

Is Your Harassment Policy Up-to-Date?

By Leonard T. Bier, CAPP, JD; and Michael J. Ash, Esq.

TOWARD THE END OF 2017, a wave of high-profile media personalities resigned amid investigations into accusations of sexual harassment and inappropriate workplace behavior. This trend is expected to continue this year and reach into all employment sectors. It is important for public and private parking managers to review their existing protocols for handling sexual harassment accusations to ensure such situations will be handled quickly and fairly while limiting legal exposure.

What Is Sexual Harassment?

The United States Equal Employment Opportunity Commission (EEOC) is a federal agency that administers and enforces civil rights laws against workplace discrimination. EEOC guidelines specifically provide that harassment constitutes “verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of [the employee’s protected class,]” “has the purpose or effect of creating an intimidating, hostile, or offensive work environment,” “has the purpose or effect of unreasonably interfering with an individual’s work performance,” includes “epithets, slurs, negative stereotyping, or threatening, intimidating or hostile acts, that relate to ... disability,” and “written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of [the employee’s protected class] and that is placed on walls, bulletin boards, or elsewhere in the employer’s premises or circulated in the workplace.” 29 C.F.R. §1609.1(b).

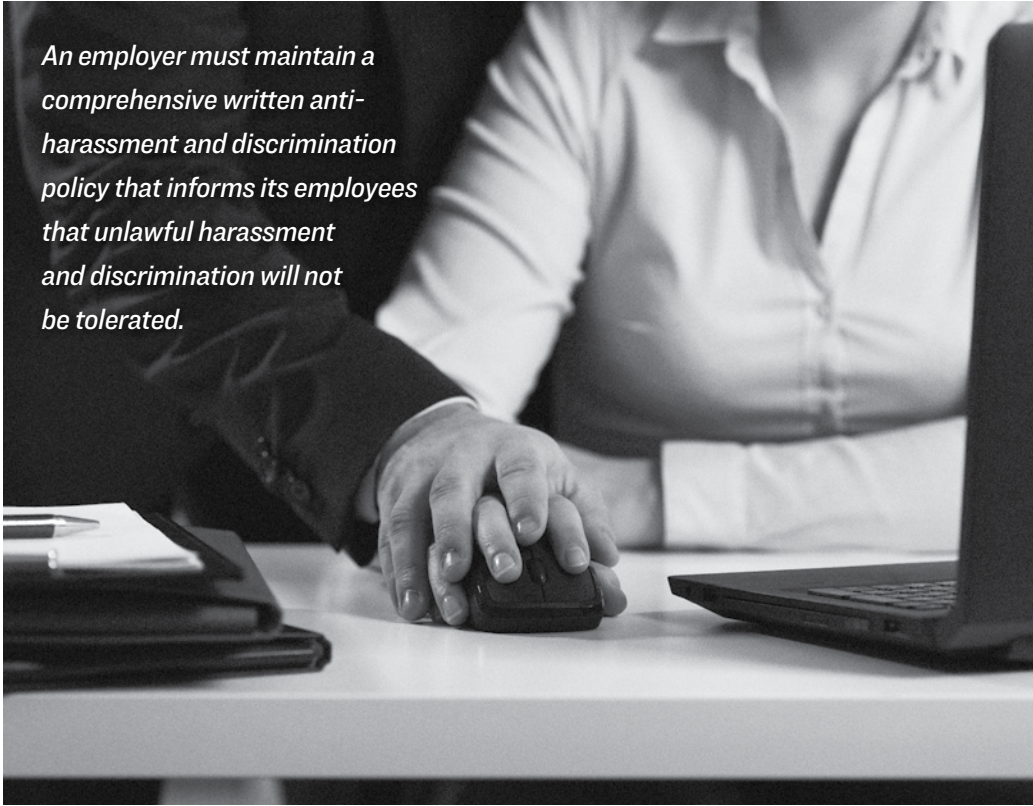
Many cases have interpreted individual state laws against discrimination, clarifying the general criteria in proving whether sexual harassment can be established to find an employer

liable. Courts have specifically held that a plaintiff in a sexual harassment action must demonstrate that the complained-of conduct would not have occurred but for the employee’s gender and was severe or pervasive enough to make a reasonable woman believe that the conditions of employment are

altered and the working environment is hostile or abusive. An employer may be strictly liable for equitable damages (e.g., back pay, promotions, reinstatement) for sexual harassment committed by a supervisor. Agency principals apply to determine whether an employer may be responsible for compensatory damages (e.g., damages for emotional distress).

Liability for Sexual Harassment

In order for a plaintiff to succeed in proving a hostile work environment, he or she must present a full and complete depiction of the work environ-



An employer must maintain a comprehensive written anti-harassment and discrimination policy that informs its employees that unlawful harassment and discrimination will not be tolerated.

SHUTTERSTOCK / PHOTOGRAPHEE.EU

ment which, when viewed as a whole, presents an image that is intimidating and hostile. State and federal courts recognize that testimony by employees about discriminatory actions by the defendant-employer similar to those alleged by the plaintiff are admissible to prove the employer's motive or intent to discriminate. An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. In such circumstances, the employer is strictly liable for tangible job consequences resulting from the supervisor's actions.


Suggestions for Employers

An employer must maintain a comprehensive written anti-harassment and discrimination policy that informs its employees that unlawful harassment and discrimination will not be tolerated. The written anti-harassment or discrimination policy must also inform employees how and to whom they should bring their complaints. In its Model EEO Program, the EEOC set forth the following minimum guidelines of what must be included in an anti-harassment policy:

- A clear explanation of what constitutes prohibited conduct.
- A statement of assurance that employees who complain of harassment or provide information relating to complaints of harassment will not be retaliated against.
- A clear description of the complaint process.

- A statement of assurance that the employer will keep complaints of harassment confidential to the extent possible.
- A complaint process that states the employer will investigate complaints of harassment promptly, thoroughly, and impartially.
- A statement of assurance that the employer will take immediate and appropriate corrective action when harassment has occurred.

Employers should provide periodic training to supervisors and managers concerning their responsibilities regarding the employer's anti-harassment and anti-discrimination policy. The training should, at minimum, provide the supervisors and managers the types of conduct that will violate the anti-harassment and discrimination policy, the seri-

ousness of the employer's policy against harassment and discrimination, the duties and responsibilities of the supervisors if they learn of allegations of harassment and discrimination, and a clear prohibition against retaliation for making complaints or participating in a harassment or discrimination investigation. 



LEONARD T. BIER, CAPP, JD, is the principal of Bier Associates. He can be reached at lenbier@optonline.net or 732.828.8866.



MICHAEL J. ASH, Esq., is a partner with Decotiis, Fitzpatrick, & Cole, LLP. He can be reached at mash@decotiislaw.com.

Management Checklist: Harassment

- Sexual harassment policy.
- Discrimination policy.
- Complaint mechanism.
- Identify several individuals to whom employees can go to in order to notify the employer of possible discrimination.
- Handling of investigation, prompt and thorough.
- Remedial measures (counseling, discipline, termination).
- Monitoring.
- Training (training should be conducted every six months or at least annually).
- Liability insurance for all officers.