

## Primer 4

### Harassment in a Nutshell

*See it or hear it?  
Report it and document it!*

**Is It or Isn't It?** Last year I got a call from Dan – the head of a pharmaceutical sales group – who asked me to advise him on a little problem he was having with two of his sales managers, a man and a woman. They were colleagues, long-time employees, top earners, and extremely well liked and respected. The problem? Although he couldn't prove it, Dan's "gut" told him that they were having an affair.

Dear reader: does this alleged affair constitute workplace harassment, or hostile work environment, or not?

Tough question. Pose this situation and question to a thousand different employment law attorneys and you'll probably get a thousand different answers. Remember, I'm no attorney, I just work with them. My layman's answer: I don't think so, but it could be considered hostile work environment if one of them directly supervises the other, or their behavior negatively impacts others in the company.

But Dan made it clear to me that they were colleagues of the same rank and that there wasn't even a whisper of gossip about these two having an affair. It was only his gut that was telling him something was going on, nothing else.

My initial response threw Dan for a loop. "I think you should keep your nose out of it," I said bluntly. "It's none of your business if they are having an affair."

"But they're married," he blurted out, "And not to each other! And they both have kids, and, and...well, it's just plain immoral!" Unfortunately for him, Dan was preaching to the wrong choir. I'm not very tolerant of managers who judge their employees' private and personal behavior by their own moral code. So I told Dan to put a cork in his dudgeon and spend his time worrying about the people in his group who were screwing up their work.

"That's totally the opposite of what our legal department told me to do," Dan retorted. "They want to jump on it immediately, to protect the

company from possible litigation.”

Now I was the one thrown for a loop. “If you’ve already been advised by your lawyers,” I asked, “what the heck are you calling me for?”

There was a long pause, then he said quietly, “A second opinion.” adding that he was now more confused than ever about what to do. Talk about bad behavior, people problems and a sticky situation all rolled into one!

Apparently, the company’s attorneys wanted to draw up some kind of legal document for the couple to sign, a “love contract,” they called it. This document would make it clear to the couple that if they were engaging in adulterous acts on company or client property, or arranging to do so on company time or equipment (computers, phones, etc.) and these acts or actions were proven by the company to have occurred, then they would be grounds for disciplinary action, up to and including termination. The document was also intended to indemnify the company from anything that might occur if the relationship ever became public, or soured, or if one of them became a supervisor to the other.

On hearing this, I did what every smart consultant should do, I chickened out and deferred to the lawyers.

But I challenged Dan to consider how asking the love birds to sign such a contract would impact his business. “Well, it’s certainly going to be embarrassing for them.” he said, “And it will probably hurt their secret relationship – which might not be such a bad thing for them or their families.” “Dan,” I cautioned sharply, “you’re moralizing again. Stick to the business consequences of this particular course of action.”

Dan cursed down the phone, admitting that this was “one hell of a sticky situation!” (I didn’t challenge him on the cursing – you’ve got to know when to pick your fights.) As he thought out loud about it, Dan became certain that being asked to sign such a document would “really freak them out.” They could resign because of it, he mused, and that would really hurt business. If they signed the contract and stayed with the firm, then their sense of humiliation and shame and overall emotional state might impact their ability to do their jobs as well as they had been doing, at least for a while. “That could really hurt the team, and our clients, and our revenues.” Now he was thinking like the good manager that I knew him to be.

In the end Dan decided to reject his lawyer’s advice *and* my advice. As we talked, he came up with a third option, which was to privately