

Harassment Claims in the #MeToo Era Should Be A Priority



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In the wake of the recent media coverage of sexual harassment, an organization and its leaders must realize they cannot stick their heads in the sand with respect to harassment complaints. The #MeToo movement is putting the onus on organizations and leaders to take proactive steps to prevent and resolve harassment claims in the workplace.

Organizations must be prepared to properly handle workplace harassment claims should they arise. These claims include not only sexual harassment, but harassment based on race, national origin, age, disability and any other status protected by law. Harassment claims may be directed not only at supervisors and other employees, but also customers, consultants, volunteers and board members.

Once a harassment complaint arises, employers have the affirmative duty to investigate. This duty arises whether the complaint is made formally pursuant to an established harassment policy or made in some informal manner. Employers can avoid or minimize liability for actionable harassment by investigating and taking prompt remedial action to end harassment.

Every organization should have a written harassment policy which contains a complaint procedure designed to encourage victims of harassment to come forward. Complaints made through the complaint procedure must be investigated. In addition, a supervisor's observations or informal reports of harassment from an aggrieved or third person must be investigated even if the term "harassment" is not used.

The organization's investigation should commence and conclude promptly. The investigation should be conducted by a trusted internal source such as the human resources department or outside legal counsel. In some circumstances, it may be necessary to take interim measures before the conclusion of the investigation and care should be taken not to disadvantage the victim of the alleged harassment in order to avoid the perception of retaliation.

The aim of every investigation is to determine certain basic facts: what happened, who the alleged harasser(s) were, where and when the incident took place, how the complainant's work was affected, whether anyone else witnessed the incident, whether the incident was isolated or part of a continuing practice, what the reaction of the complainant was, how the complainant has been affected, whether the complainant has talked to anyone else about the incident and whether there is any documentation of the incident.

As part of the investigation, the complainant should be interviewed and be asked to put in writing the details of the alleged incident(s). The complainant should be assured at the outset that he or she will be protected from any unlawful retaliation and that during the course of the investigation the employer will limit to the extent feasible the disclosure of the information to those with a need to know.

The alleged harasser should also be interviewed and informed of the purpose of the investigation, assured that no conclusion has been made regarding the investigation, and told that the investigation will be conducted as confidentially as possible. Further, the alleged harasser should be made aware that he or she must avoid any appearance of reprisal against the complainant and that any reprisal could serve as an independent basis for discipline.

When the investigation has been completed, a conclusion should be reached and some specific action should occur. First and foremost, the results of the investigation should be communicated promptly to the complainant as well as the alleged harasser.

If at the conclusion of the investigation it is determined that harassment has occurred, the employer must take prompt remedial action. This will include some type of disciplinary action against the alleged harasser and advising the complainant of the action taken.

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