



## Address Harassment Complaints Immediately to Avoid Liability

By TDIC Risk Management Staff

The Dentists Insurance Company reports repeated calls to its Advice Line about harassment of dental staff by patients or vendors.

Federal and state laws forbid harassment of employees, and dentists have an obligation as employers to maintain a safe workplace. Further, dentists can be held liable if a harassment situation is not addressed, according to attorney Christopher Yeh.

"Dentists can be liable because their duty is to provide a harassment-free workplace," said Yeh, a Honolulu-based attorney specializing in labor and employment law. "Their responsibility is to protect employees from harassment by an individual in the work environment, whether it is a coworker or a third-party such as a patient or vendor. Once dentists have notice of harassment, such as a complaint, it is their duty to take reasonable steps to prevent it."

The U.S. Equal Employment Opportunity Commission states that it is "unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature." The commission also notes "harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general."

When it comes to harassment of employees, Yeh said every situation is different. Dentists must apply proportional corrective action depending on the circumstances. If a coworker, vendor representative or patient tells an off-color joke, the corrective action should be reasonable based upon the severity of the situation.

The Equal Opportunity Commission specifies that the "law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious." However, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment. The commission also notes that harassment can happen to either a man or a woman, and the harasser can be the same gender.

Yeh said that the best action for dentists is to have an office policy that defines and prohibits inappropriate behavior. This is best included in your office's employee manual. "The policy should include a definition of harassment as well as examples of unprofessional and rude behavior," he said. Yeh emphasized that

there should be at least two people in the dental office to whom employees can report regarding harassment, and that employees must be assured there will be no retaliation for reporting harassment.

Once a dentist or office manager has notice of harassment, either by an employee reporting the situation or by observation, the harassment must be investigated as soon as possible. "Dentists must determine the facts of the situation and if office policy was violated," Yeh said. Office managers must be trained to take immediate corrective action in the event of employee harassment.

To investigate a harassment complaint, talk to the employee who filed the complaint and guarantee that he or she is safe from retaliation. Reassure the employee that he or she did the appropriate thing by reporting the incident. Inform the employee that you need to know immediately about any retaliation or ongoing harassment. Ask the employee to recount the situation while you take notes about dates, times, situations and witnesses. Clarify any vague or unclear comments.

Investigating a harassment complaint against a patient is a delicate situation, and TDIC advises that the dentist interview the patient accused of harassment with the same respectful approach given the employee and any other witnesses. Ask open-ended questions, seek specific facts and take objective notes.

Once you have interviewed all parties, consider the degree of the offense. If it is not a completely offensive situation such as inappropriate jokes or comments, talk to the offender. Provide examples of the inappropriate behavior and what will happen if the behavior continues. If the offender is a patient, advise him or her that dismissal from the practice will occur if the behavior does not stop. Note the situation in the patient's chart using objective language and facts.

If the offense from a patient or vendor employee is more serious, such as sexually explicit language or touching, TDIC advises dentists to dismiss that patient or stop doing business with that vendor. The dentist can also consider calling the vendor and requesting a different representative. In this situation, call TDIC's Advice Line at 800.733.0634 to discuss the situation with an analyst before taking the next step.

**TDIC's Risk Management Advice Line can be reached at 800.733.0634.**

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