

Review Your Anti-Harassment Policy Before a court reviews it for you

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A Milwaukee-area employer recently learned the hard way that its policy prohibiting sexual harassment was not effective to limit its exposure in a federal sexual harassment case. The case offers important lessons to help employers ensure that their harassment policies will pass legal muster.

V&J Foods, Inc., a Burger King franchisee, was named as a defendant in a federal sexual harassment lawsuit after a 35-year-old manager made alleged sexual advances to a 16-year-old employee. The employee attempted to complain about the situation, but was unable to find the right person to complain to. Ultimately, the employee's mother stepped in to help. The employee was fired shortly thereafter, allegedly for involving her mother in the complaint process.

The company defended the lawsuit by asserting that it had a policy prohibiting harassment that provided a complaint procedure. The trial court agreed and threw the case out. The Seventh Circuit Court of Appeals, however, disagreed and reinstated the case.

The case is significant to employers because, in addition to reinstating the case, the court criticized the company's harassment policy.

According to the court, the policy was not effective in notifying employees how to make complaints. Although the policy told employees to report problems to the district manager, the company did not provide enough information to let employees know who that person was or how to make contact. The court

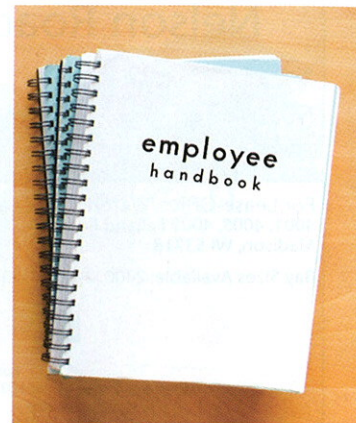
stressed that employers need to make sure that their employees can understand exactly how to make a complaint.

The decision should serve as a reminder for employers to periodically review their harassment policies to make sure they comply with recent legal decisions. The following list, while not exhaustive, includes some key items that employers should think about when reviewing their harassment policies.

Prohibit all forms of unlawful harassment. Unlawful harassment isn't just limited to sexual harassment. Harassment because of an employee's race, religion, disability or other protected characteristic is illegal as well. It is therefore important to make sure that your policy prohibits harassment based on all classifications covered by federal, state and local laws.

Employees must know to whom they can complain and how to contact them. Employees must know how to contact the person designated to receive harassment complaints. A policy that instructs employees to contact the district manager should also explain where they can find contact information. For example, employees could be given a hand-out which provides them with their district manager's name and contact information.

Complaints should be directed to high-level superiors. Harassment policies directing employees to complain to "any supervisor" can create practical problems. First, employees might not understand who is a supervisor and who is not. Second, low-level supervisors may not comprehend the seriousness of the situation. Rather than reporting the situation up the corporate ladder, they often tell a complaining employee to "just ignore it and it will stop." To avoid this problem, policies should designate higher-level supervisors or HR employees as the contact points.



Employees must be able to bypass the alleged harasser. A policy that instructs an employee to make a complaint to the alleged harasser has no value. Instead, the policy needs to provide an alternative route to make a complaint. Small employers can do this by designating their HR director as the primary contact with the company president as the secondary contact.

Make sure the policy covers harassment by customers, vendors and others. Unlawful harassment is not limited to inappropriate conduct by coworkers and supervisors. Employers should make it clear that inappropriate conduct by non-employees will not be tolerated.


Prohibit retaliation. In order to be effective, a harassment policy must assure employees that they will not be retaliated against for making a good-faith claim of harassment.

Provide periodic training to all employees. This step is just as important as having a policy. Companies that foster a culture that does not tolerate inappropriate behavior are far less likely to have harassment situations arise. Second, by conducting training, companies ensure that employees understand how to make complaints of harassment.

As with most lawsuits, the best defense to a harassment claim is to take steps to ensure that they never arise. Employers that pay attention to the points identified above are one step closer to this goal.



Daniel Barker, an attorney with Murphy Desmond, S.C., is committed to helping employers navigate the increasingly complex field of labor and employment law.

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