

Communication is critical in avoiding sexual harassment

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By Deborah Weinstein

"The worst day of my life," "like getting struck by lightning," "the single most evil thing I have ever experienced" is how Bill O'Reilly described his feelings about being sued for sexual harassment by a staffer last year. While O'Reilly is a larger-than-life character and his accuser's allegations are a titillating look into a celebrity's private affairs, as an attorney in this area for 15 years, the O'Reilly matter was no more contentious than most of the cases I have handled. Forgetting the sensational headlines, this case, like the Paula Jones and Anita Hill matters, points out that we still have a lot to learn about sexual harassment.

The laws that O'Reilly's accuser used to sue him and his employer, Fox News, are still in their infancy. It was only 18 years ago that the U.S. Supreme Court first recognized a cause of action for sexual harassment. However, since that time, much work has been done in mapping out what conduct is acceptable and what actions are out of bounds in a workplace.

Unfortunately, while the boundaries of appropriateness are now clearly delineated, many supervisors and staffers do not realize where the markers are. In addition, many supervisors fail to grasp, despite reading about O'Reilly, the tremendous negative impact to their careers, their families and their companies straying over those lines can cause.

Both supervisors and companies should realize that "it can happen to you." Even though the O'Reilly case was settled after O'Reilly asserted that his accuser's allegations were fabricated, O'Reilly's reputation did not emerge unscathed. He was forced to cancel the book tour for his new "children's book." The settlement came too late to stop embarrassing allegations from being aired in public.

How can sexual harassment be avoided? Communication. Not late night cell phone calls promoting sex toy purchases, but a frank conversation about the subject within an organization. Sexual harassment is a sensitive topic for most of us. Like sex education in general, talking about it can make us feel uncomfortable. However, like that dreaded talk about "the birds and the bees," communication on this subject in the workplace is critical: communication between top management and supervisors and communication between supervisors and staff.

The American work force is more diverse than it has ever been and will continue to be increasingly diverse in the future. The generation of workers entering the labor pool today has grown up with sexual harassment protection. They have vastly different expectations from previous generations when it comes to the type of work environment they want. In addition, these workers have been sensitized to recognize, as unacceptable, conduct that a few decades ago was considered a normal part of "getting along at work."

Sexual harassment training is the best way to begin this dialogue. Training involves explaining what sexual harassment is, how to avoid it and what to do if you are harassed or someone comes to you with a complaint about harassment. California recently mandated that employers with more than 50 employees must provide two hours of just such training to their managers and supervisors. Connecticut has a similar law and New Jersey has strongly advocated training for New Jersey employers. In many organizations, senior management is nervous that bringing up the subject of sexual harassment will somehow put the idea of "suing your employer" into the minds of their supervisors and staff. Of course, they must assume that their employees do not read the spicy articles in the newspapers.

Employers will be well served by understanding that simply having a sexual harassment policy as part of their employee manual is not going to, by itself, deter harassment. In addition, pronouncements from senior management that sexual harassment "will not be tolerated" are equally ineffective. Fox News pointed out in their briefs in the O'Reilly matter that they have a strong anti-harassment policy in their employee manual and even reissued their "Unlawful Harassment" memorandum just days before O'Reilly's accuser filed her suit.

The real key to ending harassment is a conversation, within the organization, about what sexual harassment is, what type of conduct is unacceptable, and to whom you can complain if you feel harassed. This level of communication will explain to supervisors and staffers alike what the boundaries of acceptable conduct are and what to do if these lines are crossed.

An effective training program will not end harassment or even the allegations of harassment, however, training is the best way to get American workers and management to start talking about sexual harassment in a constructive fashion. Not training could result in Bill O'Reilly's real worst nightmare.

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