

# Touchy Subject

In addition to costly legal battles, sexual harassment claims can damage an operation's reputation and morale



Story by Daniel P. Smith  
Photo by Josh Keown

From her office in Tucson, Arizona, Ute Gascho guides Magpies Gourmet Pizza, overseeing a 20-year-old brand with five locations, 115 employees, and a rock-solid reputation with the locals. With that in her pocket, Gascho takes harassment claims serious, recognizing that a sniff of trouble in one of her pizzerias can damage two decades of good will.

“If you want to have a good reputation in your community, then you need to pay attention to what’s going on in your operation,” Gascho says. “That’s why we put safety first and foremost in our operation — and we certainly include harassment in that.”

From the corporate chains to the ma and pa pizzerias, sexual harassment — and harassment of any kind — remains a topic that can and should be addressed in the restaurant. Ignorance to the topic and the training exposes an operator to the risk of lengthy and costly legal tussles as well as PR upheaval and declining employee morale.

“You want to make sure you’re protecting your company from liability and litigation, but you also want to make sure you’re doing right by your employees and creating an environment free of harassment,” says Anne Larson, an attorney with Chicago-based Much Shelist. “Anti-harassment policies are important because they are both a sword and shield: a sword to prevent or stop harassment and a shield to protect the company from liability.”

## Responding to a Sexual Harassment Complaint

Labor attorney Donald F. Peters, Jr. offers these tips for operators who encounter a sexual harassment allegation:

1. Depending on the seriousness of the allegations, consider immediately suspending the accused harasser pending the outcome of your investigation or moving the accused to another shift or location.
2. Investigate thoroughly and promptly by interviewing the alleged victim, alleged harasser and any witnesses.
3. Be open to whatever turns the investigation may take as the outcome might be quite different than the allegations.
4. Make and retain notes of what people say.
5. Act within a reasonable time frame. Don't rush to judgment, but don't dawdle either.
6. Keep the investigation confidential.
7. Act reasonably based on the facts. "This is the legal standard," Peters said. "The employer doesn't have to be 'right.'"
8. Advise the alleged victim of the investigation's conclusion.

Defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, sexual harassment cases are particularly tricky because they often rely on interpretation, semantics, and he said/she said reports — all of which can be misconstrued. Factor in the American attitude toward sexuality and a hot button topic emerges, one that receives a fair — some might even say inordinate — amount of play in the press and courtrooms.

"Sexual harassment cases are like snowflakes — they are all different," says Donald F. Peters, Jr., a labor attorney with Peters & Lyons, Ltd. in Burr Ridge, Illinois.

The restaurant industry has long been subject to sexual harassment cases given the outgoing personalities of staff, the amount of social contact in an operation, nighttime hours, and informal nature of the workplace atmosphere where plenty of "shop talk" occurs. Year after year, the restaurant industry resides among the Equal Employment Opportunity Commission's chief lawsuit targets.

To counter sexual harassment in your establishment, both Larson and Peters urge training and clear mechanisms to handle and resolve complaints.

On the training front, managers should not only give

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new employees a copy of the facility's anti-harassment policy, but discuss the policy and emphasize its importance. The policy should include a clear definition of harassment, a statement saying that harassment will not be tolerated, and identify the manner in which an employee can register a complaint. Such a policy, says Larson, will help lead to a quick and appropriate resolution should a complaint materialize.

"Half the battle for companies is to eliminate complaints by ensuring that all employees are aware of the company's anti-harassment policy and adhere to it," Larson says. "The other half of the battle is to ensure that anti-harassment policies contain a clear, understandable complaint mechanism that both minors and adults can understand and for companies to promptly investigate and remediate these complaints."

In addition to having an employee sign the policy, a note of the verbal discussion between manager and employee should also be made, initialed, and placed in the employee's file. Some courts have looked at the nature, extent, and quality of the training as a way to gauge the management's liability. To further insulate themselves from damaging charges, operators might also consider having employees re-sign the harassment policy on an annual basis; host staff training on harassment; post the policy in a visible place; and have a separate section dedicated to the topic in an employee handbook.

"If there is a legal claim, effective training coupled with an effective well-crafted anti-harassment policy can minimize or in some cases eliminate employer liability," Peters says. "It's a matter of creating a record so the defense is more credible than relying on one's recollection because an employee has up to 300 days to begin legal action. Prudent restaurant people keep good notes."

With the groundwork for a sexual harassment policy established, Peters suggests operators then take the next step and extend the policy to cover not only sexual harassment, but other types of legally prohibited harassment that can wiggle into the workplace, such as harassment because of religion, national origin, race, gender, sexual preference and

disability. If a complaint should be made, even in an informal manner, management's best served to act quickly and in a reasonable manner. When a complaint surfaces at Magpies, Gascho's supervisors must immediately file an incident report detailing the facts as well as what was seen and heard by others. The supervisor then contacts the restaurant manager before the complaint moves into the hands of the HR staff.

"When things get swept under the rug, even for a few days, that's when things grow into something much bigger," Gascho says. ♦

Chicago-based writer **Daniel P. Smith** has covered business issues and best practices for a variety of trade publications, newspapers and magazines.

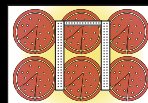


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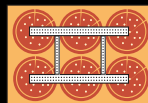
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