



Workplace Sexual Harassment Claims The #MeToo Movement

Due in part to the **#MeToo** movement, employers have experienced an influx of workplace sexual harassment claims. More than ever, employers have been reminded of their legal and ethical duties to create harassment-free workplaces. These duties involve preventing foreseeable sexual harassment including proactively training employees about sexual harassment. This also entails properly investigating sexual harassment claims and immediately correcting known harassment. The following are key points to assist employers in carrying out these crucial responsibilities.

Preventing Foreseeable Sexual Harassment



Training Employees About Sexual Harassment

Proactive measures are vital to preventing foreseeable sexual harassment in the workplace. Employers benefit significantly from implementing clear sexual harassment policies, providing effective preventive training to all employees and maintaining a workplace with zero tolerance for inappropriate conduct.

Training is an important tool in preventing sexual harassment. Employers should make annual training **mandatory**, utilizing HR or a third party trainer to conduct the presentations. Separate trainings for the employee workforce and managers are recommended, as managers have expanded responsibilities in recognizing and addressing harassment. The trainings should include relevant legal content and also be relatable with helpful examples of what constitutes sexual harassment. In all trainings, it should be reinforced that sexual harassment should be immediately reported.



Reviewing and Updating Your Policies

Employers should routinely review their sexual harassment policies to ensure legal compliance and update policies accordingly. While the written policy should be included in the Handbook or Manual, proactive employers will take an extra step. The sexual harassment policy should be separately distributed to all employees on an annual basis. Employees should be required to sign and date an acknowledgment that they have received and reviewed the policy.



Focusing on Deadlines

Because the **#MeToo** movement has generated sexual harassment complaints containing both recent and older allegations, it is critical that employers have a good understanding of their deadlines for submitting complaints. It should be easy for employees to locate and make sense of these deadlines. Be aware that federal, state and local laws provide specific filing deadlines for harassment claims that may be longer than the ones established in an employer's policy.



Issuing a Strong Anti-Harassment Message

Employers' diligent proactive efforts send the message to the workforce that sexual harassment will not be tolerated. Reinforcing a zero tolerance anti-harassment approach is imperative. When that message consistently comes from the top—an employer's senior managers, CEO and Board—it is most effective. Sexual harassment training should be attended by all employees and company leaders as well. In addition, an employer's senior leaders and Board should consider attending preventive sexual harassment seminars and sharing that information with the employees. Email updates, company newsletters and HR trainings all provide good opportunities to share an employer's anti-harassment message from leadership with the workforce. These measures show that an employer's commitment to preventing sexual harassment is serious and sincere.

Investigating Sexual Harassment Claims



The Steps in Investigating a Sexual Harassment Claim

When harassment is alleged, employers must (1) conduct fair, timely and thorough investigations that provide all parties appropriate due process, (2) document the investigation including the methodology the investigator used, the factual findings, credibility determinations and any conclusions reached, and (3) if warranted, take prompt and effective remedial action. Waiting too long to kick off an investigation or postponing the conclusion of an investigation could lead to a claim that the company ignored the complaint or failed to take the concerns seriously.



The Importance of Due Process

Alternatively, employers should never rush to judgment and take adverse action against accused employees at the allegation stage prior to conducting an internal investigation into any sexual harassment allegations, including questioning potential witnesses. Employers can easily end up facing lawsuits for wrongful termination and defamation. When however, the complainant is a current employee having ongoing interaction with the subject of the complaint, employers might consider interim or preventive measures during the investigation, including a temporary reassignment or change in reporting relationships.



Avoiding Retaliation

At the outset it must be made clear to employees that (1) they will not be exposed to retaliation as a result of lodging complaints or participating in any workplace investigation, (2) the existence of the investigation, the individuals who are involved and the specific allegations will be on a strictly need-to-know basis, (3) they are to keep the entire conversation confidential, including that they were interviewed, and (4)

retaliation against those who complain or who participate in the investigation will not be tolerated and acts of retaliation will be subject to disciplinary action, up to and including termination.



Confidentiality and Fairness

The investigation and all information gathered during the course of the investigation must be kept confidential. Failing to safeguard witness identities or the confidentiality of the information could result in a claim of retaliation by any witness who later suffers any adverse consequences following the investigation. Witness interviews are crucial. Prepare thoroughly and anticipate witness concerns. If the person who is accused of harassment has any control over the investigator (e.g., HR investigates and reports to the alleged perpetrator—a C-Suite Executive) then the investigation is not neutral and objective.



Ensuring Corrective Action is Taken

If misconduct is found, the punishment should fit the findings. The employer must take **immediate and appropriate** corrective action. Disciplinary actions should lead to real change. The employer must take all reasonable steps necessary to prevent further sexual harassment from occurring.

Employers Beware: Regardless of the outcome of the investigation, it is an unlawful employment practice for an employer to take any adverse employment action against the complainant or any individual who provides information during a workplace investigation because of the complaint or participation in the investigation. This includes action that materially affects the terms, conditions, or privileges of employment, (e.g., firing, demotion, failure to promote, negative performance reviews, undesirable work assignments, etc.).

What Can You Do Now?

Dykema's Labor and Employment Practice directs workplace investigations on behalf of companies of all sizes. We regularly defend claims of harassment, retaliation and whistleblower cases in litigation, and understand how companies can protect themselves in these types of cases with a properly handled investigation. We also advise companies at the end of investigations regarding how to improve their internal processes and policies to prevent future incidents.



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