

Shouldn't All Candidates Be Asked If They Have Been Accused of Harassment?

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Our defense of sexual harassment cases has led us to review the psychological underpinnings of the harassment scenario and how childhood experiences may lead to personality disorders, sexually compulsive behavior or sexual addiction. While the scientific community is reluctant to endorse the concept of sexual addiction because of the potential criminal defense that diagnosis might provide to rapists and child molesters, our practice has reviewed sufficient psychiatric/psychological records over 2+ decades to allow us to conclude that some individuals compulsively and repeatedly engage in self-destructive sexual activity, including sexualizing the work environment and commencing affairs at work.

On rare occasions where the accuser is the one addicted, sexual addiction/compulsivity can provide a defense to harassment claims. Not only may it corroborate that the accuser made the first overture, but the recognized *sequelae* of the condition is a sudden reaction with rage when the target of affections either fails to respond or as bosses tend to do, criticize, discipline or terminate the employee.

More often, however, businesses suffer when sexual addicts come into the workplace and harass employees. We have dealt with a handful of matters over the years where the accused executive or manager had issues at prior employers and even more where circumstances suggested that without confirmation. Accordingly, wouldn't it be wise to include in a required employment application or written interview format the following question:

“We have recently incorporated the following question into our employment screening process: Have you ever been accused of – *not reported*- but accused of harassment of any kind in the workplace? If so, please identify the basis for the harassment claimed, when the accusation was made and the outcome.”

There is no sense in limiting the question to sexual harassment, since employers should know if they are about to hire someone with a history of racial or ethnic harassment as well.

It would be extremely unwise and potentially *per se* illegal to ask if someone ever MADE an allegation of harassment. However, no legal implications flow from asking about accusations *against* the applicant. The question may screen out problematic, serial harassers or at least identify which individuals hired should be monitored. It might save the company a quarter million dollars down the road – which will likely never be known or appreciated outside of the HR department- just like most of your work.

