SPECTRUM



Commission Update: Executive Director Minner Retires

Commission's Executive Direc- cessful Civil and Human Rights tor William V. Minner an- offices in the nation". The Des nounced his retirement, after Moines Register acknowledged forty-one years with the Com- in 2005 the Commission as a mission, the last 16 years as human rights organization suc-Executive Director. Mr. Min- ceeding in difficult economic ner retired effective December times, whereas similar organi-6, 2013. Mr. Minner is the zations had not. Commission's longest serving Executive Director and served leadership, the Commission under four different Kansas resolved more than 17,000 Governors.

directorship, the Kansas Human of \$15 million on behalf of al-Rights Commission achieved leged victims of discrimination. national and statewide recogni- The agency also continued its tion. The International Asso- nationally acclaimed voluntary ciation of Official Human third-party mediation program Rights Agencies (IAOHRA) administered by Kansas Legal recognized the Kansas Human Services. Rights Commission in August

Kansas Human Rights 2004 "as one of the most suc-

Under Mr. Minner's complaints of alleged discrimi-Under Mr. Minner's nation and recovered in excess

Mr. Minner has dedi-



KHRC Executive Director William Minner was recognized by the Kansas Senate for his service.

Pictured (L-R) KHRC Chair Melvin Neufeld, Janet Minner, William V. Minner, and Senator Anthony Hensley

cated his life to the advancement of civil and human rights Kansas Human Rights Comfor all human beings and to the mission as a Field Investigator abolition of discrimination of in 1972. After serving in variall forms in our society.

Mr. Minner joined the (Continued on page 8)

Agency Welcomes New Commissioners

Kansas Human Rights Com- sioner Kane retired from the Ohio. He grew up in Kearney, She is currently a partner at mission comed several new Commis- service. He now works for the Truman State University, and serves as attorney for the sioners.

was appointed to the KHRC in July 2013 by Governor Sam Brownback. He represents Industry. Commissioner Brant ernment Board of Commission- entz's graduate work was in the is retired and previously served as the senior vice president of 2005. customer service for Cessna Aircraft. Commissioner Brant appointed Commissioner Eric sioner Marilyn Wilder was apresides in Wichita.

Kane, Kansas City, was appointed to the KHRC by Gover- currently the Senior Pastor at degree in political science at nor Brownback, also in July The Presbyterian Church of Taylor University and Juris 2013.

Governor Sam Brownback Laverentz, Overland Park, to pointed by Governor Sam Commissioner Michael the Commission in July 2013. Brownback. Commissioner Kane Stanley. He also served con- Doctorate at Indiana University

In the past few months, the represents Labor. Commis- gregations in Tennessee and School of Law-Indianapolis. (KHRC) has wel- UAW/GM after 35 years of Missouri and is a graduate of Adrian & Pankratz in Newton Construction and General La- Princeton Theological Semi- Newton Medical Center. Commissioner David Brant borers' Local Union 1290 in nary and Vanderbilt University. Public Affairs. He currently He received his doctorate from serves as the 5th District Repre- Pittsburgh Theological Semisentative to the Unified Gov- nary. Commissioner Laverers, a position he has held since history and theology of the Civil Rights movement.

> In February 2014, Commis-Commissioner Commissioner Laverentz is Wilder earned her Bachelor's



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SPECTRUM—Summer 2014

Spotlight on.....Do You Have I³? (Internal Investigations Intelligence)



television sets as the Kansas City Chiefs started their season Commission (EEOC), "Such reasonable care generally requires with nine straight wins. Even with this excitement just a few an employer to establish, disseminate, and enforce an antimiles away, many of us at the Kansas Human Rights Commis- harassment policy and complaint procedure and to take other sion (KHRC) were following a different professional football reasonable steps to prevent and correct harassment." team, the Miami Dolphins, and not because of their win-loss record.

offensive lineman Jonathon Martin left the team on October 28, policy and complaint procedure, and re-distribute it periodi-2013 due to alleged harassment by fellow teammate Richie cally. Some organizations prefer to distribute their policies Incognito. It was widely reported that Martin was subjected to a broad range of offensive behavior including racial slurs, racial epithets, inappropriate physical touching, lewd gestures, and vulgar taunts about his sister and mother. The incidents reportedly took place in the Dolphins' workplace, including the practice field, locker room, and team airplane, as well as social settings away from work. The alleged harassing behavior took the form of in-person conduct, i.e. "jokes" and "banter", telephone conversations, voice mails, and texts.

The behavior reportedly permeating the Dolphins' offensive line is not unlike many discrimination complaints filed with the KHRC.

.

In the fall of 2013, many Kansans were glued to their ment. According to the U.S. Equal Employment Opportunity

Employers should create, make readily available, and enforce anti-harassment policies and complaint procedures. Instead, we were reading reports that Miami Dolphins Employers should provide every employee with a copy of the annually. Many organizations ask their employees to sign an acknowledgement that they have received and understood the policy. The Dolphins in 2013 distributed a workplace conduct policy to all players and asked that they sign an acknowledgement form stating they understood the policy.

> In addition to distributing policies to each individual, many companies post them in central locations, such as break rooms or beside time clocks, and include them in employee handbooks. In the digital age, policies can be made available on company intranet websites or computer networks.

The Dolphins requested the National Football League (NFL) to investigate the allegations. The NFL, in turn, hired an outside law firm to independently investigate and report their findings.

How to Begin?

Unlike the Dolphins and the NFL, many employers do not have the resources to hire an outside firm to investigate allegations of harassment, and are unsure how to proceed when an employee complains of bad behavior.

The steps to an effective investigation begin before the first complaint is received with the employer taking reasonable prevent care to and promptly correct harass-



The EEOC provides that an anti-harassment policy and complaint procedure should include, at a minimum, the following points:

- A clear explanation of prohibited conduct;
- Assurances that employees who make complaints of harassment or provide information related to such complaints will be protected against retaliation:
- A clearly described complaint process that provides accessible and multiple avenues of complaint;
- Assurance the employer will protect the confidentiality of harassment complaints to the extent possible;
- A complaint process that provides a prompt, thorough, and impartial investigation; and
- Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.

Puzzled About **Policies?**

The employer should make it clear in easily understood language that it will not tolerate harassment based on any of the prohibited categories. The Kansas Act Against Discrimination and/ or the Kansas Age in Em-Discrimination ployment Act prohibit harassment in employment because of race, religion, color, sex (including pregnancy discrimination), disability. ancestry, national origin, age, and retaliation. Discrimination based on genetic screening and testing is also prohibited. Organizations should also be aware of local ordinances. For example, the City of Lawrence prohibits discrimination based on sexual

(Continued on page 6)

Page 2

You Decide Case Study

Grace (not her real name) works for a small manufacturing plant in Anytown, Kansas. Grace is Hispanic and is married to an African American. Together they have one son.

The manufacturing plant has 100 employees. The anti-harassment policy is distributed to all employees annually. Employees are required to sign an acknowledgement that they understand and will abide by the policy. Human resources tracks the signature forms to make sure acknowledgements are received from all employees.

The anti-harassment policy prohibits harassment based on national origin and race, as well as several other bases. The policy directs employees to report harassment to their supervisor, the human resources department or to the president of the company, and provides contact phone numbers. The policy does not require complaints to be submitted in writing. The policy promises that all complaints will be investigated quickly, in an unbiased manner, and discreetly. The policy prohibits retaliation against employees who report harassment or act as witnesses in the investigation.

Grace alleges that she is being subjected on an almost daily basis to derogatory names, "jokes", and comments from two co-workers about herself, her husband, and her son. Grace complains that the co-workers perform the harassment in front of their supervisor. Grace has found "jokes" taped to her locker door. Grace says the treatment demonstrates bigotry against Hispanics and African Americans. Grace is especially offended that racist jokes are told about her son. The treatment began immediately after Grace's co-workers learned about her family through casual conversations and pictures. The treatment has continued for five months from July 2013 to December 2013.

Grace complained to her supervisor on numerous occasions about hostile comments from the co-workers in November 2013 and again in December 2013. Grace says the supervisor's response has been that the co-workers are just having fun. The supervisor has the authority to make tangible employment decisions as he hired Grace for her current position.

Grace telephoned the Human Resources Manager about "concerns" in December 2013. The Human Resource Manager told Grace to put her complaint in writing. Grace tried to follow up with the Human Resources Manager by lodging her complaints in person. The Human Resources Manager told Grace that she needed to make an appointment, he could not take her complaint, and Grace would have to submit the complaint in writing. The Human Resource Manager acknowledges that Grace repeated the same complaints that she previously telephoned about, including naming the co-workers as alleged harassers, and reporting that she previously complained to her supervisor many times, and the supervisor was a witness. A day later Grace submitted her complaints via e-mail to the Human Resources Manager.

The Human Resources Manager asked Grace's supervisor to investigate. Grace's supervisor reported that he questioned the two named co-workers and they denied making the offensive remarks. The supervisor did not talk to Grace or any other co-workers. The Human Resources Manager feels that they have not determined if a violation of the Kansas Act Against Discrimination occurred.

Grace reports that she constructively quit her job in January 2014 due to the almost daily harassment and because the company did not respond to her complaints. She filed a complaint with the KHRC.

You determine:

(__) Yes, the employer had an effective complaint process.

(__) No, the employer did not have an effective complaint process.

(Continued on page 7)

Combating Human Trafficking in Kansas

"Kansas has been identified as a major human trafficking corridor."

"If you see something, say something."

Learn more at www.ag.ks.gov

Click on the Children's Safety tab.

Then click on the Human Trafficking tab.

recognized as a modern form of slavery by the United Nations, ishing children who are sexually the U.S. Justice Department and the Kansas Human Trafficking Advisory Board established by the Kansas Attorney General. While today's human trafficking may not involve the physical bondage of the past - victims are still subjected to bondage of more modern forms. These forms include debt bondage for those who agree to indentured servitude in exchange for being allowed to come to the United States with the promise of a good job or psychological bondage of those involved in the sex trade. This \$9.2 billion industry in the United States is the secondfastest growing crime in our country. The U.S. Justice Department reports that 83 percent of trafficking victims are domestic and a majority of these are children. The largest group is girls subjected to commercial sexual exploitation.

With several major highways crisscrossing our state, Kansas has been identified as a major human trafficking corridor. In order to combat this growing crime in our state, the Attorney General's office established the Human Trafficking Advisory Board in order to develop a legislative, administrative and community network that could counter these vicious crimes. Legislation passed in 2013 gave law enforcement officials new tools and increased fines and sentences for those who promote sexual exploitation and those who are the customers of these exploited victims. These laws also apply to labor trafficking. The major focus of the new laws, however, is to rescue the victims of trafficking - particularly the children subjected to

Human trafficking is domestic minor sex trafficking.

The paradigm of punexploited as juvenile offenders has been turned around by these new laws in Kansas. Law enforcement officers are being trained to recognize sexual exploitation of minors, and when they do, they are now legally mandated to take the child into police protective custody. Commercial sexual exploitation of minors is now defined as "sexual abuse" under the Kansas law. The Department for Children and Families to is be contacted and a rapid response team is to be sent to assess the needs of the child. A special facility has been created to provide deep trauma care for these victims. Currently, only one such facility exists in Kansas at the Wichita Children's Home, but more are needed for other areas of the state. Recognizing these children as victims is a substantial change for law enforcement. The Attorney General has created an Anti-Human Trafficking Unit in his office to meet his new statutory duty to coordinate this training for law enforcement.

First responders, including health care professionals in hospital emergency rooms, walkin clinics and schools, are being trained to look for red flags of trafficking and the Department of Health and Environment is making a statewide effort to coordinate this information with the Attorney General's office. The Kansas Department of Labor has reached out to employers with print and video media and is training its investigators, inspectors and auditors to look for signs of trafficking in routine inspection of employer wage and tax records and during inspecGUEST COLUMN

tions of employer premises. The Attorney General's office is providing public awareness presentations for first responders and the public.

A coordinated statewide effort has been launched to educate the public about human trafficking. The Attorney General's office, the Governor's office, Department of Labor and the Department for Children and Families have aired public service announcements that urge reporting of suspicious circumstances to local law enforcement. "If you see something, say something" is the motto. The National Human Trafficking Resource Center hotline and text line are being posted in public buildings throughout Kansas such as rest stops and driver license stations. This is an anonymous 24-hour resource to get information, report tips and for victims to seek help. The hotline number is (888) 373-7888, or by text, INFO or HELP to BeFree (233-733).

If we all try to be aware of these horrific crimes and we take the time to give information to law enforcement, these crimes will no longer be hidden in plain sight.

Kansas Attorney General Derek Schmidt Anti-Human Trafficking Unit

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U.S. Supreme Court Narrows the Definition of "Supervisor"; Issues Decision in Vance v. Ball State University

Background

In Faragher v. Boca Raton and old, the complainant generally Burlington Industries, Inc. v. must show that the employer Ellerth, Court set the standard that an about the harassing conduct and by the meaning of the word in employer can be held responsi- took no action to stop or pre- general usage in that Ms. Davis ble (vicariously liable) for its vent the harassment. supervisor's actions for unlawful harassment under Title VII

held the employer is always Title VII unlawful harassment liable for a supervisor's harass- claims. ment if it culminates in a tangible employment action. If the harassment does not result in an adverse employment action, the American woman, began work- poses of vicarious liability unemployer may be able to avoid ing for Ball State University in der Title VII if he or she is emliability or limit damages by 1989 as a substitute server in powered by the employer to establishing "(1) that it exer- their Dining Services. cised reasonable care to prevent Vance subsequently became a victim." and promptly correct any har- full-time catering assistant in assing behavior and (2) that the 2007. Ms. Vance had interacplaintiff unreasonably failed to tions with Saundra Davis, a Court noted the ability to take take advantage of any preventa- white woman employed as a tangible employment actions tive or corrective opportunities catering specialist. Ms. Vance generally involves the ability that were presented".

rasser is a co-worker, the com- Davis' creation of a racially mote, reassignment with sigplainant must prove the em- hostile ployer was negligent in regards Both parties agree that Ms. ties, or a decision causing a to the harassing conduct before Davis did not have the power to significant change in benefits."

the employer can be held re- hire, fire, demote, transfer, or their decisions in sponsible. To meet this thresh- discipline Ms. Vance.

of the Civil Rights Act of 1964. Supreme court was asked to other employees. determine who is а The U.S. Supreme Court "supervisor" for the purpose of

Vance Summary

alleged that Ms. Davis was her "to effect a 'significant change supervisor and that Ball State in employment status, such as In contrast, if the ha- University was liable for Ms. hiring, firing, failing to pro-

The plaintiff argued the U.S. Supreme knew or should have known that a "supervisor" was defined had leadership responsibilities, and that Ms. Davis at times led In the Vance case, the U.S. or directed Ms. Vance and

"Supervisor" <u>Defined</u>

The Court rejected this argument and held in a 5-4 split decision instead "that an em-Maetta Vance, an African- ployee is a 'supervisor' for pur-Ms. take tangible actions against the

More specifically, the work environment. nificantly different responsibili-



The U.S. Supreme Court clarifies the definition of "supervisor" for Title VII harassment cases.



Ruth Glover KHRC Executive Director

Glover Selected as KHRC Director

The Board of the Kansas Human Rights Commission selected Ruth Glover as the KHRC's new Executive Director at their April 11, 2014 meeting. Ms. Glover had been serving as Acting Executive Director since the retirement of Director William V. Minner, effective December 6, 2013. Previously, Ms. Glover was the KHRC's Assistant Director for nine years. She was recognized as the Kansas Human Relations Association Member of the Year in 2008. Ms. Glover is a graduate of Kansas State University and has served with various State of Kansas agencies.

She resides in Topeka with her family.



(Continued from page 2)

orientation and gender identity. Some employers opt to prohibit offense behavior remind these individuals about the prohibibased on categories not in law, such as sophomoric or "toxic" behavior directed towards others not based on a prohibited basis.

The policy should protect employees by prohibiting harassment by everyone in the workplace and non-employees who come into contact with employees, such as customers or delivery personnel.

Employers can emphasize the importance of the policy and heighten its awareness by the organization's leader or top management issuing it. The policy should also encourage employees to report bad behavior before it reaches the thresholds of severe or pervasive. (Likewise, employers should investigate reported offenses, even if they don't initially appear to be illegal.)

Employees should be trained on the policies.

Retaliation

No policy is complete without clearly forbidding adverse treatment of employees who complain of or participate in investigations of harassment internally, with the KHRC, with the EEOC, or with local human relations commissions. In Fiscal Year 2013 (June 12, 2012 – July 1, 2013), retaliation was the most cited reason for filing an employment complaint with the KHRC. The KHRC received 438 employment retaliation complaints during this period, far outdistancing the second place basis of disability with 260 instances. Also, it is not uncommon for the KHRC to find "probable cause" on the retaliation charge while the initial allegation is found "no probable cause".

EEOC Regional Attorney John C. Hendrickson said, "We are focused on putting an end to retaliation. Federal law guarantees everyone the right to complain when she believes job discrimination has occurred. The EEOC will support employees in exercising the rights Congress has the alleged harasser or witnesses. guaranteed them."

"Management should undertake whatever ask the supervisor not to report it. The measures are necessary to ensure that re- supervisor should not comply with the taliation does not occur. For example, request as not investigating risks incurring

when management investigates a com- employer liability. The employer must plaint of harassment, the official who in- carry out its duty to investigate. terviews the parties and witnesses should tion against retaliation. Management should also scrutinize employment decisions affecting the complainant and witness during and after the investigation to ensure that such decisions are not based on retaliatory motives."

The Complaint Process

The complaint process should not deter the filing of complaints by creating barriers. Rather, the process should facilitate the filing of complaints. For example, the employer is obligated to investigate a complaint, no matter how it is receivedwritten, verbal, e-mail, etc. The employer should also provide alternative complaint contacts. As such, the employer should not require the employee to solely report harassment to that individual's supervisor because the supervisor might be the harasser or the employee might feel uncomfortable reporting harassment to the supervisor for a variety of reasons. It is advisable for the employer to provide complaint contacts outside the employee's chain of command, such as designee(s) in human resources or other supervisors. The employer should also make provision for employees in outlying offices or second and third shifts to have access to complaint contacts.

The policy should also contain information about filing deadlines with the KHRC (within 6 months) and the EEOC (within 300 days of the last date of harassment).

Shhhh?

Some employees may ask that their complaint be kept entirely confidential. From a practical standpoint, it would difficult to honor this type of request. It is better to keep allegations confidential to the extent possible. To conduct an effective investigation, the employer will likely

On occasion an employee may Therefore, the EEOC advises, report harassment to a supervisor, but then

Let the Investigation Begin

The employer should start a prompt, thorough, and impartial investigation once a complaint is received. The extent of the investigation will depend on the individual circumstances.

In addition, it may be necessary for the employer to take temporary action so that additional alleged harassment cannot occur. For example, the employer may make scheduling or supervisory reporting changes so the parties do not come into contact. Other measures may include placing the alleged harasser on temporary, non -disciplinary leave while the investigation is in process or transferring the alleged harasser. The complainant should not be involuntarily transferred, shifts changed, etc. as these types of changes might constitute retaliation.

The investigator should be unbiased and base recommendations on the investigative facts. The alleged harasser should not supervise the investigator or have any direct or indirect control over the investigation or its recommendations.

Who, What, When, Where, How?

If necessary, the investigator should interview the complainant, the alleged harasser, and any witnesses or others with relevant information. The investigator should document each step of the investigation. The investigator should ask open-ended questions such as:

Of the complainant: Who committed the alleged harassment? Who are witnesses? What exactly happened? What was said? When did it happen? Where did it happen? How often? Were there other victims? Is there physical evidence, such as notes, e-mails, photographs, texts, or social media postings? Did touching occur?

Of the alleged harasser: What is need to reveal or ask certain information of your response to the allegations? If the accused says the allegations are false, why would complainant be mistaken or lie? Who are witnesses or others with relevant information?

Of witnesses or others with rele-

(Continued from page 6)

hear? When did this happen? Where did of management's determination. it take place?

that the complaint will be kept confiden- should take preventative action, such as occurs, etc. tial to the extent possible and avoid start- training or re-distribution of its antiing rumors, the investigation should be harassment policy and complaint process. limited to those that need to be involved. The investigator may also need to assess the credibility of the parties.

Making a Determination

termination as to whether harassment oc- proportionate to the harassment. Reme- in making the curred when the investigation is con- dial actions can range from an oral or workplace better cluded. It may be difficult to come to a written reprimand, to transfer, to suspen- for all employconclusive decision due to contradictory sion, to discharge. Training is an impor- ees. statements or the lack of witnesses. The tant option. The corrective action should lack of eye witnesses does not necessarily stop the harassment and prevent it from

undercut the allegations because harass- occurring again. ment often occurs when no one else can vant information: Who else saw or heard observe it. A written report should be measures be taken to correct the harasswhat happened? What did you see or finalized. The parties should be informed

Corrective Action

harassment happened, the employer effective anti-harassment policy and comshould take immediate and appropriate plaint process are Management should make a de- corrective measures. Discipline should be important

The EEOC recommends that ment's impact on the complainant. Examples might include an apology from the If management cannot harasser, monitoring treatment of the com-In order to maintain the pledge reach a determination, the employer plainant to ensure that retaliation does not

Summary

Employers should take care not to "fumble the ball" when it comes to ad-If the employer determines that dressing harassment in the workplace. An

tools



Source: www.eeoc.gov: "Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors" and "Questions and Answers for Small Employers on Employer Liability for Harassment by Supervisors"

(Continued from page 3)

You Decide Case Study Conclusion

No, the employer does not have an effective complaint process. The supervisor, an eye witness, did not report Grace's complaints (or take steps to stop the harassing behavior). Also, the company did not initiate any type of review or investigation at first contact. Even though Grace contacted the designated Human Resources Manager, and was consistent in her allegations on more than one occasion, no investigation was undertaken until the complaint was submitted in writing. The company delayed starting the investigation until the complaint was received in writing. The company also selected an inappropriate investigator, the supervisor who allegedly witnessed the harassing behavior but did not report it or take action to stop it. The investigation was incomplete as only the alleged harassers were interviewed and no one asked Grace if there might be other witnesses or physical evidence of the "jokes". The company still has not concluded their investigation despite the passage of a significant amount of time.

In conclusion, the employer did not exercise reasonable care to prevent and correct harassment.



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David Brant

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Pat Hill

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Michael Kane

Labor, Kansas City

Eric Laverentz

At Large, Overland park

Marilyn Wilder

Legal, Hesston

By law, the Commission must represent particular areas of the workforce and community. In addition, no more than four Commissioners may belong to one particular political party. The Governor of the State of Kansas appoints all seven Commissioners to serve the Kansas Human Rights Commission.

(Continued from page 1)

ous positions, Mr. Minner was promoted to Executive Director in 1997. Also in 1997, Mr. Minner conciliated a \$200,000 settlement for the aggrieved party, the largest monetary settlement in the history of the Kansas Human Rights Commission.

Mr. Minner has received many awards during his years of public service, including the U.S. Department of Justice Community Service Award in 1981; the Outstanding Public Service Award presented by the Coordinating Committee of the Black Community in 1987; the Martin Luther King, Jr. Civil Rights Award presented by the Living the Dream Committee; the Martin Luther King, Jr. Governor's Award presented by the Governor Bill Graves in 1995; and most recently, the national Overall Human Rights Award presented by the National Association of Human Rights Workers in 1998.

KANSAS HUMAN RIGHTS COMMISSION AREA OFFICES Eternal Vigilance is the Price of Freedom

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Governor Sam Brownback presents a 40-year service pin to Executive Director William Minner.

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