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WHAT YOU NEED TO KNOW ABOUT HARASSMENT AND DISCRIMINATION TO BE AN EFFECTIVE MANAGER

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TABLE OF CONTENTS

PART ONE: WHAT IS THE COMPANY'S POLICY?

PART TWO: WHAT CONDUCT VIOLATES THE LAW?

PART THREE: WHAT DOES THE LAW REQUIRE OF THE COMPANY?

PART FOUR: WHAT SHOULD MANAGERS LOOK FOR?

PART FIVE: WHAT COULD GO WRONG?



PART ONE: WHAT IS THE COMPANY'S POLICY?

While it is important to know what the law says about harassment and discrimination, it is just as important to know what your company's policy says, because the written policies are the ultimate rulebook for your workplace.

Your company's Employee Manual should include, at a minimum, the following policies:

- Equal Employment Opportunity Statement
- Reasonable Accommodation for Disabilities
- Anti-Discrimination and Anti-Harassment Statements and definitions
- Internal Complaint Procedure

PART TWO: WHAT CONDUCT VIOLATES THE LAW?

Employees are protected by a variety of local, state, and federal laws, from discrimination or harassment that is based on or related to the employee's membership in a protected category.

Protected categories include:

- | | |
|--|-------------------|
| - age | - race |
| - color | - national origin |
| - gender | - pregnancy |
| - religion | - marital status |
| - sexual orientation | - veteran status |
| - disability (including association with a person with a disability) | - whistleblowers |

RULE ABOUT DISCRIMINATION

It is illegal for an employer to make any employment decisions in a discriminatory way. This means that none of the traits listed above can be a factor in ANY employment decision (including hiring, firing, promotion, scheduling, leaves of absence, training, etc.) and that management CAN NOT make statements or written comments that could imply that one of the traits was a factor.



TYPES OF HARASSMENT

Under current law, harassment, whether sexual harassment or any other kind, falls into these two categories:

1) Involves a Tangible Employment Action:

Usually this involves an employer or supervisor offering an employee a raise in pay, a promotion or some type of employment-related economic benefit for a sexual favor.

2) Hostile or Offensive Working Environment:

This type of harassment is more subjective and difficult to identify. Where sexually related conduct unreasonably interferes with an individual's work performance, a "hostile or offensive working environment may be created."

Employers are responsible for:

- harassment by supervisor(s) whether the employer knew about it or not, and
- harassment by employee(s) if the employer knew about it and did nothing to stop it.

In addition, the employer may even be held responsible for the misconduct of people who do not work for the company, but who regularly come into the workplace.

PART THREE: WHAT DOES THE LAW REQUIRE OF THE COMPANY?

EMPLOYER'S RESPONSIBILITIES

- 1) Investigate
- 2) Prevent conduct from occurring again
- 3) Do not retaliate against the employee who complained

In order to make sure that these responsibilities are met by the Company, it is your job, as a manager, to provide an appropriate response to an employee's complaint (respond with "I'm glad you told me" and "I will look into it immediately") AND report the information to Human Resources the same day that you learn of it!



Steps in the employee investigation that will be conducted by H.R.:

- Step 1. Make a record
- Step 2. Interview complainant
- Step 3. Interview alleged harasser
- Step 4. Interview witnesses
- Step 5. Weigh evidence
- Step 6. Take action
- Step 7. Have a follow-up meeting with complainant
- Step 8. Check back with complainant

You can help in this process by getting a detailed and, if possible, written statement from the complaining employee as soon as the issue is brought to your attention. Do not, however, take it upon yourself to conduct the investigation!

PART FOUR: WHAT SHOULD MANAGERS LOOK FOR?

Whenever you hear about conduct that might be considered harassment or discrimination against any employee, it is your responsibility to take action!

EXAMPLES:

Employee A says that he is bothered because his supervisor keeps asking him about whether he has plans to retire soon.

Red flag = potential evidence of age discrimination!

Employee B is currently involved in an investigation related to her complaint that she was harassed by a co-worker. The employee's supervisor asks you if the employee can be told not to return to the work until after the investigation is completed because she is causing a "distraction."

Red flag = employment decision that could be retaliation!



PART FIVE: WHAT COULD GO WRONG?

The number of harassment and discrimination claims and lawsuits filed each year continue to increase. In many, many cases, if the manager had handled the situation differently, the company would not have lost their case. Manager mistakes in this area can cost an employer hundreds of thousands of dollars and cost the manager his or her job.

Examples of real cases where managers made serious mistakes:

- Employee told manager that her supervisor was sexually harassing her by making suggestive comments and manager failed to do anything for 10 days because he “didn’t know how serious the allegations were.” In the meantime, the harassment continued and the employee resigned – court says this is not “prompt” action by the employer and finds that the employee’s resignation was actually caused by manager’s delay.

Result = sexual harassment, employer loses

- Manager had difficulty pronouncing an employee’s name and decided to give him an “easier” nickname. Employee complained and was not taken seriously.

Result = national origin discrimination, employer loses

- Administrator working at a correctional facility told her managers at a holiday party after work that there was a janitorial inmate in the office late, leering at her, and making her uncomfortable. Manager did nothing and the employee was raped by the inmate the next week.

Result = sexual harassment, employer loses

- Muslim employee was frequently referred to as “Taliban” or “towel head” by co-workers and then had his time card hidden and his computer unplugged. When he complained to his manager that these acts were done by the same employees who called him names, the manager said he was “being paranoid” – court disagrees.

Result = religious discrimination, employer loses