

# Sexual Misconduct in the Workplace

Our society is facing a colossal ethical crisis



BY BRAD YARBROUGH

With so many shocking stories in the news today, you may be wondering what this world is coming to. Or is it just me?

Take, for instance, the scandalous reports of sexual misconduct by high-profile individuals. The number of claims and criminal proceedings are disturbing and reveal an outbreak of sex-related transgressions. While unbridled lust is not a new phenomenon, social misdeeds are now broadcast more widely and quickly to a public with an insatiable appetite for news and opinions.

Indeed, there is an explosion of sexual harassment news. And the blast ought to wake us up. There is just too much at stake. It's time to have a more candid discussion about sexual ethics in regards to the workplace.

## The Battle Between Good and Evil

Generally, ethics is the conscious framework necessary to do the right thing. Thomas Aquinas emphasized the principle "Do good, avoid evil." But that

begs the question of what is good and what is evil. While there is agreement about the virtues of honesty, self-discipline, politeness, good manners, trustworthiness and generosity, it seems that there is still much ignorance about acceptable sexual behavior. Of course there is. We are in the midst of an ethical crisis.

The basics of sexual ethics have evolved throughout history from old-fashioned values to the new morality of the 1920's before arriving at that liberated place where "if it feels good do it." The consequences of being "me" centered instead of "we" centered have been damaging, if not disastrous. Weakened ethical considerations have given rise to a society that promotes the entertainment appeal of sexual acts, the marketing value of sexually charged campaigns and the growth of the porn business into a multi billion-dollar industry. At the same time, our society insists on protecting individuals from being victimized by unwanted sexual aggression or unwillingly subjected to

sexual settings. This has culminated in a colossal ethics crisis.

The focus of sexual ethics has become an issue of consent. Any individual that expresses themselves in a manner that has a suggestive sexual element had better know if the recipient or witnesses find those acts or expressions acceptable—whether verbalized or merely a gesture. Ethical conduct must also address those situations where consent cannot truthfully be obtained, such as from minors, the mentally disabled, anyone under the influence of drugs or alcohol or someone who believes they must consent for self-preservation whether physically, socially or economically.

As a starter, every employee, employer, contractor, vendor, associate, business owner and board member must fully understand the law. It is Title VII of the Civil Rights Act of 1964. In effect today, it is applicable to all U.S. employers with 15 or more employees. And anyone affected by the offensive conduct in question—not just the person to whom it is directed—may be a victim.

## Types of Harassment

There are two different types of sexual harassment claims, although the manner in which a court will distinguish between the two has become blurred in recent years:

**Quid Pro Quo:** Sexual harassment that occurs when a supervisor or one in an authority position requests sex, or a sexual relationship, in exchange for not firing or otherwise punishing the employee or in exchange for favors, such as promotions or raises.

**Hostile Work Environment.** Sexual harassment that occurs through the presence of demeaning or sexual photographs, jokes or threats. The inappropriate behavior or conduct must be so pervasive as to create an intimidating and offensive work environment.

# What Constitutes Sexual Harassment?

When sexual harassment accusations are made, other ethical considerations are required. Among them are the right of individuals to due process, the sensibility of statutes of limitations and the reality that an individual's character can undergo change over time—for better or for worse. Another weighty ethical issue is the victim's right to privacy and how to offer a less painful procedure for the reporting of sexual misconduct whether of a criminal nature or not. And because cultural traditions and religious faith greatly influence beliefs about what constitutes good or evil sexual practice, worldwide ethical positions vary.

## Call to Action

With such mixed messages coming from a highly sexualized society, there's a vital need for an intentional, proactive strategy aimed at eliminating the incidence of sexual misconduct. Businesses should immediately address sexual harassment policies and provide more training to its employees. This has become one of the largest ethical issues of our day, and our professional association should be applauded for giving attention to it. The IRWA and its members are collectively committed to ethical excellence.✪



Brad Yarbrough is the Owner and CEO of Pilgrim Land Services, a right of way services company in Oklahoma City. With over 35 years experience in oil and gas, he has clients nationwide and an extensive network of landmen and agents.

As stated in Title VII of the Civil Rights Act of 1964, the offense is defined as: *"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."*

**The Equal Employment Opportunity Commission offers additional guidance on what constitutes sexual harassment, including the following:**

- ☛ The conduct of the offender must be offensive and unwelcomed by the victim.
- ☛ Harassment may still occur when there is no economic injury to or discharge of the victim.
- ☛ The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a coworker or a non-employee.
- ☛ The victim and harasser may be a woman or a man. The victim does not have to be of the opposite sex.

**In hostile work environment cases, the court will consider the following factors:**

- ✓ Frequency of the alleged inappropriate behavior
- ✓ Severity of the behavior
- ✓ Conduct of the victim
- ✓ Context of the alleged harassment
- ✓ Size of the employer's business
- ✓ Nature of the employer's business
- ✓ In a hostile work environment claim, whether a reasonable person in the position of the plaintiff would have thought the environment to be hostile