

Preventing Sexual Harassment in the Workplace

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We have all been hearing a lot about sexual harassment lately. What obligation do library trustees have to prevent sexual harassment in the workplace?

Although the news has been dominated by conversations about sexual harassment, harassment is part of a bigger picture: discrimination in the workplace. Understanding what constitutes discrimination is the first step to preventing it, both to protect employees and to avoid liability.

The inquiry starts with determining whether the employee is a member of a “protected class.” New Hampshire law has more protected classes than federal law, under RSA 354-A:7: Age; sex, including gender and pregnancy; sexual orientation; race; color; national origin; marital status; physical or mental disability; and religion. If the employee is a member of a protected class, then the question becomes whether the employee has suffered discrimination because of membership to one or more of these protected classes.

Many of us think of discrimination as occurring only when tangible adverse employment action is taken, such as a demotion, termination, or refusal to hire someone. However, harassment is also a type of discrimination when it is based on a person’s protected class status.

Harassment occurs through derogatory, abusive, insulting, or offensive conduct relating to, or because of, a person’s membership in a protected class, when the harassment unreasonably interferes with a person’s work performance or creates intimidation or a hostile or offensive working environment. The conduct must be unwelcome, and can be in the form of jokes, gestures, unwanted physical contact, or even the sharing of offensive messages or images. Severity and frequency of the conduct are taken into account when determining whether the conduct rises to the level of “harassment.” Harassment can occur between co-workers or between supervisors and subordinates. When an employer becomes aware of harassment, the employer has a responsibility to investigate and take effective action to stop harassing conduct that has occurred or is occurring.

The matter is made more complicated by the fact that not everyone has the same concept of “offensive,” and a “nice” compliment to one person might be an offensive or unwanted comment to another. Therefore, it is good practice both for library trustees and library employees to undergo sexual harassment trainings. Trustees, in consultation with their library directors, should also review their sexual harassment policies—or create one, if one does not already exist—to inform employees what harassment is and that engaging in such behavior has serious consequences.

For more information, visit the New Hampshire Commission for Human Rights website at <https://www.nh.gov/hrc/>. □