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thank you for
your referrals.

SEXUAL HARASSMENT BASICS

Sexual harassment is a matter of concern for employees and employers. As an employee, it is important to know your rights under the law and also to be aware of your employer's policies regarding sexual harassment. For employers, it is extremely important to know what your duties and responsibilities are under the law, to provide training to supervisors and employees regarding sexual harassment, to adopt policies that best protect your organization, and to be aware of the legal consequences of sexual harassment to your company and supervisors.

The first step for employees and employers is to understand the legal definition of sexual harassment. There are two types of sexual harassment. The first type is called quid pro quo sexual harassment. Quid Pro Quo sexual harassment involves behavior that makes submission to sexual conduct a condition to a tangible job benefit or makes refusal to submit to sexual conduct a reason for retaliation. An example is where a supervisor offers an employee a promotion on the condition that the employee submits to the supervisor's sexual advances. Only a supervisor can commit quid pro quo sexual harassment, and there is strict liability to the employer for this type of harassment.

The second type of sexual harassment is hostile work environment sexual harassment. Hostile work environment sexual harassment is severe and pervasive sex based harassment that alters the terms and conditions of the employee's employment. Intent is not required. The harasser can be a supervisor, co-worker or third party. The behavior can come in many forms, including offensive touching, lewd jokes, and sexually explicit material.

For an employee, if you believe that you are being subjected to either quid pro quo or hostile work environment sexual harassment, it is important that you report the harassment to your supervisor. If the offender is your supervisor, you should report the conduct to another individual within your employer's chain of command. You should inquire whether your employer has a written policy on sexual harassment. If so, you should follow the policy regarding reporting. If your employer does not resolve the matter in a satisfactory manner, you can file a complaint in many instances either with the Ohio Civil Rights Commission or the U.S. Equal Employment Opportunity Commission.

As an employer, it is important to keep apprised of your legal responsibilities. Again, there is strict liability for quid pro quo sexual harassment. This means that the employer is liable for a supervisor's actions in this regard regardless of whether it knew about the behavior or had an effective anti-sexual harassment policy. An employer is able to limit liability for hostile work environment sexual harassment by implementing and adhering to a written anti-sexual harassment policy which conforms to the guidelines established by the United States Supreme Court case law.

LEGISLATIVE UPDATE

THE AMERICANS WITH DISABILITIES ACT (ADA) AMENDMENTS ACT OF 2008 ("ADA AMENDMENTS ACT")

On September 25, 2008, President Bush signed the ADA Amendments Act. The Act was drafted "[t]o restore the intent and protections of the Americans with Disabilities Act of 1990." This Act makes changes to the definition of the term "disability," as used in the ADA. The Act rejects the holdings of several United States Supreme Court decisions which had previously restricted the definition of the term disability. The Act also rejects portions of the U.S. Equal Employment Opportunity Commission's ADA regulations.

The Act retains the basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. The Act adds rules of construction and definitions to alter the interpretation. Among other changes, the Act:

- Emphasizes that the definition of "disability" should be interpreted broadly in favor of coverage;
- Provides that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability;
- Expands the definition of "major life activities" by including two non-exhaustive lists. The first list includes activities that the EEOC had not previously specifically recognized, including reading, bending and communicating. The second list includes major bodily functions, such as functions of the immune system, and brain and respiratory function;
- Establishes that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and
- Provides that an individual meets the requirements of the "regarded as" prong if the individual is subjected to actions which violate the ADA because of an actual or perceived impairment regardless of whether the impairment limits a major life activity, unless the impairment is minor or transitory (6 mos. or less).

SUBROGATION AND WORKERS' COMPENSATION

Subrogation is the process by which the Ohio Bureau of Workers' Compensation ("BWC") or a self-insured employer recollects medical and compensation costs paid on behalf of injured workers when a third party causes the workers' compensation injury. In order for subrogation to occur, the injured worker must collect a judgment or settlement from a third party.

BWC has the right of recovery from a third person, corporation, political subdivision or an insurance company for the cost of benefits paid on behalf of an injured worker according to [ORC 4123.93 et seq.](#)

What types of accidents typically involve subrogation?

The most common accident type is a motor-vehicle crash caused by another driver. However, there are many other accident situations where subrogation can apply, such as:

- Premise liability (i.e., slip and fall injuries, falling objects, security breaches, failure to warn or make safe);
- Products liability (i.e., malfunctioning machinery);
- Medical malpractice (i.e., failure to diagnose or treat or negligent treatment);
- Construction sites (i.e., scaffolding collapse, cave-ins, explosions, fires);
- Assaults; or
- Animal bites.

These injuries must occur while in the course of the injured worker's employment.

What happens?

When your personal injury (e.g. car crash) case is ready to be settled, you or your attorney will need to contact the BWC Law subrogation section. They will then negotiate an amount to be reimbursed to the BWC to satisfy their subrogation interest. The telephone number for BWC legal operations is 614-466-6600. If your employer is self-insured, you will need to contact the employer's representative.