

## Consultants Can Provide Training To Combat Sexual Harassment

*By Lin Gensing-Pophal, May 2007*

The U.S. Supreme Court has ruled on the issue, and state legislatures are enacting laws directing employers to implement training, but workplace issues related to sexual harassment remain. Organizations can find themselves at risk if they do not take steps to train and educate employees and staff properly.

While it can be difficult to quantify the frequency or prevalence of sexual harassment in the workplace, surveys indicate that anywhere from 30 percent to 70 percent of women say they have experienced some form of sexual harassment in the workplace. The range can be attributed to the fact that what one person considers sexual harassment might be considered acceptable behavior by someone else. It is the gray areas that can create consternation for organizations attempting to create positive working environments while minimizing risk.

It is not just women who are the victims of sexual harassment, however. The U.S. Equal Employment Opportunity Commission says that in 2006 12,025 sexual harassment charges were filed, and that a record 15 percent of those charges were filed by men.

The permutations of the types of harassment, and the resultant risk that companies face, create opportunities for HR consultants.

While there are consultants who address issues of harassment in a reactive manner—such as through investigative follow-up, there is also ample opportunity to intervene in a more proactive manner, through the delivery of training and education to organizations and their management and supervisory staff.

Steve Palazzolo is senior counsel at Warner Norcross & Judd LLP in Michigan and has 15 years of experience in labor law. In 2001, the U.S. Supreme Court had the final say on the issue in *Clark County v. Breeden*. The court ruled sexual harassment to be a form of sex discrimination in employment and a violation of Title VII of the Civil Rights Act. The decision put employers on notice that if they wanted a defense against sexual harassment claims, they needed to conduct sexual harassment training.

In addition, during 2004 California enacted A.B. 1825, legislation mandating that all California employers with more than 50 employees conduct sexual harassment training. Under the California regulation, that training must be conducted by an expert in the field and must include at least two hours of classroom or interactive training.

Palazzolo said he expects that other states will enact similar measures, which would create additional opportunities for HR consultants providing this type of training. Sexual harassment law is evolving as federal and state courts hand down decisions that set new parameters about what qualifies as a hostile work environment or sexual harassment, he says. As training takes many different forms, opportunities will clearly abound, he

says.

"While live HR training remains tops, computer-based training and webinars are growing in popularity," he says.

An organization that provides this type of training is LearnKey, a provider of self-paced training solutions for corporate, education, government and personal users. LearnKey has been making e-learning materials for more than 20 years-including a course on sexual harassment-available in different formats including online, on CD-ROM and on a corporate network. It is also available in Spanish.

David Lewis, president of OperationsInc, a human resources consulting firm in Stamford, Conn., says sexual harassment training is an area of growth that is not going away anytime soon. Any accusation must be taken seriously, he says, because "it's nearly impossible for an employer to say unequivocally that 'no, [harassment] hasn't happened' because there's such a subjective ... standard applied."

However, while the need and demand for training in this area is growing and likely to continue to grow, it is not an area of practice for the neophyte, Lewis says. HR consultants providing training in this area need to master subject matter, he says. Those consultants need to know the statutes associated with Title VII and with harassment issues in the workplace as a whole.

In addition, HR consultants need to understand sexual harassment from a case law perspective. It is a risky niche for consultants to get into if they do not know the material; offering bad advice could put consultants in a position of liability if they are not careful.

Competition in this area can be significant as well, Lewis says. He points out that law firms and attorneys often offer sexual harassment training. "That means you've got to be equal to the challenge of what an attorney may

be able to bring to the table in terms of first-hand information," says Lewis.

However, he adds, his firm gets a lot of business from companies that do not want a lawyer who might use too much "legalese," which may make the presentation boring or too difficult for the employees to grasp.

For consultants attempting to break into this area, Lewis suggests reviewing the competition to determine how best to design and position a program. When OperationsInc decided to start offering sexual harassment training, he says, "I went to six different workplace harassment training and prevention training sessions" offered by competitors, which he then used to design a best-practices approach that is offered to clients.

Lewis says consultants need to stay current on what is happening in the area of sexual harassment. He suggests using a tool such as one offered by Google News that allows users to receive alerts based on specific search terms, such as "sexual harassment."

"If there's something that looks like a recent case or something out of the ordinary it may become a part of my presentation," he says. In addition, he recommends live training versus CD-ROM or web-based training in this area because live programs allow the opportunity for dialogue and interaction.

This area is not for the faint of heart, but there is ample opportunity for knowledgeable HR consultants to provide training to organizations concerned about limiting liability and risk.

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