

HR INSIGHTS

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Investigating a Sexual Harassment Claim

Receiving a sexual harassment claim from an employee is a delicate situation. Employers must consider how they will respond to the complaint, how they will investigate the allegations and what guidelines they will use to assess the complaint's validity. Ultimately, the employer's response can have a significant effect on whether the employer is found liable for the alleged behavior in the event the complaint results in litigation.

Prevention Techniques

To protect your business and your employees in the event of a sexual harassment claim, consider the following actions:

- Create a strictly enforced company policy banning sexual harassment on the job. This policy should be distributed to all employees and should define sexual harassment and state that your company does not tolerate sexually harassing behavior of any kind.
- Determine if the conduct was actually sexual harassment by deciding if the conduct was sexual in nature and if it was unwelcome by the accuser. The organization can determine if the conduct was sexual by evaluating what was done or said, but determining whether behavior is unwelcomed is more complicated.
- The Equal Employment Opportunity Commission (EEOC) says that sexual conduct is unwelcome when the victim does not solicit or incite the conduct in question, and/or the conduct is considered offensive or undesirable by the victim.
- Employers wishing to determine if conduct was unwelcome need to consider every aspect of the circumstance, including the victim's speech, clothing and whether he or she participated in the conduct voluntarily. Each of these factors alone do not necessarily dispute or constitute a sexual harassment claim, but together may invalidate or validate a claim.
- Determine whether the conduct is considered quid pro quo or hostile working environment sexual harassment.
 - Quid pro quo: An employee requests unwelcome sexual favors for, or in return of a promotion, raise, new job title, etc. Threats of demotion, salary cuts and bad performance reviews if sexual favors are not received are also considered quid pro quo sexual harassment.

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- Hostile working environment: This constitutes behavior that a “reasonable person” would find to be “hostile” and “offensive,” according to the EEOC.
- Conduct an investigation to determine whether the sexual harassment allegations are valid. To do so, you should already have a system in place for handling these types of situations, including:
 - Training certain employees who will receive sexual harassment claims on how to conduct investigation
 - Protecting private information in the event that the complaint would become the subject of litigation
 - Considering any conflicts of interest between the employer, harasser, investigator and others involved in the investigation
 - Seeking legal guidance
 - Maintaining confidentiality throughout the investigation amongst all parties involved
 - Keeping written records of the following (at minimum):
 - Details of the complaint
 - Preliminary investigation plan
 - Responses to the complaint
 - Witness statements
 - Adjustments or amendments made
 - Investigator’s findings
 - Conclusions as a result of investigations
 - Discipline administered
 - Harasser monitoring efforts
- Take action immediately after receiving a sexual harassment complaint to stop potentially unlawful conduct.

By adhering to these actions, employers can demonstrate that they take all complaints concerning sexual harassment seriously. In addition, should a complaint result in litigation, a jury is less likely to punish the employer for failing to act, because steps were taken to remedy the situation through an investigation.