

When Harassment Is Not Harassment



There is more and more discussion today about harassment and bullying in the workplace. This has led to assertions of harassment and bullying in situations even where the claims are unwarranted. Discipline is one of the most frequent areas where we see claims of harassment from employees – employees claim that they are being harassed but managers feel they are simply doing their job. Problems arise because workplace harassment is a serious and legitimate topic, but employees sometimes allege they have been “harassed” because they are receiving negative feedback.

The development of the law surrounding harassment has not changed the fact that employers are still allowed to discipline employees. Discipline is not a pleasant part of the relationship – for the employee or the employer – but that does not mean that it is harassment. Where the manager is acting appropriately and respectfully, there is no harassment. Importantly, adjudicators have confirmed that just because the situation is uncomfortable or there are unpleasant consequences for the employee, it does not equate to harassment.

The frequently cited definition for workplace harassment is “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome”. Discipline can become harassment when it strays into this territory, for example, where the discipline is vindictive, cruel, or demeaning. However, the majority of discipline does not fall into the category of “harassment”. Correcting problem behavior, providing a negative performance review, or telling an employee that he or she is falling below expectations would not usually be harassment but, instead, would be a normal function of the managerial role.

Amodeo v. Craiglee Nursing Home provides some examples of alleged harassment where the conduct was merely disciplinary in nature. For example, the employee was repeatedly reminded that she must document all discussions with residents’ families. This was found to be a normal reminder of the expectations of the employee. Another allegation of harassment was based on the employee being told

that she would have to work more hours if she could not keep up with completion of resident assessments, a required part of her job. The employee thought this was an impossible work demand. The Board found that, while some of the comments made towards the employee were blunt and unflattering, they were part of the manager's role in disciplining employees who were failing to meet expectations.

What does this mean for Employers? While harassment is a serious matter, not every unpleasant situation for an employee is harassment. Employers can and should continue to discipline employees for problematic behavior. Where an employee claims they have been harassed, the employer should investigate the matter to ensure that the discipline was appropriate and the message was conveyed in a respectful manner. If such is the case, the employee should be reminded, respectfully, of the difference between being harassed and being asked to do her job.

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