

Sexual Harassment Claims May Arise from the Conduct of Non-Employees

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Employers generally are familiar with laws that prohibit sexual harassment in the workplace. Most employers establish and enforce policies prohibiting sexual harassment by co-workers and supervisors, investigate claims of harassment by employees, and impose disciplinary action on employees if they violate the employer's sexual harassment policy. The enforcement of such policies helps employers avoid liability for sexual harassment claims based on employee misconduct, but employers should also be mindful of the conduct of third parties in the workplace. Failing to respond to sexual harassment complaints about the behavior of third parties could result in exposure to sexual harassment claims just as surely as unanswered complaints about employee misconduct, as demonstrated by a lawsuit recently filed by the Equal Employment Opportunity Commission against a home health care business.

In *EEOC v. Beacon Hill Investments Corp.*, the Commission brought suit on behalf of a class of female home health care workers who were assigned to work in the home of one of the employer's male patients. The male patient allegedly made inappropriate sexual contact with the female employees, made suggestive comments to them on a daily basis, and accosted them while they slept in his home. The female employees allege they complained to their employer but no action was taken in response to their complaints. Ultimately, the employees felt they had no recourse but to resign due to the treatment they received at the hands of the male patient. The Commission's lawsuit followed.

Courts in various federal circuits have recognized sexual harassment claims by employees based on third party misconduct, similar to that alleged in the EEOC's complaint. Those courts have held that an employer may be held liable for a hostile work environment if it fails to take appropriate remedial action reasonably calculated to address the third party misconduct. Although an employer does not have the authority over third parties that it has over employees, and, thus, its options are more limited in addressing claims of third party harassment, employers should ensure their sexual harassment policies cover harassment by third parties, and provide a reporting procedure for complaints of third party harassment. Employers should investigate complaints to the extent possible and then determine if any reasonable corrective action is necessary and available depending on the facts of each situation. When in doubt, employers should not hesitate to contact legal counsel for advice on how to respond to a complaint of third party harassment.

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