



Loss Control Insights

Harassment vs. Rude Behavior

Sometimes an employee tells an off-color joke or makes a rude comment to a co-worker. The person may not even know that the joke was thought to be offensive, or that the joke was overheard by someone nearby and found to be offensive. In other cases, the comment might be deliberately made in anger. But does such an incident count as harassment?

Courts have consistently ruled that a single verbal comment does not ordinarily make a harassment case. Of course, this doesn't mean such behavior is acceptable in the workplace. The organization should investigate and correct the behavior. If the investigation doesn't find any other evidence of harassment, the incident is unlikely to violate the harassment laws.

Elements of a claim

Typically, offensive comments must form a pattern to become unlawful. The nature of the language is also important. The laws protect employees on the basis of race, gender, and certain other classes, but don't offer protection against rude comments (though such behavior may fall under your workplace violence policy). However, if a confrontation involves derogatory racial or sexual remarks, you should address it before it violates a harassment law.

To count as harassment, the comments must be unwelcome. A woman who tells sexual jokes to co-workers may have a difficult time proving that sexual comments made to her are unwelcome or offensive. However, telling such jokes does not prevent her from making (or winning) a harassment claim if someone says or does something that she finds offensive. Prior behavior must be used carefully so you don't appear to be blaming the victim.

To become unlawful, the conduct must unreasonably interfere with work, or create a hostile or intimidating work environment. This is why one or two verbal comments generally won't establish a claim. However, severe or escalating behavior can become unlawful after fewer incidents. Unwanted physical contact can become hostile or intimidating much sooner than verbal comments, and could be unlawful harassment after only one or two incidents.

Correcting offensive behavior

Any offensive behavior should be taken seriously because the longer it goes on, the more likely it will form a pattern. Companies are obligated to stop such behavior before it violates the law. Supervisors should be able to recognize and address harassment, and employees should know how to report such behavior. The organization should investigate offensive conduct because you never know whether:

- the incident was isolated, or if the conduct has been going on for some time; or
- the person complaining was the only one affected, or if others have also been affected but simply haven't come forward.

Policies on harassment and workplace violence help you investigate complaints and take appropriate action against offenders. A rude comment made in anger may not be illegal, but it does affect the workplace and should be addressed. You should expect employees to conduct themselves professionally at all times so that incidents which don't fall under harassment or violence policies can still be addressed.

Preventing retaliation

Finally, keep in mind that many retaliation claims are won even if the court doesn't find enough evidence to support the underlying harassment claim. Make sure that actions taken don't adversely affect the victim. For example, a retaliation charge can be filed if the complaining person is unwillingly transferred or given leave in order to separate the people involved.

Any action taken should be effective in stopping the harassing behavior, and should be consistent with the organization's legal obligations for addressing such behavior. The organization's response must also be applied consistently in all cases. If you document actions and show that they're consistent with organization policy, with legal principles, and with actions taken in previous cases, the organization should be protected — and should be a better place to work.