



So, What Is Harassment Really?

Publication

5.01.13

I see it all the time - an employee feels like he or she is being picked on in the office and complains to a supervisor: "I'm the victim of harassment!" Or the disgruntled worker might take it one step further - "That guy is creating a hostile work environment!" These words conjure up fear in the mind of any human resources professional because of the possibility of an ensuing lawsuit. But how worried should employers be when these words are thrown around? And how bad does it have to be in order to be truly considered "harassment?"

In order to maintain a claim of harassment, it's not enough to prove that someone did something mean or rude or distasteful to you. Instead, the courts will look at the frequency of the conduct, its severity, whether it was physically threatening or humiliating, and whether it unreasonably interfered with the worker's ability to do the job. So, the employee who thinks that supervisor is glaring at her in a mean way is not the victim of "harassment," and the manager who is forcing her workers to work overtime this week is not creating a "hostile work environment." It takes a whole lot more than that to constitute illegal behavior.

But does that mean employers should now ignore all complaints unless they are repeated and horrific, involving allegations of physical assault or requests for sexual favors, and lead to mass resignations? Of course not. The point is that a business owner shouldn't necessarily fear a million-dollar judgment simply because an employee cries "harassment!" But the owner can - and should - act to address misconduct even if it doesn't rise to that level.

If an employee were to sue an employer just because a co-worker told her a dirty joke, the courts would toss her harassment lawsuit pretty quickly. But just because the conduct wouldn't cause liability doesn't mean an employer wouldn't be able to act on it. In fact, I would recommend disciplining that joking co-worker immediately and warning him that future misconduct will lead to termination. If he were to tell a second dirty joke, I still don't believe the unwitting listener has an actionable hostile work environment claim against the company, but you better believe I'd recommend terminating the co-worker for violating company policies.

Handling complaints like this in a consistent manner will prevent the misconduct from ever developing to the point where someone could have a real claim of harassment against a company.

This article appeared in the May 1, 2013 issue of *The Daily Journal of Commerce*.

Related People



Richard R. Meneghello
Chief Content Officer
503.205.8044
Email