

Training for Success

By Byrona J. Maule, Phillips Murrah P.C.

Ilaud the company that takes seriously its responsibility of training its supervisors and managers on the multitude of employment laws regarding discrimination and harassment.

Why train your employees on the laws regarding discrimination and harassment?

A company has a limited affirmative defense to liability for harassment if the employer can show that it exercised reasonable care to avoid harassment and to eliminate harassment when it occurred and if the employee failed to take advantage of the employer's safeguards to prevent or avoid the harm.

How does this translate into action in the business world?

The Policy

The foundation of the defense is a strong policy affirming the employer's com-

mitment to equal opportunity in the work place, prohibiting harassment and discrimination, establishing a clear reporting and investigation process, and an anti-retaliation provision. Don't fall into the trap of only speaking about sexual harassment. A good anti-harassment and discrimination policy needs to prohibit harassment and discrimination for all protected classes – sex, race, ethnicity, national origin, age, religion, disability and genetics. It should list by position, to whom and how complaints should be made, and it should establish the process and timeline for the investigation. Most importantly, a good policy should stress that those involved in a complaint or investigation will not be retaliated against for their good faith involvement in the process.

The Training

If the policy is the foundation of the defense, the training for supervisors, management and employees is the capstone. Having a policy is a great start, but it is only a start. If an employer does not take steps to distribute the policy and train its supervisors, managers and

employees on the policy – then the policy does more harm than good. Because the policy establishes that the employer knows what its obligations are, but if the policy is not implemented, then it appears that the employer knowingly chose to ignore its obligations to equal opportunity in the work place. Implementation of the policy is everything.

Good implementation involves several different steps:

first, distributing the policy and any revisions to all employees and new hires, which should include an acknowledgement page which the employee must sign, acknowledging that he/she received the policy or revisions;

second, training upon hire regarding the policy, which should include making clear to the new employee the people to whom discrimination or harassment can be reported; and

third, annual training of supervisors, managers and employees. This training is often neglected – but employment law changes frequently. Your supervisors, managers and employees need to be updated on all changes in the law and corresponding changes in policy. The training should cover not only the law and any changes, but it should cover the employer's specific policy.

Policies and training are not one size fits all. Effective policies should be geared toward the corporate climate of the specific employer. Train-

ing should be directed to the audience, whether supervisors, managers or front line employees. It should engage the attendee – the more interactive the better. Training for supervisors and management should include role playing – including receiving complaint and/or participating in an investigation. Employees should be encouraged to ask questions at training and should be encouraged to affirmatively state if they understand the policies and will follow the policies.

Last but not least, at all training, an open door should be offered – for anyone that might feel they have been subjected to discrimination or harassment, or otherwise has a concern about the policy and its enforcement. This opportunity should be made company wide and if someone utilizes the opportunity, it should be treated like any other complaint of discrimination or harassment.

If an employer does the above, it should be able to assert the *Faragher* defense, one of the few defenses available to employers in discrimination and harassment cases.

¹Faragher v. City of Boca Raton, 524 US 775 (1998)

About the Author... Byrona J. Maule is a successful labor and employment attorney with over 20 years of experience representing employers - from the courtroom to the boardroom - in H.R. matters. A director at Phillips Murrah P.C., Oklahoma City's third-largest law firm, Maule provides her clients with the power of a strategic partner. You may contact Maule at bjmaule@phillipsmurrah.com or (405) 235-4100.

