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In several recent court cases, agricultural operations have either settled sexual harassment suits or have been required by jury orders to pay considerable amounts. In all cases, agricultural employers were sued by the Equal Employment Opportunity Commission (EEOC) on behalf of employees alleging sexual harassment and retaliation. Retaliation greatly aggravates the situation and typically increases both the awards and the likelihood of an employee being able to prove harassment.

On January 24, 2005, The Wall Street Journal reported that one of California’s largest agricultural businesses, Harris Farm, had been sued by the U.S. EEOC. This was the first agricultural case that was not settled outside of court. In 1999, lettuce grower Tanimura & Antle settled allegations of sexual harassment by agreeing to pay nearly $1.9 million. In the Harris Farm case, the jury awarded almost $1 million to a farm worker who alleged that she was physically and verbally attacked by a supervisor, verbally abused by co-workers, and then retaliated against by the company after she reported the harassment. See http://www.eeoc.gov/press/1-21-05.html for more information on this case.

On June 16, 2005, The Washington Post reported on Rivera Vineyards settling a sexual harassment case for $1.05 million. In 2003, the EEOC filed suit on behalf of a group of Latino farmworkers at Rivera Vineyard (California), alleging sexual harassment, retaliation, and job segregation. The complaints went as far back as 1989. In addition to the monetary settlement of $1.05 million, the company agreed to reinstate workers who were terminated wrongfully, hire an outside consultant to handle complaints of harassment, implement anti-discrimination policies and procedures, provide EEO training, develop hiring goals to open positions to women, which were typically filled by men, and report to the EEOC to show compliance. See http://www.eeoc.gov/press/6-15-05.html for more information on this case.
Labor advocates claim these cases are typical of many agricultural operations and interpret the decisions and settlements as a signal to employees to break their silence and no longer tolerate sexual harassment. Every agricultural employer needs to be vigilant to prevent harassment from happening in greenhouses, nurseries, or on farms. Top management emphasis and supervisor training are key to successfully negotiating the caveats of fair labor relations and equal treatment. Supervisors are particularly at risk, because they are the first line of defense in protecting an operation. If a supervisor acts inappropriately, consequences may be even worse, because the supervisor could be held personally liable. Not only will supervisors lose their jobs, but they also may be forced to pay significant damages, in addition to the employer’s charges.

What is “Sexual Harassment”?

Basically, agricultural employers must maintain a workplace free of harassment and intimidation and show reasonable care to prevent and correct any occurrence of sexual harassment. Managers often are not aware that sexual harassment is broadly defined to include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. There are, however, limits to when behavior will be considered harassment. Generally accepted behavior, like an occasional compliment, is not harassment. To determine what is considered sexual and unwelcome behavior, the law takes the perspective of a “reasonable person.” Therefore, there is a considerable gray area. In a case where a woman is the victim of harassment, a “reasonable person” would be another woman. An employee, feeling harassed, needs to make her or his objections known to the offending party. Still, the main responsibility rests with the employer and managers. They need to discourage inappropriate behavior convincingly.

Usually, sexual harassment occurs when submission is explicitly or implicitly made a term or condition of employment, as well as when submission or rejection affects employment-related decisions (e.g., hiring, training, evaluation, promotion, pay increase, discipline, or termination). Another typical harassment situation happens when the purpose or effect of an unwelcome action substantially interferes with work performance or creates a hostile or offensive work environment. Not only do well known “quid pro quo” (tit-for-tat) situations constitute sexual harassment, but also a hostile environment created by supervisors, co-workers, or even—what many managers overlook—non-employees (e.g., customers) are included. Sexual harassment is not limited to women; men can be sexually harassed, too. Also, a 1998 Supreme Court decision included same-sex harassment by men in the definition.

How to Protect Employees?

Some employers have instituted no-dating policies for co-workers or developed formalized “love contracts” that dating employees need to sign. But I recommend that agricultural employers seek a middle ground. Any pressure for sex, touching, groping, suggestive behavior, including provocative clothing, sexual humor, and sexually explicit photographs or computer graphics must be discouraged immediately and forcefully. While it is better to err on the side of caution with any of these behaviors, socially accepted relationships should not be punished nor strongly discouraged.

Every employer needs a clearly stated policy against sexual harassment. Such a policy needs to state that sexually offensive behavior at the workplace will not be tolerated, that it reduces productivity, and diminishes morale. Working together effectively requires mutual respect and professionalism. Employees should be informed that offensive behavior may result in disciplinary action, up to and including dismissal. A complaint procedure must be available for every employee, where the direct supervisor is not the person receiving the complaint, as they may be the offending party. It also is important to take every complaint seriously and investigate confidentially. If a manager or supervisor observes offending behavior, they must discourage it immediately. If an investigation shows evidence of wrong-doing, managers need to follow through with disciplinary action and not turn a blind eye.

Encourage employees to clearly articulate any objections to sexually charged behavior. If talking does not help, it sometimes clarifies the situation to put concerns in writing. Also, employees need to be aware of complaint procedures and whom to turn to if harassment happens. They should know that they can contact upper level managers at any time, if problems occur. An open communication channel will often prevent law suits. Essential to the success of harassment prevention is regular supervisor training and exemplary behavior by top management and owners.

How to Guard Against Retaliation?

Retaliation of any kind against an employee complaining about or trying to prevent sexual harassment makes matters worse. To guard against retaliation, only involve other employees on a need-to-know basis and carefully explain to everybody involved that no adverse action against the complaining employee will be tolerated. If possible, it will be best to separate the accuser from the accused until the investigation is completed. A well-respected manager or supervisor who is not directly involved in the problem situation should be put in charge of the investigation.

A difficult situation develops when an employee who has complained about harassment, has acted to prevent harassment against others, or has helped another employee file a claim later has disciplinary problems, such as violating a company policy, and normally would be subjected to discipline. Because of the potential for retaliation claims, this situation needs to be handled with extreme care. Documentation of any actions taken and the rationale for each action is important. If an employee already is involved in a sexual harassment claim, the employer should consult with an experienced attorney.
before considering any adverse employment action. Any actions undertaken must be adequate according to established company policy and reflect precedence, i.e., equal to how previous cases were handled.

In Short
The best policy is to prevent sexual harassment from happening through training and vigilance. The second best solution is to stop sexual harassment from happening by immediately discouraging any such behavior and having open communication channels between all employees and upper management. If an employee complains, a manager should take this as an opportunity to prevent a dangerous problem from ruining the business. However, not all complaints are justified. Therefore, employers also must respect the accused when dealing with sexual harassment. Finally, to avoid retaliation claims, managers must exercise great care to avert any perception of retaliation.

This material is provided for general educational purposes. It does not constitute legal advice. For more information on sexual harassment go to http://www.eeoc.gov/types/sexual_harassment.html. For information on labor management in Michigan go to Dr. Bitsch’s website: http://www.msu.edu/user/bitsch.