

Employers Council, the nation's largest employers association, has provided expert assistance and thoughtful guidance to employers since 1939. We collaborate with our members to develop effective, successful employer-employee relationships by providing "one-stop shopping" in every facet of human resources and employment law. Employers Council offers the broadest array of professional services under one roof. We walk alongside our members, offering guidance, support and expertise.

For more information about our services, contact the Utah office at [SaltLakeCity@EmployersCouncil.org](mailto:SaltLakeCity@EmployersCouncil.org) or 801.364.8479.

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## When the Customer is Wrong

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In the wake of social movements addressing sexual harassment, more than one employer has questioned to what extent it must address sexual harassment by non-employees, or if such harassment must be addressed at all. The latter question is easier: harassment by non-employees must be remedied. The first question is more difficult but can also be answered: an employer must prevent and remedy harassment by non-employees insofar as it has control over the harasser and is aware of the situation, simply put.

What happens when addressing the harassment is likely to lose the customer? In those circumstances, businesses often struggle to reconcile their philosophy of "the customer is always right" with obligations imposed by anti-discrimination laws. But make no mistake! A decision to allow harassment to continue is not defensible using the argument that, if the harassment was addressed, financial losses would result.

Depending on the industry in which an employer operates, harassment may be infrequent or highly situational, or it may be so common that it is virtually considered a hazard of the job, and employees are considered to have "assumed the risk" by accepting the job.

Take the following situation. An elderly client contracts for home healthcare services. The customer receives services in his private home and considers it "his kingdom." While working with home healthcare providers, the client engages in overt sexual conduct, makes sexual remarks, and touches the healthcare workers. Is the customer the "king of the castle," free to do as he chooses within the confines of his own home?

In short, an employer in this situation does not have to accept all the rules of the customer's "kingdom." Though the customer may find it acceptable to verbally and physically harass the caregivers in his residence, this is not acceptable workplace conduct and the caregivers have not assumed the risk of being exposed to harassment by virtue of accepting their positions. Litigation efforts by the Equal Employment Opportunity Commission (EEOC), and case law stemming from such litigation, continuously reinforce that employers must act even when non-employees are the "bad actors."

Employers Council members who are facing down such difficult situations are encouraged to reach out for help handling difficult workplace scenarios like harassment. Our attorneys and HR professionals can assist with guidance and legal advice.