Guidelines For Handling Discrimination and Harassment Complaints



Most employers are anxious when faced with discrimination and harassment complaints. And with good reason: Such complaints can lead to workplace tension, government investigations and even costly legal battles. If the complaint is mishandled, even unintentionally, an employer may unwittingly put itself out of business.

If the employer takes the complaint seriously, however, and follows a careful strategy for dealing with it, the employer can reduce the likelihood of a lawsuit and even improve employee relations in the process.

Here are some basics rules to follow if you receive a complaint of discrimination or harassment:

- **Keep an open mind.** Many employers have a hard time believing that discrimination or harassment could be happening right under their noses. As a result, they often fail to investigate complaints, assuming that the complaint could not possibly be true.
- Unfortunately, failing to investigate a complaint is a surefire way to land in court. Investigate every complaint you receive. Don’t come to any conclusions until your investigation is complete.
- **Treat the employee bringing forward the complain with respect and compassion.**

Employees often find it extremely difficult to complain about discrimination or harassment. They feel vulnerable and afraid. This can have an impact on the quality of their work, and it can also lead them to seek outside assistance from lawyers. When an employee comes to you with concerns about discrimination or harassment, be understanding. If the employee feels that you are taking the complaint seriously and that you are not angry at her for complaining, she is less likely to take her complaint to a government agency or to court.

- **Do not blame the employee bringing forward the complaint**. You may be tempted to become angry at the complaining employee for the fact that you must now deal with the specter of discrimination and harassment in your business. Don’t ever forget that the complaining employee is the victim and not the cause of the problem. If you allow yourself to become angry at the

employee, you open yourself up to claims of illegal retaliation (see next tip, below). You also run the risk of polarizing your workplace, damaging morale and lowering productivity.

- **Don't retaliate against the employee bringing forward the complaint.** It is against the law to punish someone for complaining about discrimination or harassment. The most obvious forms of retaliation are termination, discipline, demotion, pay cuts or threats to do any of these things. More subtle forms of retaliation may include changing the shift hours or work area of the accuser, changing the accuser's job responsibilities or isolating the accuser by leaving her out of meetings and other office functions.
- **Follow established procedures.** If you have an employee handbook or other documented policies relating to discrimination and harassment, follow those policies. Don't open yourself up to claims of unfair treatment by bending the rules.
- **Educate yourself.** Do some research on the law of discrimination and harassment – what it is, how it is proven in court and what your responsibilities are as an employer.
- **Interview the people involved.** Start by talking to the person who complained. Find out exactly what the employee's concerns are. Get details: what was said or done, when, where, and who else was there. Take notes of your interviews. Then talk to any employees who are being accused of discrimination or harassment. Get details from them as well. Be sure to interview any witnesses who may have seen or heard any problematic conduct. Gather any relevant documents.
- **Look for corroboration or contradiction.** Discrimination and harassment complaints often offer the classic example of "he said/she said." Often, the accuser and accused offer different versions of incidents, leaving you with no way of knowing who's telling the truth. You may have to turn to other sources for clues. For example, schedules, time cards and other attendance records (for trainings, meetings, and so on) may help you determine if each party was where he or she claimed to be. Witnesses – including coworkers, vendors, customers or friends – may have seen part of an incident. And in some cases, documents will prove one side right. After all, it's hard to argue with an email that contains racial slurs or sexual innuendo.
- **Keep it confidential.** A discrimination complaint can polarize a workplace. Workers will likely side with either the complaining employee or the accused employee, and the rumor mill will start working overtime. Worse, if too many details about the complaint are leaked, you may be accused of damaging the reputation of the alleged victim or alleged harasser – and get slapped with a defamation lawsuit. Avoid these problems by insisting on confidentiality and practicing it in your investigation.
- **Write it all down.** Take notes during your interviews. Before the interview is over, go back through your notes with the interviewee to make sure you got it right. Keep a journal of your investigation. Write down the steps you have taken to get at the truth, including dates and places of interviews you have conducted. Write down the names of all documents you have reviewed. Document any action taken against the accused or the reasons for deciding not to take action. This written record will protect you later if your employee claims that you ignored her complaint or conducted a one-sided investigation.
- **Cooperate with government agencies.** If the employee makes a complaint with

a government agency (either the federal Equal Employment Opportunity Commission (EEOC) or an equivalent state agency), that agency may investigate. It will probably ask you to provide certain documents, to give your side of the story, and to explain any efforts you made to deal with the complaint yourself. Be cautious, but cooperative. Try to provide the agency with the materials it requests, but remember that the agency is gathering evidence that could be used against you later. This is a good time to consider hiring a lawyer to advise you.

- **Consider hiring an experienced investigator.** Many law firms and private consulting agencies will investigate workplace complaints for a fee. You might consider bringing in outside help if more than one employee complains of harassment, the accused is a highranking official in your business (like the president or CEO), the accuser has publicized the complaint, either in the workplace or in the media, the accusations are extreme (allegations of rape or assault, for example) or if, for any reason, you feel too personally involved to make a fair, objective decision.
- **Take appropriate action against the wrongdoer(s).** Once you have gathered all the information available, sit down and decide what you think really happened. If you conclude that some form of discrimination or harassment occurred, figure out how to discipline the wrongdoer(s) appropriately. Termination may be warranted for the more egregious kinds of discrimination and harassment, such as threats, stalking or repeated and unwanted physical contact. Lesser discipline, such as a warning or counseling, might be in order if the harassment arises out of a misunderstanding. Once you have decided on an appropriate action, take it quickly, document it and notify the accuser.