

OP-ED: Questions and answers concerning policies on harassment

By: Shayda Zaerpoor Le in Compliance Corner August 23, 2018 2:14 pm



Shayda
Zaerpoor Le

Workplace harassment has always been a point of concern for prudent employers, but the time is ripe to reassess policies to evaluate efficacy and the potential for improvement. The following questions can be a starting point for assessing where current policies stand.

Q: Are my policies too focused on legal definitions and requirements, or do they represent my organization's standards and culture?

A: Legal definitions are important, but without more, employees may have a hard time making use of legalese as a practical tool. The average employee is more likely to read the legal definition for harassment and instead default to a subjective evaluation of what would feel like harassment to him or her. Also, legal requirements serve as a floor for workplace behavior, not a ceiling. While we want our employees to abide by legal requirements, a productive workplace environment should aim for higher. Setting the bar higher for workplace conduct makes it easier to maintain compliance with legal requirements and communicates to employees that unacceptable (and unproductive) behavior will not be tolerated, even if such behavior is not unlawful.

Instead consider: Provide additional information in plain language that is more likely to be understood and followed. For example, the policy can explain that harassment has both an objective and subjective component, and that the circumstances and the perspective of the individual affected are relevant to the evaluation. Also, determine whether policy language encourages desired behaviors, rather than just prohibiting illegal ones. If not, highlight the type of work environment desired and state that all employees contribute to the culture of the organization and are charged with maintaining those standards.

Q: Are my policies focused only on sexual harassment?

A: Although we are in an environment of renewed (and justifiable) focus on sexual harassment, policies should not be too narrow, and differential behavior based on any protected class should be implicated. Helping employees understand that “protected classes” cover many categories beyond just gender, race or disability can help them appreciate that workplace behavior can also implicate many types of people. Military status, use of leave, family relationship or issues of domestic violence are all examples of protected categories that an average employee may take for granted.

Instead consider: The policies can provide an understanding of these categories and what differential treatment can look like, and the fact that the different protected classes are important in part because they highlight the diversity of characteristics within our workplaces. Our expectation is that employees will be mindful that these characteristics may be present even when they are not physically visible.

Q: Do my policies provide any tangible examples of behaviors we expect our employees to avoid?

A: Consider providing some examples of behaviors that can be problematic. All employees should understand it is illegal to require another employee to submit to a sexual advance as a condition of a workplace term or benefit. However, many employees may not appreciate that a social invitation or a request for a date may feel like an uncomfortable advance, particularly if it is declined and subsequently repeated. Similarly, many employees may not understand that comments about gender-based stereotypes are often problematic, even when they do not relate to sexuality or physical attractiveness. Providing a few examples of behaviors that are discouraged can help to shape the culture.

Q: Do my policies outline what will happen in the event of a complaint or a possible violation?

A: Some employers may be hesitant to provide a detailed complaint-reporting process out of concern that it may provide a road map to claims or that it may encourage additional issues. Although no organization wants to receive a complaint or allegation of harassment, it is a much larger problem when issues of harassment go unreported – complaints are in fact preferable to silence.

Instead consider: The complaint policy should outline what types of issues must be reported, such as instances when an employee has credible information about an issue and not simply where the employee was affected by the event or witnessed it directly. It should also explain where reports can be lodged, what resources exist for an employee to request assistance or accommodations while the complaint is under review, and assurance that all

complaints are reviewed promptly and thoroughly. This can help assure employees that information of this nature can and should be freely reported. In terms of prohibiting retaliation, employees are likely to feel much more secure when the policy makes clear that it does not simply prohibit retaliation in the form of outward hostility, but also protects against more nuanced outcomes such as shift assignments, work allocation and even the cold shoulder. Consider outlining what the responsive process may entail, such as reviewing any available materials, talking to other individuals, and doing one's best to yield an outcome that appropriately redresses the issue. In practice, many employees do not raise smaller complaints out of concern that a fellow co-worker may be seriously punished or terminated, so an understanding that discipline will be tailored to the circumstances at issue may help employees feel that smaller issues can be raised before they escalate into significant ones.

A user-friendly policy can be an important component of keeping employees informed about appropriate behavior, as well as helping them feel comfortable enough to provide officials with the information they need to take appropriate steps and mitigate instances of potential harassment.

Shayda Zaerpoor Le is a partner with Barran Liebman LLP. She advises employers, management and higher education institutions on a wide range of employment issues. Contact her at 503-276-2193 or sle@barran.com.



Copyright © 2018 Daily Journal of Commerce 921 S.W. Washington St. Suite 210, Portland, OR 97205 (503)226-



1311