

WORKPLACE POLICIES TO PREVENT HARASSMENT CLAIMS



Insight for business owners and risk managers

While an employer's hiring and firing practices may present the greatest risk for litigation, lawsuits based on a company's employment practices can happen for many reasons. Poorly written policies or a manager's style can embroil a business in the complaint of a single employee.

Workplace harassment can come from a lack of managerial action as easily as from offensive behavior. A company's risk level is reduced when employees have a solid understanding of company policies, as well as employees' rights and responsibilities. It is the employer's legal duty to communicate workplace conduct policies and to ensure every employee understands and adheres to them.

HARASSMENT

Workplace harassment is one of the most difficult risks for an employer to control. Whereas most forms of litigation are based on claims of deceitful or improper actions by company management, harassment suits usually seek to blame management for the ignorant, inappropriate or hateful actions of their employees.

Harassment is any form of malicious or exploitive behavior that alienates or damages an individual to the point of affecting employment conditions. Harassment can be caused by co-workers or managers, either individually or in groups. When the harassment is pervasive or repeated, the situation creates a hostile work environment.

No matter what party is responsible for the harassment, the employer could be implicated in an employee's complaint. While it may be difficult for an isolated incident of co-worker harassment to be blamed on management, every instance of harassment must be regarded as extremely serious. Managers are responsible for promptly and thoroughly investigating and documenting all cases.

TYPES OF HARASSMENT

Though harassment comprises a variety of offenses, one of its more common forms is sexual harassment. While there are blatant acts of sexual harassment (threatening to fire subordinates if they do not grant sexual favors; an openly discriminatory system of promotion and pay), some less aggressive forms can be the result of an employee paying too much attention to a co-worker or an improper joke that had no direct target.

What constitutes as sexual harassment is not always clear to people. Opinions on offensive behavior vary widely, and courts often have to rule on what is defined as normal behavior. Generally, if an employee feels uncomfortable or harassed, he or she should report it immediately so the offensive behavior can be stopped.

General harassment claims are as serious as sexual harassment. Biases can easily result in the exclusion of a co-worker or create favoritism for similarly minded employees. Managers should not tolerate harassment and should take steps to counsel individuals who display signs of discriminatory behavior based on race, ethnicity, disability or religion. Discrimination based on religion can be particularly difficult to handle; it is often visually indiscernible, and co-workers may feel they have religious superiority or no reason to be considerate of another person's beliefs.

Workers should feel that they can report harassment without any threat of repercussion. At least two channels for reporting harassment should be set up for situations where one is compromised or directly connected to the harassment. If employees do not feel they can report harassment safely, managers may not be aware there is a problem until litigation for a hostile work environment and negligent management is filed. Workers should be trained to recognize harassment of co-workers and be instructed to treat offenses seriously.

Employers can be held liable for harassment that happens outside the workplace. Job-sponsored events are often considered as being under a company's liability. Although harassment completely outside of any work-related functions is not the company's



responsibility, employers should be open to receive reports of any harassment incidents between two employees and speak with the offending party. While an employer cannot reprimand employees for actions performed in their free time, he or she can remind them of the company's no-tolerance policy for similar actions in the workplace and, if necessary, separate the employees involved in the situation.

An employer can take proactive steps to help prevent harassment and negligence litigation, which includes employee training, signed documentation of the training, and an agreement of understanding and willingness to comply with company standards. Training should happen on a regular basis, not just when employees are hired. Demonstrating and reminding workers of the severity of harassment can keep adverse actions from occurring and can demonstrate in court that managers made genuine preventive efforts.

NECESSITIES OF A HARASSMENT SUIT

While it is difficult to eliminate the possibility of individual acts of harassment, an isolated, uncharacteristic action by a single employee is not likely to result in a lawsuit against the entire company. Noncriminal harassment from a co-worker is not grounds for a lawsuit; harassment claims typically target the employer.

Handbook policies and managers are representatives of a company and its culture. If either causes an employee to be ignored, punished or fired for a "protected attribute," it will be viable grounds for a harassment case. To minimize this risk, companies must have trustworthy individuals in positions of authority and establish clear, unbiased handbook policies.



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Cases of hostile work environments are easier for employers to avoid. Employees claiming a hostile work environment typically must show that harassment 1) occurred repeatedly, 2) was not condoned by the employer in any way, 3) targeted a “protected attribute,” 4) was allowed by the employer, 5) interfered with job functionality, and 6) did not cease after appropriate actions by the employee.

Typically, a claim of a hostile work environment succeeds only if the claimant first made his or her employer aware of the situation and the employer failed to take appropriate steps to correct the problem.

Additionally, employees cannot claim that they were discriminated against simply because a manager or co-workers didn't like them for personal reasons. However, employers or HR representatives receiving complaints should encourage individuals to be cordial and work well together despite personal attitudes. A targeted employee could assume (and therefore allege) that he or she is disliked because of a protected attribute. Employees should be trained on the aspects of a hostile work environment and behaviors that will not be tolerated in the workplace.

Employers should recognize that being able to prevent harassment litigation from being successful does not prevent the expensive litigation from occurring. Companies and managers take every step possible to keep employees from feeling harassed. Goodwill toward employees and an effort to accommodate concerns can prevent a host of legal issues. Most lawyers will not accept plaintiff cases unless an employer has disregarded the concerns of an employee.

NEGLIGENCE IN HIRING

There are situations in which an employer can be sued for negligence after a first incident of co-worker harassment. If a new employee is accused of physical harassment and it is discovered that he or she has been reported or arrested for similar behavior prior to being hired, a plaintiff could claim the employer showed negligence in hiring. Employers should do thorough background checks on job candidates before hiring to reduce this risk.

DOCUMENTATION

Proper action by managers and HR representatives is of little value if it is not properly documented. If a suit is filed, the employer will need to provide proof of the facts pertaining to the suit. This may include proof of policies, training and management's response the complainant's original complaint. An employer needs solid proof that its managers took steps to prevent problems and inform employees about their rights. In addition, the employer must prove that when problems occurred, management responded promptly and appropriately.

The employer should have policies, practices and formal documents for handling complaints; every complaint should be logged and investigated using established methods. A separate and confidential file must be kept, which includes all documentation and notes pertaining to the complaint. The documentation should include a statement relevant to how the complaint was resolved and the steps that were taken to ensure the situation will not recur.

Having employees read and agree to company policies provided in an employee handbook is a key method a company might use to protect itself and educate its workers. Handbooks should be written carefully and kept up to date. They should include policies as well as the employees' responsibilities and rights. Managers should be subject to the handbook as well and carry out all investigations and evaluations with the rules of the handbook in mind. Handbooks must comply with local, state and federal laws. The employer may wish to have the handbook reviewed by legal counsel.

While not all risk of harassment complaints can be eliminated, well-written policies, management and employee training can lessen their occurrence.

Many employers carry Liability insurance that can help mitigate expenses when unavoidable claims are filed. If you have questions about your current Liability insurance, or would like to request additional resources, contact the team at VGM Insurance today.