

# *The SESCO Report*

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Your "Human" Resource Since 1945

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## SESCO Special Report Harassment in the Workplace

The society that we live in has been hyper sexualized and this culture bleeds into the workplace and it is virtually impossible to separate the two. Further, with recent allegations in Hollywood, politics, the tech industry and academia, harassment, particularly sex harassment, has become the news of the day. Because of the significant liability, employers must take a very proactive and aggressive position. This special report is being provided due to the heightened awareness and sensitivity in today's society and workplace regarding harassment.

Harassment is a form of employment discrimination. Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment in the workplace becomes unlawful where:

1. Enduring the offensive conduct becomes a condition of continued employment.
2. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Further, anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying or participating in any way in an investigation, proceeding or lawsuit under these laws.

Poor teamwork, rude behavior, petty slights, general personality annoyances and other unprofessional conduct will not rise to the level of illegal harassment. To be unlawful, the conduct must be of a protected nature as noted and must create a work environment that is intimidating, hostile or offensive to reasonable people. Normally, the conduct must be repetitive and not just a single incident.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put downs, offensive objects or pictures, and interference with work performance. Again, these actions must be based on a protected category as identified in Title VII. Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee such as a customer or vendor.
- The victim does not have to be the person harassed, but anyone affected by the offensive conduct such as witnesses.
- Unlawful harassment may occur without economic injury to, or discharge of, the victim.

Although Title VII has been the law since 1967 and further sex harassment became a household name during the Clarence Thomas Supreme Court hearings, in the last 12 months, there has been a significant heightened awareness and, frankly, tension in the workplace when it comes to harassment, in particular, sex harassment. Please consider the following statistics:

- FY 2016 - 28,216 cases filed with the EEOC
- FY 2016 - monetary benefits \$125.5 million
- Bureau of Labor Statistics - 2017 Study - 75% of women say they have been sexually harassed at work and 71% did not report it for fear of retaliation and/or did not want to interfere.

The reality is that some form of illegal harassment, normally sex harassment, is taking place in every employment environment on a daily basis. So, what must an employer do - what are the responsibilities under federal employment discrimination laws for every employer (federal discrimination laws cover employers with 15 or more employees - all states have anti-discrimination laws protecting employers with one or more employees)?

### SESCO Tips

1. You are required to provide equal pay to male and female employees who perform the same work, unless you can justify a pay difference.
2. Employers cannot discriminate against or harass applicants, employees or former employees because of race, color, religion, sex (including pregnancy, sexual orientation or gender identity), national origin, age (40 or over), disability or genetic information (including family history).
3. You cannot use employment policies or practices that have a negative effect on applicants or employees based on their protected category.
4. You must consider reasonable accommodations (changes to the way things

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are normally done at work), because of an applicant's or employee's religious beliefs or disability.

5. In general, you cannot request medical or genetic information from applicants.
6. You or an agent of the organization (manager) cannot retaliate against (punish) an applicant, employee or former employee for reporting discrimination, participating in a discrimination investigation or lawsuit.
7. You are required to post at your business federal discrimination laws.
8. You must retain any employment records such as applications, personnel records and payroll records as required by law.

If you have at least 100 employees or if you are a federal contractor with at least 50 employees and at least \$50,000 in government contracts:

- You must report data about the ethnicity, race and gender of your workforce to the government via an EEO-1 Report and/or Affirmative Action Program.

## **SESCO provides the following staff recommendations to prevent harassment complaints within your organization:**

- Clearly state in your employee handbook, on your application form and on required posters throughout your facility that harassment based on race, color, religion, sex (including pregnancy, sexual orientation or gender identity), national origin, disability, age (40 or older) or genetic information (including family and medical history) is illegal and will not be tolerated.
- Explain how employees can report harassment. This is normally accomplished through policy to include an open-door policy or complaint procedure. The policy should be created in such a way that it provides an employee multiple options of reporting.
- State that you will protect the confidentiality of employees who report harassment or participate in a harassment investigation, to the greatest possible extent that you can.
- State that employees will not be punished for reporting harassment or partic-

ipating in a harassment investigation or lawsuit.

- Require managers and other employees with human resource responsibilities to respond appropriately to harassment or to report it to individuals who are authorized to respond. **Supervisors should never ignore any complaint or inappropriate behavior.**
- Provide for prompt, thorough and impartial investigation of harassment complaints, preferably utilizing an outside third party such as SESCO.
- Provide for prompt and effective corrective and preventative action when necessary.
- Consider requiring that employees who file internal complaints be notified about the status of their complaint, the results of the investigation and any corrective and preventative action taken.

## **Employer Liability for Harassment**

The employer is automatically liable for harassment by a supervisor (an agent of the organization) that results in a negative employment action such as a termination, failure to promote or hire, and loss of wages. There is no defense regardless of the policies, training and preventative action that the employer has implemented.

If the supervisor's harassment results in a hostile working environment, the employer can avoid liability **only** if it can prove that:

- It reasonably tried to prevent and promptly correct the harassing behavior.
- The employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer.

The employer will be liable for harassment by non-supervisory employees or non-employees of whom it has control (e.g. independent contractors or customer on the premises), if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action.

When investigating allegations of harassment, the EEOC considers the entire record including the nature of the conduct, and the context in which the alleged incidents

occurred. A determination of harassment is severe or evasive enough to be illegal is made on a case-by-case basis. **Note** - Training employees should take place. This will remind employees of your anti-harassment policy, open-door procedures and commitment to non-discrimination. **The training should place employees on notice that if they do not report directed or non-directed harassment, then the employer obviously cannot address it.**

## **SESCO Tips for Preventing Harassment and Discrimination: Be Proactive!**

1. Create a climate in which employees value and respect each other in a way that supports a harassment-free environment. Set a good example! Frankly in today's competitive employment environment, employers who establish a pro-employee/pro-employer culture will not typically have problems with harassment. Management at all levels should:

- Use appropriate and professional language
- Show respectful and empathetic communication
- Treat all employees with fairness and equitable distribution of responsibilities

2. Continually monitor the work environment and encourage employees to talk with you so that you may recognize sex harassment or discrimination situations as they develop.
3. Conduct confidential employee surveys allowing for a method of confidential communication from employees to senior management via a third party.
4. Ensure that employees are aware of the organization's harassment/discrimination and open-door policies. This means training management and employees annually.
5. Take all harassment complaints seriously. This is where most of the liability is generated wherein a supervisor ignores or considers a complaint frivolous or unimportant.
6. Investigate every complaint of harassment. SESCO suggests the investigation

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should take no longer than three (3) to five (5) days following the complaint. Swift and aggressive action is of upmost importance.

7. Maintain a confidential written record of each complaint, your investigation and interview notes and subsequent resolutions.
8. Determine appropriate disciplinary action based on the findings of an investigation. Appropriate action may include counseling, a permanent written warning, suspension, demotion or even termination.
9. Ensure employees' protection against retaliatory action for reporting behavior that they believe is harassment.

### So, what should employers do now?

1. SESCO retainer clients receive an annual audit of employment practices. SESCO will audit all practices including compensation to determine if there is any liability.
2. Have SESCO review your employee handbook and especially your EEO, affirmative action, open-door, and anti-harassment policies.
3. Plan in the new year to train managers and employees - even if you have done so in the past year. SESCO's training also includes topics such as ethical behavior, professionalism in the workplace along with harassment.

In our practice today, harassment, bullying, and unprofessional behavior are the most common issues we assist our clients. It is critical that all employers regardless of size be proactive and implement an effective anti-discrimination/ harassment plan.

## Special Thanks to New SESCO Clients!

Auto Spot Tire Pros  
Jacksonville, FL

Burnette Family Tire Pros  
Mabank, TX

Warrior Tire Pros  
Warrior, AL

Neighborhood Tire Pros  
Marietta, GA

Hoffman Tire Pros  
Fayetteville, GA

Tri-City Auto Care Tire Pros  
Durham, NC

Steele Guiltner, Inc.  
West Memphis, AR

Inlign Automotive, Inc.  
Longwood, FL

Van's Tire - Wadsworth  
Wadsworth, OH

Shook Tire Pros  
Blairsville, GA

Hometown Tire Pros  
Ruidoso, NM

Kaiser Tire Pros  
Louisville, KY

Southern Highlands Community  
Mental Health Center  
Princeton, WV

Ed Whitehead's Tire Pros  
Yuma, AZ

Friendly City Tire Pros  
New Albany, MS

Quality Tire Pros  
Chattanooga, TN

S&S Discount Tire Pros  
Alexander City, AL

All Pro Tire Pros  
Bluffton, SC

## George Dinwiddie III Joins SESCO Management Consultants

SESCO Management Consultants is proud to announce that George Dinwiddie III has joined our professional team as Regional Vice President – Knoxville, Tennessee.

George and his family are well known in the Southeast as his grandfather operated Kerns Bakery. The Dinwiddie family also owned and operated George Dinwiddie Distributing Company, a beer distributorship that included Coors, Pabst Brewing and many other brands. George founded Dinwiddie Wine & Spirits Company, and as such, has a long history of practical hands-on experience in owning and operating businesses and managing human resources.

In addition to his professional career, George is extremely active in the Knoxville region including past chairman of the Knoxville American Heart Association, past chairman of the Westside YMCA, current board member of the Greater Knoxville Sports Hall of Fame, and many other business organizations and charitable efforts.

Please join me in welcoming George to our professional team. He is available for immediate consultation and can be reached at 423-764-4127 or [george@sescomgt.com](mailto:george@sescomgt.com).

## SESCO Client Feedback

*"Good day to all! I just attended my first TPU this past Friday. In recent years I've been sending my son and my partner's son to meetings figuring that they need to get all the new information first hand since I'll be passing the torch to them in the future. Well I'm glad I attended this one, that's for sure. I was blown away by the SESCO presentation and the information I did not know! I found it to be informative and enlightening and am looking forward to engaging with them in helping me to achieve compliance with my business. I highly recommend that all owners attend these TPU sessions. You never know what you don't know until you hear it! Kudos to Bob and Kelly - awesome meeting!" ~ Larry Vollano, President - MIC Tire Pros*

*"I would like to say thank you for putting in a great TPU and weekend of excitement. I learned so much at the TPU about handbooks, compensation plans, interviews, etc. I had no idea of some of the things I learned." ~ Jody Gilpin - Tire Pros of the Tri-State*



P.O. Box 1848  
Bristol, TN 37621  
(423) 764-4127 • FAX (423) 764-5869  
www.sescomgt.com  
email: sesco@sescomgt.com

RETURN SERVICE REQUESTED

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*MERRY CHRISTMAS &  
\* \* \* \* \*  
HAPPY NEW YEAR*

*The Holidays are here again, a time for remembering those who have stood beside us during the past year. We are grateful to have clients like you, who are a pleasure to work with. Thank you and best wishes for the holidays and new year!*

*~ The SESCO Staff*

*We hope this Christmas enriches your life;  
May each day be happy and bright.  
Overflowing with pleasure and love;  
May your Christmas be filled with delight.*