

15 years later...

Employees and Employers Still Affected by Harassment at Work

This Summer is the 15th Anniversary of the historic New Jersey Supreme Court decision in *Lehmann v. Toys 'R' Us*. The case established protection for women under the Law Against Discrimination from unwanted and coercive sexual harassment. Those protections can also apply to “straight” male, gay and lesbian employees.

Unfortunately, the abusive and unhealthy conduct that the *Lehmann* case intended to stop continues in many workplaces. So this isn't a “happy” anniversary for anyone who is a victim of verbal or physical harassment and abuse from supervisors or co-employees. Because that case is so important, we mark its anniversary by offering these **10 Recommendations** to guide both employees **and** those who supervise them.

1. KEEP A RECORD. It's time-consuming and stressful, but it's important to keep a written record of what's happening from day one. Buy a notebook or a calendar, or create a file on your home computer (don't use your office computer or e-mail). Put down **exactly what was said or done** that you feel was unwelcome and harassing, however crude, and how it has affected you (headaches,

sleeplessness, stomach upset). It's also important to detail how it has affected **your job performance**, whether that means your productivity, your attendance or your avoidance of the person or persons harassing you. As time passes your memory may fade on the details – this will be a reminder and a record of them.

2. KNOW WHAT IS AND ISN'T IMPROPER HARASSMENT. Sexual harassment must be based on gender or sexual orientation. That means that if a supervisor uses vulgar language toward everyone, male and female, it may not be unlawful, unless the vulgar words refer to one gender in particular.

3. TELL HIM OR HER TO STOP. It may be difficult to tell your boss that his or her comments or actions are unwelcome. But it's better to make it “crystal clear” that they are.

4. CHECK YOURSELF OUT. Again, the key word is “unwelcome.” Take an honest look at whether **you can be accused of not being offended** by harassment. This doesn't mean that anyone ever “deserves” or is “asking” to be abused, but talking at work like a “truck driver” or participating in “dirty talk” may make it difficult to claim that you are offended by vulgar language.

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5. TELL A TRUSTED CO-EMPLOYEE. If there's someone at work that you trust, tell her or him what's happening. If you have witnesses, write down their names and (if you know them) their addresses and phone numbers. If and when you report what's happening, you'll likely face a denial by your victimizer, making your complaint a "she said, he said" situation. Before anything is reported, you need to "build your case" as carefully and completely as possible. While someone you tell about the harassment may not be an "eye-ball witness," she or he will be someone who **knew about** the harassment at the time that it happened.

6. CHECK YOUR EMPLOYER'S POLICIES. If you don't have a copy of the Employee Manual or Handbook, get one. There should be a policy about sexual discrimination or harassment on the job and a **procedure to be followed**. There should also be **protections against retaliation for reporting** what's happening to you. If your employer has its policies and procedures on-line, then print them out. If there are none, check the posters in the lunchroom or elsewhere, which **are supposed to** tell you about your employer's anti-sexual harassment policies.

7. FOLLOW THE PROCEDURES. Many employers have anti-discrimination policies that exist in name only. The Personnel or Human Resources representatives in your company may have little knowledge or training in protecting victims of sexual harassment, or may have a "mandate from above" to minimize complaints and protect the company. Once you have your "evidence" together, you should follow whatever complaint procedures exist. If you don't, you'll be accused of **minimizing your own complaints**. If the policy requires you to make a first report to the harasser, **go to the next step** or call Personnel or Human Resources to ask what to do, **without naming names or going into details**.

Thanks to my colleague Lisa DeSantis, Esq. for her assistance with this article (recently Of Counsel to NKNR&E) and also to law clerk Alyssia Proko-Smickley - MF

8. CHECK YOUR PERSONNEL FILE. Sometimes employers respond to discrimination or harassment complaints by trying to put the victim "on the defensive." Were you ever disciplined? Did you recently get a bad review? Were you denied advancement because of your work performance? If you don't know the answer to questions like these, schedule an appointment to see your personnel file. You can't copy it, but you can look at it. While other work issues can never be excuses for on-the-job sexual harassment, you should know, in advance, what you may be facing in response to a complaint.

9. PREPARE YOUR PRESENTATION. You want this to be taken seriously, so be serious about your preparation, whether it's verbal or in writing. "Rehearse" with a family member or friend. Present your evidence in typewritten, not handwritten form – and don't "hand over" your notes. Prepare to **demand** that action be taken immediately.

10. REPORT, DON'T RESIGN. You can, of course, choose to quit rather than confront. That's a matter of your willingness and ability to follow this course and your personal finances in a difficult economy. Even if you do leave your job, following the above steps will help you later with a claim for unemployment benefits. If you decide to go forward, you should think about the ways that the harasser may **retaliate** and **present a plan to prevent it**. Ask to report to another supervisor, or to be moved to another department, if you have the qualifications for it. As a "worst case" alternative, ask (if possible) if you can work from home, or for a leave of absence until the employer's investigation is complete.

Anytime along the way, call the United States Equal Employment Opportunity Commission (EEOC) (973-645-6383 for the New Jersey office and 212-336-3620 for the New York Office), the New Jersey Division on Civil Rights (DCR) (973-977-4500 for the Paterson, New Jersey office or 973-648-2700 for the Newark, New Jersey office), the New York Division of Human Rights (212-961-8650), or a lawyer, if you need help.

“Dear Legalties” Advice on Workplace Romance



The best way to handle dating a supervisor or co-worker is not to do it at all. But since most of our waking hours are spent on the job, interacting with other people, that’s not realistic advice. What we do recommend is getting the answers to these questions before things get started:

- **DOES YOUR OFFICE HAVE A POLICY ON DATING CO-WORKERS?** Most businesses don’t have a formal dating policy, so a supervisor or Human Resources person can intervene if there’s a disruption of day-to-day work or office morale. This includes the feelings of co-workers who may be offended by open displays of affection, or who spend too much time gossiping about your office romance.
- **WHAT ARE THE BOSS’S PERSONAL VIEWS?** Perhaps more important than a formal policy is what the owner or your supervisor thinks about office romances. Those views could be based on a business decision, or personal morality or experience. In either case, try to find out, discreetly, what he or she thinks.

Mike Farhi Recommends...

The practice of law has become more and more specialized. A lawyer who is a “master of all trades” is now a thing of the past, much like 8-track tapes and black & white TV. For that reason, Mike Farhi has been working with a group of specialists in areas of law that he does not handle. Those areas include **Automobile Accident Claims, Bankruptcy, Complex Divorce Cases, Criminal Defense, Federal Workers Compensation, Immigration, New Jersey Workers Compensation Claims and Social Security Claims**. If you, a family member, friend, neighbor or co-worker needs a lawyer in one of those areas, call or e-mail Mike for a referral.

- **ARE YOU WILLING TO RISK YOUR JOB OR YOUR CHANCES OF ADVANCEMENT?** A supervisor who gives preferential treatment to his or her partner, a couple who are uncomfortable with each other after a break-up and make others uncomfortable, or someone who becomes distracted and less productive on the job, all place themselves at risk of termination.
- **CAN YOU BE DISCREET?** That means limiting displays of affection and personal talk to lunch hours – or off-hours. It means keeping personal details private. It means avoiding e-mails or arguments. Or showing up late – or leaving work early – together. Equally important is whether your partner can and will show the same discipline.
- **DO THE TWO OF YOU HAVE AN EXIT STRATEGY?** Are you both mature enough to have an amicable breakup? How will you avoid or minimize being the subjects of gossip? Can you prevent, in advance, harassment, stalking or even sabotage from your “ex.”

Deals Gone Bad Cause More Lawsuits

A recent article in the Real Estate section of a prominent local newspaper noted an increased number of cancelled deals over the past year. “A lot of buyers are getting cold feet and backing out in attorney review,” one broker was quoted as saying. Another reason given for broken deals is that “lenders have gotten tightfisted.”

Those circumstances have prompted some sellers to sue in order to force a sale or payment of damages. As a lawyer quoted in that article said: “when real estate prices were rising, deals that fell apart were no big deal. You’d sell for as much or more and it was never a matter of litigation. But now [with a declining market] a seller could face real losses.”

The attorneys at **Nashel Kates** have successfully defended several potential buyers against claims that they failed to diligently pursue a mortgage. If you have a “deal gone bad” where litigation has started or is threatened, give us a call.

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