

# COMBATING SEXUAL HARASSMENT DISCIPLINING THE SEXUAL HARASSER

*By Michael Corum*

## TABLE OF CONTENTS

---

### **Introduction**

### **Chapter One: Defining Sexual Harassment**

- Legal Bases For Prohibition of Sexual Harassment
- EEOC Regulations
- Quid Pro Quo Harassment
- Offensive Environment
  - Sexually Offensive Conduct
  - Persistent
- Objective Instances
  - Unwanted
  - Management Obligations to Prevent
- Case Studies
  - Case One: The Express Male
  - Case Discussion
  - Case Two: The Saucy Scientist
  - Case Discussion

### **Chapter Two: Investigating Allegations of Harassment**

- Investigating Sexual Harassment as a Management Function
- The Level of Involvement
- A Word About Objectivity
- Evidence in Sexual Harassment Cases
- Interviewing the Victim
  - Detail
  - Documentation
- Interviewing Other Witnesses
  - Looking for Witnesses
  - Questioning Techniques
  - Documentation
- Confronting the Harasser
  - The Rights of the Accused Harasser
  - Interviewing the Harasser
- Searching for Corroborating Information

- Recording Your Own Observations
- Relationship with other Investigations
  - The Discrimination Complaint Process
  - Criminal Investigations

### Chapter Three: Assessing the Facts: Whom do you believe?

- Factors To Use in Assessing Credibility
  - Detail and Consistency of the Story
  - The Inherent Probability of the Story
  - The Character and Past Actions of the Players
  - Reason for Bias
  - Corroboration
  - Attitude
  - How Quickly Did the Person Complain or Mention the Incident to Others?

### Chapter Four: Choosing the Response

- Option A:
  - It is Not Sexual Harassment and Requires No Action
  - Bad Language
  - Prime-Time Adult Jokes
  - Asking Somebody Out
  - Innocent Compliments
- Option B:
  - Not Sexual Harassment but Corrective Action is Warranted
- Option C:
  - Borderline Harassment Requiring Warning or Counseling
  - Probing
  - Accidental Touching
  - Excessively Sexual Talk
  - "Innocent" Propositions
- Option D:
  - Formal Discipline for Wrongdoing
  - Sexual Touching
  - Continued Behavior after Being Told No
  - Favorable Treatment in Exchange for Sex
  - Reprisal for Refusing
  - Grossly Offensive Gestures
  - Conduct the Employee Was Warned About
  - Other Actionable Sexual Conduct

### Chapter Five: The Disciplinary Action

- Cause of Action
- Disciplinary Procedures

Applying the Penalty Factors

Factors in Sexual Harassment Cases

Reassignment as a Penalty

Proof of the Charges

Additional Concerns in a Disciplinary Case

Discipline of Military Personnel

Military Disciplinary Measures

The Effect of Retention Policies on Discipline

Differences Between Military and Civil Service Disciplinary Actions

Conclusion