THE JOURNAL
The Magazine For Manufactured & Modular Housing Professionals

Sexual Harassment Claims:

What MHC Owners & Managers Need To Know

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The following is a brief overview of federal and state law as it pertains to sexual harassment claims that can be brought by employees, independent contractors, vendors, and members of the public against MHC owners and managers.

The Law and Sexual Harassment

Sex harassment in the work place is a form of illegal sex discrimination and is absolutely prohibited by both state and federal law. It has become the most common form of work place harassment. Any unwelcome sexual advance in the work place, either verbal or physical, is considered sexual harassment.

Any such advance or conduct by an employee, independent contractor or vendor may be unlawful if it affects an individual's employment, interferes with that employee's work performance or creates an intimidating or hostile work environment. California and numerous other states have expanded the scope of sexual harassment to include pregnancy and gender identity issues.

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Federal and state law recognize that sexual harassment in the work place often produces in employees feeling of anger, frustration, shame, depression and in more extreme cases, post- traumatic stress disorder. As an MHC owner or manager you should know that the law governs all work place relationships. In addition to employees, it covers the relationship between your employees, independent contractors, vendors, outside coworkers, supervisors and your park residents.

Both an employee who is accused of sexual harassment and the employer who is responsible for that employee's supervision may be liable for damages to the victim. Of particular importance is that fact that an employer may be held strictly liable where a supervisor is accused of harassment even when the employer was unaware of the harassment.

In the event that an employee registers a complaint based on alleged sexual harassment, their employer may not retaliate against that employee in any way. This would include any treatment of that employee that would be likely to dissuade the employee from making the claim, a poor performance evaluation, an unfavorable work assignment or the denial of a promotion.

The damages that may be recovered by an employee against another harassing employee or the employer include:

1. The recovery of back wages and benefits;
2. The recovery of litigation fees and costs;
3. Order requiring the rehire of the employee; and
4. The recovery of damages for emotional distress and lost reputation. In certain states unlimited compensatory and punitive damages are also allowed and the employer may be ordered to undergo specific sexual harassment training.

What is Sexual Harassment?

There are two basic types of sexual harassment: Quid pro quo (an instance where a supervisor conditions a job benefit on sexual activity); or hostile work environment (where there is a pervasive environment of harassment or innuendo that interferes with an employee's performance). The law recognizes that a single incident of sexual harassment, if severe, can constitute sexual harassment in the work place. Of course, a series of less severe incidents occurring in the work place, when taken together, may constitute sexual harassment as well. The key to determining whether or not conduct rises to this level is to determine whether or not the conduct negatively alters the employee's work environment in a material way. These determinations will be evaluated against a "reasonable person standard". A judge or jury deciding such a case would typically be asked to place a "reasonable person" in the shoes of the alleged victim for the purpose of evaluating whether or not a reasonable person would be injured in a similar way and to the same degree as claimed by the alleged victim.

It is not necessarily significant that the offending party is of the same or opposite sex as the victim. Sexual harassment can take place between persons of the same gender and the same or different sexual orientation.

Sexual harassment can be found in various forms of speech, including routine conversation, the giving of compliments, innuendo, off- color jokes and embarrassing personal inquiries. The common thread is that this speech is sexual in nature and unacceptable to the vic-

tim.

Of course, general inoffensive comments about a person's appearance or personal circumstances may be acceptable so long as those comments do not unreasonably interfere with an employee's work environment. A good rule of thumb is to ask yourself whether or not the comment that you are about to make to an employee would be acceptable if your spouse or immediate boss were present.

Generally, remarks constituting sexual innuendo are always inappropriate and therefore, illegal. Jokes involving a person's sexuality, appearance, orientation, or bodily functions are also usually inappropriate and illegal. It is entirely predictable that such jokes will be offensive to one or more employees who may be listening and therefore unreasonably interfere with their working environment. Remarks of a personal nature including an employee's sex life, sexual preference, history, etc. are also off-limits and should be avoided in every instance.

Sexual harassment constituting quid pro quo amounts to illegal sexual favoritism. An employee who is offered benefits in exchange for sexual favors; denied benefits for the refusal to exchange sexual favors; and assignment and compensation benefits in exchange for sexual favors are all illegal sex discrimination.

Non-verbal harassment can also constitute illegal work place activity on the part of the employer. Examples of this type of behavior include staring, leering, sexually oriented hand gestures, invading personal space, facial expressions and personal gifts of a sexual nature. Of course, unsolicited or unwelcome physical contact of a sexual nature is categorically prohibited. This type of behavior includes any unwelcome touching, blocking, or hazing.

It is important for MHC owners and managers to be aware of the fact that they may not allow displays of sexually provocative material to exist in their work places. This includes the display of such posters, signs, cartoons or pictures in the work place. Unwanted personal letters, sexually oriented emails or texts are also illegal and may form a sound basis for a sexual harassment claim.

Where possible, personal relationships in the work place should be avoided. The risk of such of relationships is that they represent a potential claim of harassment against the employer after the break-up; they expose the employer to the claim of adverse or preferential treatment; and such relationships may prove embarrassing to others in the work place who are exposed to that relationship.

Investigating a Claim

As an MHC manager, you may be supervising multiple employees, independent contractors and vendors on a day-to-day basis. You may be the first person to receive a complaint. You may be in a position to respond constructively to such a complaint and potentially keep your company and the owner of the park free from liability. As a park manager, you should always contact your immediate supervisor and the park owner so that they are aware of the alleged conduct and the steps being taken to address and resolve the claim. It may be advisable to retain the services of a law firm specializing in employment law at an early juncture to initiate and coordinate the investigation of a sexual harassment claim in the work place. In this way, much of the investigation can be managed at a professional arms-length, while ensuring that much of the information received remains confidential and protected from later discovery in the event of litigation.

In the event that an employee makes a claim of sexual harassment in your work place, it is very important that the employer (or a law firm on your behalf) take immediate steps to investigate the claim and prevent any further harassment from taking place. Those steps are as follows:

1. Separately interview the victim and the accused. These interviews should be recorded (with the participants' knowledge) or reduced to writing and reviewed and acknowledged by the interviewee;

2. The employee should pursue other avenues of investigation to determine the facts, including discreet one-on-one interviews with other potential witnesses, review of physical evidence, including correspondence, email's, pictures, etc. and assemble all in the investigative file;

3. Once the employer is reasonably sure about the facts, appropriate and immediate steps should be taken to stop the conduct to ensure that it does not continue;

4. The employer should schedule periodic follow-up meetings with the victim and document the results of that follow-up meeting to ensure that the employer's remedial steps are working; and

5. Ensure that there is no retaliation of any kind against the victimized employee.

An MHC owner or manager should take all reasonable steps to protect the privacy of each individual involved in the investigation. Information about the investigation should only be shared with whom it's necessary to investigate and resolve the claim. You cannot promise complete confidentiality because it may be necessary to share certain information with others to gain a complete understanding of the events leading up to the claim. Only those who absolutely need to know within the company should be involved. You should take every reasonable step to protect reputations while learning the facts.

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