

Sexual Harassment Liability in Public Safety

The national media has placed a keen focus on the issue of sexual harassment in the workplace over the past several weeks. Media and political figures are accused of sexual misconduct and, possibly even more importantly, a multitude of men and women in positions of power are found to have been aware of misconduct to some extent but did little to prevent or report it.

As disturbing as these well-known cases are, the steady flow of accusations against some in public safety are, in many respects, more concerning. Not because police officers or firefighters are routinely engaging in some of the types of misconduct reported out of Hollywood, but because **the men and women of public safety are expected to uphold higher standards than celebrities and media moguls.**

First responders are the people we call in our moments of greatest need. They enter private homes. They are placed in the position to care for some of society's most vulnerable individuals, including children, the elderly and countless victims of crime or medical emergency.

A working knowledge of their responsibilities in the area of harassment allegations is too often missing from the "tool box" of new supervisors as well as seasoned public safety leaders. There are a few key items for agency leaders to keep in mind.

- (1) **Utilize common sense rules of thumb.** Does an individual have a widely-known *nickname* that indicates a tendency to engage in harassing behavior? Is a questionable activity in the agency widely-known by a nickname? Is the only possible defense to what happened fall along the lines of: *she initiated it, she was laughing as hard as anybody, he smiled through the whole thing?*

All of these aforementioned examples illustrate that the activity is not a secret and is known to supervisors. As a result, the agency is in no position to deny that they were alerted of the issue. Behavior that would rightly embarrass the agency is known to the public **does not need to be reported if the chief, captain or sergeant is already aware of it.**

- (2) **Prohibit retaliatory acts in the wake of complaints.** Leaders in public safety, through policy and training, need to emphasize to all supervisors the importance of avoiding retaliatory acts when harassment allegations are lodged. It is vital that a person does not see shift or work assignments affected in any negative way due to simply lodging a complaint. **Even the *appearance* of retaliation, when some negative employment action is taken following closely behind a complaint, can often be the most costly part of a sexual harassment lawsuit** in terms of finances and time.

- (3) **Reserve judgment when conducting the internal investigation.** This is challenging in any internal investigation but particularly so as allegations become more egregious and

personal—as in the case of sexual harassment cases. Keep in mind that just because the accuser is not someone who you hold in high regard—personally or professionally—does not mean that the allegation is necessarily false. Furthermore, just because the accused is someone you believe to be a great professional who you would never suspect of engaging in wrongdoing does not necessarily mean that they did not engage in the alleged behavior.

Allowing preconceived notions about agency “superstars” or agency “trouble-makers” to impact the internal investigation can be disastrous in that it stands to compromise the integrity of the investigation and puts the agency at substantial risk of liability stemming from the original complaint and/or allegations of subsequent retaliation.

- (4) **Demonstrate a willingness to take disciplinary action when allegations are shown to be demonstrably false.** This is vitally important if agencies are going to gain genuine buy-in throughout the agency. **If there are allegations of sexual harassment in the agency—that should fundamentally trouble agency leaders for obvious reasons. Those leaders should be equally bothered by *false* accusations against agency members.** For an employee to essentially “weaponize” laws created to protect workers in order to attack a fellow member of the department is unacceptable and it should prove a violation of agency policies prohibiting false reporting on fellow employees.

When investigating and evaluating harassment allegations, “never mind” from the complainant is never a reason to close the investigation. If the investigation reveals that someone engaged in harassing behavior, that must result in serious disciplinary action. The same is true if the investigation reveals that someone is falsifying allegations, regardless of the motive. **It is both possible and vital to agency operations that leaders treat harassing behavior and demonstrably false allegations of harassment with similar severity.**

Contrary to *their* apparent belief, most Americans do *not* look to Hollywood or to Washington, D.C. for models of ethical conduct. Many *do*, however, hold their local public safety professionals to high ethical standards. This higher standard is reasonable and should be viewed as a public trust to be protected.

Sexual harassment liability poses a substantial risk to public safety agencies in terms of **financial costs, organizational disruption and public trust.** It is vital to agency operations that all employees—and particularly supervisors—are familiar with their fundamental responsibilities under the law when it comes to sexual harassment.