



## JUST IN CASE

Email newsletter from Bovarnick & Associates

December 2008

## Bovarnick Appears on Money Matters

Rob, who will appear on CN8 business show "Money Matters" for the second time on New Year's Eve on the following Channels:

- 2-Comcast Malvern-9:30 p.m. December 31 (Wednesday)
- 21-Comcast Radnor- 10 p.m. December 29 (Monday) and 4:30 p.m. December 30(Tuesday)
- 190- Comcast Plymouth Meeting, 7 p.m, December 30 (Tuesday) and Lower Merion 6:30 p.m January 1 (Thursday)

If you miss the show you view it Press section of the website, [www.rbovnick.com](http://www.rbovnick.com).

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# How to Avoid Holiday Harassment

## "ASK THE ATTORNEY"

by  
**Robert M. Bovarnick**  
The Bulletin

Sexual harassment is harassment or unwelcome attention of a sexual nature. It includes a range of behavior from mild transgressions and annoyances to serious abuses. Sexual harassment can occur in a variety of circumstances. Some polls show that upwards of 25% of women report that they have been harassed in the workplace, with more than half of those reporting emotional harassment or inappropriate touching.

Essentially, the rule is that sex-specific and derogatory language, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment if the conduct is unwelcome, severe, and pervasive enough that it creates an objectively intimidating, hostile, or offensive work environment and the worker subjectively finds it abusive.

These factors can only be determined by looking at all the circumstances, which may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.

The harasser can be anyone, such as a supervisor, a client or a co-worker.

The victim does not have to be the person directly harassed but can be anyone who finds the behavior offensive and is affected by it. While adverse effects on the victim are common, this does not have to be the case for the behavior to be unlawful.

The harasser can be male or female. The victim can be male or female. The harasser does not have to be of the opposite sex. The harasser may be completely unaware that the behavior is offensive or constitutes sexual harassment or may be completely unaware that the actions could be unlawful.

Sexual harassment generally falls into two categories: "quid pro quo" harassment, or the explicit tying of job benefits to sexual acts or submission to sexual conduct, and hostile environment harassment, or the active creation of an offensive work environment. Early on, most of the claims heard by the courts were the quid pro quo harassment claims, typically characterized by a supervisor's demand for sexual favors in exchange for an economic benefit, such as a raise or a promotion.

Hostile environment sexual harassment claims were first

recognized in 1986. The Supreme Court said that even absent economic consequences, harassment (in that case inappropriate touching) could constitute a violation of the law when it became "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."

The question then comes up as to when the employer is liable for the actions of the employees. Initially, the Supreme Court held that an employer is responsible for the supervisor's misuse of his authority. However, if the harassment was never reported by the subordinate employee, can the employer still be liable?

The Supreme Court answered this question by creating a defense to the employer to avoid sexual harassment liability that had occurred without the knowledge of the employer. The employer must prove two parts of the test: (1) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and (2) that the employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm. In other words, an employer should not be held responsible for the harassment if the employer had an effective anti-harassment policy in place and the employee failed to use it.

If there is a case for sexual harassment, the damages can include the following: wage and economic loss (back pay); reinstatement, front pay and, in certain circumstances, loss in earning capacity; medical and psychiatric care and other out-of-pocket losses; pain and suffering (anguish and humiliation); punitive damages on a showing of willfulness; and, if allowed by statute, attorney's fees. Under federal law, noneconomic compensatory and punitive damages are capped on a sliding scale, depending on the size of the employer.

In conclusion, it is important for companies to have an effective anti-harassment policy and make sure all employees are aware of it.

## Five Books to Read the New Year

by:  
**Marc Kramer**

As we enter the New Year, it's a good idea to consider a variety of books that can provide ideas to improve your prospects for 2009. Here are five books to consider:

- "Billion-Dollar Lessons" by Paul Carroll and Chunka Mui. There are usually three types of business books- "How to," "Inspirational" and "Biographies of business successes." This book is all about failures and spectacular ones at that. I think you learn more from failure than you do from success, so this is a great read.
- "Marketing to the Affluent," by Dan Kennedy. This is part of a series of books by Entrepreneur Press called "No B.S." The author talks about understand what motivates the rich to purchase. He provides a process and methodology for developing the right pitch and prices to get people with six figure incomes to part with their cash for any object or service.
- "Design and Launch a Boutique Online in a Week," by Melissa Campanelli. My wife has lots of friends who design and make their own jewelry, pocket books, purses and dresses. This book would show them how to develop their own online shop to sell their products. The book takes you beyond just setting up store with a shopping cart. It provides the reader with also how to attract shoppers and close sales.
- "How to Start, Run and Grow Your Own Profitable Business," by James Stephenson with Rich Mintzer. With the economy going sideways and the average American not knowing whether they will have a job, a home based business looks very enticing. This book provides the step by step process for picking and building a business.
- "Relevance: Making Stuff that Matters," by Tim Manners. Marketers have been trying to get people to buy things they don't need instead of what would be useful. This book is about identifying trends and understanding what customers need in order to develop products that people want.

Reading is one of the best ways to generate new ideas and reinvigorate yourself and your business.

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I enjoy being able to share with everyone the Firm's continuous growth and development. Whenever you get the chance, pick up the phone or send me an email and let me know how you are as well.

**Sincerely,**  
**Rob**