

PR 4.05.1

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NOTICE

Employees' Right to Non-Discriminatory Work Environment

Indiana Harbor Belt Railroad Company's Policy, as well as federal, state and local discrimination statutes, forbids illegal discrimination in the workplace. It is a violation of company policy, as well as of applicable laws for any employee, whether agreement or non-agreement, to deliberately discriminate in word or action against a fellow employee or applicant for employment, customer or vendor on the basis of race, color, sex, national origin, religion, age or physical or mental handicap.

The policy prohibits the use in the workplace of racial or sexual epithets and stereotypes, slang words or names, or any other language or actions which by their nature or effect degrade or insult a person, or any group of persons, on the basis of race, color, sex, national origin, religion, age or physical or mental impairment. Common sense and decency condemn such actions and demand that every employee be treated with respect.

Company policy and applicable laws include prohibition of sexual harassment which is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when the following conditions apply:

- submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment,
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual,
- such conduct creates an intimidating, hostile, or offensive work environment,
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance.

Employees, either agreement or non-agreement, whose behavior is in violation of the company's non-discrimination policy are subject to disciplinary action up to and including dismissal. Discriminatory behavior will not be condoned or tolerated at any level of the company's employment.

Employees are required to report immediately any incident of discrimination or sexual harassment if they sincerely feel that they have been subject to any act of illegal discrimination. The company has established for this purpose an Internal Discrimination Complaint Resolution Procedure whereby employees who feel they have been discriminated against in violation of company policy can seek help. If you believe you have been discriminated against, you must contact the Director Human Resources, Gibson Main Office Building, Room 402, 2721- 161st Street, Hammond, Indiana 46323-1099, (219) 989-4923

Any complaint filed will be handled in the strictest confidence. Employees filing complaints will be protected from retaliation or reprisal. Use of the Internal Discrimination Complaint procedure does not, in any way, restrict an employee's right to file a discrimination complaint with a federal, state or local fair employment practice agency, nor does it prevent an employee from utilizing labor agreement procedures.

James E. Roots
General Manager, IHB RR Co.

AVOIDING SEXUAL HARASSMENT

Since the passage of the Civil Rights Act of 1991, personnel professionals across the country have been deluged with requests for practical information and assistance in how employees can be trained to recognize and avoid words or actions that may give rise to sexual harassment claims.

Professor David Allen Larson has written this article to "educate and assist both employers and employees" on the law of sexual harassment, particularly harassment arising from a sexually hostile or abusive working environment. A summary of this article follows:

Quid Pro Quo Harassment

If an employer conditions a tangible job benefit on an employee's willingness to provide sexual favors, or inflicts a tangible job detriment on an employee because that employee refuses to go along with a request or demand for such favors, then the employer has committed "quid pro quo" sexual harassment. Merely because the employee used sexual innuendo at work, however, does not necessarily show that she "welcomed" sexual harassment, particularly from a supervisor.

Hostile Environment Harassment

Much more common, are sexual harassment claims based not on any explicit or implicit threat or promise tied to the employee's willingness to engage in a sexual relationship with a supervisor, but based on a working environment that the employee finds sexually degrading or offensive. An employee can show a violation of Title VII by showing that she was subject to harassment that is "sufficiently severe or pervasive to alter the conditions of (the employee's) employment and create an abusive working environment."

A policy disapproving of sexual harassment will protect an employer only if it is specifically aimed at sexual discrimination and harassment, and provides employees with alternative methods of complaining about such behavior to the employer. Just telling people to talk it over with their direct supervisor is not enough, because it does nothing for the employee who is being harassed by that very supervisor.

Professor Larson devotes the balance of his article to a discussion of the key concepts in this area: prohibited conduct; unwelcomeness; the extent to which the harassment must be "severe or pervasive"; and what constitutes an abusive environment.

What Sort of Conduct is Prohibited?

An employee does not have to demonstrate the existence of explicit sexual advances in order to show that she was subjected to unlawful harassment. So long as the conduct complained of was motivated by the gender of the employee, the "sexual" part of the sexual harassment will usually be found to have been shown. The real question is whether an employee of the opposite sex would have been treated the same way; if not, and if the sex of the employee is connected to the treatment she received, then sexual discrimination may have occurred. The use of derogatory terms unique to women, the posting of pornographic pictures, the use of different language to describe the shortcomings of female employees rather than males - all of these can, in an appropriate case, be considered sexual harassment.

When is Sexual Conduct Unwelcome?

The principal method of measuring the extent to which an employee found conduct unwelcome is to consider whether or not she ever made her discomfort known and, if so, when and how that she did so. If, for example, an employer has disseminated a widely published policy expressly prohibiting sexual harassment that contains a grievance procedure enabling employees to raise concerns in a confidential setting free from reprisals, yet the employee never took advantage of that procedure, it will be much more difficult for her to prove that the conduct was truly unwelcome. Likewise, if an employee's complaint concerns sexual kidding that she says she found offensive, but the evidence shows that the employee herself engaged in such kidding with no prompting from others, the employer will have a good chance at defeating the claim. On the other hand, if the employee told the offending co-workers or supervisor to "knock it off," yet the behavior continued, the employer will face an uphill battle in attempting to convince anyone that the conduct was not unwelcome.

When is Sexual Conduct "Sufficiently Severe and Pervasive" to Create Liability?

In deciding whether sexual conduct meets the Supreme Court's requirement that it be "sufficiently severe and pervasive to alter the conditions of employment," the circumstances under which the conduct occurred, as well as the number of incidents involved will be looked at. Note that "the required showing of severity or seriousness of the harassing conduct varies inversely with the pervasiveness or frequency of the conduct." Thus, even if one incident alone would not rise to the level of severity needed to demonstrate a sexually discriminatory hostile working environment, when several incidents are combined, one may well conclude that the totality of the circumstances reflects a violation of the law.

When Does Harassment Create an "Abusive Working Environment"?

One of the most critical changes in the law of sexual harassment is the application of a subjective standard in deciding whether conduct created an abusive working environment for the particular employee who has raised the claim. The traditional test in this area has been whether a "reasonable person" would find such a work environment hostile or abusive. Such an objective standard means that a hypersensitive plaintiff cannot recover merely because she found the atmosphere offensive; the question remains whether a reasonable person would agree.

However, this test has been modified in two ways. First, the proper standard where (as is usually the case) the plaintiff is female is whether a reasonable woman would have found the conduct offensive. Beyond this, some have shown a tendency to make the standard more subjective, coming close to finding that if this person found the conduct offensive, it was.

The Civil Rights Act of 1991

The new Civil Rights Act expands the remedies available to victims of sexual harassment. Before the new law went into effect, such persons were only entitled to recover any lost wages and benefits suffered as a result of the harassment, equitable remedies such as reinstatement, and costs and attorney's fees. Because many incidents of harassment do not involve a job loss, however, there was little monetary incentive for a victim of harassment who had not been fired or forced to quit to bring suit. Now, however, such persons may recover compensatory damages for the physical and mental harm caused by the harassment, as well as punitive damages if they can show that the harassment was done with malice or with reckless indifference to the employee's rights.