

Recent EEOC Enforcement Activity Underscores Importance of Proactive Workplace Harassment Prevention

January 15, 2020

Since the start of fiscal year 2020 (October 1, 2019-September 30, 2020), the Equal Employment Opportunity Commission has recovered more than \$25 million in monetary relief and secured substantial equitable remedies from employers accused of engaging in unlawful race- and sex-based discrimination and harassment. In fiscal year 2018, the most recent period for which detailed enforcement data is available, the EEOC collected a total of \$134 million on behalf of workplace harassment victims *alone*. While harassing conduct of a sexual nature is perhaps the most well-known form of workplace harassment, especially in light of the global #MeToo movement, it is far from the only kind that may expose an employer to significant risk of legal liability. According to the EEOC, more than 30% of the charges it receives each year include claims of unlawful harassment based on sex, race, disability, age, national origin, and religion (in that order). Indeed, the EEOC's recent harassment enforcement actions have not been limited to those asserting "Me Too" - styled sexual harassment claims, but have involved allegations often of egregious harassment based on an employee's race, color, national origin, or some combination of those protected characteristics. It's an important distinction, especially for employers with anti-harassment programs that focus predominantly, if not exclusively, on preventing and correcting *sexual* harassment. While workplace sexual harassment continues to occur far too often, other forms of harassing conduct - based on, for instance, religion, disability, age, or LGBTQ status - also are happening on the job, creating potentially significant legal risk for employers. As the EEOC has emphasized in its four-year Strategic Enforcement Plan, which identifies systemic harassment as one of six national enforcement priorities, "Strong enforcement with appropriate monetary relief and effective injunctive relief to prevent future harassment of all protected groups is critical, but not sufficient." Employers seeking to significantly enhance their compliance, and thus "greatly deter future violations," should make "a

concerted effort to promote holistic prevention programs, including training and outreach."

Strategies for Minimizing Risk of Workplace Harassment

Employers seeking to minimize the harm that harassing behavior can cause to employee productivity and morale - not to mention the business bottom line - may want to take a fresh look at their harassment prevention programs with the following tips in mind:

- 1. Review written anti-harassment policies and complaint procedures to ensure they are current and up to date.** For instance, federal government contractors subject to Executive Order 11246 are barred from discriminating against their employees on the basis of sexual orientation or gender identity. Workplace harassment is a form of unlawful discrimination. Does your anti-harassment policy reference all relevant protected characteristics?
- 2. Update compliance training content to include relevant examples of different types of harassing conduct.** Does your training content describe the difference between sexual harassment and sex-based harassment? Understanding how various types of harassing conduct can occur and what are the practical and legal consequences of such behavior will put employees on notice of what behavior should be avoided and, if observed or experienced, reported to a manager or supervisor.
- 3. Regularly reinforce the company's strong zero-tolerance policy against all forms of harassing behavior.** Managers and supervisors should set the tone for appropriate workplace conduct and take every opportunity to promote a harassment-free environment by minding their own actions and swiftly addressing potentially harassing conduct observed by, or reported to, them.
- 4. Train (a) managers and supervisors on how to recognize and respond to subtle forms of (and potential precursors to) workplace harassment and (b) HR staff on how to properly investigate and resolve employee complaints about such behavior.** Anti-harassment and EEO training are essential components of any meaningful corporate prevention program. Whether offered live by expert outside or in-house facilitators, or made available via "on-demand" web content, the success of any HR compliance training program depends on its ability to convey important legal or policy concepts in a clear and relatable way. Avoid telling employees what they *can't* do, and focus on building awareness and a sense of shared responsibility for promoting a healthy and harassment-free workplace. At the same time, the best compliance training can't fix a problem that already has arisen, which is why every compliance-oriented employer should make sure those responsible for receiving, investigating, and resolving harassment complaints are well-equipped to do so.

5. **Take seriously your obligation to avoid workplace retaliation.** A healthy workplace climate cannot exist if employees do not trust that they can complain about misconduct without fear of being fired or suffering some other retaliatory action for having done so. Ensuring that all employees, managers, and supervisors understand the company's strong zero-tolerance policy against retaliation can help to encourage employees to report misconduct, which in turn will build trust in the company's processes and lead to a healthier work environment for all.
6. **Be mindful of specific state and local EEO compliance mandates.** A number of states and municipalities - including California, Connecticut, New York, and New York City, for example - have enacted new, or revised existing, harassment prevention training and notice posting requirements. Companies located in jurisdictions with specific training mandates should be mindful of those requirements when implementing or revising their compliance training programs.

Related Practices

[Labor & Employment](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.