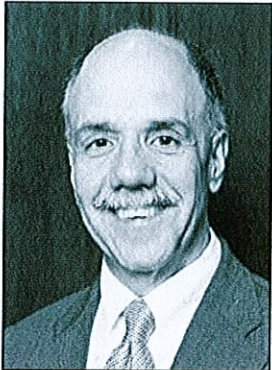


Handling Employee HR Complaints — How Not to Drop the Ball

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Abstract

Despite corporate policies and procedures, complaints from employees who believe they have experienced harassment, discrimination or retaliation often get mishandled. This leads to unnecessary administrative complaints to the Equal Employment Opportunity Commission (EEOC) or a state human rights agency. Ignored or disgruntled employees often resort to the court system to right a perceived wrong — resulting in costly and time-consuming litigation. Proper complaint-handling by managers and supervisors can reduce the likelihood of complaints and help support a harassment-free workplace.

Employers can control the liability exposure arising from illegal harassment from hostile work environment claims when there is no tangible employment action, such as discharge, demotion or undesirable reassignment. Control can be achieved by taking proactive measures to prevent harassment and by effectively dealing with harassment when there is a complaint. At a minimum, an employer must create and disseminate effective anti-harassment policies, and provide workable, uncomplicated procedures to handle complaints. If an employer has a viable system and the complainant fails to utilize it, the employer is in a better position to avoid liability. An employer is always responsible for harassment by a supervisor that culminates in a tangible employment action. An individual qualifies as an employee's "supervisor" if the individual has the authority to recommend tangible employment decisions affecting the employee or if the individual has the authority to direct the employee's daily work activities.¹

What Triggers an Investigation?

The following actions call for an immediate investigation:

- A formal complaint.
- An informal complaint (written or unwritten).
- An Equal Employment Opportunity Commission (EEOC), state or local charge.
- Reasonable suspicion of harassment.

Consider investigating complaints of conduct that might not rise to the level of actionable harassment, but perhaps violate policy or is otherwise unacceptable. This may present an opportunity to control the situation before it escalates. Having a progressive response based on the infraction is warranted.

Investigation must be prompt and thorough and should be conducted, even if the behavior has ceased by the time the complaint is made. Consider interim preventative measures while the investigation is conducted (i.e., temporary reassignment or leave). Such measures, however, should not penalize the complainant.

Create a Functional Reporting System for Complaints

Before creating a complaint-handling system, employers must check collective bargaining agreements and all applicable laws to see if there are specific time frames and procedures that must be followed. Although there is no one system suitable for all companies, a viable system should include, at a minimum, the features listed below:

- An understandable complaint procedure, with *at least* two avenues for reporting improper conduct. Limiting reporting to the complainant's supervisor, manager or one company officer does not work. Consider at least two avenues for reporting (perhaps

one male and one female) as well as a separate officer.

- Train complaint-intake persons so they know what is expected.
- When a complaint is made, strive to assure the confidentiality of all parties involved — but do not guarantee it.
- Encourage complainants to put their complaints in writing.
- Document the investigation. Record the nature of the harassment, dates, times, places it occurred, name of the harasser, witnesses and the complainant's response to the harassment.
- Involve general or labor counsel when creating the procedures.

Take Action When a Complaint Is Made!

When a person makes a complaint to a designated intake person, that person should explain the company's grievance procedures, the provisions of any collective bargaining agreements, and the steps he or she will take to investigate the complaint. Involve union representatives, when applicable. Investigations vary, but should include, at a minimum, the following:

- Interviews of the complainant, alleged harasser and witnesses. Document the conversations.
- A knowledgeable, trained, fair and impartial investigator.
- Reasonable time frames in which personnel are required to commence and complete the investigations.
- Involvement of counsel.
- Mediation as an alternative way to resolve the complaint.



Respond When There Is Illegal Harassment

If illegal harassment has occurred, the employer must take immediate and appropriate corrective action. Examples include separating the parties (without taking action against the complainant), counseling, and warnings or disciplinary actions against the harasser based on the severity of the situation. Advise the complainant that retaliation will not be tolerated. In addition, false or malicious complaints of illegal harassment should not be tolerated. Put steps into place to prevent further acts of harassment. Training for employees that explains company policies, federal and local laws, actions that constitute illegal harassment, and team building may be in order as well as diversity and sensitivity training.

In addition, there should be an internal appeals process if the complainant is not satisfied with the remedial efforts taken by the district.

Problematic Policy Language

There are certain provisions that should be avoided in anti-harassment policies. They include:

- Promising responses or investigations within an unobtainable time period.
- Requiring complainants to submit their complaints in writing or by completing a form before their complaint is recognized.
- Guaranteeing confidentiality. This is difficult when witnesses or other parties need to be contacted for legitimate reasons relating to the investigation.
- Unclear, inconsistent, illegal or ambiguous language or terms.
- A "zero tolerance" policy that mandates termination or specific discipline if a complaint is deemed to be valid. It removes the opportunity for settlements, compromise between the parties or a less stringent response if there are mitigating circumstances or if the offense was an isolated incident.

Employment liability is a major loss exposure for employers. In addition to financial ramifications, defending employment liability lawsuits and handling complaints require staff time away from the company's usual business pursuits, and it can have a negative effect on morale, productivity and reputation. Along with sound policies, employee training and proactive management, proper complaint handling will help the organization in its efforts to create a workplace free of harassment and discrimination. ■

Reference

1. "Questions & Answers for Small Employers on Employer Liability for Harassment by Supervisors." U.S. Equal Employment Opportunity Commission (EEOC) website: <http://www.eeoc.gov/policy/docs/harassment-facts.html>.