Sexual Harassment

By Reg P. Wydeven
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My first summer job was working as a filing clerk in a medical office. Of the office's 25 employees, there were only two other men, and they were both doctors. Needless to say, whenever anything heavy needed to be moved or something needed to be retrieved from a high place, I was called upon. By default, I soon became known as the beefcake of the office - clearly this was not due to any manliness I possessed, but simply because the two male doctors were in their late 70s.

Working so closely with so many women, I was immersed in their discussions about topics I knew little about and quickly came to fear, namely, feminine hygiene problems and the fact that men are pigs. Basically, I felt like I spent my summer on the set of 'Oprah'.

While my awkward summer probably didn't rise to the level of a hostile working environment for sexual harassment purposes, it certainly made me uncomfortable and I got a hint of what sexual harassment might be like.

The California Supreme Court recently recognized a new kind of sexual harassment when it ruled in favor of two employees who were never actually harassed. Edna Miller and Frances Mackey, former prison guards at the Valley State Prison for Women in Chowchilla, sued the Department of Corrections for sexual harassment. They alleged that the warden at the time, Lewis Kuykendall, was sexually involved with at least three women at the same time. A lower court dismissed their case, explaining that Miller and Mackey "were not themselves subjected to sexual advances and were not treated any differently than male employees."

Miller and Mackey appealed their case to the Supreme Court, which overturned that decision. California's high court held that an isolated instance of favoritism would not ordinarily constitute sexual harassment, however, when it is so widespread that "the demeaning message is conveyed to female employees that they are viewed by management as 'sexual playthings' or that the way required for women to get ahead in the workplace is by engaging in sexual conduct," it constitutes harassment.

So not only do employers have to be fearful of lawsuits from employees that are being hit on, they also have to be afraid of suits filed by employees that are not being hit on.

Employers' fears of sexual harassment lawsuits are well founded. Many experts believe the number of these suits has at least doubled in the last 15 years, especially after high profile cases like those involving Anita Hill and Clarence Thomas, Paula Jones and Bill Clinton, most recently, Bill O'Reilly.

To alleviate these fears, many employers are procuring Employment Practices Liability Insurance ("EPLI") policies to provide coverage for sexual harassment claims. Employers are seeking EPLI insurance because traditional commercial general liability, homeowners, directors and officers, and malpractice insurance policies don't cover sexual harassment.

Most of these policies provide coverage for "bodily injury", but since mental anguish or emotional distress unaccompanied by a physical injury typically does not constitute bodily injury, most sexual harassment claims are not covered. Even if an employee could show bodily injury, however, insurance coverage would likely not be available because of the numerous exclusions in those policies.

While I certainly suffered mental anguish and emotional distress that fateful summer in the medical office, it was actually mostly attributable to hearing Bryan Adams' 'Everything I Do, I Do For You' song on the radio 217,000 times.