

HR Weekly Podcast
5-21-2014

Today is May 21, 2014, and welcome to the HR weekly podcast from the State Human Resources Division. Today's topic discusses sexual harassment.

The content of today's podcast is republished in part from an article entitled "Sexual Harassment: An Expensive Proposition" written by Mr. Tracy L. Moon, Jr., Esquire, with his permission. Mr. Moon is a partner in the Atlanta, Georgia office of Fisher & Phillips, Attorneys at Law.

The Equal Employment Opportunity Commission, or EEOC, reports that sexual harassment claims continue to be a serious issue, with 7,256 new charges filed in FY 2013. Although that number has decreased in recent years, the awards in sexual harassment lawsuits continue to climb.

Sexual harassment comes in several forms. The most well-known type of sexual harassment is quid pro quo harassment. The traditional example is "sleep with me and you get the job or the promotion." This claim requires the action of a supervisor.

Sexual harassment also comes in the form of hostile environment claims. This claim can result from peer or co-worker conduct. For example, two men in an open workplace telling graphic jokes or stories of a sexual nature can create a hostile work environment for females forced to endure the behavior.

Employers must provide a workplace free from unlawful harassment. As a consequence, a company could also be liable for the alleged harassment by non-employees, including alleged harassment by customers or the employees of vendors or subcontractors.

Employers must adopt a clear policy or policies prohibiting sexual harassment. The policy should define the prohibited conduct, and provide a description of how and to whom employees can report a violation to management.

The policy should include:

- A "bypass" reporting procedure to ensure employees have more than one supervisor to report a violation;
- A statement informing employees that they will not be retaliated against for making a complaint; and
- An explanation of the consequences of violating the policy.

In this regard, the policy should inform employees that a violation will subject them to disciplinary action up to and including termination of employment. All employees should receive a copy of the policy when they are hired and given an opportunity to ask questions. Employers should stress the importance of reporting discriminatory misconduct to the person or persons identified in the policy. As necessary, the policy should be reviewed, revised, and republished to ensure continued compliance and awareness.

Employers should train their supervisors about the policy prohibiting sexual harassment and how to handle employee complaints. The training should stress the importance of taking all complaints seriously and informing upper management when a complaint is received. In addition, supervisors must be trained to take action when they see something that could be a violation of the policy, even if there has been no complaint. Employers should provide supervisor training at least annually to ensure their continued attention to compliance and enforcement of the policy. It is important to remember that harassment can also be based on other protected classes, such as race and national origin, and this should also be covered in the training.

Supervisors must listen to and take seriously every complaint of sexual harassment. After a complaint is received, an investigation must be conducted. The scope of the investigation may vary depending on the circumstances but should be sufficient to obtain the information needed to determine the "appropriate remedial action" to be taken to ensure the misconduct stops and does not recur. It is important to note that the termination of the offending employee's employment may not be the "appropriate remedial action" necessary to ensure the unlawful conduct stops and does not recur. It is also important to note that the employer must ensure that the employee making a complaint is not retaliated against.

If you have a question about this topic, please contact your HR Consultant at 803-896-5300. Thank you.