Unlawful Workplace Harassment

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It’s Against The Law!

• Harassment is a form of *Discrimination*
• Title VII of the Civil Rights Act of 1964
• New York State Law
  • Age, race, creed, color, national origin, sexual orientation, military status, sex, disability, genetic predisposition or carrier status, marital status, arrest record or status as a victim of domestic violence, familial status
  • 70% on a basis other than sex.
It’s Against The Law!

• Important Court Decisions
  • Meritor Savings Bank v. Vinson (1986)
    • Quid Pro Quo
    • Hostile Work Environment
  • Burlington Industries v. Ellerth (1998)
    • Affirmative Defense
• Definition of Workplace Harassment Today
Who’s Covered?

• **Those who harass**— employees at all levels, customers, members of the same sex

• **Those who are targeted** – victims, bystanders and, in some cases, witnesses who are affected by the harassment.

• What exactly is sexual harassment?
It’s Wrong!

- Impact On Victims
  - **Psychological Consequences** – Depression, anxiety, guilt, fear, substance abuse, etc.
  - **Physical Consequences** – Sleep disturbance, fatigue, headaches, weight loss/gain, etc.
  - **Work Related Consequences** – Decreased job performance, decreased satisfaction, increased absenteeism, etc.
  - **Reluctance To Complain** – only 8-15% complain
The Risk

- More than one upstate employer sued every day
- 40.6% of all US settlements are in NYS
- Average Award: $400,000 (+$100,000 Attorney’s fees)
- Civil Rights Act of 1991
- High Profile Sexual Harassment Cases
  - Clarence Thomas – Anita Hill (1991)
  - Jones v. Clinton (1998)
  - Harvey Weinstein, etc.
- Harassment Complaints
  - Highest Number in 7 years
  - Sex based harassment down 1% - 6th consecutive decrease
- Personal Liability
The Risk

- Charges alleging harassment on the basis “other than sex” have dramatically increased.
- Discrimination Trends (EEOC-2016)

<table>
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- Gender Identity
- Personal Liability
Preventative and Remedial Actions
(The Affirmative Defense)

• Anti-Harassment Policy
  • Statement of Prohibition
  • Define inappropriate behaviors
  • Procedural details – multiple avenues of complaint
  • Require employee’s to report harassment
  • Describe how you will respond
  • Prohibit retaliation

• Communicate the Policy

• Staff Training
Handling A Complaint Of Sexual Harassment

• “Prompt, Thorough Investigation”
  • Timeliness
  • Objective
  • Thoroughness
  • Confidentiality
  • Corrective Action – consistent/proportionate

• Evaluating Evidence Of Harassment – *The Reasonable Person Standard*

• Helping The Victim Cope

• Preventing Retaliation
Common Management Mistakes

• Not taking action unless corroboration provided (make a decision even where evidence is conflicting—go with your gut)
• Moving the complaining employee (unless at employee’s request)
• Inadequate investigations
• Inconsistent discipline for inappropriate conduct
• Failure to respond appropriately when harasser is an important asset to company
• Inadequate documentation
• Failure to follow-up with the victim
Next Webinar

*Paid Family Leave Update*

How’s it going? We’ll talk about challenges that have surfaced since the implementation of PFL and how employers and regulators are reacting to those challenges.

*Thursday, February 22, 2018*

*11:00 am – 12:00 pm*

*HRCI certification is pending*

Register at www.bcnys.org
Spring 2018 Webinars

- **February 22** – PFL Implementation Update
- **March 15** - ADA/FMLA/Worker’s Compensation Compliance
- **April 19** - Employee Work Schedules, Break and Meal Period Compliance/NYS Budget Update
- **May 17** - End of Session Preview/Paid Family Leave Update
- **June 26** - Legislative Update/End of Session Review

Register at www.bcnys.org
PFL Updates

• March 22
• April 26
• May 24
• June 14

Thursdays @ 11:00 am

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