

"In many ways, it's one of the most difficult areas of employment law because it's always 'he said, she said' or 'he said, he said.'"

Handling sexual harassment cases is complicated because they must be evaluated on a case-by-case basis, Shepherd and other employment lawyers said. Harassment complaints are often highly fact-specific and subjective and typically turn on the credibility of the accused and the accuser, since there are frequently few, if any, witnesses.

In addition, perceptions of what is welcome or unwelcome behavior can change with time, particularly in cases in which workplace romances have soured. For that reason, some companies prohibit romantic relationships between co-workers, especially supervisors and subordinates, and consider failures to disclose even consensual relationships a firing offense.

A company's internal culture can also be a factor, leading some employers to have different levels of tolerance for different types of behavior.

"What is culturally deemed acceptable varies by company," said Julie L. Burke, a director in the employer's resource group for Associated Industries of Massachusetts, the state's largest business lobby. "So an all-male environment might be different than a male-female environment, or a white-collar environment might be different than a blue-collar environment."

How an employer chooses to handle a complaint can depend on the severity of the conduct, the number of complaints, and whether there have been prior allegations involving the same person. When determining appropriate penalties, employers often consider the circumstances of the accused person's career, such as whether he or she was hired recently or is a longtime employee and whether his or her performance has otherwise been exemplary. Employment lawyers advise employers to be consistent in their discipline, since companies can land in hot water when they treat some accused employees, such as top salespeople, differently than others.

Sources: Adapted from Sacha Pfeiffer (May 25, 2006), "Gray Areas Complicate Sexual Harassment Cases," *Boston Globe*, p. A1; Todd Henneman (July 31, 2006), "A Broader Retaliation Standard . . .," *Workforce Management*, pp. 33-34.

Discussion Questions

1. Should the president of Caritas Christi Health Care be fired? Why?
2. Why is the handling of sexual harassment cases considered complicated?
3. Explain in your own words why consistency in handling sexual harassment claims is important.

HR Journal Test Answers

Answers to HR Journal Test on page 66, "Are You Aware of the Law?"

- | | |
|--------|---------|
| 1. No | 6. No |
| 2. Yes | 7. Yes |
| 3. Yes | 8. No |
| 4. Yes | 9. Yes |
| 5. Yes | 10. Yes |