

Sexual Harassment:

Can You Be Held Accountable For the Actions of Others?

By James Dunne

Dear Restaurant Report:

I am a server at a private country club and have been here in this capacity for five years. I love my job but I HATE who I work with and how my boss treats us. The things I see and hear would make the Labor Board cringe! My boss could care LESS about how much we are requested by members or how much we know about the menu. All he wants is for us to sit on his lap and look at the calendar for next month.

Sickening? You bet! I am lucky and don't have to put up with him because I have made it clear that I won't put up with it. (My husband works here but in another department).

I pride myself on being well-informed and pleasant without being flirtatious and fake. The members request me all the time so I am considered an asset to this club. But let me tell you it's getting harder to have a good attitude with every day I work there.

In five years I have gone from \$2.15 to \$3.25 an hour plus automatic 17% gratuities. I am not late for my shift, I come to work in my UNIFORM ready to work and I make sure the people I wait on have an enjoyable experience.

He puts his "flavors of the month" on all the good money tables and parties. It's repulsive! I want to do something about it but like I said my husband is also employed there and I don't want to do anything to "hurt" the club, just my supervisor. He's a snake.

Last week I applied for a similar job at another exclusive golf club. I was called immediately and offered a job there. I am looking forward to working somewhere that will appreciate what I have to offer and have

high expectations of their staff.

I won't quit my old job, but I am going to go down to just working a couple of evening shifts there (to maintain my right to play golf with my husband on Monday is the ONLY reason).

I will miss waiting on the people I have learned so well what they drink and how they want their steaks cooked. It is a comfort knowing that I too will be missed by them. But it is clear things are not about to change there.

Of 20 servers, only 3-4 of us truly like doing our job and do it well. The other 17 are there to be paid and have learned the way to a "good check" is not how they "serve" food but how they "serve" our boss.

Thanks for listening!
D.

So it happens everywhere - it doesn't make it acceptable. And Mr. Dunne has his say on this timely subject...

Sexual Harassment:

Can You Be Held Accountable For the Actions of Others?

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After receiving a letter from a despondent female country club server, the editor of these pages was prompted to address her plight. This server wrote, "My boss could care LESS about how much we are requested by members or how much we know about the menu. All he wants is for us to sit on his lap...He puts his 'flavors of the month' on all the good money tables and parties..."

Many of us might read this quote and say that this woman is overreacting...an instigator...catty...or even imagining things. Regardless of whether you feel any of these things, or whether you sympathize with her plight, you must understand ONE thing: What you feel does not matter!

Sexual Harassment refers to sexually directed actions which are unwanted and subject the worker to adverse employment conditions, or

create a hostile work environment. This can occur between a boss and an employee, among coworkers, and even between a guest, purveyor or business contact and an employee.

The critical term that you need to note is "unwanted". Flattery is acceptable, if it is welcomed. A proposition for a date is acceptable, if it is welcomed. Off-color jokes, comments and vulgarities are acceptable, if they are welcomed. Flirting and touching are acceptable, if they are welcomed. But, the moment an employee expresses their uneasiness to the individual saying or doing something offensive, it potentially becomes an issue of sexual harassment the next instance any of these words are stated or actions are performed. What you feel does not matter, because what constitutes harassment lies in the eyes of the harassed, not you or the harasser.

Sexual Harassment comes in two forms: Quid Pro Quo and Hostile Work Environment.

Quid Pro Quo (this for that) is harassment where a supervisor or employer links specific employment outcomes to an employee granting sexual favors. In other words, submission is made a condition of employment. For example, a boss linking sexual requests to hiring, a promotion, keeping ones job, a raise, a better work schedule, a better evaluation, or a better work station all fall under Quid Pro Quo Harassment. The link between sex and the specific outcome does not have to be explicit, it can be more subtle, and merely implied.

Hostile Work Environment is harassment which unreasonably interferes with an employees work performance, or creates a hostile, intimidating or offensive work environment. This type of harassment is not as clear cut. An employee does not necessarily have to feel physically threatened. Instead, they might feel uncomfortable working in a climate where they are offended and uncomfortable with foul language, persistent flirtation, suggestive gestures, touching and groping, off-color jokes, a pin-up in the office, comments about their appearance, comments about gender, or repeated requests to go out with them after work. Such a climate makes it difficult for a 'reasonable person' to do the job they were hired for. They might dread coming to work each day because of what they must face from their co-workers and/or management.

As an owner, are you guilty of such charges if it is a manager or employee of yours who is harassing another employee? Absolutely. Your shift manager, a waiter, a guest, or even a delivery man might be guilty of the harassment to your employee. Depending on the circumstances, even if you were not aware of any wrongdoing, you will be going down the legal highway along with the accused. Legally, a manager can be held accountable for the actions of others...unless the operation has strong anti-harassment policies and training in place that is consistently practiced.

Remember that an employee who feels harassed should first let the person who she feels is harassing her know, in no uncertain terms, that she does not want this to continue. If the person feels threatened and does not want to confront the harasser, they have the legal duty of telling someone within the operation with decision-making power...be it a supervisor, manager or owner. It is up to that supervisor, manager or owner to take immediate action.

While most discussions on sexual harassment focus on female employees as victims, it is important to note that men are victims too. The percentage of men making accusations of harassment has climbed to almost 15% of total reported cases in the United States. In a recent hospitality-related case, Manhattan's "Times Square Brewery and Restaurant" settled out of court with a payment of over \$450,000 to 27 male servers. These servers, both current and former employees of the restaurant, claimed that the female managing partner of the operation had forcibly tucked in their shirts, squeezed their buttocks, felt their thighs, and had repeatedly used homophobic and racist slurs.

While you can not completely control the conduct of others, you certainly can have an influence on their words and actions within your operation. Your staff should not only have a clear understanding of what is expected of them when performing their day-to-day duties, but also what is acceptable when communicating with each other interpersonally.

By following the steps below, you can significantly reduce your operations risk of being in the middle of a harassment case. Not only can you reduce your potential liability, but, by training your staff, you are also making your restaurant a fun, comfortable and productive place to work. Remember, training impacts every aspect of your operation...not only will you protect

yourself in a liability suit, but your staff will appreciate the level of respect and professionalism you are bringing to the day-to-day operations of your restaurant!

Steps You Can Take:

- o Do not wait for a harassment case to arise before you take action. Be proactive, start a program now. It is to your benefit if a case does arise down the road. If a case does arise, and you have handled it in an appropriate manner, you will have significantly reduced your liability by having made 'reasonable efforts' to prevent harassment from occurring.

- o Let your staff know, in no uncertain terms, that such a climate and/or actions by any member of your operation simply will not be tolerated...up to and including termination of the guilty party. Have your attorney put it in writing, and present it to each new hire. Don't just leave it on paper...practice it! Insure your staff that if they do have an issue, they should approach you directly. Moreover, direct them to someone else in the operation if it is you that they might have an issue with.

- o If an employee approaches you with a complaint, DO NOT take it lightly. Try your best to put them at ease and let them know that you will do everything you can to make them feel comfortable coming to work. Document the discussion, and assure the employee you will address the issue and take quick action. Let them know that you will need some time to gather all of the facts. Give them a specific time that you will report back to them on the status of the situation.

- o Follow-up on complaints quickly and objectively. Interview the accused, as well as any witnesses who might substantiate any reported incidents. Maintain confidentiality, but be sure to document everything.

- o Do not change the schedule of the harassed employee who made the accusations...unless they request it. If they do make the request, document this and have them sign their approval to the documentation.

- o Document any and all conversations, details of the complaint, results of your inquiries, and any corrective action you have taken regarding these issues. This will help you down the line as a 'reasonable efforts' defense in a court of law.

o Be the example for the rest of your management and staff. Off-color jokes, foul language, groping and questionable touching should not be part of your persona. Show each and every person in your operation what professionalism and respectful conduct are.

o Conduct training, more training, and even more training to instill awareness. Do not leave yourself vulnerable to any false accusations. Do not talk to or reprimand a staff member behind closed doors without someone else present. When you are alone with an employee behind closed doors, you are leaving yourself open to accusations.

o Do not retaliate against or ignore an employee who voices a complaint. If you retaliate by firing them, treating them differently, changing their schedule, or simply ignoring their plight, you are now in the center of the tornado which can quite possibly destroy the financial stability of your restaurant.

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James Dunne is a member of the faculty at New York Institute of Technology's Culinary Arts Center, and the President of Service Dynamics. Service Dynamics offers an assortment of training programs, design services and mystery shopper reports for your operation. Go to <http://www.service-dynamics.com> to find out more about these services.