

Abra LearningAction® WHITE PAPER

Sexual Harassment and Other Legal Issues: Why Training is Important

The Law Has Changed

A recent wave of changes in the law has made it essential for companies to conduct training on matters of legal sensitivity.

The U.S. Supreme Court released two key decisions in June of 1998. As a result of these decisions, a company can dramatically reduce the likelihood of liability through an "affirmative defense" if it can show, by a preponderance of the evidence, that it (a) exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer. (Note that this defense is available whenever the employee has not suffered tangible employment action as a result of the alleged harassment -- e.g., been fired or denied a promotion.)

Law firms and in-house counsel universally recognize that, as a result of these court decisions, companies need to institute effective training policies that will teach employees what sexual harassment is, and what to do if an employee believes that harassment has occurred. It is important that this training be able to reach all of a company's workers and that a company be able to document that this training occurred.

Furthermore, numerous other courts have expanded the Supreme Court decisions beyond sexual harassment. The employer's affirmative defense has been extended, so that it now applies to discrimination against all other protected classes. For instance, one recent federal court decision found that a company was liable for racial discrimination committed by one of its employees where the company did not effectively disseminate its anti-discrimination policy to employees.

Training Reduces Harassment and Discrimination

Many companies have conducted sexual harassment and discrimination training for many years. Companies find that training is an effective way to reduce complaints and lawsuits and to make the workplace more productive. According to the Society for Human Resources Management, approximately 62 percent of companies currently conduct sexual harassment training of some sort.

The Cost of Harassment and Discrimination in the Workplace

Companies of all sizes have repeatedly faced high-publicity lawsuits in which they have incurred tremendous damage from jury awards, settlements, other costs and fees, and negative press exposure:

1. More than 50% of companies have been named as defendants in at least one suit in the past five years, according to a study conducted by a leading national human resources professional organization.
2. Larger companies (those with more than 250 workers) reported an average of 6.08 sexual harassment complaints per year, while smaller companies reported an average of 2.18 complaints per year, according to a study by a leading national human resources professional organization.
3. When a company is sued in a harassment case, it statistically has a greater than 50 percent chance of losing the case.
4. The average jury award in discrimination and sexual harassment suits was around \$100,000 in 1996, up from \$75,000 the year before, according to a recent research on national jury verdict awards. Additionally, in approximately one-third of discrimination and harassment suits, companies also were required to pay punitive damages averaging \$75,000.
5. Jury awards are just the beginning of the costs companies incur. Companies also face large attorneys' fees of their own and may be required to pay attorneys' fees for the plaintiff as well. Companies also face very large settlement costs. In addition, there are also court fees and the cost of time invested in responding to suits.
6. Most significantly, the bad press and damaged reputation is enormous. When Texaco was hit with a discrimination lawsuit—which it ultimately settled for \$176 million—civil rights leaders urged a boycott of the company, the company's stock fell, and many customers stayed away. Smaller companies faced with harassment and discrimination suits are hit with similar negative publicity on local TV stations and in the local press.
7. There has been an increase in large, class-action harassment suits filed by the Equal Employment Opportunity Commission (EEOC) against companies. The pharmaceutical company Astra recently paid \$10 million to settle a large harassment claim, and Mitsubishi settled a similar claim for \$34 million.

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