



Talking About Workplace Sexual Harassment

BY PAT BURSON | pat.burson@newsday.com
Appeared on October 15, 2007

If you've been at the water cooler recently, it probably came up: Sexual harassment is a hot topic at the moment. First there was the recent jury award to Anucha Browne Sanders over her treatment by New York Knicks coach Isiah Thomas and Madison Square Garden; then there was Supreme Court Justice Clarence Thomas' resurrection of accusations Anita Hill made years ago during his confirmation hearings - rehashed in a new autobiography in which he again maintains his innocence and questions Hill's.

And it appears that MSG executives' troubles aren't over yet. Courtney Prince, a former captain of the Rangers City Skaters cheerleading squad has a sex-discrimination lawsuit pending against the Garden and two of its employees.

When such high-profile incidents get people buzzing, legal and workplace experts say it's also a good time for employees and employers to revisit and re-evaluate their efforts toward eradicating sexual harassment on the job - whether in offices or ditches, on front lines or assembly lines, in halls of learning or houses of faith - anywhere men and women work closely together.

The issue isn't new, but approaches to it continue to evolve. We asked experts who deal with the issue of sexual harassment as part of their work to offer their insights.

Here's what they had to say:

The workplace-harassment researcher and trainer: Sexual harassment policies often are written to protect the company, not to give practical guidance to workers at all levels, says Freada Kapor Klein, founder of the Level Playing Field Institute in San Francisco, who studies sexual harassment on the job and works with companies to create bias-free environments. Here's her approach:

Toss out the one-size-fits-all, zero-tolerance sexual harassment policies that amount to little more than a list of do's and don'ts. They "make no sense when you're talking about grown-ups who spend eight, 10 and 12 hours a day in the workplace, who come from very different cultures, and who ought to be allowed some latitude to decide for themselves which is appropriate and inappropriate," says Klein, who offers more options for handling difficult situations at work in her new book, "Giving Notice: Why the Best and the Brightest are Leaving the Workplace and How You Can Help Them Stay" (Jossey-Bass). It arrives in bookstores on Friday.

Create "people-friendly" policies that deal with real-life situations, including examples of "the gray area, where the workplace stops and starts," she says.

"For instance, if two people are walking to the train station after work, and they're talking about their weekend dates and somebody's offended by a comment that their co-worker makes, how do they

handle it? Is this the business of the employer? Does it affect how they work together tomorrow?"

Establish safe and confidential places where employees can go informally to seek advice, ask a question or express a concern, as well as places they could go to file a formal complaint that would be investigated. "It's really letting the employee choose how to handle it," Klein says. "The choice should be the employee's."

Explain the differences between behaviors that are annoying, inappropriate and illegal. "There's a wide range of behavior, and it has a subjective part and objective part," she says. "The subjective piece means this is unwelcome to me. I don't like this joke. I don't like the way this person touches me. I don't want to hear about your dates. The objective part is, does it cross the line for most people? Would most people agree that this is out of bounds in a work environment?"

Urge employees to be clear about their boundaries and speak up respectfully if they feel their boundaries have been violated.

Let your employees know that you will enforce their boundaries. Klein says she thinks employees should be able to negotiate their own relationships with their colleagues without interference. But, she adds, if one employee already has warned another that he or she is doing something that's crossing the line and the person continues, then it's time for a higher-up to step in.

"When you say, 'Please don't touch me again,' then I understand that I'm risking getting in trouble when I persist because management has made it clear" that everyone's boundaries will be protected.

The human resources consultant: Sexual harassment "is one of the biggest problems in the workplace," says David Lewis, president of OperationsInc, a human resources consulting firm based in Stamford, Conn., who has investigated claims and conducted training sessions promoting awareness and prevention.

"Companies just don't get it. They don't understand what constitutes harassment or how vulnerable they are. That's why I make that bold statement."

Lewis urges employers large and small to take a preventive approach:

Have an up-to-date sexual harassment policy that has been reviewed by your attorney. On the first day at work, each hire should be given a copy of the policy to read and sign, agreeing to abide by its terms. Also include the policy in the employee handbook.

Provide sexual harassment awareness training for all new employees at least once a year. "That would make sure that everybody in the company was on equal footing," Lewis says. Follow up with a

refresher course for all employees at least once a year to reinforce what they've already learned.

Instead of having employees go online and sit in front of a computer to watch a training video, conduct live training sessions that enable them to ask questions; then listen to their feedback. "It's less about distributing materials, and more about doing something that's interactive," he says.

Update your policy and training programs as laws change and issues arise within your company or the culture.

The negotiator: If you believe you've been the victim of sexual harassment, attempt to negotiate before you litigate, says Carol Frohlinger, a lawyer and co-founder of Negotiating Women Inc., a Manhattan-based firm that works to help women advance more effectively in the workplace.

Here's what she recommends:

Start with a gut check. "I think people need to trust their gut," she says. "If you're uncomfortable, chances are the other person means to make you uncomfortable."

Go to the person first and try to talk to him or her directly and privately.

Be as specific as possible. What was the offending behavior? When and where did it occur? How did it affect you?

Ask the person what he or she meant by what was said or done. "Lots of people's behavior may make someone else uncomfortable, but their intent is not to do that. They're just clueless," Frohlinger says. "Another person may be in a position of power and is trying to take advantage of that."

If you're concerned about confronting the person, practice what you want to say while you're alone or with a trusted friend or adviser.

Don't sit passively and hope the problem will go away.

"Hope is not a strategy," Frohlinger says. "Hoping that this person is going to change his or her behavior is not going to do it. You need to feel that you deserve to work in an environment that's free of this illegal behavior."

If your conversation fails to alter the other person's behavior, go to a supervisor or a representative in your company's human resources department.

If all else fails, consider your legal options, "but don't make that decision lightly," she says. Consider all the issues - the time, expense and impact on your personal and professional life, for example - before filing a lawsuit.

"It might be a better option for you to just change jobs than to try to pursue your rights through the courts," she says. "There are some people who are willing to stand up and go through whatever they need to go through ... [for others] that's just not the right choice for them."

The employers' lawyer: Seth Borden, a labor and employment lawyer from Merrick and a partner in the firm of Kreitzman, Mortensen & Borden in Manhattan, represents employers exclusively. He

admonishes them to take seriously any accusation or complaint of sexual harassment.

If an accusation is made, he advises employers to:

Refamiliarize themselves with federal sexual harassment laws and their company's policy.

Conduct a thorough investigation, interviewing as many witnesses as possible and reviewing as much information and documentation as possible, looking for facts to corroborate or contradict the allegations.

Keep a written record of their findings.

If their probe uncovers a problem, take immediate action to remedy it.

Don't even think about retaliating. Demoting or firing the person, reassigning him or her to a less-desirable work area or refusing previously approved requests for vacation, leave or time off could all come across as retaliating against a person who has filed a complaint - and it's illegal, he says.

If you reassign or fire someone who has complained about sexual harassment, make sure you're doing it for legitimate and nonretaliatory reasons. Otherwise, you'll appear to be singling out that person unfairly, he says.

DEFINING SEXUAL HARASSMENT

According to the federal Equal Employment Opportunity Commission, sexual harassment involves the "unwelcome sexual advances, requests for sexual favors and other verbal or physical contact of a sexual nature ... when it explicitly or implicitly affects a person's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment."

As executives at Madison Square Garden are discovering, sexual harassment complaints can cost them millions if a jury finds them guilty and can paint them as employers who tolerate a hostile work environment.

In fiscal year 2006, the EEOC received 12,025 charges of sexual harassment - with 15.4 percent of them filed by men. The EEOC resolved 11,936 sexual harassment charges and recovered \$48.8 million in monetary benefits, not including the amounts obtained through litigation.

While companies focus on their risk of financial losses, they also should acknowledge the cost sexual harassment has on their human capital, the workers who have had to deal with it, says Lauren Stiller Rikleen, executive director of the Bowditch Institute for Women's Success in Framingham, Mass., which works with businesses to help women advance in the workplace.

"It's totally degrading. It makes people feel diminished, and if you feel diminished, you can't work to your full capacity," Rikleen says.

"When people are in a severe situation, it can be debilitating. You're uncomfortable to be near a person. You put an enormous amount of attention into avoiding a person at work, trying to extricate yourself from any situation where that other person will be. ... That is a huge amount of effort that is taken away from one's job."

Copyright © 2007, *Newsday Inc.*