



How to Protect Your Dental Practice from the Rising Tide of Sexual Harassment Claims by Paul Edwards

The 100-year flood is here. The rain keeps coming. And no, we're not talking about the weather. We're talking about the sexual harassment storm unleashed by the #MeToo movement - the fury of which continues to grow.

The #MeToo movement - a hashtag designed to encourage women to self-identify as victims of sexual harassment - garnered more than 2.3 million tweets from 85 countries, and had over 77 million participants on Facebook in the first few weeks alone. Here in the U.S., as the careers of mega moguls and superstars sail away downstream, experts expect a deluge of new complaints from employees emboldened by the changing cultural environment. And that's saying something! On average, the Equal Employment Opportunity Commission (EEOC) already receives close to 13,000 sex-based complaints each year. Most likely, that will seem like a small number in the rearview mirror of history.

The #MeToo Movement and You

Given the looming storm on the horizon, employers in every industry (not just Hollywood!) need to shore up their defenses.

Why? Because as an employer, you're legally responsible for problems you knew or should have known about in your business - including harassment issues involving your team.

To put it into perspective, let's look back through the historical mirror to 1991, when Anita Hill alleged that Supreme Court nominee Clarence Thomas had sexually harassed her. In the first quarter following those high-profile accusations, the EEOC received a whopping 71% increase in sexual harassment claims. And those floodwaters never receded. Over the next five years the agency's

claims more than doubled!

Given its broad participatory appeal, the #MeToo movement promises to dwarf that deluge.

How Do You Define Sexual Harassment?

What counts as harassment, though? To many people, this topic feels full of gray areas and blurry lines. You probably know there's no place for "friendly massages" in the workplace, and if you're a born hugger, you've probably started restraining yourself. But what about situations that seem harmless, or ones where you're not sure exactly what's going on? If a guy from your IT company clearly has a crush on your not-interested front receptionist, and he's just brought her flowers for the third time, could that be considered harassment?

The answer is, maybe. Officially, sexual harassment can take a variety of forms, including:

- Commenting about a person's body or sexual deficiencies
- Using degrading words to describe a person
- Sending sexually offensive emails, texts, or social media messages
- Touching or brushing against someone's body
- Making obscene comments or gestures
- Displaying or circulating obscene materials to coworkers, whether at work or not

Those are just examples. Whatever the behavior, a harassment situation exists when these issues are frequent or severe enough that an uncomfortable or hostile work environment is created, or anytime an adverse employment decision is made as a result.

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What this means is that you, and your management team, need to go through training to be able to identify these situations and know how to respond. This includes immediately investigating any potential misconduct you notice or are informed about, even if you think the issue wasn't that serious, or even if you doubt the validity of the claim.

EPLI Isn't a Guaranteed Protection

Many employers think their EPLI policy-Employment Practices Liability Insurance-will protect them against sexual harassment claims, but this is often not the case. Check your policy exclusions! Here are a few common gaps to watch out for:

- If you've already had any recent discrimination claims, EPLI may not cover you.
- If an act is deemed intentional or malicious, EPLI will not cover you.
- Finally, if a claim is brought by a third party-and in most states, sexual harassment claims must first go through the EEOC, a third party-EPLI often will not defend or cover you.

As you can see, there's a theme of non-coverage here.

Your best bet isn't to rely on EPLI. Instead, be proactive where you can be, and react immediately and appropriately to any incidents. Start by reviewing the policies you have in place, and then check your own actions and assumptions.

You're Only as Strong as Your Sexual Harassment Policies

Right now is a good opportunity to review whether you have well-written sexual harassment policies in place. Remember, in several states, if you have 50 or more employees, sexual harassment training is required, and written sexual harassment policies are mandatory.

Your policies should include: sexual harassment definitions, a clear process for an employee to report if they have either experienced or witnessed harassment, as well as assurances of non-retaliation should someone make a good-faith complaint.

But if you're like many dentists, the policies in your employee handbook may be years old, of uncertain origin, or badly in need of revision. If that's the case, your policy may be missing key details, or include the wrong things. Here are some common issues that might be in need of repair:

Language that bans sexual harassment "in the workplace." Think about this one - the workplace isn't necessarily the only place that work-related sexual harassment could occur. What if your team is traveling together to a seminar, if employees are texting after hours, or if harassment is occurring on Facebook? On-location or not, you must still take action and investigate if a sexual harassment claim is made.

No policy or planning for third-party harassment. Some policies ban sexual harassment by "co-workers and managers," and leave it at that. But you work in a dental practice - employees aren't the only potential harassers in your practice. Patients, delivery people, sales reps or suppliers could also potentially cause problems for team members. To keep your employees and your practice a little better protected, your employee handbook and your own planning should account for this.

Not creating a way for employees to report concerns. It's vital to formalize a policy requiring employees to report concerns or grievances to management. (Have an HR expert create this type of policy for you, because getting this right gives you a rare opportunity to reduce your liability for situations you didn't know about. After all, you can only take action if you know!) This should be part of your employee handbook, and your employees should acknowledge that they understand this policy is in place. Be sure to follow through and investigate any and all reports you receive.

The Right Steps to Take

Overall, there's no one thing you can do to eliminate your practice's risk, but planning and best practices can make major harassment incidents and claims far less likely.

First, if and when a complaint comes up, promptly address it and make sure you follow your own complaint procedure. Allow your employee to move through the graduated steps that are laid out in your policy.

Second, if you need to suspend one or more individuals while you investigate, or you conclude there has been misconduct, follow the process in your handbook's disciplinary policy. A failure to follow your own policies in investigating or responding to complaints can undermine potential legal defenses should things escalate. These days, the best type of disciplinary policy is Progressive Corrective Coaching - an interactive approach that provides a framework for handling everything from informal conversations all the way through to termination, if need be. Steps need not be taken in order (or at all) - your response should be guided by the severity of the situation.

Third, document, document, document! Diligently record each encounter with your employees, from the initial complaint, to witness statements, to any remedial or disciplinary actions taken. Think of each act of documentation as another brick in your defensive wall.

Finally, get help when you identify gaps in your HR knowledge or coverage. At CEDR HR Solutions, we offer and facilitate voluntary sexual harassment training for our members. We also provide comprehensive policies, procedures and unlimited guidance from a team of employment law consultants and HR experts.

If you have any questions about your policies, or need a second set of eyes to look over your response procedures, we can help.

In our changing world, the sexual harassment storm isn't the only one looming out there. It's just the biggest. Be prepared and be safe.

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Prepared For The Unknown – Your Happy Ending

Several years ago, a group of Eagle Scouts in our neighborhood set out for a 20-mile hike in the beautiful but potentially threatening desert canyons of the southwest. Their packs were full and heavy. They carried plenty of food and first aid for almost any kind emergency. They had studied the route carefully with their leaders, mapped out the known water sources, and filled their bottles one last time before stepping into the mouth of the narrow, river-cut canyon. Clearly, they went by the book and took every precaution. They were prepared, so it seemed, the way every good Boy Scout should be prepared.

Since a few of the boys were still young and not natural hikers, the troop decided to avoid carrying unnecessary weight in their pack by keeping their water supply minimal - they would rely on the trail map to locate water sources and could see every spot available along the entire 20-mile route. What they didn't know, or prepare for, was the water sources had been cut off due to the severe drought. So they hiked from one dry source to the next, to the next. Each time, hoping they would find the water they desperately needed in the hot dry desert air, and each time, drawing nearer to extreme dehydration. Thankfully in the end, they were rescued and all recovered well. A happy ending, this time.

What do wise Boy Scouts and wise dental practice owners have in common? They don't just prepare for the obvious route ahead, they acknowledge and account for the unforeseen variables that occur, and sometimes they do so in such a way that can leave one vulnerable to serious effects that require rescuing.

There is a very smart doctor who has made sound business decisions throughout his career in practice ownership, and relied on the expertise of specialists, advisors, and consultants, all of which were experts in specific areas. He dotted his I's and crossed his T's and if he knew better he tried better, to do it right the first time. Dr. Sellerdoc had managed to avoid any real major crisis in his dental career because of this careful planning. What he didn't see coming, was a surprise positive change in his local economy, which ultimately affected the transition of his practice. He never took the time to speak with a transition specialist regarding his practice - he assumed the practice value was increasing and that there would be many transition options available. Now, when he should have every option in transition, he is very limited.

One of the most important things we can do for ourselves and our careers, is find someone who can see what we cannot. The scouts should have confirmed their water sources. The dentist should have learned more about his transition options when obvious changes were taking place. When it comes time for you to make a transition, whether that change is bringing on an associate, merging, or selling, don't just look at what you know. Consider the fact that there are many who know which sources are dry and which are good. Consider a document that protects you when you don't know what you don't know. Consider a program that enables you to reach your goals not by cutting someone else short, but by allowing him or her to succeed. Consider the fact that your success, could very well lie in a well-hidden variable.

Happy planning ahead, for the known, for the unknown, for your happy ending.

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QUALITY DIODE LASER APPLICATIONS TRANSFORMING PRACTICES - PART 1 -

by Dr. Jim King³

Back in our clinical pasts, most of us have invested in the proverbial Door Stop! Dental technology can be very expensive when it arrives in our office without ongoing clinical support and/or with limited training. Sometimes, it simply falls short of the advertising hype - lacking the performance, reliability, cost-efficiency and profitability promised and, often, without adequate guarantee.

If it is a diode laser, take a minute to evaluate the reasons you aren't reenergizing your practice for the future with a quality proven laser - in other words, using it across a multitude of applications? Practices who haven't invested out of fear of Door Stop syndrome or those limiting their daily laser use to troughing or an occasional gingivectomy, Re-group! (Occasionally, my US. Army Dental Corps background reflects less than warm and cozy.)

Having provided hands-on laser training to thousands of dentists, and, more recently - hundreds of hygienists - I am amazed at how under utilized the quality laser is. The elements of this technology's success in dentistry are well-established: research, FDA clearance of over 30 procedures, availability, ease-of-use, clinical training options and affordability, are

all in place. Cheaply made units have flooded the market, and with their degraded performance, some practices never experienced real laser dentistry applied results.

Consider the advantages of the quality laser as a great tool for adding procedures to your practice - those procedures you are "just not tackling in office," or those you, "routinely referred out." True dental laser practices - those using lasers across hygiene and, operatively, many times per day - experience a less stressful and more enjoyable clinical life. The patients are more than impressed with laser procedures' benefits and make more raving referrals. The significant revenue added, in office, benefits personal lives, as a major adjunct to success.

Some key quality laser applications and the logic of their use:

HYGIENE/PERIO

One of the fastest growing applications in laser use, and importance.

- De-Contamination of Full Mouth - A 4 to 5-minute procedure, basically delivers energy into the sulcus to minimize bacteria transfer during cleaning and visit. Generates peace of mind to those with compromised immune systems, such as oncology,

transplant or cardiac patients. Also, what hygienist or dentist wouldn't appreciate an adjunct to their protective mask in minimizing exposure to bacteria?

- De-Epithelization, Bacterial Reduction, Bio-stimulation
- Ulcer Treatment, Lesion Removal (without reappointment), Tooth Desensitization

OPERATIVE

How much more patient-centered can a dental instrument be? Reduced-to-no bleeding, suturing or post-operative discomfort, and bacterial reduction, built into every use!

- Troughing (Great exposure of margins in seconds, not minutes, with controlled bleeding and reduced post-operative discomfort.)
- Oral Surgery (Control bleeding, solidify clots to minimize dry sockets and reduce bacteria.)
- Gingivectomies (Again, improved visibility for precise, therapeutic contouring with little, to no, bleeding or post-operative discomfort to patient, who also sees immediate results.)