



## **Harassment in Veterinary Practices: Where It Lurks, Prevention & Remediation**

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Almost all the media attention of late has been on sexual harassment by male bosses against their female subordinates. However, in the veterinary practice setting there are many other potential forms of harassment, and from many other potential sources, which the practice must address, prevent and remediate if harassment occurs, notwithstanding all the practice's preventive actions.

### **What is Harassment?**

All the federal and state statutes that prohibit harassment in the workplace include definitions which, as should be expected, are written in very legal terms. However, in plain English, prohibited harassment occurs whenever an employee must endure a hostile (i.e., an offensive) work environment simply because they are a member of a protected class of employees. The hostility (the offensiveness) can be expressed either in words or deeds. Generally, it must be "pervasive", in the sense that it must occur on such a regular basis, that it becomes a routine condition of employment. However, in some situations even one incident can constitute prohibited harassment. (For example, forcibly kissing a coworker; pulling a chador off the head of a female Muslim employee; or using a racial slur.)

Admittedly, all these statutes do consider any form of work-place harassment as serious a violation as any other form. However, veterinary practices should consider sexual harassment somewhat differently because, unlike other forms, there are really two degrees of sexual harassment; one more serious than the other.

### **Two Degrees of Sexual Harassment.**

The first degree is the above-described hostile working environment based on the employee's sex. This is where, for example, a female employee is regularly subjected to crude jokes of a sexual nature; references to the particular characteristics of her body; repeated and rebuffed requests for a date by a male coworker etc.

There is a more serious, second degree which is called quid-pro-quo (something for something) sexual-harassment. The common definition of such harassment is when succumbing to sexual advances or requests for sexual favors, or refusing to do so, is used as a basis for making employment-related decisions. (The classic situation of a boss telling a subordinate that a promotion or salary increase is in the offing if the employee sleeps with the boss; or, refusing to do so, will result in the boss making the employee's life miserable at work). As discussed above, veterinary practices also must be mindful that such prohibited harassment is not just the more common place of male to female; but also male to male, female to female, or female to male.

### **Other Types of Harassment.**

Statutes which prohibit harassment in employment contain a laundry list of various classifications of employees who employers must protect. In general, most statutes require that employers protect their employees against harassment not only based on their sex, but also their sexual orientation, race, color, nationality, national origin or ancestry, religion or creed, family or marital status, pregnancy, age, disability or handicap, military service or status in the military. (Some state statutes include more protected classifications of employees than others, but these are the most frequently protected ones.)



For example, a veterinary practice must protect its employees from harassment because they are gay or bisexual, Muslim or Jewish, African-American or from India, are divorced or have children out of wedlock; or are being harassed based on their inclusion in any of the other protected classifications of employees enumerated above.

### **Sources of Harassment - Where It Lurks**

**Four Sources.** While the media has focused on sexual harassment by male bosses against subordinate female employees, there are actually four potential sources of harassment which veterinary practices must address with preventive measures.

**Employee-to-Employee.** The first source is not just boss to subordinate, but more generally employee-to-employee harassment. A co-worker can engage in both hostile working environment and quid-pro-quo sexual harassment just as easily as a boss to a subordinate. (Examples of co-worker to co-worker harassment are: telling sexually charged jokes; making references to an employee's looks; or "go out on a date with me (or have sex with me), or I will badmouth you to the boss and, you know, I have the boss's ear.)

**Veterinary Staff to Clients.** The second source of possible harassment is by veterinary staff to clients. Installation of video cameras within the practice is a good initial step. While a good step towards prevention, it is not a total solution. Not every corner of a veterinary practice can be covered by video cameras; they do not record voices; facial expressions caught on video camera may not be an accurate indicator of what occurred between the patient and the staff member; and harassment can occur through mobile phone, text message, and other electronic means.

**Clients & Other Third Parties to Veterinary Staff.** A third source of harassment is the reverse of the second; client harassment of staff. And a fourth, similar source, is harassment of staff by vendors and other visitors to the office. Employers have a legal obligation to maintain a harassment-free environment for employees. This includes protecting them from harassment by other individuals who are at the workplace, in addition to other employees. For the veterinary practice, this includes protecting staff from harassment by clients, vendors, and other visitors to the practice's office. (e.g.; the client or repairperson who continues to bug a staff member for a date after the staff member has said no; or who tries to kiss or otherwise touch a staff member in a sexual manner.)

### **Veterinary Practice Liability.**

To the surprise of most practice owners, there are situations when the practice, as an entity, can be held legally responsible for workplace harassment, even when the owner is not aware that the harassment has occurred. When liability is imposed on the practice entity, it means that the practice assets can be attached to satisfy any judgment awarded to a harassed employee. In general, such liability is imposed in two situations.

**Should Have Known.** The first situation is where the practice owner asserts he/she had no actual knowledge that the harassment had occurred and, therefore, the practice cannot be held responsible for any monetary damages awarded to the employee. But, from the facts of the case, the judge, or more likely a jury, finds that the practice owner "should have known" that the harassment was occurring. Such liability is imposed in situations where the facts are that the harassment was so widespread, or so well-known by others in the office, that the practice owner is not credible in asserting a lack of knowledge; or a reasonable conclusion is that the owner was "deliberately ignorant" (i.e.; turned a blind eye) to the ongoing harassment.



**Liability for Supervisors.** A second potential source of liability for the veterinary practice, when the owner asserts no knowledge of the harassment, is where a “supervisor” is the perpetrator of the harassment; or when a supervisor is aware of the harassment, takes no action in response and/or does not advise upper management or the owners about it. The rationale behind imposing liability on the practice in these situations is that it has placed the supervisor in a position of authority and, therefore, it should be held legally responsible for any misdeeds by its supervisor.

A “supervisor” is generally defined as someone who not only has the authority to direct and control the work of subordinates; but also to hire, fire and discipline subordinates, or effectively recommend such actions to the owners or others in upper management. All veterinarians, who are practice employees, can be considered as directing the work of the veterinary technicians and others in their team. Consequently, to limit a practice’s liability for harassment by veterinary employees, and possibly by others in the practice, such additional (hiring/firing/disciplining) supervisory authority should be limited to as few individuals as possible in the practice.

### **Harassment Prevention Program - Your Best Defense**

In its defense, a veterinary practice can always assert that the harassment did not actually occur as the employee alleges. However, recent events have proven that this is generally not an effective defense. The practice can also assert that it has no responsibility, and hence no liability, for the harassment. Here, again, the above examples -- of when a practice can be held liable even when the practice owner arguably had no knowledge of the harassment -- similarly establish that this is often not an effective defense. Consequently, having a harassment prevention policy/program is a veterinary practice’s best defense against a claim of harassment.

**Requirements for Effective Policy.** A veterinary practice cannot simply adopt a written policy prohibiting harassment; put it on a shelf somewhere in the office; and then expect to trot-it-out as a defense when a harassment claim is made. In general, the courts have held that to be an effective defense, a policy prohibiting harassment must be backed-up by a vigorous program of implementation/enforcement, which was effective in addressing and remediating the employee’s claim of harassment. Provided a practice can prove that its program was effective, then, in all probability, the lawsuit will be dismissed against the practice, even when it is found that the employee was actually harassed.

**Five Components.** There are five components to a complete harassment prevention policy/program. These are: (1) adoption and circulation to all staff of a written policy; (2) educating staff about the policy; (3) implementation; (4) enforcement; and (5) remediation, when necessary.

**The Policy Statement.** A brief sentence or two prohibiting harassment is not sufficient for an effective policy statement. Rather, to be effective the policy must include a definition/description of the various types of harassment, with examples of what is prohibited conduct; a statement that the practice will not tolerate this type of conduct, and that all employees, including supervisors and managers, will be subject to discipline, up to and including termination, for violating this prohibition; that all employees are obligated to report any incidents of harassment, even when the employee is not the subject of the harassment, and even when the harassed employee requests that the other employee not report the incident; that employees are also subject to discipline for failing to report; and identifying individual practice managers as the policy’s compliance officers to whom incidences of harassment must be reported (best practice is to also identify an outside individual, usually an attorney specializing in employment law, to whom alleged violations can be reported, particularly when an owner is the alleged harasser).



**Investigation & Remediation Process.** The policy should also include a fairly detailed description of the investigatory process which the practice will employ when a claim of harassment is made; and a statement that all employees are required to cooperate with such an investigation; and are subject to discipline for failing to do so. Another major provision is a fairly detailed description of what types of remedial or corrective actions the practice will take, when the investigation confirms that harassment has occurred, in order to restore a harassment-free work environment. While the policy should include other ancillary provisions, such as confidentiality, not reporting false allegations, and not infringing on employee personal privacy, these are the major provisions for an effective policy.

**Circulating of Policy/Program.** The policy/program statement is then circulated to all employees and a written record is entered into their permanent personnel files to confirm that each received a copy (for this purpose we recommend that each employee execute an Acknowledgment of Receipt form). As new employees are hired, they are also provided with a copy of the statement, and are required to execute an acknowledgment form for inclusion in their permanent personnel files.

**Staff/Manager Training.** Best practice is to conduct an in-service training of approximately one hour, with some additional time for questions and answers. Having the outside compliance officer (as previously discussed, usually an attorney specializing in employment law) conduct the training is recommended because it tends to have more impact on employees than a member of the practice conducting it. Also, the attorney is more likely better able to describe the all-important investigatory process which the practice will use when a complaint is made; and to explain what is considered legally acceptable remedial/corrective action if harassment is found.

Practice Managers should attend a separate program because their training includes what their responsibilities are in implementing and enforcing the policy. Attendance at these training programs is mandatory for both employees and managers, and written records of attendance are to be kept. These training programs can be videotaped for viewing by new employees and managers as they are hired.

**Policy/Program Implementation.** Conducting these training programs is actually the first step in implementation. Implementation primarily involves monitoring for continuing employee awareness and compliance with the policy/program. Aspects of implementation include: periodically conducting short, refresher, in-service training of both staff and managers; circulating a flyer, or other similarly short document, reminding employees of the essential terms of the policy/program and encouraging them to ask any questions they may have, and/or to report any concerns about possible violations; periodically updating the policy due to changes in the law or in the identity of the internal or external compliance officers; and, without violating any confidentiality obligations, reporting on any practice investigations/enforcement actions.

**Policy/Program Enforcement.** Enforcement essentially involves strictly following the investigatory and other procedures provided in the policy/program when an employee reports a possible violation, or when practice management has any reason to believe that the policy is being violated. No matter how frivolous management may consider any claim, it is best to nevertheless strictly follow the policy's procedures for an investigation. The results of the investigation are always reported to both the complainant and the alleged harasser. Whether these two parties are satisfied or dissatisfied with the results must be documented, along with the factual and other basis for the practice's disagreement with any such dissatisfaction.

**Remediation/Corrective Actions.** When an investigation finds a policy violation, the final program element essentially involves implementing remedial and corrective actions which are appropriate to the



type and seriousness of the violation. Although the practice should consider the remedial/corrective action requested by the harassed employee, it is the practice which ultimately decides whether and what, if any, such action to take. The remedial/corrective action must always be appropriate to the nature and seriousness of the violation. The harassed employee's satisfaction or dissatisfaction with the actions taken, or lack thereof, is documented; along with the practice's response to any such dissatisfaction, and an explanation of its rationale for those actions, if any, it has taken.

**Conclusion.**

This article has been an overview of how veterinary practices should address the issue of workplace harassment, from both preventive and remedial perspectives. If any veterinarians have any questions, or need assistance in implementing a program for their practice, please contact Peter H. Tanella, Esq. at Mandelbaum Salsburg P.C.