

OUTSIDE COUNSEL

A Legal Update for Animal Care Providers.

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by Atty. Douglas M. Mansfield

DONAHUE, TUCKER & CIANDELLA

Sexual Harassment

An Ounce of Prevention...

Implementing a non-harassment policy for your Practice is an important preventative measure in protecting yourself and your partners from future possible harassment claims.



Prevention is the only sure-fire way to ensure no liability, since any tangible, "adverse employment action" (i.e. termination, reduction in pay, demotion) flowing from harassment results in automatic liability for an employer. In short, you should ensure that your Practice exercises "reasonable care" promptly to prevent and correct any sexually harassing behavior. If an employer does so and an employee unreasonably fails to take advantage of those preventative or corrective

opportunities, an employer will not be liable for the harassment if there has been no tangible, adverse employment action.

Should a claim be made against your Practice, your ability to demonstrate efforts at prevention (i.e. non-harassment policy, training) and response (i.e. appropriately handling a complaint) are crucial to your defense.

The following is a preventative plan designed to prevent sexual harassment claims, document those efforts, maximize the likelihood of an effective response to a complaint and ensure the ability of your Practice to assert all affirmative defenses permitted by law.

First, implement a proper, written non-harassment policy. If you already have one in place, make sure legal counsel has reviewed the policy. Certain key elements must be included in the policy in order to take advantage of it in a defense. These include a non-retaliation provision, examples of potential harassing conduct, the name of a person to make complaints to, (including an alternate, should the first person be the subject of the complaint).

Ensure that your supervisors are aware of their responsibilities under the non-harassment policy and understand that compliance with the policy is part of their job responsibilities. Identify and document whom you consider a supervisor. The U.S. Supreme Court has held that an employer is liable when a "supervisor" harasses an employee over whom the supervisor has immediate or successively higher authority. Include and document as a qualification for every supervisory position a "commitment to equal opportunity."

Ensure that all employees are given a copy of the non-harassment policy. New hires should be given a copy at the time of hire. Redistribute the policy on an annual basis. When distributing the harassment policy, you should obtain a signed receipt from the employee acknowledging receipt, documenting its distribution. An updated receipt should be

obtained each time it is distributed and should be kept in the employee's personnel file. Provide and document appropriate training to supervisors and non-supervisory employees on sexual harassment prevention. The type of training will be different for supervisors than for non-supervisors. Non-supervisory training will include an overview of the policy, examples of harassing behavior and appropriate ways to handle the behavior. Such training will play a role in showing you have taken reasonable steps to prevent sexually harassing behavior.



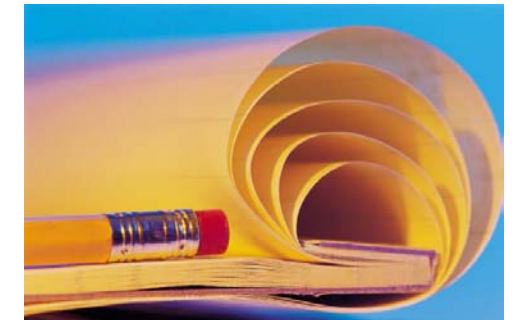
Training of supervisors plays an important role in your preventative strategy. In 1998, the U.S. Supreme Court issued two decisions establishing standards for determining employer liability for sexual harassment committed by supervisors. Both cases authorized the imposition of automatic employer liability where a supervisor engages in sexual misconduct and directly misuses his or her authority to discharge, demote or otherwise impose a tangible "adverse employment action." However, where a supervisor's sexually harassing misconduct does not cause such tangible job related harm to the employee, the employer can avoid liability or reduce damages if the employer proves, as an affirmative defense, "(a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventative or corrective

opportunities provided by the employer or to avoid harm otherwise."

Providing training promotes your ability to take advantage of this defense as well as increases the likelihood that the supervisor will not engage in the unlawful conduct in the first place. All supervisors should be required to attend such training and all training of employees should be documented.

Following the above outline can help prevent claims and reduce the risk that you and your partners may be found liable for harassment in the workplace.

... a pound of Cure.



Personnel Files

Did you know...

New Hampshire law requires every employer to provide a reasonable opportunity for any employee (past or present) to inspect her personnel file and obtain a copy if she so chooses. If an employee disagrees with any information contained in her personnel file and the employer and employee cannot agree on a correction or removal, the employee has a right to submit for inclusion in the personnel file a written statement along with evidence explaining her position. "Personnel file" is defined to include employment applications, internal evaluations, disciplinary documentation, payroll records, injury reports and

performance assessments, whether maintained in one or more locations. The term does not include recommendations, peer evaluations or notes not generated or created by the employer



Disposition of Unclaimed Animals

A client brings his dog to your clinic for treatment, which requires the dog to be left overnight. The client never returns and fails to pay his bill for your services. New Hampshire law sets forth a procedure that you must follow before you can treat the animal as abandoned.

This procedure, described in NH RSA 437:19, applies to what the law calls “animal care centers.” This is defined to include veterinary establishments, humane societies, boarding kennels or other such centers providing care and treatment for animals.

The law requires the operator of an animal care center to send out a certified letter to the owner of an animal that has refused or neglected to reclaim their animal, or who has refused or neglected to pay fees and charges due for a period of 7 or more days. After this 7-day period (not counting the first day the animal arrived) has expired, the operator of such an establishment may send the letter. The law describes the letter as a “certified letter”, which is sent for the purpose of providing the owner with notice. Although the law does not require, it is advisable to send the letter return receipt requested as well as certified, thus, allowing you to prove “notice” if needed. The letter must advise the owner of the operator’s intention to treat the animal as abandoned, within the

meaning of NH RSA 437, if the owner does not reclaim the animal or pay charges and fees within 7 days after mailing of the notification.

A cat reclaimed under the above procedure and which is not licensed under NH’s elective licensing scheme, can only be released upon proof of a current, valid rabies vaccination or upon being vaccinated against rabies.

If an owner fails to reclaim the animal after the 7th day (do not count the day the letter was mailed), the operator of the animal care center shall be vested with ownership of the animal, at which point the operator may dispose of the abandoned animal in any lawful manner (e.g. adoption, euthanasia, etc.).¹ The law requires you as an operator of an “animal care center” to advise an owner of an animal of the provisions of the law relating to unclaimed and abandoned animals at the time you take custody of the animal. Thus, it is advisable that an operator of an animal care center include a brief statement setting forth this general procedure in the intake paperwork you have an owner sign, when the animal is initially brought to your facility. In addition, the posting of a brief notice in your lobby of this procedure is also advisable, in order to fulfill this legal obligation.

By following the above procedure, you help ensure your compliance with legal requirements in handling those animals unclaimed by their owners. If your facility is acting in a capacity for a local municipality as a repository of unlicensed or stray animals, additional obligations will apply.

¹ New Hampshire law (RSA 437:22) makes it a misdemeanor to make such animal available for purposes of experimentation or vivisection.

Exeter Office: 225 Water Street, Exeter, NH 03833
(603) 778-0686

Portsmouth Office: Kearsarge House, 104
Congress St., Portsmouth, NH 03801
(603) 766-1686

For more information, please contact Douglas M.
Mansfield, Esq. at (603)778-0686 ext.512

dmansfield@dtclawyers.com
www.dtclawyers.com



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