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An Employee Has Reported Sexual Harassment – Now What?

Your employee has complained that her supervisor is sexually harassing her. What do you do?

Answer: You must do a prompt investigation into the accusation and take prompt appropriate action.

Some preventive actions you should have already taken are:

Train personnel and managers: Make a clear and unambiguous statement of the company's position against sexual harassment. Give information about possible solutions to problems. Let managers and employees know what they are supposed to do.

Written sexual harassment policy: Make sure there are at least two people to whom the person may report. If the policy requires the victim to report harassment to her supervisor and the supervisor is the harasser, the company will be liable even if the harassment was not reported. Make sure the reporting procedure is clear and widely distributed. Define sexual harassment clearly. Include illegal sexual discrimination, unwelcome advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature. Make it clear that submission to such conduct cannot be used as a basis for any employment decisions. Ban all behavior unreasonably interfering with work performance, or creating an intimidating, hostile, or offensive work environment. Include examples, but make it clear that the list of examples is not intended to be all-inclusive.

If procedures are in place, follow the procedures.

Thoroughly investigate: Interview the complainant and the alleged harasser. Ask questions neutrally. Ask open-ended questions. Make sure all witnesses are identified and interviewed. What did the employee do in response to the alleged harassment? What action does the employee want you to take? Advise both the accuser and the alleged harasser of the time by which a resolution will be reached. Make a prompt determination as to whether any action should be taken to separate the parties during the investigation, such as transfers or assigning a new supervisor.

Take prompt action: Impose discipline if necessary, and finalize the investigation promptly. Advise the complainant of the action taken. If no harassment is found, advise the parties, restate the company policy against harassment to both parties, and advise that no adverse action will result to either party as a result of the complaint.

Don't overreact: An employer who simply fires an employee in response to an accusation of harassment without an investigation may be held liable. I handled a case where an accused harasser was fired without any investigation and the accuser later admitted that there had been no sexual harassment. The employer settled the lawsuit for defamation of character.

Don't retaliate: Advise the alleged harasser that no retaliatory action may be taken against the complainant. Advise the complainant that if any retaliation occurs she should report it. A victim of sexual harassment should not have to work in a less desirable location as part of the remedy. A transfer to a position that leaves the victim worse off is not allowed.

With a policy in place, and procedures that are promptly followed, an employer need not worry about sexual harassment claims.

If you need to update your policies, or find yourself dealing with a sexual harassment complaint, contact an employment law attorney to assist you.