Employers – Don't Wait For a Sex Scandal to Enforce Your Sexual Harassment Policy

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In the modern workplace, the pitfalls of a sexual harassment claim for a company are often obvious and problematic. Surprisingly, despite the risks of adverse public exposure, an expensive monetary judgment, and the potential award of attorney fees, many businesses have yet to prepare for and properly address this phenomenon.

Taking a do-nothing approach to preventing sexual harassment claims may have a devastating impact on your company. On the other hand, establishing the mechanisms to protect victims and preserve company resources often requires a proper understanding of sexual harassment and proper planning and implementation of an effective policy.

Title VII of the Civil Rights Act of 1964 does not prescribe all conduct of a sexual nature in the workplace. Only unwelcomed sexual conduct that is a term or condition of employment constitutes a violation of Title VII. There are two basic types of sexual harassment. The first kind, known as "Quid Pro Quo" harassment, occurs as a result of a supervisor seeking to exchange sexual favors from a subordinate for favorable treatment regarding the terms or conditions of employment. In the face of a refusal to participate, the supervisor might threaten to demote the employee or reduce their pay. Both the offer and the threat may be direct or implied, through words and conduct.

The second type of legally recognized harassment is hostile environment harassment. Hostile environment harassment occurs when offensive comments, pictures or actions make the workplace hostile to one gender. The pervasive use of lewd comments, dirty jokes, pictures and sometimes touching are examples of actions that might create a hostile work environment. Hostile work environment harassment can be committed by supervisors, coworkers, subordinates, vendors and even customers.

A proactive response to preventing sexual harassment is management's best weapon. A well-written and effective anti-harassment policy can provide a useful legal defense to allegations of harassment. To be effective, the anti-harassment policy should contain a detailed reporting mechanism for victims of harassment and should be distributed to all employees, along with an acknowledgment of receipt. Company wide training on preventing sexual harassment will also be useful.

In advance of receiving a complaint of sexual harassment, it is imperative that management be prepared to respond quickly to any allegations and ensure that each complaint is promptly and thoroughly investigated. During the pendency of the investigation, the company should also act reasonably to end the harassment. This may result in changes to work areas and supervisory chains of command during the course of the investigation. If harassment is confirmed, swift discipline should be implemented for the harasser consistent with the facts and company policy.

The results of the investigation and disciplinary aftermath should avoid any action that retaliates against the individual lodging the complaint. Issues regarding retaliation are often subjective and could be a direct result of separating the alleged harasser from the victim. In the end, the victim of harassment should not be in a worse position as a result of reporting the allegations.

Finally, in responding to sexual harassment — speed matters. A company must work proactively to investigate the allegations and respond promptly. Working together, management, human resources and corporate legal counsel can work together to reduce the prospect of harassment and respond effectively and fairly to all allegations once raised.

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