

Are Employers Liable for Third-Party Harassment?

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Do you think your company has taken every reasonable precaution to avoid employment related claims and lawsuits? Your employees have undergone discrimination and harassment training. You have policies and procedures in place that comply with state and federal laws and employer "best practices" requirements for handling employee harassment. Then it happens. A lawsuit lands on your desk, filed by an employee who claims that he/she was the victim of sexual or racial harassment by a customer.

Under both federal and state law in most states (including Minnesota) employers may be held liable for sexual harassment committed not only by employees, but also by third-parties such as customers, clients, vendors, business visitors or contractors. According to the Equal Opportunity Commission (EEOC), the federal agency that enforce anti-discrimination law, employers are liable for the harassing acts of non-employees, where the employer knows or should have known of sexually harassing conduct and fails to take prompt and appropriate corrective action. The Minnesota Court of Appeals has held that, under the Minnesota Human Rights Act, an employer may be held liable when it is aware that an employee has been sexually harassed by a non-employee, yet fails to take timely and appropriate action to protect the employee. *Costilla v. State of Minnesota*, 571 N.W. 2d 587 (Minn. Ct. App. 1998). Most other states and the federal courts have taken the same position. See e.g., *Folkerson v. Circus Circus Enters., Inc.*, 107 F.3d 754 (9th Cir. 1997). Harassment for reasons other than sex are also treated similarly.

Steps you can take to avoid or manage the risk of customer harassment.

- Do not ignore the problem or complaint, even if it seems trivial or contrived.
- Educate employees on harassment and discrimination issues and how to discourage this behavior by third parties.

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- ☑ Include customers/clients, vendors, business visitors and contractors in your harassment and discrimination policy and post the policy where visitors can easily see it.
- ☑ Expand your harassment reporting policy to require employees to report harassment by non-employees.
- ☑ When employees submit complaints about non-employee sexual or other harassment or discrimination, investigate them immediately and thoroughly.
- ☑ Don't punish employees who lodge complaints about non-employee harassment or discrimination. Discharging an employee is an obvious retaliation. Less obvious are actions such as removing an employee from a project. While your intention may have been to protect the employee from the source of his or her complaint, the employee (and the courts and agencies) may see this type of action as retaliation for making the complaint.
- ☑ Take "appropriate action" to implement adequate remedies to stop any harassment or discrimination by non-employees, insofar as matters are under your control, and put the harasser's organization on written notice of any problem and the action you expect them to take to address it, such as removing an offending salesperson from your company's account.






While these measures may not prevent all third party harassment or discrimination claims, they will decrease the number of occurrences in your workplace and increase your chances of successfully defending claims if problems do occur. Contact any Seaton, Beck, Peters, Bowen & Feuss attorney if you would like assistance in reviewing your policy, implementing anti-harassment measures, investigating a complaint or defending against a harassment charge or lawsuit.

UPCOMING SEMINARS

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A dynamic, interactive, and informative workshop focusing on what every employer **can** do, **should** do, and **must** do to remain union-free, including

-  Understanding how today's unions try to organize employees.
-  Understanding management's right to communicate.
-  How to counter pro-union arguments.
-  Implement the 10-point union avoidance plan.
-  And much more!

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Wyndham Garden Hotel—Bloomington MN

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March 6, 2003—8:30 a.m. to 4:00 p.m.
Wyndham Garden Hotel—Bloomington, Minnesota

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