

Practice Management

Protecting the Urgent Care Center from Sexual Harassment Claims

Urgent message: Sexual harassment claims can be costly for an urgent care operator, not to mention ruinous to a center's reputation. An urgent care center should protect itself by having firm policies and procedures in place to prevent and resolve sexual harassment issues.

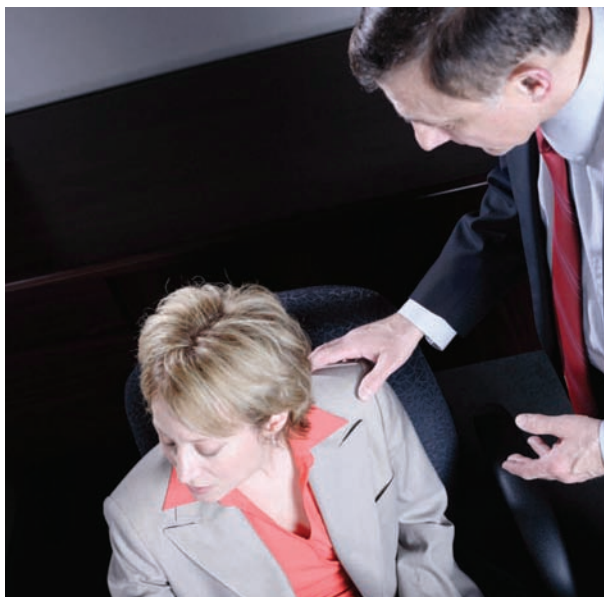
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Sexual harassment emerged as a major human resources issue in the 1990s. Victims of alleged sexual harassment—who can be men or women—sometimes find sympathetic juries will award punitive damages and attorney fees amounting to thousands of dollars against a business owner—regardless of whether the owner engaged in, or was even aware of, the harassment.

To protect the business and maintain its reputation, an urgent care operator must create a workplace that is free of harassment and promptly deal with any allegations of inappropriate behavior.

What is Sexual Harassment?

According to the U.S. Equal Employment Opportunity



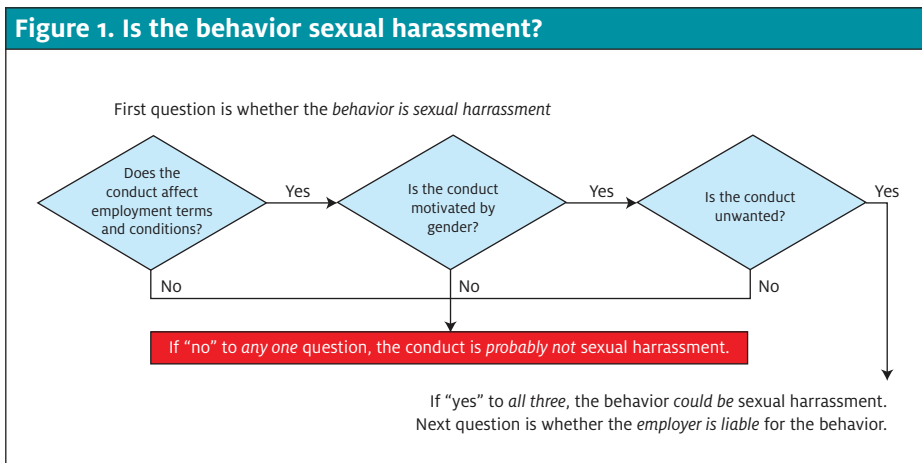
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Commission, sexual harassment involves any unwelcome, one-sided, sexual advances; requests for sexual favors; and other verbal or physical conduct of a sexual nature that comes from supervisors, coworkers, clients, or other individuals in the workplace. It may be perpetrated by men, women, transgendered, or gender-confused persons; victims may be heterosexual or homosexual, and of the same or opposite sex as the perpetrator.

Sexual harassment violates federal and many state laws that prohibit discrimination, intimidation, retaliation,

and other conduct which undermines the integrity of the employment relationship.

Conventional definitions of sexual harassment divide behavior into one of two categories:



der. **Figure 1** illustrates this new framework for determining whether behavior is sexual harassment.

Sexual Harassment Risks in Urgent Care Centers

Numerous factors (highlighted in **Table 1**) contribute to sexual harassment being a business risk for urgent care centers.

In physician-owned and operated businesses, providers and staff not only work long hours in close proximity, but

■ **Quid pro quo harassment:** When advancement of one’s career—such as a promotion, pay raise, time off, or more desirable working conditions or hours—is dependent on providing sexual favors. Quid pro quo also applies to avoidance of a detriment, such as being fired or demoted. Usually, the victim has to choose between submitting to the harassment and losing his/her job. One occurrence is generally sufficient to prove quid pro quo harassment.

■ **Hostile and offensive work environment:** More common but also more difficult to prove than quid pro quo harassment is a hostile and offensive work environment where unwanted physical or verbal behavior interferes with an employee’s work performance, or where an intimidating and offensive work setting is created. The frequency and severity of behavior contributing to a “hostile and offensive work environment” is subject to interpretation by the courts, but generally the harassing behavior is repeated over time.

Because some circumstances can be classified under both headings—and many instances of “sexual harassment” are neither “hostile” nor “sexual”—courts have moved away from the quid pro quo/hostile environment dichotomy to instead look at whether or not the terms and conditions of employment are affected because of unwanted conduct motivated by gen-

there are significant differences in power, income, and social status between the two. It’s often easy for

Table 1. Factors That Make Urgent Care Centers Susceptible to Sexual Harassment Claims

- Typically, urgent care centers are small businesses; when the owner, operator, and supervisor are the same individual, an employee may feel they are unable to voice a complaint without their job being threatened.
- There are gender differences and a broad power differential between the medical doctor—who is typically the center’s owner, operator, and/or employee supervisor—and support staff in terms of income, education, and social status.
- Providers and assistants working long hours in close proximity settings like labs and exam rooms may be conducive to unwelcome touching that could be considered harassment. In addition, medical practice often occurs behind closed doors with no witnesses.
- Urgent care centers deal with patient privacy related to sexual behavior and physical appearances on a daily basis. Comments to staff about a patient’s sexuality or physical attributes outside the context of providing medical treatment may be considered offensive.
- There is greater diversity in the medical workforce, with changes in conventionally anticipated gender roles. Urgent care centers must be sensitive to unexpected patterns of harassment—initiated by men or women, heterosexuals or homosexuals, and targeting individuals of the same or opposite gender.
- Start-up medical practices often fail to conduct thorough reference and background checks. An individual who has been disciplined or dismissed from previous employment due to harassing behavior can bring a host of problems—including “negligent hiring” claims—to a future employer if such behavior is not anticipated and contained.

providers and staff to become too casual in their interactions and naïve as to the perceptions of certain behavior or the liability posed to the practice.

When is an Urgent Care Center Liable for Sexual Harassment?

An urgent care center may be liable for the acts of its employees if an owner, officer, supervisor, or other individual with power over an employee engages in behavior that could be considered sexual harassment.

Likewise, an employer may be liable for creating a harassing environment if the employer:

- fails to take steps to prevent a hostile and offensive work environment
- fails to respond to specific complaints or allegations of harassment
- knows about potentially offensive behavior and fails to take corrective action.

Table 2 illustrates situations in which an employer may be liable for harassment.

Urgent care centers have a duty to prevent and correct harassment, and employees have a duty to avoid harassment by using the center’s complaint procedures. (Every urgent care center should have such procedures in place and known to employees, though further discussion of such is beyond the scope of this article.) However, many urgent care centers have not addressed the issue or have not defined a policy regarding sexual harassment.

Urgent Care Centers Need a Sexual Harassment Policy

An urgent care operator’s best defense is to make sure that everyone in the center—providers, administrators, supervisors, and staff—understands there will be zero tolerance of harassment in the workplace, that complaints may be taken “straight to the top,” that a timely, thorough, and impartial investigation of any claims will occur, and that appropriate and swift corrective action will be taken based on the findings.

A written sexual harassment policy, included in the employee handbook, can avert much of the risk of sexual harassment by providing instructions for employees and managers when sexual harassment issues arise. Common elements of a written sexual harassment policy are outlined in **Table 3**.

Table 2. Is the employer liable for harassing behavior?		
<i>If the harasser is a(n):</i>	<i>then the employer is liable when</i>	<i>unless the employer can show</i>
Owner Manager Stockholder CEO President	harassment occurs.	NA
Supervisor	harassment occurs and results in a negative employment action.	NA
Supervisor	harassment occurs and causes a hostile working environment	<ul style="list-style-type: none"> • employer took reasonable steps to prevent and quickly stop harassing behavior <i>and</i> • employee unreasonably failed to take advantage of employer’s efforts to prevent or stop harassing behavior or to avoid harm.
Coworker	employer knew or should have known about the harassment	employer took immediate and appropriate corrective action.
Non-employees (e.g. patient, office tenant, vendor)	employer knew or should have known about the harassment	employer took immediate and appropriate corrective action.
NA, not applicable.		

In addition, an urgent care center’s general policies and procedures should address sexual harassment issues specific to the urgent care operating model.

For instance, urgent care centers deal with a whole host of patient contact issues. Any jokes or unnecessary comments about a patient’s physical appearance or sexual behaviors should be strictly off limits. A provider must also be aware of the potential for patients to create or engage in potentially hostile situations or advances towards staff, and implement policies that protect staff members. These include:

- A chaperone, most likely a staff member or someone the patient arrived with, of the patient’s gen-

Table 3. Common Elements of a Sexual Harassment Policy

The urgent care operator’s duty to prevent sexual harassment starts with developing a strong policy statement and disseminating it to all employees:

- **Adopt an attitude of zero tolerance.** A sexual harassment policy should make it clear there are serious consequences to sexual harassment and that employees should avoid all behaviors that cast coworkers in sexual terms or have the potential of being offensive or intimidating.
- **Define sexual harassment and provide examples.** The policy should define what sexual harassment is and include examples of intolerable behavior, such as comments about an employee’s body or clothing, sex-based jokes or innuendo, gossip and rumors about an employee’s personal life, dating or asking employees out, sexual assault or inappropriate touching, and others.
- **Develop a complaint procedure.** Employees who feel they’ve been harassed should understand their duty to report it timely and accurately, using the employer’s complaint procedure. The policy should outline every step of how to file a complaint, how an investigation will occur, and how outcomes will be reported, as well as punitive actions that may be taken.
- **Document every incident.** With a process in place, employers should document every alleged incident—regardless of how seemingly minor—and maintain detailed notes of every step taken in resolution. Failure to document and investigate a claim can be held against an employer at a later date, even if it’s found no harassment occurred.
- **Assure confidentiality and anti-retaliation.** All parties to a sexual harassment claim can be embarrassed, and allegations—regardless of whether they’re substantiated—can permanently damage reputations. Except when necessary for an investigation or legal action, all communication around a sexual harassment claim should be kept strictly confidential.
Because sexual harassment is typically a power move of a supervisor over a subordinate, those who have been subjected to harassment must also know they will have protection against later vengeful acts. Retaliation against someone who has complained about sexual harassment is against the law.
- **Implement an ongoing training program.** Having a sexual harassment policy is not enough; the policy must be accompanied by an active and ongoing training program. The policy should, therefore, describe how it is communicated to employees, including the content and frequency of training.

Sources: Schickman MI. Sexual harassment: Employer’s role in prevention. *American Bar Association General Practice, Solo & Small Firm Practice Guide*. 1996; Winter. Schleifer J. 8 elements your sexual harassment policy must have...and why just having a strong policy isn’t enough. *HR Daily Advisor*. 2006; June 18. Hartmus D. Elements of a good sexual harassment policy. *The Public Manager*. 2000; Spring. Reese L. Employee satisfaction with sexual harassment policies. *Public Personnel Management*. 2004; March 22.

der should always be present when a doctor is examining a patient of the opposite sex.

- The provider should document in the patient’s chart who was present during the examination, to prevent from relying on memory should an issue arise at a future date.

Every complaint, no matter how seemingly trivial or easily resolved, should be documented and investigated according to the written policy.

Creating a Process for Documenting and Investigating Claims

As with any clinical issue that leads to litigation, thorough written documentation is the employer’s best defense should a sexual harassment claim progress to a lawsuit.

The employer’s response to complaints, the level of detail involved in conducting investigations, and punitive consequences should be applied consistently across cases to avoid “double standards” in which a favored employee receives a “slap on the wrist” versus a more negative outcome in another case. Not only is being fair and equitable an important component of preventing and correcting harassment, but efforts to intimidate or retaliate against an employee who has filed a claim can result in damages—even if it turns out no sexual harassment occurred.

The individual receiving and investigating claims should never be a supervisor or in the chain of command of the alleged harasser or victim, but rather, an independent or neutral third party—such a human resources officer or board advisor. Small businesses where the owner, operator and supervisor are the same individually typically refer complaints to their attorney and utilize an experienced consultant to conduct the investigation.

Any employee found to have participated in sexual harassment that is still with the organization after punitive action is taken should be monitored to assure the employee has completely disengaged from such behavior.

Assuring a Harassment-free Culture

Urgent care operators have a duty to provide

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on a given sales call goes up immeasurably if the prospect is familiar with your organization, products, and the inherent value of these products.

Update prospective buyers on the value and associated return-on-investment of packaged wellness services. There is rarely enough time in a sales call to walk a prospect through such concepts. Thus, a wellness initiative begins by steadily educating your public. Think sound bites, testimonials, and the sharing of national success stories.

4. **Reflect your prospect's perspective.** When a sales professional is selling a conceptual product, the inherent reaction is to spout forth a litany of features and rationale. Just the opposite is advisable.

Instead, use questions to understand the prospect's vantage point and encourage them to share their perspective. Useful questions might include:

- "How does your absenteeism compare with your expectations?"
- "Overall, how do you rate the overall health of your employees on a scale of 1 to 5?"

5. **Offer a taste test.** I recently sampled a tiny chunk of cheese at our local supermarket. Going in, I had not planned to buy that or any other cheese; yet based on the sample, I purchased an entire chunk.

So it is with a discretionary purchase such as wellness services.

Consider, for example, offering a discrete service—say, a weight management program for up to five employees at each of 20 target companies. Granted, this is not the long-term plan, but decision makers tend to notice and participants tend to return to their workplace as strong and vocal advocates of your program.

6. **Educate.** The more intangible a product is, the more you need to become an educator and less a salesperson. Rather than "you should," or "I suggest," extend phrases such as "the data show," or "it is recognized within the healthcare community that a fully integrated approach to health and safety generates the most significant long-term result to a company's health and safety."

As of this writing, we are dealing with an uncertain national economy; better to bring it up, face it, and use it to your advantage than to ignore it. A compelling argument might be:

"In today's economy, with a leaner company staff and company resources, the well being of every one of your employees becomes even more important. Your company's prosperity is contingent on sending the healthiest, most positive team out there to the playing field each and every day." ■

Sexual harassment training should be mandatory, and employees should confirm they understand the policy.

a workplace that's free of intimidation and harassment; this starts with a culture where employees treat with each other with mutual respect, interact on a professional plane, and know to not even test the "gray areas" of inappropriate behavior. Consistent enforcement of policies that define unacceptable behavior and outline the consequences of "crossing the line" is an important starting point for prevention.

However, it's not enough to simply adopt and publish a sexual harassment policy; the urgent care operator must also communicate the philosophy and procedures associated with the policy to everyone in the center.

One way to do this is to set a date each year in which the policy will be delivered to every employee. Training should describe what the policy contains, provide examples of what constitutes unacceptable behavior, and outline the process for making a complaint. Sexual harassment training should be mandatory, and employees should sign a form confirming that they have received and understand the policy. Records of training dates, attendance, and content should be maintained in case it becomes necessary to prove the center is taking appropriate preventive steps.

Conclusion

Sexual harassment is a human resources reality that can jeopardize the finances and reputation of an urgent care center. However, urgent care operators can fulfill their duties to limit the risks associated with sexual harassment by developing policies prohibiting such behaviors in the workplace, outlining a procedure for investigating and resolving complaints, and communicating to staff through recurring training programs. ■

Disclaimer: Sexual harassment is a complex legal issue. Please note that while the author offers practical management advice for the urgent care operator, he is not an attorney and his recommendations are not to be construed as legal advice. Always seek competent legal counsel before acting.