

Lewd office e-mails to constitute sexual harassment

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EMPLOYEES who send lewd jokes around the office by e-mail or text message could land their companies with unlimited compensation payments for sexual harassment.

New advice from the Equal Opportunities Commission states that even when an offensive e-mail is not sent directly to a colleague, but is circulated to others in the same workplace, it can constitute harassment. So too can viewing pornographic images on a computer screen next to a colleague who finds them offensive.

Unacceptable e-mail behaviour ranges from the more crude practice of circulating e-mails or text messages with pornographic attachments to the more insidious one of sending e-mails laden with sexual innuendo or commenting on a colleague's appearance.

Jenny Watson, chairwoman of the commission, said that electronic sexual harassment was "a significant new issue" for employers. "At every stage, as technology has the potential to improve lives, it has the potential to have a negative impact in other ways. It would be quite possible for an offensive e-mail to be part of an environment that constituted sexual harassment," she said.

Because sexual harassment by e-mail is silent, immediate and almost indistinguishable from proper work, it can be difficult for employers to detect perpetrators. "Today's world makes it harder for employers to guard against sexual harassment because it could be conducted below their radar. You can't always tell what people are sending on their computers," Ms Watson said.

Sending lewd messages via the office e-mail system can already be highly dangerous, as Claire Swire knows only too well. One Thursday in 2000, the PR executive sent an e-mail to her lawyer boyfriend Bradly Chait, congratulating him on his sexual prowess.

Mr Chait forwarded the e-mail to four friends, and by the end of the week an estimated 20 million people had seen it. The lawyer was disciplined for his indiscretion and, six years later, the phenomenon is still known as the Swire effect.

Since then, an investment banker who allegedly bragged by e-mail of sleeping with a woman with "huge nails" sparked an internal investigation by his employer, JP Morgan Casenove. And a commercial manager at Yorkshire County Cricket Club was dismissed after he failed to turn up for a disciplinary hearing about a number of alleged misdemeanours, including claims that he sent e-mails about another colleague's breasts to his young secretary.

The law recognises two types of sexual harassment: unwanted conduct on the ground of a person's gender, and unwanted physical, verbal or non-verbal conduct of a sexual nature. The new guidelines, *Sexual Harassment: Managers' Questions Answered*, make clear that anything that creates a degrading and offensive environment can contribute to this.

In this context, "passing around lewd jokes by e-mail, whether or not they are personally directed at particular individuals" can constitute an offence. Although the guide does not specify how many e-mails have to be sent before a breach of the law occurs, it does state that "one incident can constitute sexual harassment if it is serious".

While sexual harassment would not be based solely on the complainant's perception of whether an e-mail or text message were offensive, the guidance notes that "the complainant's perception has to be given particular regard". The only exception would be in cases where "no reasonable person with the same perceptions and sexual attitudes as the complainant" would take offence.

Penalties for sexual harassment can run into millions. While there is a ceiling of £25,000 on compensation for injury to feelings, there is no limit on payments for loss of earnings (including salary loss, pension loss, loss of benefits and future earnings) in cases of constructive dismissal. Damages can also be unlimited if someone sues in the civil courts where sexual harassment injures health to the extent that the victim has a breakdown.

The guidance has been issued to coincide with the twentieth anniversary tomorrow of the first successful harassment case under the Sex Discrimination Act, brought by a school technician, Jean Porcelli.

Ms Watson said that sexual harassment ranked in the top five reasons for calls to the commission's helpline. Seven per cent of calls about sexual harassment are from men.

Since only a tiny proportion of people who experience harassment ever make a claim, the figures are a small glimpse into the extent of the problem.