



Inappropriate Behavior, the Inclusive Workplace, and Reasonable Care

(Management Edition)



Today's Presentation

Inclusive Workplace

Civil Rights
Laws

Demonstrating "Reasonable Care"
a/k/a
The Work Begins Before the First Complaint

Discrimination

Harassment

Anti-
Harassment
Policy

Complaint
Process

Investigation

Final Steps

Sexual
Harassment

What is an Inclusive Workplace?

- One that welcomes all individuals, treats them with dignity, and respects their differences



Why is Inclusiveness Important?

- Two heads are better than one.
- Reflect your customer base.
- Reflect your community.
- Maintain a good reputation in the community.
- Be a good partner in society.
- Discrimination and harassment are against the law.

“The most valuable resource that all teachers [or any employee] have is each other. Without collaboration our growth is limited to our own perspectives.”—Robert John Meehan

“It is time for parents to teach young people early on that in diversity there is beauty and there is strength.”---Maya Angelou



Consequences.....

- Complaints filed with the KHRC, EEOC, and/or other entities.

- EEOC sued or settled with 19 employers in the May 2016.

- Civil lawsuits.

- Criminal charges in some cases.

- Public embarrassment.

Conciliations, jury awards and settlements from the EEOC website:

- \$33,000
- \$3 million
- \$55,000
- \$250,000
- \$85,000
- \$110,000
- \$45,000
- \$8.6 million
- \$132,500
- \$24,000
- \$87,000
- \$140,000
- \$66,000 plus
- \$100,000
- \$7.7 million

Civil Rights Laws

Discrimination and Harassment

What is a “civil right”?

- Generally created & protected by a governmental body (federal or state).
- Most commonly involves the protection against discrimination on the basis of race, religion, gender, or national origin. These categories have been expanded to include age, disability, genetic discrimination, and retaliation.

Civil Rights Act of 1964 July 2, 1964



[O]ur generation of Americans has been called on to continue the unending search for justice within our own borders. We believe that all men are created equal. Yet many are denied equal treatment. We believe that all men have certain unalienable rights. Yet many Americans do not enjoy those rights. We believe that all men are entitled to the blessings of liberty. Yet millions are being deprived of those blessings-not because of their own failures, but because of the color of their skin. ... But it cannot continue. Our Constitution, the foundation of our Republic, forbids it. The principles of our freedom forbid it. Morality forbids it. And the law I will sign tonight forbids it.

President Lyndon B. Johnson

Civil Rights Act of 1964, as amended in 1991 (Title VII)

- Title I – Voting Rights
- Title II – Injunctive Relief Against Discrimination in Places of Public Accommodation
- Title III – Desegregation of Public Facilities
- Title IV – Desegregation of Public Education
- Title V – Commission on Civil Rights
- Title VI – Nondiscrimination in Federally Assisted Programs
- **Title VII – Equal Employment Opportunity**
- Title VIII – Registration and Voting Statistics
- Title IX – Intervention and Procedure after Removal in Civil Rights
- Title X – Establishment of Community Relations Service
- Title XI - Miscellaneous

Some Common Federal Statutes

- Civil Rights Act of 1964 (amended in 1991), Title VII
- Age Discrimination in Employment Act
- Pregnancy Discrimination Act
- Equal Pay Act
- Americans with Disabilities Act (ADA)
- Genetic Information Non-Discrimination Act (GINA)



Kansas Act Against Discrimination & Kansas Age Discrimination in Employment Act

Governor Arn signed a bill on April 1, 1953, establishing the Kansas Act Against Discrimination and the Kansas Anti-Discrimination Commission, the forerunner to the Kansas Human Rights Commission. Kansas became the twelfth state to adopt an anti-discrimination law. The federal Civil Rights Act of 1964 followed 11 years later.

The Kansas Age Discrimination in Employment Act was adopted in 1983.



12

History of KAAD

- **1953**-Kansas Act Against Discrimination passed (employment only)
- **1961**-Enforceable law
- **1965**-Public accommodations
- **1970**-Housing discrimination
- **1972**-Sex discrimination
- **1974**-Employment & public accommodations because of physical “handicap”
- **1983**-Kansas Age Discrimination in Employment Act
- **1991**-Employment, public accommodation and housing based on disability
- **2008**-The definition of age was changed to “40 and over”
- **2012**-Amended the definition of “disability” to correspond with the federal ADAAA.

K A N S A S
**Human Rights
Commission**

Our Mission



The mission of the Kansas Human Rights Commission is to prevent and eliminate discrimination and assure equal opportunities in all employment relations, to eliminate and prevent discrimination, segregation or separation, and assure equal opportunities in all places of public accommodations and in housing.



Kansas Act Against Discrimination

“The practice or policy of discriminationthreatens not only the rights and privileges of the inhabitants of the state of Kansas but menaces the institutions and foundations of a free democratic state.”

(emphasis added)



Kansas Act Against Discrimination

Prohibits discrimination in:

- ❖ *Employment,*
- ❖ *Housing, and*
- ❖ *Public Accommodations*



Protected Classes

- Race
- Religion
- Color
- National Origin
- Ancestry
- Sex
- Disability
- Age (employment only)
- Family Status (housing only)
- Genetic Screening and Testing (employment only)



Other: Retaliation (for outwardly opposing discrimination)

Simplified Bases	Alleged Bases	Total
Age	Age	198
Color	Color	25
Disability Total	Disability, Record of, Regarded As	245
Genetic Information	Genetic Information	0
Natl Origin	Natl Origin Arab, Afghani, Mid-Eastern	1
	Natl Origin East Indian	2
	Natl Origin Hispanic	34
	Natl Origin Mexican	10
	Natl Origin Other	35
Natl Origin Total		82
Race	Race-Bi-Racial, Multi-Racial	4
	Race Amer Indian, Alaskan Native	5
	Race Asian	3
	Race Black	172
	Race White	37
Race Total		221
Religion	Religion: Catholic	1
	Religion: Jewish	0
	Religion: Muslim	1
	Religion: 7 th Day Adventist	1
	Religion: Other	25
Religion Total		28
Retaliation Total		443
Sex	Sex Female	171
	Sex Male	45
	Sex Pregnancy	1
Sex Total		217

Detailed Alleged Bases for Employment Complaints- FY 2015

729 Employment Complaints Filed. 747 Total Complaints Filed.

278, or 38%, of employment complaints alleged harassment.

Total exceeds the actual number of complaints filed since many contain multiples bases.

National Origin includes Ancestry.

TYPE OF ALLEGATION	NUMBER FILED
Benefits	8
Constructive Discharge	65
Demotion	19
Discharge	411
Discipline	95
Harassment	200
Hiring	47
Layoff	14
Maternity	5
Promotion	36
Reasonable Accommodation	70
Recall	1
References Unfavorable	11
Reinstatement	3
Retirement-Involuntary	4
Sexual Harassment	78
Suspension	42
Terms/Conditions	456
Training	24
Wages	39
*Total	1,628

Types of Allegations of Unlawful Employment Practices-FY 2015

- 729 Employment Complaints Filed
- **278, or 38%, of employment complaints alleged harassment.**
- Total exceeds the actual number of complaints filed since many complaints contain multiple allegations

Local Communities Prohibit Discrimination



- Emporia
- Hutchinson
- Junction City
- Kansas City
- Lawrence
- Manhattan
- Overland Park
- Roeland Park (new Summer 2014)
- Salina
- Topeka
- Winfield

(List may not be all inclusive)

Local ordinances may have additional prohibited bases, such as sexual orientation, gender identity or military status.

Your Organization's Anti-Harassment or Anti-Discrimination Policies



Be aware of your organization's own policies. They may be more restrictive than what we have covered here.

What is Discrimination?

- Any direct or indirect exclusion... segregation...denial, or any other differentiation ... in the treatment of a person on the account of their... **[protected class]**.

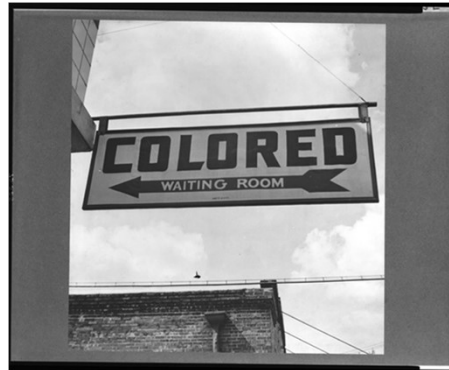
KHRC Rules & Regulations

Discrimination happens when...

*An adverse action meets
a protected class.*



Two Types of Discrimination



Two Types of Discrimination

1. **Disparate Treatment-** treating members of a protected class in a different and less favorable manner than others because of their protected class status.

Overt discrimination is an intentional, purposeful act of discrimination based on an individual's protected class status.

Example: Refusing to hire women with pre-school children, while not applying the same standard to male applicants.

Two Types of Discrimination

- 2. Adverse Impact** - conduct which, although applied equally to all, has significant adverse effect on protected class members as compared to others. That is, practices fair in form but discriminatory in operation.

Example: English tests when reading/writing is not an essential function of the job.

Harassment

It is illegal to harass an employee because of race, color, religion, sex (including pregnancy), ancestry, national origin, age (40 or over), disability, genetic information. It is also illegal to harass someone because they have complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

27

How Widespread is Harassment?

- EEOC press release from January 14, 2015:
 - Approximately 30 percent of all charges filed with the EEOC allege workplace harassment.
 - One in four women face harassment in the workplace.
 - Specifically mentioned that individuals with disabilities are vulnerable to harassment.

28

How Widespread is Harassment?-contd.

- How about Kansas?
 - 38% of employment complaints filed with the KHRC in FY 2015 alleged harassment. (Of the 729 employment complaints filed, 278 alleged harassment. 78 alleged sexual harassment and 200 alleged harassment based on other bases.)

Alleged Harassment in Kansas-FY 2014

Rank	Basis	Number
1	Disability	83
2	Sex (Sex Female-57, Sex Male-22, Sex Pregnancy-2)	81
3	Race	78
4	Age	64
5	National Origin/Ancestry	52
6	Religion	18
7	Color	17
	Total	393

305 complaints alleged harassment. Total above exceeds the actual number of complaints filed since many contain multiples bases.

Harassment Overview

- Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal if it is so frequent or severe that it creates a hostile or offensive work environment or if it results in an adverse employment decision (such as the victim being fired or demoted).

Harassment Overview-Continued

- The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer such as a client or customer (third party harassment).
- Harassment outside of the workplace may also be illegal if there is a link with the workplace. For example, if a supervisor harasses an employee while driving the employee to a meeting.
- Victim can be a bystander witnessing harassing behavior by others.



The Six Components of Harassment (Hostile Work Environment)

1. **Related to employment**
2. **Unwelcome, uninvited, offensive**
3. **Sufficiently severe to affect the terms and conditions of employment**
4. **Pervasive, not isolated**
5. **Of a prohibited nature (broadly interpreted)**
(Race, Religion, Color, National Origin, Ancestry, Sex, Disability, Age, Family Status, Genetic Information)
6. **Creates an intimidating, hostile, abusive environment in the workplace.**

Sexual Harassment-Two Types

- Hostile Work Environment (previous slide)
- **Quid Pro Quo** - (“This for that”) occurs when submission to unwelcome sexual conduct is made a condition of employment or employment decisions.

Quid Pro Quo

- Quid Pro Quo harassment occurs when a manager, supervisor, or person in a position of authority threatens an employee with a demotion or other negative consequence (or promises a benefit or promotion) in exchange for a sexual favor. Quid Pro Quo may also occur if an employee feels he/she must tolerate sexual advances, or other behavior of a sexual nature, because of a perceived threat by the person of authority.

Favoritism Due to Sexual Favors

- If one employee is rewarded in the workplace (promoted, given better work assignments, or larger pay raises) for cooperative sexual behavior at the expense of other non-favored employees in your workplace, it may be evidence of a hostile environment.



Same Sex Sexual Harassment

- Same sex harassment is actionable.
- Usually occurs when an individual does not consider another person to meet the stereotype of that gender, i.e. not feminine enough or not masculine enough.
- Sexual harassment must be so objectively offensive so as to alter the condition of the victim's employment.

Evidence of Harassment

- Jokes, slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct (blocking movement, pats, pinching, hugs, rubbing.)
- Teasing, spreading rumors, “telling tales”.
- Non-verbal behaviors—staring, looking someone up and down, suggestive looks.
- Posters, cartoons, drawings, calendars, pin-ups, pictures of an offensive nature.
- Modern Evidence of Harassment
 - Electronic Tools—Computers, Screen Savers, E-mails, Phone Calls, Voice Mail, Texts, Pictures
 - Social Media—Facebook, Twitter, Snapchat

What to do if You are Harassed

- Tell the Person to Stop
- Advise Management of Alleged Harassment
- Follow Your Organization’s Policies and Procedures
- Keep Records
- File a Complaint if not resolved by management

What to Do If You are a Supervisor

- Know your organization's anti-harassment policy and complaint process.
- Have zero-tolerance for "teasing" or "jokes" based on any of the protected classes, even if the alleged victim does not *seem* to mind.
- If you see harassing behavior "in the act", put a stop to it.
- Set an example.
- Have your listening ears on when someone complains; Be receptive to complaints.
- If you receive a complaint or if you have a concern (even if you did not receive a complaint), work together with your HR/Legal. (The organization must show they have demonstrated "reasonable care" to prevent and stop harassment with an effective anti-harassment and complaint policies, effective investigation, and take prompt, corrective action.)
- Do not retaliate against the alleged victim for complaining or witnesses for participating in an investigation.

Some Possible Necessary Immediate Steps If You Receive A Complaint

- Make it clear the alleged victim cannot be retaliated against.
- It may be necessary for the employer to take temporary action so that additional alleged harassment cannot occur.
 - Make scheduling or reporting changes so that the parties do not come into contact with each other.
 - Temporary, non-disciplinary leave for the alleged harasser while the investigation is in process.
 - Transferring the alleged harasser.
- The Complainant should not be involuntarily transferred, shifts changed, etc. The Employer should be careful about the appearance of retaliating against the Complainant.

Conclude the Complaint Process

- Someone should report back to the Complainant that the investigation has concluded. (May not be able to discuss any disciplinary matters.)
- Follow up with the Complainant to make sure harassing behavior has not continued or retaliation has occurred.
- Document! Document! Document your receipt, investigation and resolution of any complaints received. (Work HR and Legal.)

Case Study No. 1—Race Harassment

Jonathan and Richie work together. Richie has seniority over Jonathan. Jonathan is African American. Richie is Caucasian.

Richie subjects Jonathan 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 a variety of workplaces, 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.



Jonathan leaves employment because the work environment is so intolerable a reasonable person would not be able to stay (constructive discharge).

Case Study No. 1-Race Harassment Continued

1. **Related to employment**
2. **Unwelcome, uninvited, offensive**
3. **Sufficiently severe to affect the terms and conditions of employment**
4. **Pervasive, not isolated**
5. **Of a prohibited nature (broadly interpreted)**
(Race, Religion, Color, National Origin, Ancestry, Sex, Disability, Age, Family Status, Genetic Information)
6. **Creates an intimidating, hostile, abusive environment in the workplace.**

Case Study No. 1-Race Harassment-Continued

- Jonathan Martin left the Miami Dolphins on October 28, 2013 due to the alleged harassment by teammate Richie Incognito and two other offensive linemen.
- The Dolphins in 2013 distributed a workplace conduct policy to all players and asked that they all sign an acknowledgement form stating they understood the policy.

Case Study No. 1-Race Harassment Continued

- The Miami Dolphins asked the NFL to investigate. The NFL contracted with a law firm to do the investigation.
- “The Report concludes that three starters on the Dolphins offensive line ...engaged in a pattern of harassment directed at not only Jonathan Martin, but also another young Dolphins offensive lineman and an assistant trainer.”
- The Report cited racial slurs, racially derogatory language, name-calling, improper physical touching.

Case Study No. 1-Race Harassment Continued

- “The Report concludes that the harassment by Martin’s teammates was a contributing factor in his decision to leave the team, but also finds that Martin’s teammates **did not intend** to drive Martin from the team..” (emphasis added)
- “Further, Martin’s vulnerabilities do not excuse the harassment that was directed at him. That the same taunts might have bounced off a different person is beside the point. Bullies often pick vulnerable victims, but this makes their conduct more, not less, objectionable.”

Case Study No. 1-Race Harassment Continued

- Jonathan Martin played for the San Francisco 49ers in the 2014-2015 season.
- Richie Incognito was without a team for the 2014 season. He signed to play for the Buffalo Bills for the 2015-2016 season.
- The Miami Dolphins fired offensive line coach Jim Turner and trainer Kevin O'Neill for apparently overlooking the hostile work environment. Turner was alleged to have witnessed much of the "teasing" and participated in one harassing incident against a different offensive lineman.

Case No. 2-Sexual Harassment

- Bob is the head of the organization.
- Bob asks subordinate women if they come to work without their panties, demands kisses, tells women he wants to see them naked, and dragged one woman in a headlock while whispering in her ear.

Case No. 2-Sexual Harassment-Continued

1. **Related to employment**
2. **Unwelcome, uninvited, offensive**
3. **Sufficiently severe to affect the terms and conditions of employment**
4. **Pervasive, not isolated**
5. **Of a prohibited nature (broadly interpreted)**
(Race, Religion, Color, National Origin, Ancestry, Sex, Disability, Age, Family Status, Genetic Information)
6. **Creates an intimidating, hostile, abusive environment in the workplace.**

Case No. 2-Sexual Harassment-Continued

- Ex-San Diego Mayor Bob Filner was sentenced to three months of home confinement and three years of probation.
- Filner resigned amid widespread allegations of sexual harassment.
- Filner pled guilty in October 2013 to one felony and two misdemeanors for placing a woman in a headlock, kissing another woman, and grabbing the buttocks of a third.



We have provided some pretty extreme examples.

We receive complaints with far less serious allegations.

Sophomoric or “Toxic” Behavior
(Not based on a Protected Category)
(Behaviors that violate respectful workplace norms.)

- Spreading rumors or whispering about others
- Making demeaning comments about others
- Raising your voice
- Slamming your hand down on a desk
- Slamming doors
- Touching someone else or shaking your finger in their face
- Calling names, i.e. “Stupid” or “Dumb” or inappropriate nicknames
- Using profanity
- Not keeping confidential information confidential
- Standing in someone’s personal space
- Driving by someone’s house or following them
- Cyberstalking
- Bullying

Demonstrating “Reasonable Care” to Prevent And Address Harassment

Why Demonstrate “Reasonable Care”?

- Want employees to feel included and valued.
- Harassed employees have decreased productivity and increased turnover.
- Maintain a good reputation in the community.
- Harassment is morally wrong.
- Discrimination and harassment are against the law.
- Public embarrassment.
- Can incur liability for the organization by not exercising reasonable care to prevent and correct promptly harassing behavior.

Employer's Defense

- Employer must prove that it exercised reasonable care to prevent and promptly correct harassing behavior.

- Employer must prove that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer, or to avoid the harm otherwise.

56

“Arch Enemies” of Effective Harassment Policies and Practices

- Supervisors not recognizing when an employee is complaining of harassment and then failing to act upon the complaint or to forward it to HR.
- Supervisors know of or witness the harassment, but ignore it. Thereby, failing to protect the employee (and the organization) from harassing behavior.
- Mandating the harassment complaint be submitted in writing before taking action to initiate an investigation.
- Not conducting a thorough investigation or concluding it in a timely manner.

An Effective Anti-Harassment Policy and Complaint Process

The Anti-Harassment Policy and Complaint Process

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.

More on the Anti-Harassment and Complaint Policy

- The policy should prohibit harassment by everyone in the workplace and non-employees who come into contact with employees (customers, delivery personnel, etc.).
- The policy should prohibit harassment by employees in work-related situations outside the normal workplace (training, conventions, travel status).
- The policy should prohibit harassment by employees in social and other settings away from work (work holiday parties).

How to Distribute the Policy

- Provide every employee with a copy of the policy and complaint procedure.
- Consider distributing the policy and procedure annually.
- Train on the policy.
- Many organizations ask their employees to sign an acknowledgement that they have received and understood the policy.
- Make the policy available in “common” areas—bulletin boards, break rooms, time clocks, intranets, computer networks, employee handbooks.
- Emphasize the importance of the policy by having top management issue it.

The Complaint Process

The Complaint Process

- The complaint process should facilitate the filing of complaints. It should not create barriers.
- The employer is obligated to investigate a complaint no matter how it is received (written, verbal, e-mail, etc.)
- Provide alternative contacts for reporting complaints.
 - Employers should not require employees to report to one sole contact.
 - Provide complaint contacts outside the employee's chain of command, such as human resources or other supervisors.
- Make sure employees in outlying offices or 2nd or 3rd shifts have access to file complaints.

The Complaint Process

The Complainant may not use the word “harassment” when complaining. They may complain of bad behavior, toxic behavior, being mistreated.

The Employer needs to recognize the complaint as one of harassment.

What to Do if You Are a Supervisor

How do I protect myself or my company?

- Strong policy and complaint procedure.
- Effective investigative process.

Policies

- Establish strong policies.
- Publicize policies frequently.
- Train on the policies frequently.

Policies and Complaint Process

- A clear explanation of prohibited conduct. Use plain language.
- Assurance that the employee making a complaint will not be retaliated against.
- A clearly described complaint process.
- A complaint process that provides alternative reporting contacts (besides the supervisor).

Policies and Complaint Process (continued)

- Assurance that the employer will protect the confidentiality of harassment complaints to the extent possible.
- A complaint process that provided a prompt, thorough, and impartial investigation.
- Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.

Other Considerations When a Complaint is Received

- It may be necessary for the employer to take temporary action so that additional alleged harassment cannot occur.
 - Make scheduling or reporting changes so that the parties do not come into contact with each other.
 - Temporary, non-disciplinary leave for the alleged harasser while the investigation is in process.
 - Transferring the alleged harasser.
 - The Complainant should not be involuntarily transferred, shifts changed, etc. The Employer should be careful about the appearance of retaliating against the Complainant.

The Investigation

Effective Investigation Process

- As soon as management learns about alleged harassment it may be determined a detailed fact finding investigation is necessary. Be open to where the investigation may lead you.
- The investigation, if necessary, should be launched immediately.
- The Complainant may ask you to keep the complaint to yourself or not proceed with an investigation. The Employer has been put on notice about the alleged harassment and has a responsibility to investigate.
- Select an investigator who will be unbiased and will base recommendations on the investigative facts. Recommended that the investigator be independent of the chain of command for the alleged incidents.
- If possible, select someone with experience in this area. Did the proposed investigator previously know about the alleged harassment? If so, select someone else.
- Conclude the investigation in a timely manner. Investigations lasting more than a week will be scrutinized.

Investigation Interviews

- Explain the complaint. Remind participants of confidentiality expectations and non-retaliation provision. Thank for participating. Explain that you are a neutral investigator.
- Remember the who, what, when, where, why, and how.
- Who did it?
- What happened?
- When did it happen?
- Where did it happen?
- Why did it happen?
- How did it happen?
- Is there evidence? (text messages, social media posts, copies of “jokes”)
- Was there touching involved?
- Witnesses?
- Do you know of others who were harassed by the same person?

Investigation Interviews

- Remember to ask witnesses, and the alleged harasser the same information.
- Be sure to use open-ended questions and follow-up questions when interviewing the complainant, the alleged harasser, and witnesses. The purpose is to facilitate the gathering of information.

Credibility- Who to Believe, Factors to Consider

- Inherent plausibility-Is testimony believable, does it make sense?
- Demeanor-Does the employee seem to be telling the truth?
- Corroboration-Is their witness testimony, or is their physical evidence?
- Past record- Does alleged harasser have a history of similar behavior?

Assurance of Immediate and Appropriate Corrective Action

- When a violation has occurred the alleged harasser should receive appropriate corrective action in accordance with any disciplinary policies or harassment policies.
- Measures should then be put into place which are designed to stop the harassment. Be sure that any actions taken are not considered retaliation against the Complainant.
- Management should keep in mind that the employer is liable if the harassment does not stop.

Examples of Corrective Measures

- Reissue policy
- Education/training
- Oral or written warning/reprimand
- Transfer or reassignment of the offender
- Demotion
- Reduction of wages
- Suspension
- Discharge/termination

Final Steps

- Report back to the Complainant that the investigation has concluded. (It may not be appropriate to discuss all parts of the final report, such as disciplinary action.)
- Follow up with the Complainant in the future to make sure any harassing behavior has not continued.

Harassment by “ALTER EGO” of Employer

Standard of Liability

- An employer is liable for unlawful harassment whenever the harasser is of a sufficiently high rank to fall “within that class...who may be treated as the organization’s proxy.” In such circumstances, the official’s unlawful harassment is imputed automatically to the employer. Thus the company cannot raise the affirmative defense, even if the harassment did not result in a tangible employment action.

Officials who qualify as “ALTER EGOS” OR “PROXIES”

- PRESIDENT
- OWNER
- PARTNER
- CORPORATE OFFICER
- UPPER MANAGEMENT

HOSTILE ENVIRONMENT HARASSMENT

- Two prongs of affirmative defense
- Prong one-Did respondent exercise reasonable care to prevent and correct harassment?
- Prong two-Did complainant unreasonably fail to use respondent's complaint procedure?

Effective policy

- It is not just enough to have a policy. It has to be an effective policy.

VICARIOUS LIABILITY

- Employer is always liable for unlawful harassment by a supervisor when it culminates in a tangible employment action.
- If no tangible employment action, the employer can avoid or limit damages by proving an affirmative defense.

SUPERVISORY AUTHORITY

- The harasser must have actual or apparent authority to undertake or recommend tangible employment decisions affecting Complainant's or direct Complainant's daily work activities.

TANGIBLE EMPLOYMENT ACTION

- Any significant change in employment status such as hiring, promotion, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. etc. It need not be an adverse action but must be casually linked to the supervisor.s harassment.

Thank you!

The End

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