

How To Address Complaints of Harassment

The law requires that employers take steps to prevent and remedy workplace harassment. Failure to do so can expose you to significant liability on a hostile work environment claim. The following tips are to help you comply with the law, minimize risk, and adequately respond to complaints of harassment.

- ***Tip 1: Have a written anti-harassment policy.***

You must have a written policy prohibiting discrimination and harassment in the workplace. Your policy needs to be distributed to all employees. This can be done with an employee handbook or with a separate policy statement. You also should train your employees and managers on complying with the policy. Simply handing out the policy and having employees acknowledge receipt is not enough.

- ***Tip 2: Have clear reporting procedures.***

Your policy must make clear the avenues available for employees to report harassment. Your policy should offer that any form of complaint (written or oral, formal or informal) will suffice; that they can be made to immediate supervisors, or further up the chain of command if the immediate supervisor is the problem, to Human Resources, or to some other designated

company representative; that all complaints will be taken seriously and investigated; and that employees will not be retaliated against for making a complaint or participating in an investigation. Your policy should encourage employees not only to report harassment they may experience, but also harassment of others that they may witness. You also need to train managers and supervisors to report all potential harassment brought to their attention, with the caveat “when in doubt, report it.”

- ***Tip 3: Investigate the complaint.***

It is imperative that you thoroughly investigate all claims of harassment, no matter how trivial the complaint may seem. If you fail to investigate, you risk a judge or jury finding that you were put on notice of the harassment and failed to take reasonable steps to remedy the harassment. An investigation also may unearth a more troubling workplace environment. For serious situations, it is wise to have an outside neutral, such as a lawyer or HR expert, conduct the investigation.

Your investigation should always start with interviewing the person making the complaint. Ask them to describe everything that happened, identify witnesses, and provide any documents or other evidence to support their claim. For example, if they are being sent harassing text messages, ask for copies of the text messages. Take detailed notes of the interview and get a written statement if you can. Most important, do not jump to conclusions or pass judgment at this point. Gather the facts first.



You should also ask the complainant if they want to be separated from the alleged harasser during the investigation. This may require altering schedules, changing work locations, or keeping one person away from the workplace. You can first ask the complainant if they are willing to take one of those steps during the investigation, with the understanding that any leave would be paid. If they are unwilling, then you should change the alleged harasser's work schedule or location, or suspend him or her, until the investigation is completed.

Next, interview the alleged harasser. Ask them to provide evidence and identify witnesses that may support their version of events. Again, take detailed notes and try to get a written statement. When the interview is over, make clear to the alleged harasser that retaliation in any form will not be tolerated and that they should not try to contact the complainant.

Finally, interview any witnesses identified by the complainant and the alleged harasser. Tell them you received a complaint and that they have been identified as a witness. Again, gather evidence, take detailed notes, and get written statements if you can.

After you have interviewed witnesses and gathered evidence, you should prepare a written report describing the nature of the complaint, the results of the investigation, and whether harassment occurred. This report need not be shared with the victim or the harasser, but they should be informed of the results. If discipline is handed out as a result

of the investigation, then a copy of the report needs to be put in the disciplined employee's personnel file. The report and supporting documents should also be kept in a separate HR or management file.

● ***Tip 4: Enforce your policy.***

Your anti-harassment policy is worthless if you do not enforce it. If you find harassment occurred, you need to discipline the harasser. The discipline needs to be severe enough to send a clear message that harassment is not tolerated and further incidents will result in termination. You should also consider what resolution the victim expects, since they are the person your policy is designed to protect and the person who may bring a lawsuit if they don't think your response was adequate. The discipline given should be consistent with discipline given in similar past situations. Of course, one way to avoid liability would be to have a zero-tolerance policy and terminate the harasser; but this may not make sense for all situations.

● ***Tip 5: Tell the complainant what you did.***

At the conclusion of the investigation, you should notify the complainant that the harasser was disciplined (you do not need to give the details of the discipline) and instruct them to report any harassment or retaliation they may experience in the future. This will send the message that you take all complaints seriously.

● ***Tip 6: Continue to monitor the situation.***

You will want to continue monitoring the situation, even if you find harassment did not occur. This can be done by following up with the victim on occasion. This way, you can stay abreast of issues that the victim may be reluctant to report, and then have the opportunity to nip them in the bud before they get out of hand.



Employment Law Q & A:

Question: Can I prohibit employees from discussing an ongoing internal investigation?

Answer: Maybe not. In a recent decision, the National Labor Relations Board (NLRB) ruled that instructing an employee to not discuss an ongoing internal investigation with co-workers until the investigation concluded violated the National Labor Relations Act (NLRA). The NLRB concluded that the employer's general concern with protecting the integrity of the investigation was an insufficient reason to restrict the employee's labor law rights. Now, before instructing employees to not discuss an investigation, an employer must first determine if such an instruction is necessary to protect witnesses, to prevent a cover up, or to prevent evidence from being destroyed or testimony being fabricated.

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EMPLOYMENT LAW UPDATES

● *BOLI Announces Oregon Minimum Wage Increase*

Starting January 1, 2013, Oregon's minimum wage increases 15 cents to \$8.95 per hour. State law directs the BOLI Commissioner to adjust the minimum wage for inflation every September, rounded to the nearest five cents. The adjustment accounts for inflation as measured by the Consumer Price Index (CPI). This current adjustment accounts for a 1.7% increase in the CPI. Make sure to post a revised minimum wage poster on January 1, 2013, to reflect the change.



Announcements

Cosgrave's Employment Law Group offers Oregon employers a free consultation to review the current state of their employment policies and procedures. This service is invaluable to ensure compliance with current employment laws. For more information or to schedule an appointment, contact Shane Swilley at (503) 276-6074 or swilley@cosgravelaw.com.

If you or your company has been threatened with litigation, or a lawsuit or complaint has been filed, then contact the head of Cosgrave's Employment Law Group, Tim Coleman, at (503) 219-3810 or tcoleman@cosgravelaw.com for a consultation.