

THE SB&A LEGAL STRATEGIST

WELCOME!!

August 2007



Texas Esoteric Facts

- * More wool comes from Texas than any other state;
* The Lightning Whelk is the official state shell.
* Caddo Lake is the only natural lake in the state.

Welcome to the inaugural SB&A newsletter! Our plan is to publish a newsletter 4-6 times per year for the benefit of our clients, friends and colleagues.

As most of you know, SB&A is a boutique law firm with an emphasis on Business Law, and in particular, Strategic Business Law. In addition to our Business Law practice, we offer a wide variety of legal services focused on the individual.

Please take a few minutes to browse the newsletter. We invite all comments and suggestions; let us know how we can improve or offer up a topic that you would like to see in an upcoming issue.

Enjoy!
Scott Barrett

Check out our updated web site at http://www.sbarrettlaw.com

Feature Topic: Sexual Harassment in the Workplace: Don't Roll the Dice!

Sexual Harassment is a growing and costly concern for the business owner, manager and even for co-workers. The following is a brief synopsis of a recent lecture I gave to a group of business owners and managers.

What is Sexual Harassment? The unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.



Sexual harassment can occur in a variety of circumstances, including but not limited to the following: the victim as well as the harasser may be a woman or a man; the victim does not have to be of the opposite sex; the harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee; the victim does not have to be the person harassed but could be anyone affected by the offensive conduct; unlawful sexual harassment may occur without economic injury to or discharge of the victim; the harasser's conduct must be unwelcome.

The cost of even a single sexual harassment case can bankrupt a small to mid sized business. The average defensive hard costs (in 2002 dollars) are as follows: attorney fees if the case goes to trial, \$250,000; attorney fees if the case settles prior to trial, \$95,000; manager time expended in the claim process, 40 hours; employee time expended in claim process, 40 hours; employee time spent investigating the claim, 60 hours; employee time spent preparing for trial, 60 hours; range of settlement costs or jury awards, \$150,000 to \$250,000+.

Organizations named in sexual harassment and hostile work environment lawsuits pay huge financial settlements. The examples listed below identify amounts companies have had to pay as a result of jury awards or out-of-court settlements: in 1999 Sidney Frank Importing Co. agreed to pay \$2.6 million for the settlement of a sexual harassment lawsuit which alleged that more than 100 female employees were subjected to acts of sexual harassment by the owner and other employees of the company; in 1998, at United Parcel Services, \$80.7 million was awarded to a single plaintiff for sexual harassment and discrimination; in 1997 three Ameritech employees were awarded \$1.065 million in punitive and compensatory damages for being sexually harassed over a 19-year period; in 1997 a Continental Airlines female pilot was awarded \$875,000 when she filed a lawsuit based on allegations that the company did not adequately respond to her continued complaints of pornography left in the cockpit by co-workers; in 1997 a class action suit charging that Hooter's Restaurants discriminated against men in the hiring process resulted in a \$3.75 million award to the plaintiffs; in 1997 the EEOC determined that there was a sexual harassment and hostile work environment at Mitsubishi, which resulted in a \$34 million settlement; in 1994, at Baker and MacKenzie, a temporary employee of this law firm was awarded \$7 million for conduct she said actually caused her "very little distress"; in 1994 a Wal-Mart employee was awarded \$50,000 because a supervisor failed to take immediate steps to stop comments that caused the employee discomfort.

So how do you, as a business owner or manager, minimize your exposure to a sexual harassment law suit? Prevention is the best tool to eliminate sexual harassment in the workplace. Employers must take the steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. The best way to do so is by establishing an effective sexual harassment policy complete with a grievance process and appropriate action plan when an employee complains in addition to always using "reasonable care" in preventing and promptly addressing sexual harassment.

Don't roll the dice and gamble with your business; protect it! If you need to create a Sexual Harassment Policy and Grievance Process, or if you have one already in place but would like it to be reviewed to assess your protection, please contact Scott Barrett to set up a consultation.

