



# The Guardian



Helping to Protect You from Employment Law Claims

**BOYLE, PECHARICH, CLINE, WHITTINGTON & STALLINGS, PLLC**

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**125 North Granite Street, Prescott, AZ 86301**

**Phone 928-445-0122**

**Fax 928-445-8021**

The attorneys of **BOYLE, PECHARICH, CLINE, WHITTINGTON & STALLINGS, PLLC**

Robert S. Pecharich  
William R. Whittington  
Donald C. Zavala, Jr.

Barry B. Cline  
John C. Stallings  
G. Eugene Neil  
Jonathan A. Millet

## SEXUAL HARASSMENT IN THE WORKPLACE

### PART 1 OF 2: AN OVERVIEW

By Donald C. Zavala, Jr., Esq.

Sexual harassment in the workplace continues to be a serious concern for both employers and employees. In addition to being just plain wrong, sexual harassment can cause physical and/or emotional harm to the employee, low morale, decreased productiv

productivity and result in severe damages to employers. Employers need to know how to prevent, recognize and handle sexual harassment claims. This is a two part series. Part 1 (below) provides a brief overview of the law of harassment. Part 2 (next edition) will provide an overview of the defenses available to employers.

#### Background:

Harassment based on race, color, sex, religion and national origin is prohibited by Title VII of the Civil Rights Act of 1964. Other types of harassment are also precluded based on other federal and state laws, such as harassment based on disability or age. Sexual harassment is one form of harassment.

Title VII only applies to employers with 15 or more employees. However, under the Arizona Civil Rights Act, the prohibition against sexual harassment is extended to employers of even 1 part-time employee. Therefore, *every Arizona employer needs to pay attention to this important area of the law.*

#### Two Types of Sexual Harassment:

There are two types of sexual harassment: (1) quid pro quo (supervisor), and (2) hostile work environment. Quid pro quo harassment refers to "this for that", meaning that submission to a sexual advance or request is made a term of an individual's employment or the basis for an employment decision (such as firing, demotion or denial of promotion). This kind of sexual harassment can be committed only by someone who can make or influence employment decisions that will affect the employee (e.g., a supervisor or a manager). If the employee suffers a tangible employment action in connection with a sexual demand, the employer is strictly liable.

Hostile work environment harassment, on the other hand, generally occurs when unwelcome and offensive sexual advances or requests cause an unreasonable interference with an employee's work or creates an intimidating, hostile or offensive work environment. This form of harassment is much more common and usually comes from co-workers (but can also come from non-employees, such as a delivery person, customer, etc). Among other requirements, the conduct must be deemed to be *severe or pervasive* to a reasonable person. Petty annoyances or isolated incidents generally do not rise to the level of hostile work environment harassment. There are steps an employer can take to prevent or reduce liability for this type of harassment. Part 2 of this article (coming Spring 2011) will provide an overview of the these steps.

### Did you know?

Arizona's new Medical Marijuana law prohibits employers from discriminating against people who are medical-marijuana cardholders. However, the law does allow employers to discipline employees who use medical marijuana on the job or who work under the influence of marijuana. The issue is likely to be tested in Arizona's workplaces and in the court system. Watch for more information in future editions of The Guardian.

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