



Harassment MythBusters!

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Myth or Fact – Can You Tell ??

- You're minding your own business when Gloria the Gossip from Accounting comes into your office and tells you that "her best friend's next door neighbor" who works in the Plant reports that women are being subjected to pornographic photos, cartoons, obscene jokes and sexual propositions, as well as groping and sexual assaults.
- Hmm. Is this something you need to investigate??
- Because you've always heard that you shouldn't pay attention to "hearsay."



Myth or Fact – Can You Tell ??

- But wait.
- Could that be one of those Harassment Myths??
- Sounds like a job for the Harassment MythBusters!
- It's a tough job separating truth from Harassment Legend, but the Harassment MythBusters are here to serve.



The MythBusters!

- Today, Deborah DeLong and Michael Newman will take on 10 of the most popular Harassment legends.





The MythBusters!

- They will use modern-day legal principles and interesting fact patterns from real lawsuits to show you what's real and what's pure fiction!
- So sit back and watch as your favorite Harassment Myths dissolve before your very eyes.....



Myth # 1

“You should never investigate hearsay. It is up to the employee to tell the perpetrator to stop, and if that doesn’t work, the employee should file a written complaint with HR, providing all the details.”

Myth or Fact ??



Myth or Fact ??





Let's Investigate !

- First we asked the Dial Corporation whether this was the truth or just one of those harassment myths.
- We learned that Dial had paid \$10 million dollars to settle a sexual harassment class action alleging that it had tolerated sexual harassment in one of its plants. Women complained that offensive materials including sexual cartoons, magazines and calendars were openly displayed in the plant.
- Dial argued that it had a policy, investigated complaints and took prompt remedial action. The Court was not impressed.
- Dial knew or should have known what was going on, since it was happening in front of front line supervisors.



It's a Myth !!

- You should investigate “hearsay”, especially if the allegations are serious and potentially involve a number of employees.
- Employees are not required to tell the perpetrator to refrain from offensive conduct.
- Employees are not required to make a written complaint of harassment, and may not even have to make a formal complaint at all.





Myth # 2

“With all the training companies do these days, harassment isn’t a problem anymore. We don’t need to worry about it.”

Myth or Fact ??



Let's Investigate !

- First we asked the EEOC. It keeps statistics on those kinds of things.
- We learned that in 2005, 63.3% of the sex discrimination lawsuits filed by the EEOC contained allegations of harassment, and 46.9% of the race discrimination lawsuits contained harassment allegations.
- Harassment claims outnumbered discharge claims in 2005.



Let's Investigate !

- Then we checked with the Plaintiffs' attorneys. They usually have their finger on the pulse of where the Big Money is!
- Their big news is the \$190 million dollar lawsuit against Toyota.
- [Toyota hit with \\$190M harassment suit](#)
- Woman accuses North American chief with making repeated sexual advances and ruining her career, says other execs failed to act. **May 2, 2006: 7:28 PM EDT**



It's a Myth !!

- Harassment claims are more popular than ever. Every complaint is a lawsuit waiting to happen, and the Plaintiffs' Bar is just waiting for us to make a mistake.

Maury Povich accused of sexual harassment

Show producer seeks \$40 million from talk show host



**Producer claims affair with star;
porn, booze rife on set of show**



Myth # 3

“It’s not unlawful harassment if it happens to everyone.”

Myth or Fact ??



Let's Investigate !

- For this one we checked with Alarm One, Inc., which has just been ordered to pay \$1.7 million to a former employee who was spanked in front of her colleagues in a “camaraderie-building” exercise.
- The jury returned a verdict in favor of 53-year-old Janet Orlando on her claims of sexual harassment and battery.
- The Company claimed it wasn't sexual harassment because both male and female employees were subjected to spankings.
- The jury didn't agree.....



It's a Myth !

- Offensive conduct can be unlawful harassment even if it is directed at all employees, not just those in protected classes.





Myth # 4

“We can’t do anything about it because it happened outside the workplace.”

Myth or Fact ??



Let's Investigate !

- For this we spoke with Receivables Outsourcing, Inc., an Ohio company.
- It recently lost a sexual harassment case in which the actual propositioning occurred away from the workplace.
- The Court held that that fact did not prevent the Court from finding a hostile workplace.
- An employee who is forced to work for or in proximity to someone who is harassing the employee outside the workplace may reasonably perceive the work environment to be hostile as a result.



It's a Myth !

- Harassment can happen outside the workplace – and it usually does.....





Myth # 5

“Guys engaging in horseplay with other guys is not unlawful harassment.”

Myth or Fact ??



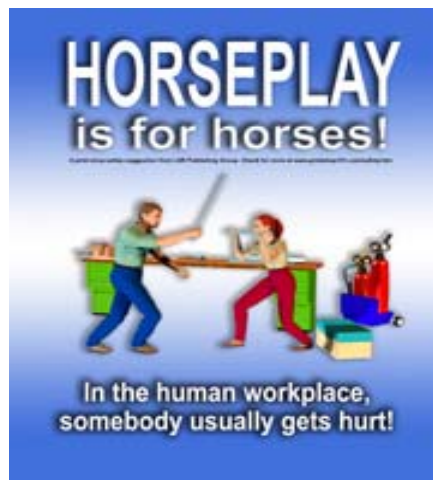
Let's Investigate !

- We spoke to Long Prairie Packing about this.
- It settled a male-on-male class action lawsuit for \$1.8 million. Male workers alleged that they were subject to repeated verbal and physical harassment by male coworkers.
- One worker testified that he was jumped by groups of men who held him down, sometimes in a bin of raw meat or a trough of blood. The worker said the sometimes daily occurrences involved simulated sex acts on him.



It's a Myth !

- Offensive conduct is actionable regardless of whether it is called "horseplay."
- The fact that the harassment is inflicted by someone of the same race, age, national origin or sex is of no consequence.





Myth # 6

“We can’t do anything about it because they aren’t our employees.”

Myth or Fact ??



Let's Investigate !

- For this we spoke to the Gorilla Foundation. It recently settled a million dollar lawsuit brought by two female employees who claimed to be harassed by Koko, the famous female gorilla who communicates through sign language.
- The employees claimed that they were asked to perform 'bizarre sexual acts" with Koko – more specifically they were told to show Koko their nipples, an act the Gorilla Foundation described as a "bonding ritual."
- The women's supervisor would interpret hand movements made by Koko as a "demand " to see exposed human nipples and made it known that if they did not indulge Koko's nipple fetish, their employment with the Gorilla Foundation would suffer.
- **Both women claimed they refused to show Koko their nipples.**



It's a Myth !

- You can be held liable for unlawful harassment by a Vendor, a customer, an independent contractor – and even a gorilla.





Myth # 7

“We can’t do anything about it because it’s a case of “he said, she said”

Myth or Fact ??



Let's Investigate !

- The EEOC weighs in on this one. It takes the position that the employer **MUST** make a credibility determination.
- Where there is a contradiction between the parties or a lack of documentary or eye-witness corroboration, management must make a credibility determination based upon factors such as inherent plausibility, past conduct and motive to falsify.



It's a Myth !

- “He said, she said” situations **MUST** be handled appropriately.
- The fact that the perpetrator denies the conduct is **NEVER** a good reason to not take remedial action if the investigator believes that the perpetrator’s testimony is not credible.





Myth # 8

“It’s not harassment because the perpetrator wasn’t trying to be offensive. That expression isn’t even racially/sexually oriented!”

Myth or Fact ??



Let's Investigate !

- For this we checked with the Atlantic City School District. It recently paid \$450,000 to two secretaries who claimed they were harassed by a comment made to them by the Assistant Superintendent.
- The Assistant Superintendent said "I ride them hard and put them away wet."
- His explanation was that he was using a rural idiom that means someone is tired or worked hard.
- The phrase is taken from the need to cool down a horse after strenuous exercise. Only a mistreated horse is stabled while it is still sweating.
- And this makes it better????



It's a Myth !

- Avoid using idioms and expressions which can be misinterpreted.
- It does not make any difference whether or not the perpetrator intended the remark or conduct to be offensive.





Myth # 9

“It only happened once. That’s not harassment.”

Myth or Fact ??



Let's Investigate !

- For this we checked with the EEOC again.
- They reminded us that single incidents of harassment can violate the law.
- Examples are :
 - ⇒ An actual or depicted noose or burning cross.
 - ⇒ A favorable reference to the Ku Klux Klan
 - ⇒ An unambiguous racial epithet such as the "N-word."



It's a Myth !

- There are certain types of incidents for which there should be "Zero Tolerance."
- One time is once too many.



Myth # 10

“Having a policy, investigating and taking prompt remedial action isn’t enough. We must communicate the results to the complainant, in writing, and thoroughly document what we did.”

Myth or Fact ??



It's a Fact !!

- Document the investigation.
- Send letters to both the Accuser and the Accused informing of them of the results and any remedial actions taken.
- If it isn't in writing, it didn't happen.





It's a Hostile Environment Out There !



"All the other women in the office are suing you for sexual harassment. Since you haven't sexually harassed me, I'm suing you for discrimination."



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