

# Education

By Jennifer Padilla

# Sexual Harassment in the Workplace

*A Conversation with Stephanie Ramsey*

Sexual harassment has been a problem that continues to plague workplaces across industries – and funeral homes are no exception.

The #MeToo movement spiraled in late 2017 in an attempt to break the stigma and promote dialogue of unwelcome sexual behavior – with prominent men in entertainment, media and politics bearing the brunt of the scrutiny.

A Pew Research Center study conducted in early 2018 found that when it comes to sexual harassment in the workplace, 50 percent of respondents are concerned about men getting away with sexual harassment; 46 percent are concerned with women not being believed; 34 percent are concerned about employers firing accused men before finding out all the facts; and 31 percent are concerned with women making false accusations.

The survey also revealed that 51 percent of respondents say the increased focus on sexual harassment has made it harder for men to interact with women in the workplace.



Stephanie Ramsey

We reached out to Stephanie Ramsey, HR specialist, senior business analyst and writer of quarterly HR newsletters for The Foresight Companies, to talk about the steps funeral home owners and staff can take to approach such issues in the funeral business.

## **What exactly is sexual harassment?**

It is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive work environment. What is key here is the word *unwelcome*.

## **What do you think of the myth that funeral homes don't have to worry about sexual harassment?**

Such a statement is a myth. A person's profession does not define them as a moral or good person. Let's take this even a step further, if such a statement were true, then

In addition, data provided by the Equal Employment Opportunity Commission stated that in 2018, men filed 15.9 percent of sexual harassment charges.

These statistics might raise concerns for business owners, employees, clients and everyone involved in a business.

there would be no cases of sexual harassment or discrimination in the funeral industry. That is simply not the fact. For example, in February 2018, Service Corporation International, the largest funeral service provider in the United States, lost a \$2 million sexual harassment and retaliation case in Tennessee. Not only did the plaintiff, Andrea Herring, follow procedures to let people know that she was being harassed, but no one helped her. This co-worker even followed her into the bathroom as well as multiple other offenses. SCI has requested a retrial as well as a reduction in damages, which have been denied. The point here is that if the largest funeral service provider who *does* have extensive policies and procedures to avoid this type of situation had it occur, what are the chances that small funeral businesses – that probably have few and possibly no policies – may be at risk of a sexual harassment situation occurring?

### **What precautionary steps can owners or hiring managers take before hiring an individual?**

Unfortunately, there is not a database that someone can check that says this candidate is a potential risk for sexual harassment. Rather, employers need to have good hiring practices to begin with. That means good interviewing techniques, background checks and actually verifying references.

If the only reference check that someone can get is verification of their last job title and pay rate, that is not much information to confirm the character of the individual that you are seeking to hire, but by law, that is all that a reference is required to provide. Hopefully, candidates are providing references that are willing to offer more information. For the most part, owners/hiring managers are using their gut instincts on whether someone will be a good fit for an organization. There is no crystal ball that they can use to know for sure.

### **Considering the Pew Research Center study, which stated that 50 percent of respondents are concerned about men getting away with sexual harassment ... what are some red flags that funeral home owners or employees should keep top-of-mind?**

Owners/managers/employers need to have a higher awareness of what is sexual harassment and be willing to step forward if they perceive they have witnessed such harassment. Some red flags can be obvious. Verbal comments and physical actions are noticeable if done in front of others. Comments of a sexual nature made to or about a person in front of others. However, a lot of harassment is not done when others will notice. Subtle indications could be noticeable tension from a co-worker when in the presence of another co-worker or in certain situations. Excessive absenteeism from someone who previously was always at work could be a sign of a problem with harassment. It takes training for owners/managers/employers to recognize these types of signs. Unfortunately, it is very difficult for an owner/manager to take action when they do not have definitive confirmation that there is a problem. But the biggest reason that anyone, regardless of gender, gets away with sexual harassment is because it is unreported. The Equal Employment Opportunity Commission previously indicated that 75 percent of sexual harassment in the workplace was unreported.

### **The Pew Research Center study also stated that 46 percent of respondents are concerned with women not being believed ... if a woman in the funeral home is making an accusation, how should she approach it?**

Anyone who is reporting accusations of harassment needs to be as factual as possible. That means to provide dates, times and details of the events. They need to identify if there were any witnesses to the event. If there were no witnesses to the

event and it simply comes down to a she said/he said situation, the fact that you are reporting the incident and providing such detail may stop the behavior.

In general, if a woman (or person) believes they are being harassed, they need to bluntly tell the individual committing the act(s) to stop doing whatever they are doing, and that it is unacceptable to them. They should document what occurred, the date and time they requested they stop the behavior. They should note any witnesses to the behavior, even if the witness did not interact with the event. If it reoccurs, they should repeat their request for the behavior to stop and document again. And then a third time should the behavior continue. Then take all documentation and report the behavior to the owner or manager. Remember part of the definition of harassment is that it must create a hostile or offensive work environment. The definition of “hostile” in terms of harassment must be recurring and/or pervasive. That is why I am illustrating documenting a pattern of behavior.

*Note: If the action was serious (involving physical contact, violence, threats, blackmail, etc.) then it should be reported immediately to an owner/manager.*

### **When considering that 31 percent of adults are concerned about men being fired without the full details, according to the survey, how should funeral directors make sure they listen to both sides equally and make a fair decision?**

First and foremost, it is important that owners/managers investigate every complaint without bias for/or against the victim or the accused. Remember that under the law, everyone is “innocent until proven guilty.” The same principle applies here. Second, it is critical that when there is a complaint filed that it be treated seriously and not simply shrugged off. Every single complaint that is reported should

be investigated regardless of how frivolous it appears. There should not be only an established complaint process but a formal investigative process. A standardized process means that every complaint will be handled in the same way. Each investigation will follow established guidelines and processes. This will help reduce the likelihood that the guilty are avoiding penalties and the innocent are paying an unfair price. Once a fair investigative process is completed, a conclusion must be reached and a decision made as to what must occur to create a sustainable work environment for all employees.

Not all events that occur mean that a termination is required (e.g. one rude but inappropriate joke). It may mean that just some form of disciplinary action is required. If that is the case, there also must be a way to reintegrate the individual who required the disciplinary action into the working environment so that 1) no further inappropriate action occurs; 2) the individual is not ostracized by the other employees; and 3) the work atmosphere is comfortable for all employees. This takes effective communication with all employees by funeral owners/managers clearly establishing what is and is not appropriate in the workplace. That includes employee gossip and harassment after an investigation is completed.

**If the harasser is a client (customer) of the funeral home, how should funeral managers approach such accusations?**

In this type of situation, the employer should assist the employee in pursuing whatever legal action may be viable such as a restraining order. Employers are charged with providing employees with a safe work environment. If they become aware of a customer or vendor who may be harassing their employee, they should do what they can to support the employee to stop that behavior.

**What if the harasser is a family member of the owner? Or the manager/owner is the harasser? Is resigning ever a better option than speaking up?**

This is a personal judgment call. Every situation is unique. Clearly there are a lot of family-owned businesses in this industry. Many of them may not have reporting structures in place that would provide a viable option for someone to file a formal complaint and expect reasonable relief after an investigation, as there would likely be some bias in the process. Additionally, if the business is small, the victim is not going to find support from the Equal Employment Opportunity Commission, as it will only be involved if it is a business with 15 or more employees. They could potentially file a civil suit, but that would certainly be made very public.

**Considering that people of different cultures and religions might have different definitions of what is considered sexual harassment, how can the funeral home's anti-harassment policies resonate as much as possible with diverse perspectives?**

Sexual harassment and other harassment are very specifically defined by federal law. How different cultures and religions would perceive such harassment is a completely different issue. Our legal system would only evaluate whether or not actions taken by individuals fell within the defined law or not.

As far as anti-harassment policies, they should clearly state that sexual and other harassment is not acceptable and prohibited and that the business is committed to a harassment-free environment. Then, it should define sexual harassment as well as other forms of harassment so employees clearly recognize what they are. They should also include a complaint procedure in their policies as well prevention measures that should be followed. And finally, there should be a retaliation policy as well, so no one would be fearful of bringing a complaint forward.

**What if sexual harassment between employees is happening outside of the funeral home or off the clock? What about if it's occurring on social media?**

If it is occurring between your employees or at your place of business, it is certainly of concern to the owner/manager. The time in which it is occurring is not relevant, especially if you remember that harassment means that it is creating a hostile work environment. So the fact that the actual event took place after-hours doesn't mean that it is not causing problems during the working hours. Also, the funeral industry does not keep an 8 to 5 schedule. Funeral directors are frequently making removals in the middle of the night, and it takes two people to do so.

Yes, social media harassment can occur, and yes it can be sexual. Sexual harassment is of a sexual nature, but it can occur in ways other than physical. It can be sexual jokes, text messages, emails, Facebook posts, etc.

**If the firm has only male staff, or only female staff, should an anti-harassment policy and trainings still be available?**

Yes, it should still be available. It is important to note that sexual harassment can and does occur between the same genders.

**What advice do you have for men and women in funeral service and how they interact with their colleagues in order to avoid such issues?**

All employees should focus on being professional and respectful to each other. There is no room in the work environment to allow anything of a sexual nature to creep in. You can be friendly and work as a team to serve the needs of families. You can laugh over a funny situation, but is there any reason to ask someone about his or her sex life? There are a whole variety of things you can discuss with a coworker that goes nowhere near the topic of sex. Is it

## Sexual Harassment as Defined by the EEOC

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a nonemployee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, the Equal Employment Opportunity Commission looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.

*Source: Equal Employment Opportunity Commission*

OK for a male employee to tell a female co-worker "You look nice today?" Yes! But would it be bad to say, "You look smoking hot, babe?"

I truly believe that if those who work in this industry focus on serving the needs of the families and treat each other with respect, they will not run into trouble. Additionally, if their place of business has appropriate policies and training and they adhere to those policies and training, I am hopeful they will not find themselves in a harassment situation.

### **Do you have any input about the fact that men file 15.9 percent of sexual assault charges?**

More and more men are willing to come forward with the #MeToo movement. Whether the perpetrators were men or women we do not know. What we *do* know is that while women are the largest statistic of sexual harassment, they are not the only statistic, and owners/managers need to have awareness that they may receive a complaint from a man. As a consultant, I have actually had this occur, and it was a woman harassing a man. Now, there was a lot to the story, so I won't go into detail here, but the fact remains that women can be the aggressors. It is a statistically smaller number, but it *does* exist.

### **What preventative measures can business owners take to avoid sexual harassment in their funeral homes? Do surveillance cameras make sense?**

Policies and training are the keys to avoiding sexual harassment in their funeral home business. There are really no other effective measures. Cameras in the public areas may be fine, but in the back office area can create some real morale problems. Plus, unless they have audio, they would only illustrate physical harassment, so I don't perceive they would be worth the investment. •

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