

“CUSTOMER SERVICE” DOES NOT INCLUDE HARASSMENT PRIVILEGES

QUESTION: I manage a toy store on the mall. We have a system where employees take turns standing outside the store entrance and playing with some of our toys, demonstrating them to mall customers as they pass by. And as is to be expected, people sometimes stop and talk to the employees about the toys and about our store in general.

That’s exactly what we want, and lately we’ve gotten a rather unexpected bonus: One of our younger male employees has started to build quite a following. Teenage girls often congregate around him when he is demonstrating yo yo’s or hula hoops. They cheer him on and flirt with him, and some of them have even thrust notes into his hand. As time has gone on, some of the flirting has become more aggressive and has included remarks about his appearance and requests for “play dates.”

I can certainly understand why the girls find him attractive, and I was sure he was flattered by all the attention - what young man wouldn’t be? That’s why I was shocked yesterday when he sheepishly asked to be excused from what he called, “outside play duty.”

At first I thought he was kidding, and I laughed, “all that female attention is getting you down, huh? Boy, I wish I had your problem!” But he then turned red-faced and muttered, “I’m sorry, I just get embarrassed when they say those things to me.” I then playfully nudged him out the door and said, “Get out there buddy - your public awaits!”

He called in sick this morning, and now I’m a bit nervous. I don’t understand why he wouldn’t just love all this female attention. But even if he doesn’t, does he expect me to give him different duties than everyone else just because he is uncomfortable? And surely he doesn’t expect me to ask his “regulars” to stop coming around, does he? It’s my livelihood we’re talking about here!

ANSWER: You’re absolutely correct to be concerned about your livelihood, but you might want to think about it in a different way:

As we’ve discussed in previous columns, the law protects employees from workplace harassment. (See our website at www.oregon.gov/boli/ta for more information). While most cases involve alleged harassment by supervisors or co-workers, there have also been times where the unwelcome actions came from third parties – customers, vendors, maintenance workers and/or even members of the public.

For example, a delivery driver who regularly cracks dirty jokes or makes suggestive comments towards a front desk receptionist is clearly risking liability for himself and his employer through such conduct. But the receptionist’s employer can also be sued as a “third party” if the employer knew or should have known of the activity but did nothing to stop it.

In analyzing such a case, a court or investigative agency would need to consider whether the employer reasonably had the ability to stop the behavior. For example, how much control did the employer have of the facility or premises? Did the employer even know who the offending party was? And if so, was the employer in a position to stop that person's behavior or otherwise end the harassment?

Unfortunately, in your case, it seems that you may have actually added to the problem by not taking your employee's concern seriously. We suggest not only that you get legal counsel, but that you also think about ways to alleviate your employee's anxiety about being placed in this position. Options you could consider include: complying with his request and assign him "inside" duties, or perhaps offering him a different shift. You could also directly approach his admirers and ask them to stop making their comments. With a little thought and input from your attorney, you will probably come up with even more solutions. And as with all such situations, you must be very careful not to make your employee think he is being punished or retaliated against in any way because he expressed his discomfort with the situation.

For more information on this and other important issues affecting Oregon employers, please visit our website. You can also call us at 971-673-0824.