

Anti-Harassment Measures Help Avoid Liability

By Bruce Larson (Irvine)

You return from vacation energized to complete the numerous projects sitting on your desk, only to find an employee standing in your doorway asking if she can speak with you about a confidential matter. In your gut, you know your day will be swallowed by what will likely follow from this conversation. The situation takes an uncomfortable turn when you realize the employee wants to lodge a complaint of sexual harassment about one of the company's supervisors.

This is particularly problematic because the alleged harasser is a valuable, long-term employee and the claims are less than credible. What you really want to do is bury your head in the sand. But savvy employers realize that taking proper actions to address allegations of harassment is a must to help shield them from liability for the supervisor's actions. This leaves a narrow line on which employers must tread. On the one side, risk alienating a valuable supervisor, and on the other, risk being held liable for his acts.

While it may seem difficult to walk this tightrope, a recent case illustrates the rewards which can come from having an adequate policy against sexual harassment and taking prompt and measured action when allegations of sexual harassment surface. *Baldwin v. Blue Cross/Blue Shield of Alabama*.

Employee Complains, Then Balks

Susan Baldwin claimed she was subjected to various profanities and sexual innuendo from her boss. After enduring this behavior for several months, Baldwin complained to the company's human resources department. Blue Cross immediately interviewed Scott Head, the alleged harasser, and three other employees, but no one substantiated Baldwin's claims. Rather

than terminating or disciplining the supervisor, Blue Cross gave him a warning and offered to hire an industrial psychologist to counsel both him and Baldwin. She refused. When Baldwin refused Blue Cross's subsequent offer to transfer her to another location, she was terminated. Her lawsuit followed quickly.

The court found that Blue Cross was not liable for discrimination for terminating Baldwin because, "Firing an employee because she will not cooperate with the employer's reasonable efforts to resolve her complaints is not discrimination based on sex, even if the complaints are about sexual harassment."

The court also found that Blue Cross was not liable for the alleged acts of its supervisor because it exercised reasonable care to promptly correct harassing behavior as soon as it was reported, and Baldwin unreasonably failed to take advantage of the remedial actions Blue Cross offered. Where an employer "cannot tell if there has been harassment, warning the alleged harasser, requiring both parties to participate in counseling, and monitoring their interactions is a proper and adequate remedy, at least as a first step." When considered in conjunction with Blue Cross's policy against harassment which provided reasonable reporting measures, these factors supported a finding that Blue Cross was not liable.

The Point?

The lesson all employers should take away from this case is that taking the time to develop a proper policy against all forms of illegal harassment can save you time, stress, and money down the road. Blue Cross was able to come out on top because it had an established harassment reporting policy and took prompt action tailored to the specific situation when it received the sexual harassment complaint.

Take the time to carefully audit your anti-harassment policies, and ensure that a copy of the policy has been distributed to all employees. And make certain that your supervisors are trained to take prompt action in response to all complaints of harassment.

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