

Sexual Harassment Prevention Training slated for New Year!

Every day and everywhere it seems, more allegations of sexual harassment or sexual misconduct are surfacing - some occurring many, many years ago.

It appears that many victims (and perhaps some of the harassers) did not realize the behavior was unlawful or crossed the line of common decency. All Kent County employees know or should know that sexual harassment is prohibited and can result in termination.

In order to reinforce the message, mandatory Sexual Harassment Prevention training has been scheduled for **Wednesday, February 28, 2018** at 9:00 a.m. and 2:30 p.m. and **Thursday, March 8, 2018** at 9:00 a.m. and 2:30 p.m. in the Levy Court chamber in the Kent County Administrative Complex. The training video and handouts will be forwarded to the Department of Public Safety, Regional Resource Recovery Facility, and County Library during the same time frame. Please mark your calendars now.

Per County policy, the County Administrator has mandated this training for all employees. Top management receives annual training on this topic at the Annual Levy Court Retreat each January and employees receive Sexual Harassment prevention training every three years.

Remember, discrimination including inappropriate comments or slurs referencing race, color, gender, gender identity, sexual orientation, pregnancy, lactation, national origin, ethnicity, nationality, political affiliation, disability, and others (foul language, etc.) is considered conduct unbecoming a County employee and can result in discipline up to and including termination.

Employees are encouraged to report incidents of sexual harassment and discrimination to the Personnel Office or a trusted Department Head. Employees reporting such conduct are protected from retaliation by co-workers or supervisors for reporting such incidents.

A couple of timely articles provided by the County's Public Officials/Employment Practices Liability Insurance Company (RSUI) and County policy on this important topic follow below:

What Is "Unwelcome" Sexual Behavior?

By [Kirstin Heffner, The McCalmon Group, Inc.](#)

October 25, 2017

Six women, who worked as cocktail servers, bartenders, and hostesses at The Plaza hotel in New York City, allege in a lawsuit that they endured a "permissive and toxic culture in which women are routinely treated as sexual objects." The lawsuit alleges a "rape culture" at the hotel and its bar, the Palm Court.

Dana Lewis, the current hospitality coordinator, claims she received unwelcomed advances within days of starting work at the hotel in 2016. She alleges she tried to ignore the advances at first but that the sexual misconduct soon became "a part of the job." Lewis is a single mother who felt she had no choice but to endure the harassment to keep her job.

Lewis alleges that her general manager, Christian Floren, who was the most senior employee at The Palm Court, followed her into the coat-check area three times on a single day and tried to force himself on her. "You know you want this," he allegedly said. After the third rejection, Floren begged Lewis not to report him to human resources, according to the lawsuit. Lewis claims she was suspended for three days after snapping a photo of him when the two were left alone together, which was a situation she told her boss she needed to avoid.

Crystal Washington, also a current employee of the hotel, claims managers did nothing after she complained about sexual harassment, and that the human resources department refused to investigate. She claims the harassment started with explicit sexual comments and escalated to groping from behind. Speaking about one of her chief tormentors, Washington said he frequently leered at her and commented on her body parts and sex life.

A former cocktail server alleges that a different manager, Raul Abrantes, made raunchy remarks to her in late 2014. He bragged about sleeping with three women he met at the bar and pleaded with another one of the plaintiffs not to alert human resources. The former manager left the job in 2016 and has since returned as a customer, boasting that he can "hit on the staff" now that he doesn't work there. Kerry Burke and Stephen Rex Brown, "Six The Plaza workers claim pervasive 'rape culture,' sexual harassment on the job," *www.newyorkdaily.com* (Aug. 8, 2017).

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct when the conduct unreasonably interferes with an individual's work or creates an intimidating, hostile, or offensive work environment.

The Plaza allegations give us the opportunity to explore the meaning of "unwelcome" conduct, which is particularly important for managers and supervisors who are held to a higher standard when it comes to sexual harassment.

Illegal sexual harassment is "unwelcome" when the victim did not invite it. It is unwelcome when the victim considers the conduct offensive. In the case of conflicting evidence, enforcement agencies or courts look at the totality of circumstance, evaluating each situation on a case-by-case basis. It is important for managers and supervisors to understand that conduct is not welcome simply because someone tolerates it or doesn't immediately report it.

Many employers advise sexual harassment victims to inform the harasser directly that the conduct is unwelcome and that it must stop. They might also mandate that victims use the employer's complaint or grievance process. Victims should never be required to confront the accused harasser. Managers and supervisors should know that even voluntary submission to sexual conduct does not necessarily defeat a claim of sexual harassment. The correct inquiry is whether the victim ultimately indicated that sexual advances were unwelcome, not whether his or her participation in sexual conduct was voluntary.

Finally, anyone in the workplace can file a sexual harassment claim. He or she does not have to be the target of sexual comments, propositions, or other sexual behavior if such conduct unreasonably interferes with an individual's work or creates an intimidating, hostile, or offensive work environment.

The Reasonable Person Standard And Hostile Working Environments

November 7, 2017

A woman filed a federal lawsuit against her former employer, the organization that oversees airport security at JFK International Airport, alleging a culture of "misogyny, racism, and harassment."

The former security guard alleges that male managers touched her inappropriately, made lewd comments about her body, and showed her cellphone video of female guards performing sex acts on male supervisors. The lawsuit further alleges that male supervisors watched livestream video of security guards engaging in sex acts in the airport's security booths.

The plaintiff alleges the employer terminated her after four years with the organization for speaking out about the sex acts in the workplace and the sexual harassment.

The plaintiff's attorneys say they have interviewed at least six other female security guards whom male supervisors pressured for sex or otherwise harassed. Named as defendants in the lawsuit are six managers and an executive with the organization. Sarah Wallace, Evan Stulberger, and Dave Manney "Ex-Airport Security Employee Alleges Managers Recorded, Shared Co-Worker Sex Videos at JFK," *www.nbcnewyork.com* (Oct. 10, 2017).

Commentary

Sexual harassment is the unlawful harassment of a person because of his or her sex. It includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature, as well as offensive remarks about a person's sex.

Sexual harassment is illegal when it creates a hostile work environment or results in an adverse employment decision like termination or demotion. According to the U.S. Equal Employment Opportunity Commission (EEOC), a "hostile environment" occurs if the harassment is pervasive (frequent) or severe enough as to create an intimidating or offensive work environment.

In order to prove a hostile environment, the plaintiff must show that a "reasonable person" would consider the environment intimidating, hostile, or abusive. For example, under the reasonable person standard, an invitation made to multiple employees to go out to dinner would not be considered a sexual advance, but a request to have sex would.

The reasonable person standard must consider the victim's point of view, and not "stereotyped notions of acceptable behavior." Therefore, according to the EEOC, "a workplace in which sexual slurs, displays of 'girlie' pictures, and other offensive conduct abound can constitute a hostile work environment even if many people deem it to be harmless or insignificant."

The conduct described in this case most likely meets the reasonable person standard, as most people would consider being subjected to unwelcome touching and being pressured for sex in the workplace offensive.

Employers must take steps to prevent sexual harassment and a hostile work environment to reduce exposure. The best way to keep harassment from escalating into a hostile work environment is to provide a strong reporting mechanism and train all employees annually on how to report. Provide a toll-free number so that employees can report harassment to a third party, or allow employees to report "up the chain" if reporting to a manager or supervisor presents difficulties.

In addition, train all managers annually on your anti-sexual harassment policies and procedures. Make sure they understand that sexual harassment will lead to disciplinary action, including possible termination, as well as legal action.

Kent County Policy 12:

Part I: Sexual Harassment

[Adopted 10-27-1992 (P-51)]

§ 12-1 Purpose.

A. Both state and federal law prohibit sexual discrimination in the workplace. The Kent County Levy Court is firmly committed to compliance with these laws. It is essential that all employees be aware of and comply with the law and this Sexual Harassment Policy.

B. The Levy Court strongly disapproves of sexual or other harassment of employees, and will appropriately discipline any employee whose conduct violates this policy.

§ 12-2 Definition.

Sexual harassment is defined as deliberate or repeated unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature in situations when:

A. The employee reasonably feels that submission or putting up with such conduct is an expressed or implied term or condition of employment;

B. The employee reasonably feels that submission to or rejection of such conduct becomes the basis for employment decisions affecting that individual; or

C. The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

§ 12-3 Sexual harassment prohibited; reporting harassment.

The Kent County Levy Court prohibits its employees from any actions or words which constitute sexual harassment. Violation of this Policy will not be tolerated by Kent County and may result in discipline up to and including immediate termination. If employees have witnessed or feel they have been subject to any harassment of this nature, they must immediately report the harassment to their immediate supervisor or, if the complaint involves the employee's immediate supervisor, to the Personnel Director or department manager.

§ 12-4 Investigation of complaints; confidentiality of complaints.

The Personnel Director or designee with assistance from the department manager or immediate supervisor will immediately investigate complaints and take the appropriate action that may be necessary. Employees who register complaints or make reports of harassment may request that their complaints or reports be made in confidence.

§ 12-5 Internal complaint procedure.

A. The employee should directly report the behavior (preferably in writing) to the Personnel Director, department manager or immediate supervisor within three working days of the offense. If not directly reported to the Personnel Director, he/she must be immediately advised a complaint has been received.

B. Upon request, the person making the report shall give all pertinent relative facts of names, places, times, words or actions that were found offensive.

C. Within three working days of the complaint, the person against whom the complaint is made will be counseled privately to determine his or her perspective.

D. Based upon the report, the investigator shall, within a reasonable time, determine whether the conduct of the person against whom the complaint has been made constitutes sexual harassment. This determination will be made by examining the entire record and totality of circumstances on a case-by-case basis. If the investigator determines that the complaint is founded, he or she will take immediate and appropriate disciplinary action or make recommendation to the supervisor that has the authority to take immediate and appropriate disciplinary action. The discipline and appeal process according to the Kent County Code will be followed.

E. Disciplinary action will include remedies up to and including termination.

F. The Personnel Director or designee with assistance from the department manager or immediate supervisor will conduct follow-up interviews with the complainant and the accused to inform them of the results of the investigation and the corrective action to be taken.

G. All information regarding each case shall be held in the strictest confidence. Violation of this confidence will be subject to separate disciplinary action.

Part II: Americans with Disabilities Act (ADA)

[Adopted 6-25-2013 (P13-03)]

§ 12-6 Discrimination prohibited.

This Policy affirms the County's commitment to follow state and federal laws that prohibit discrimination based on disability, to include people with disabilities in all aspects of employment, and to assure that disabled persons can fully participate in all programs, services, and activities offered by Kent County.

A. People with disabilities who otherwise qualify shall not be discriminated against in any areas of employment, including, but not limited to, job application and compensation procedures, fringe benefits available by virtue of employment, and, to the extent possible, activities sponsored by the County.

B. Persons with disabilities shall not be limited, segregated, or classified in a way that adversely affects their employment opportunities or status.

C. The County shall not knowingly participate in a contractual or other arrangement or relationship that would subject qualified applicants or employees with disabilities to discrimination prohibited by the ADA.

D. The County will make reasonable accommodations to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless the accommodation would impose an undue burden on the County. After a qualified individual requests reasonable accommodation, the County will make every reasonable effort to determine and provide the appropriate accommodation.

E. The County will not coerce, intimidate, threaten, harass, or interfere with any individual exercising or enjoying his or her right under Title I of the ADA or because an individual aided or encouraged any other individual in the exercise of rights granted or protected by Title I of the ADA.

F. Any person with a disability who believes he or she has been discriminated against by an employee and/or a program sponsored by Kent County should contact the Personnel Director, who serves as the County's ADA Coordinator. Employees can file a complaint with the Personnel Director, the State Human Relations Commission, the federal Equal Employment Opportunity Commission (EEOC), or file suit in federal court. Disabled persons or potential employees may report the complaint to the ADA Coordinator, the State Human Relations Commission, or the federal Equal Employment Opportunity Commission (EEOC). Current employees are encouraged to seek resolution of all perceived actions of discrimination by contacting the Personnel Director, or, in his/her absence or implication, the County Administrator. All such complaints will be promptly investigated.

G. All County employees are directed to comply with this policy regarding the ADA, and failure to do so can result in disciplinary action, up to and including termination.

KENT COUNTY CODE:

§ 68-7 **B. (2)**

There shall be no **discrimination** against any person seeking employment or employed in the service of Kent County because of political or religious affiliation or belief, national origin, race, color, sex, age, pregnancy, marital status, veteran status or disability.

Kent County is Committed to Equal Opportunity in Employment and the Provision of Services

1) Kent County Levy Court does not discriminate against any person or persons with a disability or handicap, nor does Kent County exclude or deny disabled

person(s) from access to or participation in any program, service, activity, or employment.

Any disabled or handicapped person who believes he/she has been discriminated against by any department, division, agency, office, section or employee under the control of Kent County Levy Court should contact the Kent County Personnel Director as the *Section 504 Compliance Officer* at (302) 744-2310 or Room 213 in the Kent County Administrative Complex at 555 Bay Road, Dover, Delaware, 19901.

Upon advance notice of at least three work days, persons who are visually or hearing impaired will be provided all information necessary to understand and participate in programs provided by or through Kent County Levy Court.

2) Kent County Levy Court does not discriminate against any person or persons seeking employment or services of Kent County because of political or religious affiliation or belief, national origin, race, color, sex, age (40+), pregnancy, marital status, veteran status, disability, sexual orientation, or genetic information.

Any person who believes he/she has been discriminated against by any department, division, agency, office, section or employee under the control of Kent County Levy Court should contact the Kent County Personnel Director at (302) 744-2310 or Room 213 in the Kent County Administrative Complex at 555 Bay Road, Dover, Delaware, 19901.

Please direct any concerns or complaints about the conduct of Kent County Levy Court employees to the Kent County Personnel Office at (302) 744-2310 or Room 213 in the Kent County Administrative Complex at 555 Bay Road, Dover, DE 19901. Complaints will be investigated and appropriate action taken as provided under Kent County Ordinance and/or the State Code of Conduct.

3) The Delaware Discrimination in Employment Act prohibits discrimination against any employee based on pregnancy, childbirth, or related condition, including, but not limited to, lactation. If a County employee believes that she has been subject to pregnancy discrimination, please inform the Personnel Office as soon as reasonably possible. Kent County Levy Court is committed to providing a workplace free to discrimination and harassment, and will take prompt action to investigate and address any such allegations.

The Delaware Discrimination in Employment Act also entitles employees to reasonable accommodation of known limitations related to pregnancy, childbirth, and related conditions, provided that the accommodation does not impose an undue hardship on the employer. An employee need not be disabled to request a reasonable accommodation related to pregnancy, childbirth, or a related condition(s). If an employee suffers from a limitation that prevents her from performing the essential duties of the job, please inform a supervisor and the Personnel Office so that we can promptly begin the process of identifying a reasonable accommodation. Employees are

encouraged to request a reasonable accommodation by contacting the Personnel Office as soon as possible, before performance problems arise.

(Posted 11/29/17)