

# Punishing Employees for Making ‘False’ Sexual Harassment Complaints



While the vast majority of sexual harassment complaints are made in good faith, there's always the risk that employees will manipulate the system by making accusations that they know to be baseless. Accordingly, it's become increasingly common for sexual harassment policies to include language making "false" complaints grounds for discipline. Although well-intended, such provisions may expose your organization to the risk of liability for retaliation if they're not carefully drafted. Here's a look at the risk and how to manage it.

## False vs. Bad Faith Complaints

**The Rule:** OHS, human rights, employment standards and other laws make it illegal to discipline, demote or take any other adverse action against an employee in retaliation for complaining about sexual harassment. The complaint need not be true; protection against retaliation applies as long as the employee makes the complaint in good faith.

**The Takeaway:** Punishing an employee for making a "false" sexual harassment complaint puts you in the retaliation danger zone if the employee acts in good faith but the allegation turns out to be untrue. However, if the allegation is not made in good faith, you can discipline the employee without engaging in retaliation.

## 3 Ways To Protect Yourself

In drafting your sexual harassment policy:

1. Reserve the right to punish not false, but bad faith complaints of sexual harassment;
2. Specify that a complaint isn't considered to be bad faith merely because the evidence doesn't ultimately support the allegation; and
3. Indicate that bad faith requires an investigation finding that the employee who accused another person of sexual harassment acted maliciously knowing the accusation was false or recklessly without regard to whether the accusation was true. [sexual harassment policy – discipline for bad faith accusations]