Have A Workplace Harassment Policy? Why It's Not Enough



Harassment policies are a common aspect of workplace administration for most human resource practitioners. However, establishing a harassment policy is only part of what employers should do to address harassment in the workplace. The key to protecting against potentially costly claims for harassment is to implement and follow proper policies and investigation procedures.

On December 16, 2013, an Alberta arbitration board awarded just over $805,000 in damages and lost wages to an employee who was sexually assaulted by a foreman at her place of work, both before and after making an initial complaint to her supervisor: *Calgary (City) v CUPE*, Local 38, 2013 CanLII 88297.

In November 2010, the employee reported sexual harassment and assault to her supervisor, who was also the foreman's supervisor. The next week, the supervisor went on vacation, leaving the foreman in charge. The assaults continued. Fearing she would not be believed, the employee installed a spy camera in her work station and recorded one of the assaults. The employee approached her supervisor again, who indicated his next step would be to report the assault to corporate security so an investigation could be launched. The supervisor wrote a memo to corporate security indicating that in his view, the pictures were "inconclusive". The foreman was suspended with pay and then placed on paid sick leave. On January 5, 2011, he pleaded guilty to numerous counts of sexual assault.

The employee was then the victim of what appeared to be an incident of retaliation. She was also told to attend a psychiatric evaluation and she was "counseled" by the employer. A grievance was filed on the employee's behalf and she was moved to another work site. In August 2011, the employee went on sick leave and has not returned to work. There was no record that any investigation into the allegations of sexual harassment and sexual assault was ever completed. This resulted in the largest award to date for damages and lost wages for sexual harassment in an arbitration setting.

From Prevention to Investigation: How Employers Can Reduce Risk and Liability

There are several steps you can take to minimize the risks of harassment complaints:

1. Proactively implement appropriate workplace policies that address harassment,

bullying, and workplace violence. This is now required by law in British Columbia.
2. Ensure that employees and supervisors are aware of the policies.
3. Follow the policies and review them from time to time for compliance with legal obligations.
4. If you receive a complaint, treat it seriously.
5. Without prejudging the matter, determine if anything needs to be done to address the situation while the investigation is being undertaken.
6. Commence, document, and complete an unbiased investigation in a timely manner.
7. Take appropriate action based on the results of the investigation.
8. Treat all affected parties with dignity and respect throughout the process.

Employers that have appropriate policies, conduct meaningful investigations, and follow through with reasonable and prompt action will be well placed to avoid the risk of a significant damage award against them.

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