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Sex and a construction site can be an explosive combination. As more and more women join construction crews, contractors are experiencing this "explosion" as they face the legal fees, distractions, and jury verdict risk that come with sexual harassment lawsuits. What can you do now to protect your company?

First, you must know the answer to the question, "What is sexual harassment?" TV, movies, and magazines bombard us with sex. The language at many construction sites would more likely be rated "R" than "PG." How do you separate "harmless kidding around," from "a lawsuit waiting to happen"?

The legal definition of sexual harassment tells part of the story. Legally, sexual harassment is any unwelcomed sexual act or conduct that interferes with an employee's terms or conditions of employment. Under the law there are two types of sexual harassment. A contractor is strictly liable if any manager threatens or promises an employee a reward for sexual favors. A contractor is also liable, however, if the contractor merely knew or should have known, that sexual comments or conduct make its working environment hostile to women. Most sexual harassment claims are such "hostile environment" claims.

Examples of conduct that may create a hostile working environment are as follows:

Unwelcome sexual touching.
Sexually explicit or abusive language.
Sexually suggestive or degrading remarks about a person's body or clothing.
Display of sexually explicit or suggestive literature, pictures or objects.

Understanding the legal definition of sexual harassment, however, may be less important than knowing a legally dangerous situation when you see it. After all, even if you win in court, your business may lose if you have to devote your time and resources to defending a sexual harassment lawsuit.

The types of situations that cause many sexual harassment lawsuits are often surprising. One common example is when construction workers begin treating a female co-worker as "one of the boys."

"ONE OF THE BOYS." Recent years have seen a sharp increase in the number of women joining construction crews. At first, male construction workers are, often, reserved, awkward, and even careful about their language
around a new female co-worker. Yet, if the woman seems to "appreciate" a "good" dirty joke, the female worker is soon treated "just like one of the boys." Although this situation may seem "safe," in fact, it is "explosive." A particular sexual comment or action may "cross the line," at least in the mind of the female worker. Or, a female employee may simply become angry and want to sue her employer for another reason. In any event, the female employee's laughter at earlier sexual "jokes" or pranks may not keep her from filing a sexual harassment lawsuit. A joke or a prank that seemed "funny" on the construction site may look entirely different in a solemn courtroom.

STEPS YOU SHOULD TAKE. There are several steps Contractors can take to reduce their risk of a sexual harassment lawsuit.

STEP NO. 1 - Sexual Harassment Policy Contractors should adopt a valid sexual harassment policy. If you have an employee handbook, federal law requires the handbook contain a sexual harassment policy. Even if you do not have an employee handbook, however, a court may presume that an employer approves of sexually harassing words or conduct if the employer does not have a written policy forbidding it. Your policy should define sexual harassment and require that employees report it. It is best if the policy provide for alternative managers to whom employees can report sexual harassment. Legal counsel, who has employment law expertise, should be consulted to insure your policy complies with EEOC regulations.

STEP NO. 2 - Prompt and Effective Remedial Action. Promptly investigate and take action on any reports of sexual harassment that you receive. Federal and state courts have ruled that employers who takes prompt and effective remedial action in response to reports of sexual harassment escape liability for a sexually hostile working environment even if the sexual harassment occurred. It is not always necessary that the alleged "harasser" be discharged. It is necessary that the sexual harassment be stopped. Again, legal counsel should be consulted to minimize risk of liability from either the accused "harasser" or the alleged "victim."

STEP NO. 3 - Sexual Harassment Training. The best tool for preventing sexual harassment liability is advance training of employees and managers on how to avoid sexual harassment claims. Plaintiffs in sexual harassment suits almost always sue both the employer and the alleged "harasser." Once supervisors and employees understand that they may be sued personally, they often become just as concerned as you about avoiding sexual harassment. Once they understand the type of behavior that may lead to a sexual harassment lawsuit, they become much more careful to avoid it. Like safety training, you do not need it, unless you do not have it. The cost and inconvenience of sexual harassment training is nothing compared with the cost and inconvenience of a sexual harassment lawsuit.

Unfortunately, Contractors, like other employers, find themselves in the cross-fire of today's sexual revolution. Federal and state discrimination laws, together with the tight labor market, dictate that more and more women will be joining our construction crews. The same federal and state laws make employers responsible for any unwelcome sexual conduct or comments on the job. Advance preparation is the best means to protect your business.