
SEXUAL HARASSMENT TRAINING -- IT'S A MATTER OF NECESSITY....
by LENA BODIN, MBA, SPHR

As we approach the new millennium, claims of sexual harassment has reached an all time high, from 6,000 claims in 1990 to over 16,000 claims filed in 2000. The Supreme Court now holds the employer responsible for taking steps to *prevent* and *correct* sexually harassing behavior in the workplace. In addition, both the Department of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC) also expect and holds companies responsible for preventing and correcting potential harassment in the workplace. Sometimes, these cases end up in the lap of the DOL or the EEOC who are then faced with charging the company for failing in their legal obligation to protect their workforce.

As the aging baby boomers are leaving the workforce our workplace is becoming more diverse. Added to the traditional incidences of sexual harassment, there are many other variable that have contributed to the increased number of claims. Due to publicity and landmark cases, victims of harassment are now more familiar with the concept of harassment and the available recourses. Companies are also faced with diverse cultures from their multinational, albeit in many cases, American workforce. What might be acceptable in certain cultures or some foreign countries are not acceptable behavior in the United States and these behavior, although may have been harmlessly intended, can end up in the courts in harassment claims.

What does a company do to protect itself when multi-million dollar sexual harassment claims are being settled in favor of a plaintiff?

Employment Practices Liability Insurance is one way to protect a company. However, EPLI does nothing to prevent suits from being brought to and through trial. Not to mention, that the damage goes further than simply monetary – publicity, employee morale and productivity are some of the others costs associated with a company being in court.

The real and most valuable protection a company can provide itself is prevention through training – yes training. Sometime just having a sexual harassment policy which has been distributed and properly acknowledged by employees isn't sufficient. Looking at landmark cases, the courts have clarified that training is essential and that companies have a legal duty to comply in order to protect themselves from liability in a harassment case. Mandatory training has been the standard mantra in EEOC settlement agreements.

Preliminary But Mandatory Steps to Consider...

Have an Updated Harassment Policy

Ensure that your company has a Sexual Harassment (including other forms of harassment) policy in place. This can be part of the employee handbook or a separate policy. But in either case, copies of the most current policy must be distributed to all employees in the

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organization, not just your management people. It is also imperative that each employee sign an acknowledgement form showing that they have received a copy of the policy. This signed form should be diligently maintained.

Prevention Through Education

The fact that all employees received a copy of the company harassment policy is not always enough to protect a company. Your company should ensure that all employees understand the policy provision and how to comply. Each employee must understand what steps they need to take if they become a victim of harassment and their rights and obligations under your company's harassment policy. Further, your managers must not only understand the policy but fully understand the steps to take in enforcing the policy.

Manager's training must include how to prevent harassment in the workplace, how to handle harassment claims, or what to do in the event a manager suspects harassment.

Your company will go a long way in protecting itself from potential claims and lawsuits if you can show that your company has diligently trained its managers and that those managers have followed the company policy in dealing with claims of harassment.

Some companies even provide training on an annual basis for all employees in the organization which helps reinforce the policies against harassment and the company position on violators. Implementing an annual training program will ensure that all new hires have been trained and are fully apprised of your company's policy.

Prompt Investigations of all Claims

Prompt investigations of all allegations and claims can help avoid situations from escalating. Your company has failed its legal responsibility and defeats the purpose of the distribution and training of your policy if it fails to respond to issues promptly and discretely. Usually, the investigation should be conducted by your human resources staff or an outside neutral party. A well-documented investigation shows a sincere commitment to the victims of harassment, deters further offenses and can create harmony quickly to the workplace. In addition, it shows commitment to the courts and may avoid potential liability on your company's part.

During investigations, care must be given both to the victim and the alleged offender, especially if the claim is unfounded. Because of the sensitivity involved in claims investigations, many companies look towards a neutral third party to handle the investigation proceedings to help maintain confidentiality for all parties involved.

Adequate and Consistent Implementation

While training is unquestionably an essential practice, consistency and fairness must also be exhibited and documented. In order for any policy to work the way the company intends, employees must see it as fair and consistently applied to all employees. Managers must also

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ensure policy consistency from department to department and person to person. If the victim feels they were taken seriously and the issue or concern was dealt with promptly, they will feel reassured by the organization and will be more willing to come forward with potential issues.

Again, training your managers on how to handle situations promptly and reliably becomes essential in ensuring fairness and consistency in the program.

Conclusion

Companies cannot afford to look the other way. It is naive to assume that it won't or can't happen to you because you know your workforce. Legal precedents and agency action show that training should be part of your activities for all you employees. Annual programs are even better. Costs should not stand as an obstacle to training. When you consider the fact that jury's have awarded plaintiffs millions of dollars in damages simply because an employer may have neglected in implementing one or more parts of their sexual harassment policy or failed to train their managers or employees, the risks outweigh the training costs and the implementation of a sound harassment policy.

Lena Bodin is the President of People Resource Strategies ("PRS"), a professional consulting firm with twenty years of senior level experience in business operations and human resources. PRS specializes in helping clients achieve bottom-line results through comprehensive programs designed for improving employee performance and organizational effectiveness. She has experience working with Fortune 500 companies in the financial, pharmaceuticals, and service industries. Her human resources experience has been very strategic in nature, working with start-ups and emerging companies, helping them align human resources with their strategic business plans. Ms. Bodin has an MBA in Organizational Behavior and a BBA in Human Resource Management, both from Pace University, New York.

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