AN ADMINISTRATIVE DILEMMA: SEXUAL HARASSMENT AND LIABILITY

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Conservative estimates suggest that 40% of working women and 15% of their male counterparts have experienced some form of sexual harassment; and law enforcement personnel are no exception. Police officers are expected to adhere to the highest ethical standards and are subjected to greater public scrutiny than civilians. With criminal and civil remedies readily available to deter police misconduct, police agencies should be establishing policies that take a strong, pro-active stance against sexual harassment in the workplace. Surprisingly, though, 34% of police agencies in this country are still without formal policies regulating such behavior. This article is a guide to the legislation and case law that regulates those behaviors. Recommendations for policy formulation and implementation also are included.

sexual harassment in the workplace presents a clear and present danger to law enforcement agencies. A recent survey found that thirty-four percent of law enforcement agencies in the United States have yet to formulate a written sexual harassment policy.

Not since the turbulence of racial desegregation have police administrators faced perilous consequences equal to that presented by sexual harassment in the workplace. Yet despite widespread publicity that sexual harassment has permeated even the highest levels of management, administrators have been reluctant to acknowledge its potentially damaging presence (Collier & Associates, 1995). The failure to adopt a pro-active and aggressive policy to eliminate sexual harassment has resulted in many costly lawsuits nationwide, and this certainly presents a clear and present danger to the administration of police agencies.

Sexual harassment is an overt form of discrimination (generally against women) premised on gender (42 U.S.C. 2000e to 2000e-17). This form of bias has now more than ever reached the collective conscious of contemporary society, and resulting from longstanding tolerance of female abuse, juries have been increasingly more sympathetic toward female victims of sexual harassment. Accordingly, these juries have awarded large compensatory and punitive damages in an effort to encourage administrators to formulate more comprehensive and effective policies aimed at significantly reducing sexual harassment occurrences. In policing, though, the problems of sexual harassment may well be more damaging than superficial analysis projects. Within the ranks, for example,
incidents of sexual harassment promote a working environment filled with tension and stress. In turn, police productivity and efficiency are systematically compromised; and when such practices are made public by the media, an even more damaging consequence occurs in the form of community mistrust. This mistrust challenges many ethical considerations of responsibility and accountability within the agency and can ultimately have a detrimental effect on officer moral.

Many law enforcement agencies are still without formal policies regulating sexual harassment practices, and this gamble clearly reflects a lack of understanding regarding the actual liability risks involved. Congressional amendments and U.S. Supreme Court rulings in recent years have rendered that risk even more dangerous. There is no question that sexual harassment is a wrongful act in violation of criminal and civil law, but of equal importance is the fact that it creates an erosion of the agency’s public image—an agency charged with the duty to “serve” as our public guardians through enforcing our laws and “protecting” our constitutional rights.

Sexual harassment’s continued prosperity within contemporary police agencies has ignited renewed interest among law enforcement administrators concerning liability avoidance. These administrators have yet to fully understand the ramifications of sexual harassment, and are in need of information that will statistically illustrate the extent of the problem. Questions most often asked by agency administrators include: (1) What constitutes sexual harassment in a society where attitudes and values are constantly changing, (2) How serious is the problem of sexual harassment, (3) How can sexual harassment be prevented in the workplace, (4) What can be done to effectively deal with the problem of sexual harassment when it does occur, and (5) What steps can be taken to protect the agency from civil litigation? All of these questions are legitimate administrative concerns that deserve answers. Administrators need to be informed of the disturbing statistics that tend to illuminate the problem, the legal ramifications stemming from an agency’s failure to address the issues, current trends in the law, and ways that agencies can protect themselves from liability claims.

It is the purpose of this article to provide those necessary answers by delineating the scope and severity of sexual harassment problems through examination of sexual harassment definitions and the corresponding law that regulates its presence in the workplace. Suggested policies and procedures for establishing a sexual harassment policy also will be included.

LEGISLATION AND CASE LAW

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(a)(1)). On-the-job sexual harassment is not a recent problem, although legal liability for it is. In 1976, the American court system decided the first sexual harassment case under Title VII in Barnes v. Costle (1977). However, the wider public did not appear to fully appreciate the scope of the problem until the Senate Judiciary Committee hearings on Anita Hill’s charges against Supreme