



Avoiding Sexual Harassment

Even if you forget everything else about sexual harassment, following these ten guideposts will go a long way toward keeping your Company focused on profits, not plaintiffs:

Ten tips to keeping your company focused on profits, not plaintiff.

Tip No. 1: GET A WRITTEN POLICY.

Most companies now have something that passes for a written policy on sexual harassment. If yours doesn't; get one created. This week! Read it and make sure that it is regularly updated, and reviewed internally by Human Resources (HR), that it describes how to bring a complaint to the Company's attention, and that it provides employees with several avenues to bring complaints.

Tip No. 2: DON'T LET DUST GATHER ON IT.

Even the best written policy does no good suffocating in someone's bottom drawer, or peeking out from behind a bulletin board crammed with photos of employee motorcycles for sale. Get the policy circulated regularly to ALL employees, and have them acknowledge periodically that they have received it and read it. POST the policy conspicuously.

Tip No. 3: KNOWLEDGE IS POWER.

Educate and train employees on what to do if they are harassed or see harassment in the workplace. Having periodic meetings where HR discusses the Company's policy directly with employees and some typical situations that may come up is money in the bank. Keep track of attendance at meetings- sign in sheets may become key evidence if a complaint ever reaches litigation.

Tip No. 4: INTERNAL COMPLAINTS ARE OPPORTUNITIES TO WIN.

When complaints are made, take them seriously, and investigate and resolve them with courtesy and professionalism. Someone who's worked up enough courage – or who is sufficiently upset -- to complain about a supervisor or co-worker is probably willing (with a little nudge in the wrong direction) to hire a lawyer and complain about it to a jury, too. When a complaint is raised, don't panic: listen, take notes and report it to Human Resources.

Tip No. 5: WRITE IT DOWN.

Document all complaints received from employees and/or supervisors, and all communications in the course of the investigation. This will permit the Company to explain in detail not only what it did, but also why it did it, long after memories have faded (or "improved" in litigation).

Tip No. 6: LONE WOLVES NOT ALLOWED.

Investigating sexual harassment complaints, and fashioning appropriate remedies, is often ineffective if one part of the organization is not talking to another part of the organization. Be objective, do not rank complaints. Supervisors must be trained to forward ALL complaints to Human Resources, not just the "serious" ones. A complainant who's perceived as a whiner in accounting might be perceived - by a jury - as having good reason to whine if he or she has told a supervisor three or four times about problems, and nothing got done because the supervisor decided to "handle it" alone.

Tip No. 7: COMPLETE CONFIDENTIALITY IS NOT AN OPTION.

A familiar scenario is the complaining party who begs a supervisor not to do anything to the alleged harasser. The request may be phrased as "I don't want to get anyone in trouble" or "I don't want anything done, I'm just telling you for the record." Do not make any promises you cannot keep. EVERY complaint gets forwarded to management/HR for investigation and remedy. Only those with a need to know will be in the loop. Remember that the Company has a legal duty to investigate the complaint, because a work environment free of harassment belongs to everyone (not just the complaining party).

Tip No. 8: DO NOT DROP THE BALL.

Remember to communicate with the complaining party and let her/him know what's going on. It may fall off your radar, but be aware that the complaining employee will be on "red alert" and will expect to hear back. Passing the complaint on to HR does not permit a manager to wash his/her hands of any further involvement. Follow up with HR and the employee, so that nothing falls through the cracks.

Tip No. 9: RETALIATION IS A NON-STARTER.

Not every complaint has merit, but many poor harassment claims spawn terrific retaliation claims. And most every juror understands payback. Make sure that the target of the complaint, co-workers, and the complaining party each know that retaliation will not be permitted or tolerated. A couple of follow up discussions with the parties involved after the matter has been resolved - just to make sure things are still going smoothly, will save a lot of headaches later on, and will enable the Company to cut off most retaliation claims before they get legs.

Tip No. 10: EVERY COMPLAINT HAS A REMEDY.

There are no hard-and-fast rules about appropriate punishment. The key idea, however, is to insure that the harassment will stop, and to follow up to make sure that it stays stopped. Sometimes that means termination. Sometimes that means lesser discipline. Even where a complaint is found to have no merit, be creative -there's obviously friction, so work with all parties to see if there's an acceptable approach that will reduce or eliminate the tensions that led to the complaint. And document the resolution, and the parties' agreement with it.

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