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## WHEN INTENTION DOESN'T MATTER:

### *Preventing harassment and sexual harassment in your spa*

By Felicia Brown, LMBT

**A**fter running my day spa business for more than seven years, I thought I had seen it all...broken down washers and flooding locker rooms, shortages in clientele and cash flow, employee dramas of every form and fashion, shoplifting and employee theft on various levels, and finding myself on the edge of burnout more than once. However, the day I received a complaint about sexual harassment from one of the employees in my spa was probably the scariest I have ever faced and for more reasons than one.

*According to the Equal Employment Opportunity Commission, sexual harassment represents a form of sex discrimination characterized by "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature" that affects the terms, conditions or employment decisions related to an individual's job, known as quid pro quo harassment, or creates an "intimidating, hostile, or offensive working environment" or hostile environment harassment.*

First of all, I was totally blindsided by this issue and event...actually devastated might be a better word. After all, one would think that the spa industry is made up of highly evolved, self-actualized, mature and caring individuals and healers. I certainly thought my staff was. But the truth is that as well-meaning and enlightened as most spa professionals are, many are still guilty of committing the very acts that comprise harassment and/or sexual harassment on a regular basis whether they know it or not. This was certainly true with some of my staff members...and it may be with yours.



## SEXUAL HARASSMENT COMPLAINT WAS MY SCARIEST DAY

Secondly, after doing a little bit of research, I quickly realized that my entire life...my business, livelihood and all that I had worked for since deciding to become a massage therapist was hanging precariously in the balance. That harassment and sexual harassment law suits have cost businesses millions and millions of dollars...millions which I did not have. That a lack of action and decisiveness on my part could cost me everything I owned and a whole lot more. It was a heart-stopping, bone-chilling realization.

Consider this: Just the simple act of a massage therapist rubbing the shoulders of another co-worker in the break room or reception area can be misconstrued or misunderstood by the recipient, another employee who is not a touch provider that happens to witness the rubbing, or even one that is. In fact, many acts of uninvited touch in the spa workplace or seemingly innocent yet suggestive comments or jokes could be construed as sexual harassment whether it was intended to be or not.

The same holds true for behaviors and acts that can be construed as discrimination against any number of ethnic, religious, cultural or other groups protected by Title VII of the Federal Civil Rights Act of 1964 and a variety of other federal, state and local laws.

## WHAT IS HARASSMENT?

Harassment is unwelcome conduct that is

based on race, color, sex, religion, national origin, disability, and/or age. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
- Unlawful harassment may occur



## I WAS TOTALLY BLINDSIDED BY THIS SEXUAL HARASSMENT

without economic injury to, or discharge of, the victim.

(Source [www.EEOC.gov](http://www.EEOC.gov))

## WHAT EXACTLY IS SEXUAL HARASSMENT?

According to the Equal Employment Opportunity Commission, sexual harassment represents a form of sex discrimination characterized by "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature" that affects the terms, conditions or employment decisions related to an individual's job, known as quid pro quo harassment, or creates an "intimidating, hostile, or offensive working environment" or hostile environment harassment. The former is what most people think of as sexual harassment. The latter is actually the more common occurrence.

Specific examples of sexual harassment include:

*Sexually-oriented demeaning names*

*Sexual propositions, offers, insults or threats*

*Ogling, whistling or making other sexually suggestive sounds*

*Distributing or displaying pornographic materials of all types including emails, calendars, posters, etc as well as obscene or inappropriate content in letters, emails, etc.*

*Unwelcome touch (massaging, squeezing, hugging, kissing, rubbing, etc)*

*Repeated off-color jokes or obscenities or comments*

*Forced or coerced sexual contact*

*Pressure of any type for sexual favors*

## WHERE DOES INTENTION COME INTO PLAY?

Whether an act or comment can be considered harassment or sexual harassment does not depend on the intention of the person committing the behavior or offense.

Rather, it is instead based on how the act is perceived by the recipient of or witness to the act or acts. This is an extremely important point to make when discussing this issue with your staff and to remember when investigating claims. It is imperative to look at things from the victim's viewpoint when investigating a claim and prescribing any necessary actions (training, apology, suspension or termination) for the offender.

## ARE ALL COMPANIES SUBJECT TO TITLE VII?

Title VII primarily applies to companies with fifteen or more full-time staff members, but local and state laws can often make this number much lower. To be sure you are in compliance with all laws that affect your business, talk to an attorney who specializes in employment law and check with your local and state agencies that govern the workplace. Regardless of the actual laws in place, it is important for any size business to expect and enforce respectful treatment of all employees and contractors, regardless of the size of the staff or business, especially those that are in the business of caring for others.



## THIS EVENT WAS A HEART-STOPPING, BONE-CHILLING REALIZATION

### WHAT CAN BE DONE TO PREVENT HARASSMENT AND SEXUAL HARASSMENT?

First, have a policy on harassment and sexual harassment and inform your staff of it. Putting a policy into your employee manual is fine, but to be better protected, have every single staff member sign a form stating that they have been informed of and understand this specific policy. This can be done when someone is hired as a part of their initial paperwork and orientation. If you are implementing your harassment and sexual harassment policy a little later in the game, go over it in a mandatory staff meeting or with employees one-on-one.

Keep each employee's signed statement on file in case of any complaints down the road. Then be sure to inform each staff member of their responsibility and right to keep you informed of any breaches of the policy. Make sure there is a clear go-to person or other chain of command in case of an incident.

Provide ongoing training for harassment, sexual harassment and diversity/sensitivity awareness. Regular trainings are another way for an employer to safeguard their interests. Regular training helps in several ways.

First it alerts staff members about what inappropriate behavior is and isn't. Second, it can provide an opportunity for dialogue between staff members and management in a non-threatening

environment. Third, it provides evidence of an ongoing effort from the company to provide a safe and comfortable workplace for all employees.

Follow up on complaints immediately. If you do receive a complaint about harassment or sexual harassment, follow up immediately. This should consist of an investigation into the incident (usually interviews with both parties) and preferably one-on-one interviews with the entire staff.

While this is incredibly time-consuming, it will give you a more complete picture of the incident and any other problematic behaviors that are going on. Note that all interviews should be essentially blind with absolutely no leading questions such as "Tell me what you know about John and Mary" or "Has Susan ever touched you without permission?"

Employees should be asked more generally if they have any incidents of harassment or sexual harassment to report that they have experienced or witnessed. Let the staff themselves tell you about what is going on in the business, what they have observed, etc.

Use this time also to remind staff members about your policy and see if they have any questions about it, as well as to find out if anything else is on their minds related to their employment.

(Don't be surprised if someone takes this as an opportunity to ask for a raise!)



## I WISHED THE FIRST COMPLAINT WAS THE LAST: IT WAS NOT

You will need to keep everything confidential as much as possible during the investigation and beyond. While this is a challenge it is essential to the stability of the workplace as well as a legal obligation to the parties involved in every complaint.

## OTHER TIPS AND RESOURCES

- Add a policy on dating in the workplace to nip problems before they occur. Be clear about who can date whom between departments or levels of management, etc and explain that dating one's co-workers can sometimes result in sexual harassment claims if the relationship does not work out.
- Have an open door policy and make it easy for employees to report any potentially harassing behavior or issues. Make it clear who each department or staff member should report to (their direct supervisor, human resources department, spa director or owner, etc.)
- Make whatever training you do fun and interactive. Give your staff an opportunity to learn from each other's experiences and backgrounds.
- Don't wait for problems to occur before getting started. It may seem easier to put off implementing a new policy or doing additional training, but I guarantee you will quickly change your mind when that first complaint comes in and you have to stop everything to investigate it while educating your staff.

So how did things turn out? Well I wish I could say the first complaint I dealt with was the last, but unfortunately that was not the case. In the various incidents I was faced with I reprimanded, suspended and fired employees.

None of the outcomes were particularly pretty, but I did what I had to do for the overall good of the staff and the business.

The business avoided a lawsuit, implemented strong harassment and sexual policies and procedures and we carried on. I later sold the spa so I could move forward in teaching and consulting other spa owners on this and other aspects of their businesses.

Now that I am on the other side of it, I have to say prevention is the best medicine for avoiding harassment and sexual harassment issues in any company.

My advice to all business owners who have employees is not to wait for there to be a problem but instead to take steps today in being proactive to prevent it.

Wherever you have a group of people working together, you have the potential for harassment or sexual harassment to occur, or at least the possibility for hurt feelings and communication breakdown.

Do something today to prevent future problems and encourage your staff to bond and grow together along the way. It will be well worth the time and money spent! ■