



Discrimination Against Employees Based On Gender

Questions

Q1: *Is it unethical for an Associate Member of the Institute to engage in harassing and discriminatory actions toward a coworker of the opposite gender?*

Q2: *Is it unethical for a Member to condone, overtly or implicitly, harassment by one employee against another employee?*

Q3: *Is it unethical for a Member to discriminate against an employee based on gender?*

Reference

Code of Ethics and Professional Conduct, Canon II, Obligations to the Public

R. 2.501 Members shall not discriminate in their professional activities on the basis of race, religion, gender, national origin, age, or nondisqualifying handicap.

Commentary: *This rule applies to all professional activities of the Member, including but not limited to dealings with clients, colleagues, and employees. It is stated with such breadth here so as to avoid repetition under the other Canons.*

Rules of Enactment, Application, Enforcement and Amendment, Article II, Application

The Code of Ethics and Professional Conduct

applies to the professional activities of all Members, Associate Members, and Members Emeritus of the AIA.

Facts

Over a one-year period, a female employee of an architecture firm was consistently harassed by a male coworker, who was an Associate Member of the Institute. The harassing actions included consistent, methodical, repetitive rearrangement of items in the female employee's workstation; repeated comments to the female employee and other coworkers demeaning her education, competency, and professionalism; malicious notes to the female employee; equipment removed from the female employee's workstation and replaced with inferior substitutes, with the comment that she did not deserve the better equipment; false reports filed with the supervising architect (who was an Institute Member) claiming that the female employee was not working full eight-hour days; and completed reply cards from supplier catalogues for products in which the female employee had no use, requesting that she be contacted immediately by a sales representative, thereby generating many unnecessary telephone calls. In addition, although the female employee had been with the firm six months longer than the male coworker and was two years further along in her preparation for the licensing examination, the male coworker was being paid \$3,500 a year more than she. He was also offered CAD training, which was denied to the female employee, despite her expression of a strong desire to receive that training.

The female employee attempted to discuss



THE AMERICAN INSTITUTE OF ARCHITECTS

*Code of Ethics and
Professional Conduct
Advisory Opinion No. 4*

the situation with the male coworker on three separate occasions without any positive results. After the incident of the equipment switching, she met with their supervising architect to describe the occurrences to that point and requested intervention. The supervising architect replied that the substituted equipment would serve the same purpose and that the other complaints were just her imagination. After receipt of the malicious note, she met with the supervising architect again. At that point, he met with the offending male employee *and* all the other male employees in the studio. As a result, there was a slight decrease in the harassing actions, but a great increase in tension among the female architect and the other male coworkers with whom she had experienced no problems and about whom she had made no complaints. The supervising architect told the female employee that he had done all he intended to do and that she should learn to expect this type of behavior if she were going to work in a "man's profession."

Feeling no satisfactory resolution had been reached, the female employee privately contacted officers of the local AIA component asking them to intercede in what she believed was a violation of the Institute's Code of Ethics and Professional Conduct. They expressed sympathy and referred the woman to the local Council on Human Rights. While the person with whom she met at the Council on Human Rights agreed that she had grounds for filing a complaint, she was cautioned about the possibility of being *blackballed* in the local architecture community for doing so.

At her annual evaluation, at which she was well-reviewed, she again advised the supervising architect that the harassing incidents had not completely stopped. He responded that he had done all he intended to do.

Shortly thereafter, after she passed the licensing exam, the harassing incidents escalated. After three weeks of regular occurrences, she again attempted to discuss the matter with the supervising architect and insisted that he take steps to stop the harassing behavior. Within a matter of days, she was informed that her services would no longer be required, effective 5:00 p.m. that day, because of a work slowdown. However, within a matter of days, the same firm made an offer to a male architect whose education, job experience, and licensing status were almost identical to those of the female architect. He was told that the firm wanted him to start work immediately because there was so much work that needed to be done.

Discussion

Members and Associate Members of the Institute are equally obliged to comply with the Institute's Code of Ethics and Professional Conduct. It is clear from the Commentary to R. 2.501, that it is intended to cover actions of employer and employees vis-à-vis other colleagues and employees in the work place, even though the Rule is included in the section of the Code captioned "Obligations to the Public."

The facts presented clearly outline a continuing pattern of harassment in the work place by a male employee against a female employee, that declined for awhile but never completely ceased, even after repeated complaints by the harassed employee being harassed to the coworker and their supervisor. The supervising architect implicitly condoned those harassing actions by failing to recognize and deal with the harassment after the initial complaint by the female employee. After the second complaint, the actions taken by the supervising architect



THE AMERICAN INSTITUTE OF ARCHITECTS

*Code of Ethics and
Professional Conduct
Advisory Opinion No. 4*

served only to create more tension between the female employee and other male employees with whom she had experienced a good working relationship. It did nothing to stop the harassing actions by the offending employee. The supervising architect failed to follow-up to determine if his actions had, in fact, stopped the offending behavior. His comment that the female employee should get used to harassing behavior if she intended to work in a "man's profession" placed him in the position of overtly condoning and aiding in the harassment. Additionally, the supervising architect overtly discriminated against the female employee by paying her substantially less and offering her fewer training opportunities than a male employee with considerably less experience and less seniority with the firm. Given the positive annual review received by the female employee and in the absence of any criticism from the supervising architect other than that related to her complaints of harassment, it is difficult to ascribe her employment termination to anything other than overt discrimination based on her gender. This conclusion is particularly compelled by the actions of the supervising architect in offering employment to a similarly trained and experienced male architect almost immediately after terminating the female architect because of a "work slowdown."

Member employers may wish to consider consulting with an attorney or human resource management consultant to audit their employment and promotion practices to insure that they comply with current legal requirements. While there are different, acceptable methods with which to address an issue of harassment in the work place based on gender, EEOC Guidelines may provide a good beginning point. Those guidelines suggest the following actions for employers.

Develop an explicit policy against harassment that is clearly and regularly communicated to employees and effectively implemented;

Affirmatively raise the subject with all supervisory and non-supervisory employees, expressing strong disapproval, and explaining the sanctions for harassment; and

Develop a procedure for resolving harassment complaints that encourages victims to come forward, protects confidentiality as much as possible, and provides effective remedies, including protection of the victim from retaliation.

It is also useful for components to know that when contacted about such a complaint or any other alleged violation of the Code of Ethics, the complainant can be referred to Staff Ethics Counsel at the The American Institute of Architects in Washington, DC. One of the duties of Staff Ethics Counsel is to provide information in response to inquiries about the Code of Ethics and the procedure for filing a formal complaint against a Member.

Conclusion

A1: Yes. It is unethical for a Member or Associate Member of the Institute to engage in harassing behavior toward a coworker or any other colleague in the work place.

A2: Yes. It is also unethical for a Member to overtly or implicitly condone such behavior when it is observed or when a complaint is received.



THE AMERICAN
INSTITUTE
OF ARCHITECTS

*Code of Ethics and
Professional Conduct
Advisory Opinion No. 4*

A3: Yes. Any action by a Member directed toward an employee which can only be explained and understood as being based on the employee's status as a member of a minority class—such as differentials in salary, benefits, or educational opportunities—is a violation of the Code of Ethics and Professional Conduct. In addition, such discriminatory behavior may be a violation of local ordinance, state or federal law.

Note: This opinion is based on data submitted to the National Judicial Council and does not necessarily include all the facts that would be pertinent in another specific case. This opinion is for information purposes only and should not be construed as expressing any opinion on the ethics of specific individuals.

January 1992