment has no place at work and usually is equally offensive to both men and women. The courts are also applying what we call a reasonable person standard in determining whether the conduct complained of is truly so pervasive that it creates a hostile, intimidating or offensive work environment. This means that they are throwing out a lot of the frivolous cases that we used to hear about based on an isolated incident of sexual harassment that does not involve a serious sexual touching. However, the strong cases are taken seriously and may result in substantial damage awards. ■

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