



LAWYER AS EMPLOYER

TRAINING SESSIONS ONE WAY TO HEAD OFF HARASSMENT

With myriad protected classes, avoiding claims can be a challenge

Editor's Note: This is the third in a six-part series examining how employment law issues specifically affect law firms. Next week's article will focus on how keeping proper paperwork is crucial to demonstrating legal compliance and minimizing litigation.

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Most lawyers, and probably most Americans, are familiar with the basic concepts prohibiting workplace discrimination and harassment. But many employers are unfamiliar with the scope of their obligations and fail to take adequate preventative steps to reduce the risk of liability. As a recent \$95 million sexual harassment verdict demonstrates, the stakes can be high. Below is a basic overview of your law office's obligations as employers and strategies for avoiding some common pitfalls.

Legal Basics

We have all heard discrimination is illegal, but what is "discrimination" under the law? Employees can successfully claim discrimination in two basic instances: 1) where they suffered an adverse employment action; or 2) where they were subjected to a hostile work environment, so long as the discrimination is based on an employee's membership in a protected class.

Consider the New York partner who con-

stantly berates Red Sox fans. While she is not making many friends in Connecticut, this is not illegal discrimination since Red Sox fans are not a protected class. However, the list of protected classes in Connecticut is extensive: age, ancestry, citizenship, color, disability, marital status, national origin, race, religion, sex, status as a Vietnam era or Special Disabled Veteran, sexual orientation, present or past history of mental disability, "mental retardation," learning disability or physical disability, family violence victims, and prior criminal record, just to name a few.

Even an employee's family medical history as well as the employee's genetic make-up is protected under the Genetic Information Nondiscrimination Act (GINA) and the new regulations recently implemented.

Mandatory Training

Connecticut mandates employers with at least 50 employees worldwide provide sexual harassment prevention training to all supervisors. If this rule applies to you, why limit training to only sexual harassment? Since



you can get sued for harassment based on any protected class, your training should cover all protected classes. Also, since you do not need to have 50 employees to face a discrimination lawsuit (Connecticut law requires only three employees), training is a smart idea even if it is not mandatory.

Recruiting And Hiring

We all want to know as much as we can about a candidate before making a decision to hire. However, since employers are prohibited from relying on information regarding protected classes, it is important to avoid such information. For example, avoid interview questions that elicit information about membership in any protected classes. And if

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you do come upon such information, do not create the smoking gun that documents you uncovered this information.

This risk of obtaining too much information is especially relevant given the world of social media. The hiring manager may check Facebook for insight into the candidate's personality, but may also discover protected classifications, *e.g.*, an applicant's charitable endeavors and religious associations. Once the cat is out of the bag, it is hard to argue you did not rely on it if the applicant is not hired.

Uniform Enforcement Of Policies

You can have the best employment policies in the world, but they will not help unless you are consistent. When you make an exception, although you may have the best intentions,

you may be accused of illegal discrimination. For example, you might have spared Attorney A a written warning because "he is one of our top performers," but when Attorney B gets a written warning for the same conduct, she may claim the disparate treatment was because Attorney A is a young heterosexual white male, and Attorney B is a 50-year-old homosexual Hispanic female.

Harassment From Clients

We all know the customer is always right. But when a client harasses your employees, you must respond or face liability. A few guidelines are in order. Make sure employees know the firm does not tolerate harassment even by clients and if employees feel harassed, they should report it immediately.

Next, as with all workplace harassment, you must fully investigate it and take appropriate action. Finally, what about the client? A first step may be to contact the owner and explain your mutual problem. But if the harasser is the owner, or the owner just does not care, maybe it is time to fire your client and look for business elsewhere.

As a lawyer, your job is to juggle many balls; but as an employer lawyer, you have a few extra issues to address. By taking the time now to outline sound policies, and administer those policies evenhandedly, you can avoid these common pitfalls and foster a positive work atmosphere where all your employees feel safe coming to work each day and are ready to support the firm, not attack it. ■