

Recent Headlines Demonstrate Need For Effective Anti-Harassment Program

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As a follow up to our previous post on sexual harassment in the workplace, this post explores the elements that make up an effective anti-harassment program. More than 30 years after the U.S. Supreme Court's 1986 decision recognizing a hostile environment civil rights claim, it's hard to believe we have just reached a major tipping point in our society regarding this form of prohibited sex discrimination. On Nov. 21, Fox News announced a \$90 million settlement of derivative shareholder litigation related to its series of workplace harassment incidents. That settlement creates the Fox News Workplace Professionalism and Inclusion Council that is charged with improving its work environment. Even Congress has vowed to overhaul its anti-harassment policies – a rare bi-partisan initiative. We continue to advise our clients that developing and implementing a comprehensive anti-harassment program is the number one way to minimize the risk of employment claims. It is also the right thing to do. So let's brush up on elements of an effective anti-harassment program:

- **Policy Statement:** It must define prohibited harassment with examples and extend to all protected characteristics, not just sex. It must provide for multiple avenues for making a complaint and commit to non-retaliation for making a complaint.
- **Training:** It must be provided to all employees at least annually and present specific examples and scenarios and reinforce the organization's expectation for professional behavior at all times. In addition to annual training, the anti-harassment policy should be republished and featured in employee communications throughout the year. Separate training must be provided for managers emphasizing their unique responsibility for their behaviors at all times and their potential to create liability for the organization. It must also emphasize management's obligation to act on observed behaviors even in the absence of a complaint and obligation to respond to quiet complaints or inquiries.
- **Investigations:** Must be prompt and thorough. Investigators must be trained and prepared to make credibility judgments. An investigation report must be prepared that summarizes the investigation process and explains what was concluded and why. The report must be drafted to have stand-alone meaning for third parties, such as a civil rights investigator.
- **Remedial Action:** It must stop any inappropriate behavior, remedy any

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wrong identified, specify the actions taken to prevent further unwelcome conduct, and assure non-retaliation. Additionally, follow-up plans must be developed and implemented to make sure the remedial action plan is successful.

Implementation of a comprehensive anti-harassment program has the possibility of preventing liability, but more critically, to assure that all of our colleagues are provided the professional work environment to which they are entitled.