

Sexual Harassment Prevention



Introduction

Disclaimer: Any and all information contained herein shall not be construed as legal advice and, accordingly, you should consult with your own attorneys when developing programs and policies.

Introduction

- Understand the Law
- Key Components of an Anti-Harassment Policy/Program
- A View from a Firm Leader
- Internal and External Communications
- Hypotheticals to Test Your Knowledge



Introduction (Cont'd)



- Statistics
 - 40% of women surveyed state they've experienced sexual harassment in the workplace (increases to 60% when asked about experiencing sexually crude language, displays and sexual comments).
 - 3 out of 4 individuals that experience harassment never talk to their supervisor, manager, or union representative about the harassing conduct. Reasons for not reporting include fear of disbelief of their claim, inaction on their claim, blame, or social or professional retaliation.
 - Since 2010, employers have paid out \$698.7 million to employees alleging harassment through the EEOC administrative enforcement litigation process alone. These direct costs are called by EEOC "only the tip of the iceberg."

Study of Harassment in the Workplace, EEOC, June 2016

The Law – Federal and State

- Statutes
- Regulations and Guidance
- EEOC and MCAD
- Cases



The Law - Federal



- **Title VII of the Civil Rights Act of 1964**
 - Unlawful to discriminate on the basis of sex
 - Statutory basis for sexual harassment claim
- **Federal Regulations**
 - Unwelcome sexual advances,
 - Request for sexual favors,
 - Other conduct of sexual nature,
 - Equals sexual harassment and is unlawful when:

The Law - Federal

Federal Regulations (Cont'd)

- Submission is a term or condition of employment
- Submission or rejection is basis for adverse employment action
- Conduct unreasonably interferes with work or creates hostile work environment

The Law - Federal

Federal Regulations (Cont'd)

- Totality of circumstances reviewed/case by case basis
- Employer liability for employees (co-workers and supervisors)
- Employer liability for non-employees, such as clients
- Other employees may have claims if benefits granted for sexual favors or conduct creates hostile work environment

The Law - Federal

Federal Regulations (Cont'd)

- Prevention encouraged
- Raise subject – communicate policy, establish culture, core values
- Inform employees of rights, complaint process
- Develop procedures to address, such as training, actions to take upon receipt of complaint

The Law - Federal

Federal Guidance

- Employers vicariously liable for supervisors – always if results in adverse employment action
- Employee need not suffer physical/psychological harm
- Law does not prohibit teasing, offhand comments, isolated incidents unless frequent or severe or basis for adverse employment decision
- Affirmative defense – Employer exercised reasonable care to prevent harassment and employee did not take advantage of policy.

The Law - Federal

Federal Cases

- Meritor Savings Bank v. Vinson (1986) Supreme Court held hostile work environment is sexual harassment that violates Title VII. Also finds employers not always liable for supervisor actions.
- Faragher v. City of Boca Raton (1998) and Burlington Industries v. Ellerth (1998) Employer may have affirmative defense to hostile work environment when no employment action taken.

The Law - State

Massachusetts Law, G.L. c. 151B

- Sexual harassment defined in statute
- Requires policy against sexual harassment
- Policy must prohibit retaliation
- Policy must be provided in writing to all employees on annual basis
- Individual liability

The Law - State

Massachusetts Guidelines on Sexual Harassment

- Defines types of harassment: “quid pro quo” and “hostile work environment”
- Provides examples of harassment outside workplace
- Individuals liable – “person” liable can be employee
- Individual liable – “aiding and abetting” – separate wrongful act
- Model policy
- Training encouraged

The Law - State

Massachusetts Cases

The Law – Federal and State



Other Issues / What Employers Can Do

- Compliance with all applicable laws
- Training encouraged, and required in some states (CT, CA and ME)
- Contracts with clients – ensure compliance with any referenced sexual harassment policy
- Consensual relationship contracts – policy to notify employer
- Insurance

Establishing an Anti-Harassment Policy/Program

- ☐ Written Policy
- ☐ Published
- ☐ Policy Statement
- ☐ Definitions
- ☐ Training
- ☐ Complaints
- ☐ Investigations

Establishing an Anti-Harassment Policy/Program

Other Considerations

- Duty to Report
- Confidentiality
- Retaliation

The View from a Firm Leader



Communications Imperatives



- Focus first internally, then externally
- Transparency is Key
- The 3 Cs: Compassion, Commitment, Consistency
- Find the channels that work: Town Halls, CEO Blog, Video
- Communicate in good times & bad
- I'm sorry is not an admission of wrongdoing



Hypotheticals





Questions



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