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## Hard-Core Offenders

*Egregious employee behavior can lead to expensive lawsuits and crippled employee morale. Here's how to stop it before it starts.*

By **Linda Wasmer Andrews**

### WEB EXTRAS

▣ [HR News Court Report: 'Witch Hunt' Backfires: Transsexual Can Proceed with Discrimination Claim](#)

▣ [HR News Court Report: Lax Investigation of Discrimination Claim Justifies Hefty Punitive Damages](#)

▣ [Employment Law Information Network](#) (external link)

▣ [Workplace Bullying and Trauma Institute](#) (external link)

▣ [Equal Employment Opportunity Commission](#) (external link)

▣ [EEOC Youth@Work Initiative](#) (external link)

▣ [December 2004 HR Magazine](#)

Most workplace harassers, bullies and abusers gradually inch over the line that separates acceptable and unacceptable conduct. Occasionally, though, someone bolts across that line with such audacity that you're left shaking your head in stunned disbelief.

That's the way "Carol" still feels three years after interrupting a meeting between two co-workers in her office. She says one of the men stood up, yelled at her and literally kicked her out of the cubicle.

"I flew across the room and fell over another co-worker's desk," she says. "I was mortified. I fled to my own cubicle, sobbing hysterically out of shock and in great pain." Carol says she sustained a "sacral contusion"—a bruise near her tailbone—but the more serious injury was to her sense of trust and safety.

"When my supervisor asked this man why he kicked me, he explained that he was under a great deal of stress from his divorce and took it out on me," she says. "They basically just slapped his hand and told him not to do that again. They refused to fire him, and I didn't feel safe coming back to work as long as he was still in the office."

Ultimately, Carol—who, like others in this article, prefers not to be identified—lost her job. She says this physical confrontation, combined with another incident involving a

client, contributed to the loss of her job. She also says she currently has a workers' compensation suit pending.

Outrageously egregious conduct frequently carries a steep price tag for employers. At times, companies even may be hit with punitive damages, which are intended both to punish the company and to deter others from similar conduct. In such cases, the legal damages alone can soar into the millions.

But even when no legal action is taken, extreme misbehavior can poison morale—decreasing productivity, increasing absenteeism and turnover, driving up health care costs for stressed-out employees, and generally dragging down the company's bottom line.

It doesn't have to be this way, however. The sooner you spot the warning signs of egregious behavior, the better your chances of being able to stop it before it starts.

### Over-the-Top Costs

Unfortunately, it's easy to become complacent, to fall into the trap of assuming that "it couldn't happen here"—at least until it actually does happen at your workplace. Before you know it, your company could be paying hefty financial penalties for employees' outrageous conduct. Consider these examples of unacceptable workplace behavior—and the prices employers paid because of them—as reported recently by the U.S. Equal Employment Opportunity Commission (EEOC):

- Seven Afghan Muslim employees at two car dealerships in Solano County, Calif., said they had been harassed and were called offensive names such as "the bin Laden gang," "sand niggers," "terrorists" and "camel jockeys." Their suit resulted in a \$500,000 settlement with the dealerships.

- A major soap manufacturer wound up paying \$10 million after it was alleged in a lawsuit that about 100 female employees had been sexually harassed—including being propositioned and groped, for example—at one Illinois facility.
- An 18-year-old male salesclerk for a baby products retailer in New Jersey alleged that he was subjected to a sexually hostile environment—he was called “fag,” “faggot” and “happy pants,” and he was forcibly stripped of his trousers by co-workers. The retailer settled for \$205,000.

Of course, even when litigation isn't an issue, extremely offensive or abusive behavior has a price. “I believe that legal liability is actually the least of the concerns,” says Craig Pratt, SPHR, a management consultant in Oakland, Calif., and co-author of *Investigating Workplace Harassment: How to Be Fair, Thorough and Legal* (SHRM, 2002).

“I think far and away the biggest impact is what happens to people's motivation,” says Pratt. “If you've ever been in a situation where you feel offended by the behavior of a co-worker—especially if you feel intentionally targeted—you know that you can't bring your best effort to work. Emotionally, intellectually and behaviorally, you're just not going to be all there.”

Persistent harassment or abuse can cause long-term stress in its victims, in turn exacting a mental and physical toll. In vulnerable individuals, the results are occasionally devastating. “Cindy,” for instance, is a former English teacher who says she was subjected to systematic intimidation by a school official. “He stalked me on the job,” she says. “He got in my face and screamed at me,” she says. “I went from poised and self-possessed to acting like a battered wife at work.”

Cindy says the scare tactics were combined with “an arduous workload, disparate treatment, stabs in the back and innuendos to others that I was losing it—and, by God, I did!” Eventually, she suffered what she calls a “nervous breakdown.” Her therapist diagnosed it as post-traumatic stress with a conversion disorder—a psychiatric condition in which emotional distress gives rise to very real neurological symptoms. In Cindy's case, the symptoms took the form of brief, involuntary muscle twitches that a decade later still affect her ability to speak and eat.

Targets of abuse such as Cindy and Carol are not the only ones who suffer, however. Co-workers who are bystanders may become stressed-out, too. In addition, “employees who observe or hear about harassment that goes unchallenged may feel anxious, fearing that they will be next, or depressed, feeling like the organization doesn't care about its employees,” says Kathleen Rospenda, a psychology professor at the University of Illinois at Chicago. Work soon becomes the last place they want to be.

Says Rospenda: “Unchecked harassment creates a climate of disrespect”—and that's not a climate conducive to high motivation or a person's best effort.

### Trends To Avoid

Mistreatment at the hands of co-workers or supervisors is nothing new, of course. Certainly, the lecherous male boss who can't keep his eyes and hands off the female staff has been around for centuries and is still going strong. However, other prime targets for harassers and abusers may shift with the political winds. Be alert for these emerging trends in workplace victimization:

**“Homosexual” victims.** In many workplaces, the harshest abuse is reserved for individuals who are perceived as homosexual—regardless of whether they are or are not.

The majority of such cases seem to involve male-on-male harassment, says Dale Carpenter, an associate professor at the University of Minnesota Law School who specializes in sexual orientation

### Good Employees Gone Bad

Egregious acts are usually committed by chronic offenders. Occasionally, though, a model employee will suddenly snap. James Stone, a labor and employment attorney at the McDonald Hopkins law firm in Cleveland, recalls one such incident:

“An employee deliberately drove through a large flock of birds in the parking lot, killing many. Other people, including nonemployees, observed the event. It was a rather gruesome situation, and the employee was fired on the spot, with no investigation at all.”

It turned out the employee was a military veteran who apparently had suffered a wartime flashback. As a result of the hasty discharge, “the employer was left dealing with a lawsuit and a costly settlement,” says Stone. “In general, with this kind of egregious conduct, it's best to put the employee on suspension with or without pay. It's easy to overlook mitigating factors when extreme conduct occurs. Nevertheless, sometimes they're present, and a little time allows the company to consider those factors and make a reasoned, rather than an emotional, decision.”

(For more information on responding to potentially violent actions at work, including the potential repercussions of immediate terminations, see the HR Magazine November 2002 cover story, [“Bulletproof Practices.”](#))

issues.

Carpenter also believes that such male-on-male harassment is often more severe than other types. "I think it's probably accurate to say that such harassment tends to be especially virulent and frightening to the targets," he says. "There's typically more physical intimidation and more relentless teasing involved."

Carpenter recommends watching for teasing that is based on "an individual's failure to conform to gender expectations, such as calling a man a 'sissy.' That's a warning signal that an illegal environment of harassment may be in the process of being created." (For a look at recent cases in which employees successfully sued on the basis that they were discriminated against for failing to meet gender stereotypes, see "[Religion vs. Sexual Orientation](#)" and the [Court Report](#) section in the August 2004 issue of HR Magazine.)

**Teenage victims.** A spate of recent lawsuits has involved teenage plaintiffs, some of them young girls who were groped, asked for lap dances or even raped. "We had one district office where all but one of the cases litigated in a year involved young workers," says Naomi Earp, vice chair at the EEOC. That set off alarm bells at the agency, which launched a new Youth@Work educational campaign in September.

In some cases, young workers are the victims of egregious abuse by other young employees. In such cases, lack of work experience could be a factor, says Earp. "If you have a 16- or 17-year-old worker with an 18- or 19-year-old supervisor, it could be argued that both the employee and the manager are relatively new to the workplace and may not fully understand the rules of behavior there," she explains. For HR professionals in companies that employ teenage workers, Earp recommends reviewing policies and training to make sure "they speak in a language teens will understand and that resonates with that audience."

It may be particularly important to get that message to teenage workers before summer, when the number of U.S. workers ages 15 to 17 swells to 4 million from 3 million.

**Muslim victims.** "There is something very personal and exceptionally demeaning about being targeted based on your religious beliefs. It just hits home more deeply for folks," says Linda Ordonio-Dixon, a senior trial attorney at the EEOC's San Francisco District Office. Since Sept. 11, 2001, much of the religion-based harassment has been directed at Muslims, and it's a trend that shows no sign of abating soon.

For example, Ordonio-Dixon worked on a case in which four Pakistani Muslim workers at a California steel plant alleged they were ridiculed during their daily prayers, mocked for their traditional dress and called names such as "rag head."

"The harassment went on for a number of years, it was conducted in concert with the supervisors, and there was a significant amount of emotional distress experienced by the claimants," says Ordonio-Dixon. The result: a \$1.1 million settlement. The lesson: Don't ignore fundamental anti-harassment policies and procedures.

### What Was She Thinking?

When confronted with their bad behavior, the worst harassers and abusers often claim they either didn't realize it was unwelcome or had intended it as a joke. "Lisa" says that was the case with her former boss, the editorial director at a professional association who claimed she was joking when she made repeated comments comparing Lisa to a prostitute and a "slut."

But that explanation didn't fly, says Lisa, when the editorial director continued making the comments after Lisa complained.

What drives some people to keep saying and doing such wildly offensive things? Nili Sachs, a psychotherapist in Rockford, Minn., who consults on sexual harassment issues, believes egregious behavior often has its roots in a lack of empathy. "That's the common denominator of all the harassers I've ever interviewed, read about or seen in therapy," Sachs says. Such people can say and do outrageous things that cause intense fear, shame or humiliation because they're psychologically incapable of feeling the other person's pain. They also tend to lack insight into their own motivations.

"These people may have absolutely no idea how insensitive they are," says Sachs. The implication is that many chronic offenders may not be entirely feigning ignorance about the havoc they wreak. When confronting such individuals, you may need to spell out the problem in very clear, concrete terms.

Then there are the co-workers and colleagues who used to be the kids who took others' lunch money and today are still bullies at heart. For these office bad boys and girls, "it's all about controlling another person," says Gary Namie, principal consultant at The Work Doctor, a Bellingham, Wash.-based company specializing in workplace bullying issues. Bullies, says Namie, "don't have control of their own lives."

According to Namie, such people often have deep-seated feelings of powerlessness and low self-esteem. To keep those disturbing feelings at bay, they may go for a cheap power fix by provoking fear, hurt or shame in those around them. The only way to control these controllers is to create a workplace where such behavior simply isn't tolerated.

### **Pro-Harassment Policies**

While the personality of the perpetrator certainly plays a role, egregious behavior doesn't occur in a vacuum. If dealt with promptly and decisively, such behavior often can be nipped in the bud.

On the other hand, if a company fails to respond effectively, anyone who might be prone to cruel or vile behavior may feel that a green light has been given, and the behavior can quickly escalate to the next level.

That's apparently what happened at an auto body shop in Massachusetts, where a female technician working in a shop full of men was repeatedly harassed by a male co-worker. "He was constantly saying vulgar things, making sexual advances, touching her inappropriately," says Eric Parker, a partner in the Boston law firm of Parker Scheer who represented the woman in a lawsuit against the body shop.

Parker says the woman reported the incidents, and her tormentor was fired—only to be rehired. Finally, one day, as the woman was working underneath a dashboard with her legs protruding from the open driver's door, the man knelt down and bit her right between the legs.

Parker says: "The woman was fully clothed, and there was no breaking of the skin, but she suffered considerable emotional anguish as a result of the attack. She was good and scared." The man was later arrested and pled guilty to charges of sexual assault; the lawsuit against the company was settled for \$141,000.

A message that misconduct will be tolerated or even condoned is probably the No. 1 factor contributing to egregious workplace behavior. In this case, the man's rehiring certainly sent a loud and clear signal that there would be no real consequences for sexually harassing a co-worker. By letting one person's offensive behavior slide, a company tacitly encourages not only that individual but also other potential harassers and abusers in the workforce.

"Intentionally or unintentionally, you're setting up benchmarks," says Karen Karr, an employment attorney at the Steptoe & Johnson law firm in Phoenix. "Your employees look to you for guidance on what's acceptable and what's not." The absence of a clear "stop" sign often is interpreted as "go."

At times, a company's inaction may be due to denial that a problem exists or minimization of the problem's severity. At other times, however, it may be symptomatic of a broader lack of respect and concern for employees. In such workplaces, Namie says, "fear is the dominant emotion. Success is defined as a zero-sum competition, in which one person's gain is always at another's expense."

Namie says there may also be an overemphasis on meeting quotas: "The message is, as long as you make your numbers, you're free to do with people what you want."

### **Boys Will Be Boys**

Some of the worst cases of sexual harassment come from workplaces that are male-dominated, where women may be reduced to sex objects and "weaker" men may be mercilessly tormented amidst all the jockeying for the alpha male position.

Lisa Kearney, a psychology resident at the South Texas Veterans Health Care System in San Antonio, has studied this phenomenon. Like many social scientists, she believes it can often be traced to "male gender role conflict"—in other words, the pressure men feel to conform to society's traditional definition of what it means to be a man. She says this definition tends to emphasize power, competition and material success at the expense of emotional expression and a healthy work/life balance.

### **It Couldn't Happen Here**

For the HR person at a company where numbers rule and disregard for employees is rampant, it may be tempting to take a head-in-the-sand approach. In the long run, however, this means not only betraying the human values that draw most people to the field in the first place, but also undermining the company's best interests.

"The first thing to do is get buy-in from the person at the very top of the organization," says Aimee Kaye, president of Sageview Consulting, an HR outsourcing firm in New York. "You want an organization that is free of abusive and hostile environments. But executive management people don't just do what HR people want because it's the right thing. You can't approach it that way. You have to show them how it's ultimately going to affect the bottom line."

That should be easy to do, considering all the potential costs associated with egregious

Harassment, in this theory, is a way of letting everyone know who is powerful—and who isn't.

For HR managers in mostly-male workplaces, extra care may be needed to keep the power plays from getting out of hand. In her research, however, Kearney found that one-time anti-harassment programs may not do the trick. While such programs tend to increase men's ability to recognize harassment, they don't necessarily decrease men's tolerance for it.

Instead, she suggests longer-term training in which employees are repeatedly exposed to messages about the negative impact that harassment can have on both individuals and the workplace as a whole. To make such training more appealing and relevant to male employees, she suggests, package it as part of a broader educational initiative that promises to teach "better ways of managing the stress in your life."

may need to be updated periodically to adapt to the changing times. Two emerging danger zones you may want to address are:

- E-mail, which is all too often used for distributing offensive "jokes" and explicit pornography.
- Home offices or remote satellite offices where employees and their assistants may be operating with very little supervision. Truly egregious behavior may seem like the exception to the rule, but actually it's often the rule taken to its logical extreme. The sooner you get involved, the better the odds you can prevent a relatively minor incident from spiraling into something much more sinister and destructive.

For many HR professionals, this may go somewhat against the grain. "Most of us don't want to impose our own moral judgment on our co-workers. We tend to see ourselves as live-and-let-live types," says Pratt. "But by not getting involved right away, my experience has been that these types of problems can go rapidly out of control. Early confrontation, in my view, is the critical HR practice here."

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behavior. Once you've secured the support of those at the top, it's easier to send a strong message to all those below.

Just having an anti-harassment policy, complaint mechanism and investigation procedure in place isn't enough, however. You need to make sure that they're actually used, which means having safeguards to protect complainants from retaliation.

"For a policy to work effectively, the organization needs to not just say that retaliation is prohibited, but actually model it," says Patricia Eyres, a speaker and consultant with Litigation Management and Training Services in Long Beach, Calif. Once complaints have been investigated and substantiated, appropriate corrective action also needs to be taken. Otherwise, employees get the demoralizing impression that nobody really cares what happens to them at work.

Since the best cure is always prevention, effective anti-harassment training is vital as well. For your policy, procedures and training to be most effective, however, they must be relevant to your workforce. This means they