Harassment Complaint Quiz



How Should an Employer Respond to a Harassment Complaint?

Situation

A Xerox technician who comes to the office each week swats a printing company employee in the butt with a rolled up blueprint. Distraught and in tears, she immediately tells her supervisor and demands action. The supervisor, believing he can handle the situation himself, talks to the technician, who admits what he did. So the supervisor makes him apologize to the employee. But facing the technician is the last thing she wants. She demands that the incident be reported to Xerox and the technician barred from the workplace. The supervisor refuses to "ruin the man's life over such a stupid mistake." Instead, he suggests that she call the police. The technician keeps coming to the company once a week but stays out of the employee's way. Still, his mere presence makes her very uncomfortable. She sues the company for sexual harassment. The company doesn't have a written harassment policy.

Question

Is the company liable for harassment?

1. Yes, because it didn't adequately respond to the employee's complaint.
2. Yes, because it didn't have a written harassment policy.
3. No, because the alleged harassment involved just a single incident.
4. No, because the technician was employed by Xerox, not the company.

Answer

A. The company is liable for harassment because of its inadequate response to the employee's complaint.

Explanation

This scenario, which is based on an Ontario Human Rights Tribunal ruling, illustrates some of the pitfalls to avoid when your company responds to harassment complaints.

There was no doubt in anybody's mind—including the technician himself—that swatting the employee in the butt was harassment. But in responding to the employee's complaint, the supervisor made at least four mistakes:

1. Putting the employee and the technician in the same room;

2. Not telling management about the complaint;
3. Refusing to notify the technician's employer of the incident; and
4. Telling the employee to call the police instead of recognizing that *the company* had a duty to deal with a harassment complaint.

Thus, the Tribunal concluded that the company's response to the employee's complaint was inadequate and ordered it to pay her $5,000 in damages.

Why Wrong Answers Are Wrong

B is wrong but tempting. In fact, B would be a correct answer if your company's based in MB, ON or SK. That's because the OHS laws in these jurisdictions require employers to adopt written harassment policies. Written harassment policies aren't specifically required in the rest of Canada—although they're at least a best practice. But although not having a written harassment policy isn't necessarily cause for liability itself in all jurisdictions, it may result in liability because it leaves supervisors and managers to respond to harassment complaints on their own without guidance, which is what happened in this case.

C is wrong because one incident *can* be enough to constitute harassment if it's egregious enough. Swatting an employee in the butt is the kind of egregious act that rises to this level.

D is wrong because the employer's duty to prevent sexual harassment extends to not only its own employees but also to other people who come into the workplace, including contractors and customers. Although the company didn't have authority to discipline the technician, it could—and should—have reported the incident to Xerox and not allowed him to come back to the office.

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Wamsley v. Ed Green Blueprinting Ltd., [2010] O.H.R.T.D. No. 1482, July 8, 2010