Simple Steps to Reduce Sexual Harassment Liability Risk

As an employer, you can be held liable for any sexual harassment that occurs in your workplace. That's the bad news. The good news is that you can significantly reduce your organization's liability exposure if you follow the sexual harassment prevention road map laid out in recent years by the courts. As the U.S. Supreme Court explained in 1998, the purpose of sexual harassment law is not to enable people to sue their employers. The purpose is to motivate employers to take reasonable steps to prevent sexual harassment. When employers can demonstrate that they have fulfilled this duty, they are less likely to be faced with sexual harassment liability damages. This article presents policies and practices an employer should follow in its obligation to prevent sexual harassment.

First and foremost, you should have a written policy against sexual harassment. To be effective and to demonstrate your organization's concern with preventing sexual harassment, the policy should be comprehensive. It should define what sexual harassment is and give concrete examples. It should explain that sexual harassment is determined by how the person on the receiving end experiences the behavior, not on whether or not the perpetrator intended to harass. It should state that male and female workers can be victims of sexual harassment by harassers of either gender.

The policy should avoid legal jargon and be written in language the average worker will understand. If there are workers who don't speak English, the policy should be translated into their language(s).

Some employers prefer to disregard sexual harassment in their organizations. Their response to a complaint may be to disbelieve it or to view the person who complained as a troublemaker. Many times employers are liable for sexual harassment, not because of the actual harassment, but because they didn't make employees aware of complaint procedures, or did not respond correctly when an employee filed a complaint.

Risk-averse employers take every complaint seriously and investigate it using a consistent, reasonable process that is fair to all, and aim to make a truthful determination of what happened. It is critical that your sexual harassment policy covers how to make a complaint and identify several employees designated to receive complaints. It should explain how complaints are investigated and what happens after the investigation. It should describe how the final determination of legitimate sexual harassment will be made; what the possible penalties are; whether the complaining party has the right to know what penalty, if any, the employer has decided to impose; and whether there is an appeal process.

The policy should strongly prohibit retaliation, giving examples of what retaliation is. It should state that retaliation against complaining parties or witnesses will be taken as seriously as harassment itself.

Some employers have well written policies and think that is sufficient. But it is completely ineffective to have a policy if employees can later claim they never saw it. To ensure that every reasonable effort is made that employees know the policy, each new hire should be given a copy of the policy and sign a receipt stating he or she has read and understood it.

If you want employees to remember the policy and to understand that you're serious about it, there must be ongoing exposure. Some employers have a brochure or pamphlet that summarizes the policy. Employees can be periodically reminded through memos, articles in employee newsletters, during employee meetings, or by some other means of regular communication.

We live in a culture where people may be frequently exposed, outside of work, to behavior that is highly inappropriate at work. The only way employees will know what behavior the employer requires is if they are educated in this area. It is most important to train employees with supervisory authority since they must enforce the policy against sexual harassment. If a supervisor engages in harassment of a subordinate, the employer is strictly liable.
It is not unusual for someone accused of harassment to say, "I'm not the only one who acted that way." Often, this is true. If there is an atmosphere where behavior is tolerated that is inappropriate for work or where the employers don't take sexual harassment seriously, the risk of sexual harassment liability can be high. It will not be a defense against liability to say, "But we had a policy." The policy must be comprehensive and thorough and it must be strictly followed. These are all simple steps, though not necessarily easy, since they require a substantial commitment of time and resources to be followed correctly. The benefit of this is a reduction in sexual harassment liability risk and, for most employers, a more productive workforce.