

Employers Take Note: Sexual Harassment Is Not OK ... Finally

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Before becoming a lawyer, I was a Captain in the U.S. Army. I was stationed overseas for much of my career, and served a remote tour in a faraway land. During that tour of duty, I learned many things. But the most important lesson I learned — as one of two female officers on the base — was to speak up (and out) against sexual harassment. I have always been thankful that I was in a position where speaking up (and out) was OK. But it appears that has not been the case for countless women — many of whom are now speaking up (and out) after many years of (apparently) remaining silent. Now that the court of public opinion has finally decided that sexual harassment is not OK — as evidenced by the public condemnation of the powerful men who have been accused of such conduct — it stands to reason that there will be an uptick in harassment complaints in the workplace. Thus, a quick reminder on the steps an employer should take when such a complaint is made is in order. As we all know, it is the employer's obligation to have in place a policy that prevents harassment, a complaint mechanism, and to take prompt and effective remedial action. Putting in place a policy and a complaint mechanism is readily understood. But what does it mean to take prompt and effective remedial action? It means the employer must take the complaint seriously and legitimately try to figure out whether any inappropriate conduct occurred by conducting an effective investigation. It means that the person conducting the investigation should not pre-judge the outcome or interject his or her own experiences into the situation when deciding what remedial action to take. It means that the employer must put steps in place to stop any future harassment. And it means that the employer should check in periodically with the employee who complained to make sure all is OK. Remember, the question of whether or not an employer took prompt and effective remedial action is determined by a jury with the benefit of hindsight. Given that the court of public opinion has finally decided that sexual harassment is not OK, I suspect future juries will hold employers to a higher standard and will not forgive missteps. A word of warning — don't get caught making a misstep. Seek guidance from an experienced employment lawyer on how to satisfy your obligation to take prompt and effective remedial action when a complaint of harassment is raised. And, consider revamping your anti-harassment policy, training your employees on the policy and managers and supervisors on their responsibilities under the policy. Stay tuned for our next post detailing the elements of an effective anti-harassment program.

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