



Understanding Sexual Harassment – and Harassment More Broadly – for the On-Farm Workplace

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Introduction

Human resource management is of increasing importance for today's livestock operations. Several aspects of employee supervision can challenge managers and owners, including the increasingly complex federal and state regulations surrounding employee management. Farm businesses, and in particular livestock operations, which operate year-round and require employee presence on holidays and evenings, offer unique challenges for the prevention of sexual harassment.

According to the Equal Employment Opportunity Commission (EEOC), "harassment is a form of employment discrimination." The EEOC is a US government agency responsible for enforcing federal laws that make it illegal to discriminate against and/or harass employees and/or job applicants. The EEOC is responsible enforcing federal laws relating to discrimination and harassment. Some of those laws which farm business owners/operations should be aware of include:

Title VII of the Civil Rights Act of 1964 makes it illegal to discriminate based on race, color, religion, national origin, or sex. **The Pregnancy Discrimination Act**, an amendment to Title VII, made it illegal to discriminate against women because of pregnancy, childbirth, or a related medical condition. **The Equal Pay Act of 1963** makes it illegal to pay men and women different wages for equal work in the same workplace. Furthermore, the **Age Discrimination in Employment Act of 1967** makes it illegal to discriminate against persons who are 40 or older because of their age. These laws also make it illegal to retaliate against employees who complain about discrimination, file discrimination charges with the EEOC, or participate in investigation or lawsuit regarding discrimination.

American with Disabilities Act of 1990 (ADA) made it illegal to discriminate against a qualified person with a disability. The ADA is applicable to covered entities, or employers, with 15 or more employees. Employers must make reasonable accommodations for the qualified individual, whether that person is an applicant or existing employee, unless doing so would impose an undue hardship on the operation of the business.

State workers compensation laws prohibit harassing an employee to discourage him from filing a claim, harassing her because of a filed claim, or firing an employee who has made a worker's compensation claim.

Likewise, there are state agencies charged with enforcing similar state laws. State laws may differ by state and, in turn, from the federal law. For example, the Illinois Human Rights Act prohibits discrimination based on, in addition to those covered by the EEOC, sexual orientation, military status, marital status, or order of protection status. Therefore, it is important to be familiar with the laws that apply specifically to your operation.

Harassment occurs when an employee is the recipient of offensive conduct. This may include offensive jokes, slurs, epithets or name-calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. To be illegal harassment the conduct must create a work environment reasonable people would find hostile, offensive or intimidating. Generally jokes, minor annoyances, and isolated incidents, unless extremely serious, will not rise to the level of illegal harassment.

Discrimination, on the other hand, occurs when employment decisions such as hiring, firing, pay, task assignments, promotions, layoff, or any other term, benefit, or condition of employment are made on the an illegal basis, rather than on job performance. It is important to remember that harassment could be directly related to acts which would constitute discrimination, negatively affect workplace equity, and may violate your company's policies on workplace equity and harassment. Thus, the best policy is prevention (aka, the best defense is a good offense).

How is the on-farm workplace different?

The on-farm workplace may present unique situations that make harassment claims "more likely" and more difficult to dispute, as constant supervision of all employees is difficult (or impossible). For example, your employees may be showering in and/or out of biosecure barns, working alone in isolated locations overnight or at odd hours, using common bathroom facilities, working over holidays when less people are present (or supervision is limited) or in isolated geographic areas. Furthermore, employees may face language barriers, cultural barriers, and/or challenges associated with what is traditionally a male dominated workplace. As a farm owner or manager, you should be aware of these factors and take steps to mitigate situations where sexual or other harassment may occur. Farms offering changing facilities, laundry facilities, shared bathrooms and/or showers, and with barns in isolated locations should be particularly vigilant.

You are responsible for all parties your employees interact with ...

Of particular interest for farm businesses is that the person responsible for the harassment need not be your legal employee. It could be a client, buyer, or independent contractor – if this is happening in the operation of your business, this could cause concern and/or legal complaint. It has implications for lead by example, condoning behaviors, and could potentially be used to provide evidence of a hostile work environment. While many farmers may contest harassment from non-employees being their responsibility, the possibility that such complaints contribute to a situation that leads to costly litigation does exist. Thus, in order to mitigate the legal and financial risks to the business, it is best to be vigilant with all person(s) interacting within and from outside your business operation.

Definition of Harassment and Examples

While sexual harassment is probably the most notorious form of harassment, farm owners and managers should be aware there are other forms of harassment. The EEOC prohibits various types of harassment and discrimination such as:

- **Age:** Offensive remarks about a person's age that are so frequent or severe that it creates a hostile or offensive work environment
- **Disability:** Mocking an employee for his or her disability to the point that a hostile work environment is created
- **Genetic:** Severe harassment based on genetic information, such as a family medical history
- **National Origin:** Repeated derogatory remarks about an employee's national origin, accent, or ethnicity
- **Pregnancy:** Offensive jokes regarding an employee's pregnancy that create an offensive work environment

- **Race:** Frequent racial slurs or derogatory comments about a person's color
- **Religion:** Severe offensive remarks about an employee's religious beliefs or practices
- **Retaliation:** Offensive remarks made to an employee because he or she reported harassment
- **Gender:** Offensive drawings directed at a transgendered employee that are so severe a hostile work environment is created
- **Sexual Harassment:** A manager makes unwanted sexual advances to a female employee

These above examples are not an exhaustive list, but are meant to illustrate some ways in which harassment can occur. Generally speaking, joking, minor annoyances, and isolated incidents will not be illegal harassment unless they are severe. To be unlawful, the conduct must create a work environment that is intimidating, hostile, or offensive to a reasonable person.

Sexual Harassment

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, or verbal or physical harassment of a sexual nature. Sexual harassment can include offensive remarks about a person's gender, such as about women in general. It is important to remember that the victim and/or harasser may be a woman or a man and the victim and harasser do not need to be of different gender from one another. Simple teasing and minor, isolated incidents are not unlawful. However, sexual harassment becomes unlawful when it creates a hostile or offensive work environment. For example, male employees making inappropriate sexual comments about a female employee, may rise to the level of unlawful behavior depending on the frequency, severity and situation where the comments were made such as the female employee preparing to enter a shower facility. For the wellbeing of employees and protection of your business, it is better to err on the side of caution and strongly discourage comments and behaviors that could form the basis to any harassment or sexual harassment claim.

Steps for Employers

Establish an anti-harassment policy which is known, understood and enforced. Whether you are required to have a written anti-harassment policy or not, having one in place can be a valuable tool to prevent and defend against costly lawsuits. Remember an anti-harassment policy is only valuable if it is enforced. Having the policy in your employee handbook, which is read, understood, and signed by every employee, is a logical place to distribute this information. This makes employees aware of behaviors that are unacceptable and makes employees aware they can report harassment without fear of retaliation. Your anti-harassment policy should define harassment and sexual harassment, explain procedures for reporting it, and outline the consequences of harassing others. A sample employee handbook containing this information, Swine Employee Handbook 2012, is available from the Pork Information Gateway and is shown below. *This sample and other sample policies may not fully comply with your operation's requirements to comply with state and federal laws. Verify the state and/or federal laws applicable to your operation or have the policy reviewed by an attorney prior to making the handbook available to your employees.*

Harassment

It is the goal of (Farm Name) to provide a work environment free of tensions involving matters which do not relate to the (Farm Name)'s operation. The (Farm Name) strongly disapproves of any form of harassment including but not limited to ethnic, religious or sexual harassment involving any of its employees. Actions or remarks involving ethnic or religious animosity, or conduct of sexual nature will not be tolerated.

Employees without fear of reprisal, have the responsibility to bring any form of harassment to management's attention. Complaints concerning harassment will be investigated by (Farm Name) promptly in a confidential manner and the results will be reviewed with the persons involved. Disciplinary action, up to and including discharge, will be taken against any employee engaging in any form of harassment.

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Sexual Harassment

Sexual harassment is a form of misconduct that can undermine the integrity of the employment relationship. No employee - male or female - should be subjected to unsolicited and unwelcomed verbal or physical sexual overtures or conduct.

Sexual harassment, whether committed by supervisory or non-supervisory personnel, is specifically prohibited.

(Farm Name) is responsible for taking action to effectively deal with all acts of sexual harassment occurring in the workplace or as part of the employment relationship, regardless of the manner in which it becomes aware of the conduct. This includes the acts of supervisory or management personnel, non-management employees and third- parties.

Sexual harassment is defined as either:

1. Unwelcome sexual advances or requests for sexual activity by a (Farm Name) employee in a position of power or authority to another (Farm Name) employee, or
2. Other unwelcome verbal or physical conduct of sexual nature by a (Farm Name) employee to another (Farm Name) employee, when:
 - Submission to or rejection of such conduct is used explicitly or implicitly as a condition for employment decisions;
 - The purpose or effect of such conduct is to interfere unreasonably with the work performance of the person being harassed; or
 - The purpose or effect of such conduct to a reasonable person is to create an intimidating, hostile, or offensive environment.

Sexual harassment does not refer to occasional compliments or other conduct or actions that arise out of a personal or social relationship that are socially acceptable and not intended to have a discriminatory effect on employment.

Discipline

Violations of this policy by any employee (management or non-management) will result in appropriate disciplinary action up to and including termination of employment.

If the complaint involves a manager, report directly to the owner or any board member. If the complaint does not involve a manager, report it to the manager.

Upon receiving an accusation of sexual harassment against an employee of (Farm Name), (Farm Name) will investigate and, if substantiated, will initiate the appropriate disciplinary procedures. There is a five-year limitation period from the date of occurrence for filing a charge that may lead to discipline.

An individual who makes an accusation of sexual harassment will be informed:

1. At the close of the investigation, whether or not disciplinary procedures will be initiated; and
2. At the end of any disciplinary procedures, or the discipline imposed, if applicable.

Non-Retaliation

Policy also prohibits retaliation against any person who brings an accusation of discrimination or sexual harassment or who assists with the investigation or resolution of sexual harassment. Notwithstanding this provision, (Farm Name) may discipline an employee who has been determined to have brought an accusation of sexual harassment in bad faith.

Employee training. Consider additional training, beyond knowing and understanding the policies in place on your operation for at least owners, managers, and supervisors on your operation. Ideally, consider including training (or seeking opportunities for training outside of your own operation) for all employees.

Leading by example. Owners, supervisors, and managers should lead by example. Authority figures that harass employees undermine efforts to safeguard the workplace against harassment. More subtle, is the leading by example with regard to the importance of anti-harassment policies. If managers or supervisors providing policy information, leading training efforts, or simply inviting employees to participate in outside training are dismissive and clearly not invested in such training – beyond perhaps “checking a box” for legal protection, employees will take a cue from management as to the lack of commitment to anti-harassment policy.

Fostering communication in a diverse workplace. Owners and managers can foster a more diverse workplace by ensuring language barriers do not prevent employees from understanding what behaviors are unacceptable and their expectations to be free from harassment in the workplace. Special attention should be paid to underrepresented groups or those with language barriers to communication with managers/owners.

If you have questions ...

Federal and state regulations governing employee issues and treatment can be complicated, complex, and change rapidly. Consider having your handbook or policies on harassment reviewed by an attorney familiar with your state’s regulations and your farm business. If you need advice as to how to locate an attorney familiar with agricultural businesses in your geographic location, consider reaching out to local Extension personnel or commodity organizations for recommendations.

The information in this fact sheet is intended general educational purposes. This fact sheet does not constitute legal advice; usage of the material does not create an attorney-client relationship. Anyone seeking legal advice should contact a licensed attorney in the state(s) in which their operation does business.

References

eeoc.gov/laws/types/harassment.cfm

eeoc.gov/laws/statutes/index.cfm

porkgateway.org/FileLibrary/PIGLibrary/References/KOLIVER.PDF

ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2266&ChapterID=64

eeoc.gov/laws/types/age.cfm

eeoc.gov/laws/types/disability.cfm

eeoc.gov/laws/types/genetic.cfm

eeoc.gov/laws/types/nationalorigin.cfm

eeoc.gov/laws/types/pregnancy.cfm

eeoc.gov/laws/types/race_color.cfm

eeoc.gov/laws/types/religion.cfm

eeoc.gov/laws/types/retaliation.cfm

eeoc.gov/laws/types/sex.cfm

eeoc.gov/laws/types/sexual_harassment.cfm

eeoc.gov/laws/types/sexual_harassment.cfm

porkgateway.org/FileLibrary/PIGLibrary/References/Swine%20Employee%20Handbook%202012.pdf

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