

Cornell Quarterly Article Focuses on Preventing Workplace Sexual Harassment

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Employers seeking to prevent sexual harassment in the workplace may unexpectedly find themselves on the losing end of a lawsuit, even when they have tried to do the right thing.

As detailed in the February 2008 issue of the Cornell Hospitality Quarterly, industry executives and Cornell faculty members agreed at the 2007 Labor and Employment Law Roundtable, presented by Cornell's Center for Hospitality Research, that employers need strong anti-harassment policies. But policies alone may not always help out when harassment occurs.

The article, 'Roundtable Retrospective 2007: Dealing with Sexual Harassment,' is available at no charge at <http://www.hotelschool.cornell.edu/research/chr/pubs/quarterly/featured/execsummar.html?name=harassment.pdf>. As explained by author David Sherwyn, an associate professor at the Cornell University School of Hotel Administration, when harassment occurs victims might quietly quit their jobs or they might report the harassment.

'Either way, if the victim sues, the outcome of the case can often be predicted, depending whether the case goes only to a judge for summary judgment or whether the suit is heard by a jury,' Sherwyn explained. 'For an employer to win the case, it must show that: (1) it has taken appropriate steps to prevent and correct the harassment, and (2) the employee must have unreasonably failed to take advantage of what the employer provided. This two prong test leads to a number of contradictory results.'

Sherwyn found that the outcome of cases that are heard only before a judge in a summary judgment motion often hinge on whether the victim reported the harassment before the lawsuit. If the victim did not report the harassment, but then sued, a judge will most likely find for the company if the employer had a strong anti-harassment policy. If the employee reports the harassment some judges will not grant the motion while others will judge the response. Thus, the message, from a strictly legal standpoint seems clear: for the purposes of summary judgment, have a policy, but don't make it too easy for employees to report.

'If the case goes to a jury, everything changes,' Sherwyn said. 'The attorneys at the roundtable explained that most juries are not impressed by policies alone, no matter how effective. Instead, an employer has a better chance of persuading a jury when it has gone all out-offering training in avoiding sexual harassment and providing toll-free reporting lines.'

'There's the irony for employers,' Sherwyn said. 'Adding training and toll-free lines may encourage victims to make the report that could well mean that the employer will lose in front of a judge. Such policies, however, may prevent the employee from filing a lawsuit, or, even better, prevent the conduct from happening at all. Thus, employers should understand that the law has contradictory incentives.'

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