

SEXUAL HARASSMENT EMPLOYMENT: HELP FOR COOPERATIVE AND MANAGING AGENTS

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Sexual harassment is an issue which every housing cooperative or managing agent should have a basic familiarity. As an employer, the cooperative or managing agent is obliged to refrain from discrimination on the basis of sex in their employment relationships. This article briefly discusses the evolving state of sexual harassment law.

Sexual harassment is an unlawful practice which violates both State and Federal Law. Sexual harassment is unwelcome verbal or physical sexual conduct that is a term or condition of employment. There are two types of sexual harassment, "quid pro quo" and "environmental."

"Quid pro quo" sexual harassment occurs when submission to verbal or physical conduct of a sexual nature, unwelcome sexual advances, or requests for sexual favors is made either explicitly or implicitly a term or condition of an individual's employment. The offending conduct must be unwelcome in order for it to be constituted illegal harassment.

For example, a manager which states that an applicant will "be hired for the position" if the applicant will go out with the manager on a date has engaged in sexual harassment. The same result applies if a manager states prior to a performance review that an employee's performance could be affected unless a date or other sexual favors occurred. In the case of a housing cooperative, "Quid pro quo" sexual harassment occurs between a manager and his or her subordinate employee.

The "environmental" type of sexual harassment occurs when the unwelcome conduct unreasonably interferes with an individual's job performance or creates an intimidating, hostile or offensive working environment, even if it does not lead to any tangible or economic job consequences. Every employee has the right to work in an environment free from discriminatory intimidation, ridicule and insult. The harassment need not be between a manager and a subordinate employee. It can and often occurs between co-workers.

Every employer should have a policy against sexual harassment that is communicated to each employee in writing. This policy should provide guidelines on what an employee can do if he or she believes he or she has been sexually harassed. Even if an employer has a policy against sexual harassment, the employer can still be held liable for the actions of any of its managers or agents if it knew or should have known of the occurrence, and failed to take any steps to prevent or stop the harassing conduct.

An employer cannot only be held liable of the actions of its employees, but it may also be held accountable for its customers and vendors, if it knew or should have known of the occurrence or the harassing conduct and failed to take appropriate action.

A man or woman may be the victim of sexual harassment and either may be the harasser and need not be of the opposite sex. Voluntary submission to the sexual conduct will not necessarily defeat a claim of sexual harassment. The issue is rather whether the parties acted by consent or whether pressure was applied to the employee to "voluntarily submit" to the allegedly harassing conduct. Neither will occasional use of sexually explicit language nor provocative dress by the harassed necessarily negate his or her claim.

To defeat a claim of sexual harassment, the employer would have to show that an employee welcomed the sexual conduct by demonstrating such factors as the employee solicited or incited the conduct, or that the employee welcomed the conduct by acting in a sexually aggressive manner.

The employer should take all necessary steps to prevent sexual harassment, including: developing a written policy prohibiting sexual harassment; informing managers and employees of the policy and how to resolve allegations thorough internal complaint procedures if harassed; promptly investigating any complaints; and taking appropriate action when needed, including disciplining the offender.

Employers are encourage to establish and periodically review their policies in order to ensure that both management and the employees are clear about workplace discrimination and are working together to avoid difficulties that the ill-prepared employer is bound to face.