

November 12, 2004

What's Hanging On Your Workplace Walls?

It is that time of the year when people start buying calendars for the new year. Construction companies have a reputation, deserved or not, for tolerating the display of risqué calendars. Companies need to be aware, however, of employees posting or hanging inappropriate materials in their workstations or on the companies' premises. Failure to prevent such behavior may result in a charge of discrimination or lawsuit for unlawful harassment. The following is a partial list of unwelcome behavior which will generally be considered unlawful harassment:

- The display of sexually suggestive objects, pictures, magazines, posters, cartoons or calendars
- Sexual, racial, religious, age related (and any other characteristic protected by law) jokes, language, or epithets
- Written or oral abuse of a sexual (or any other protected category) nature (e.g. sexually and/or racially degrading or vulgar words used to describe an individual)
Comments about an individual's body, sexual orientation, sexual prowess or sexual deficiencies

Courts have repeatedly frowned upon inappropriate calendars in the workplace. Not too long ago, a jury returned a verdict for a former employee who complained of unlawful harassment, where one of the pieces of evidence she offered was a calendar that depicted, for each day of the week, cartoons of various sexual positions.

In another case, an appellate court reversed a lower court's decision in favor of the employer, finding that the extent of sexually inappropriate graffiti, cartoons and calendars in the workplace suggested that the employer had taken inadequate remedial measures to correct this behavior. In a final example, another company that was faced with a class action sexual harassment lawsuit that included evidence of pornographic materials, including inappropriate calendars, settled the dispute for ten million dollars!

These three cases (and there are countless others) exemplify the importance of management monitoring the workplace to insure that the work environment fosters productivity, is free from disparaging sexual or racial comments, and is devoid of inappropriate cartoons, posters, calendars or postings. To prevent lawsuits based on allegations of harassment or discrimination, and successfully defend them if necessary, the first thing a company must do is have a policy that prohibits this type of behavior and provides multiple avenues for presenting complaints.

The policy should, among other things, specifically prohibit sexually oriented calendars, posters, graffiti, jokes and cartoons. Second, companies must educate and train their supervisors and employees about the law to help avoid claims and high monetary awards or settlements. Companies must insure that their workplace is harassment-free not only to avoid these legal costs and hassles, but also to avoid the other costs associated with unlawful harassment, including lost productivity and efficiency, absenteeism, and turnover. Accordingly, monitor your workplace, promulgate sound policies, train all employees and supervisors, and consult legal counsel when faced with a complaint of unlawful harassment.

For further questions, please contact Mark Johnson (majohnson@seyfarth.com) or Roger Price (rprice@seyfarth.com) of the Construction Law Group, or Tracy Billows (tbillows@seyfarth.com) of the Labor & Employment Practice Group.



Breadth. Depth. **Results**

www.seyfarth.com

This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact any Seyfarth Shaw LLP office. Copyright © 2004 Seyfarth Shaw LLP. All Rights Reserved.