Steps For Effective Workplace Harassment Prevention

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In recent years, the U.S. Equal Employment Opportunity Commission has received an increased number of charges from claimants based upon allegations of workplace harassment. In January 2015, in an effort to understand and combat this growing trend, the EEOC created a Select Task Force on the Study of Harassment in the Workplace to gain and communicate "insight from the worlds of social science, and practitioners on the ground, on how to prevent harassment in the workplace."[1]

The task force was comprised of 16 individuals with backgrounds in social science, employment law, employer and employee advocacy, and organized labor. In June 2016, the task force issued a report setting forth new strategies to prevent workplace harassment and recommending the most effective ways for employers and the EEOC to implement these strategies. [2]

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It is critically important for employers to review and understand the report as it outlines specific actions that employers should take in order to reduce their potential exposure to future workplace harassment claims. This article briefly summarizes the report's key findings and sets forth a number of steps that employers can take in an effort to comply with the report's recommendations.

Key Findings for Employers to Understand

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As the report made clear, workplace harassment is an increasing — and increasingly expensive — problem for employers. Under Federal law, harassment is generally defined as "any unwelcome conduct based on race, color, religion, sex, national origin, age (40 and over) or genetic information [which] becomes unlawful when employees are forced to endure offensive behavior in order to keep their jobs or the conduct is severe or pervasive enough to create a hostile work environment."[3]

According to the report, almost one-third of the 90,000 charges filed with the EEOC in 2015 included allegations of workplace harassment, and the EEOC collected $164.5 million from employers who were the subject of such workplace harassment charges.[4] In addition to monetary losses, the report noted that workplace harassment can also negatively impact an employer by reducing the productivity of an employer's workforce, causing increased employee turnover and harming an employer's reputation.

These numbers are unlikely to decrease without employers embracing new approaches to preventing

workplace harassment. The task force believed that employers' previous attempts to avoid workplace harassment have been ineffective because "[m]uch of the training done over the last 30 years has not worked as a prevention tool — it's been too focused on simply avoiding legal liability." Thus, the report recommended that employers adopt a combination of organizational efforts, policy revisions and new approaches to training to combat workplace harassment and to demonstrate an employer's commitment to eradicating it.

Organizational Strategies

The report included a number of recommended strategies for employers to implement on a companywide basis. Some of the strategies were very broad, such as the suggestion that "[e]mployers should foster an organizational culture in which harassment is not tolerated, and in which respect and civility are promoted."[5] However, the report did recommend some specific steps that employers can take in the short term both to demonstrate a commitment to following EEOC recommendations and a renewed desire to dramatically reduce instances of workplace harassment. Those recommendations included:

- Reviewing the composition of the workforce to identify the existence of what the EEOC has deemed "risk factors for harassment." These risk factors include: homogenous workforces; workplaces where some workers do not conform to workplace norms; cultural and language differences in the workplace; coarsened social discourse outside the workplace; workforces with many young workers; workplaces with "high-value" employees; workplaces with significant power disparities; workplaces that rely on customer service or client satisfaction; workplaces where work is monotonous or consists of low-intensity tasks; isolated workspaces; workplace cultures that tolerate or encourage alcohol consumption; and decentralized workplaces.[6]

- Conducting climate surveys in the workforce to identify whether and where harassment is a problem in the organization.

- Beginning the process of increasing accountability for mid-level managers or front-line supervisors, many of whom are in a unique position to see and stop harassment. For instance, employers should consider using metrics and/or performance reviews to evaluate a supervisory employee's response to workplace harassment issues.

Harassment Prevention Policy Strategies

It is imperative for employers to maintain a written anti-harassment policy and ensure that such policy is distributed to its workforce. Although most employers maintain such a policy, the report contained a number of suggestions as to how employers can revise their policies to better prevent and properly address instances of workplace harassment. The report's policy recommendations included:

- Ensuring that the anti-harassment policy includes social media considerations. The proliferation of online forums for informal discourse helps employees connect, but also creates new opportunities for harassment. Employers should also take care to include a statement in any social media policy that discussion regarding wages or working conditions is not prohibited.[7]

- Ensuring that the anti-harassment policy informs employees how they can complain of harassment and report observed harassment.[8]

The report also recommended that employers communicate its anti-harassment policy to employees in more ways than one, such as including the policy in a handbook and circulating the policy to employees through the use of a companywide memorandum or posters. Additionally, employers should test their current harassment reporting system and disciplinary procedures to see how well they work and whether any adjustments need to be made.

Anti-Harassment Training Strategies

The report was critical of employers' use of traditional employee training methods, particularly where training is the only preventative measure such employers use.[9] It will take employers time to implement a comprehensive harassment prevention program that includes both training and other aspects designed to address workplace harassment. However, there are certain steps that employers can take now to begin doing so, such as:

- Gathering small focus groups of employees to discuss what they know and do not know about workplace harassment to identify areas that may need extra training or attention.[10]

- Reviewing resource allocation to particular workplace training programs and beginning the process of redistributing resources where necessary to implement a robust training program. Allocating resources to mid-level managers and front-line supervisors is particularly important.

- Creating training programs that target bystanders, rather than just employees who face harassment. The task force particularly recommends workplace civility training and programs that inform bystanders what they can do to stop or report harassment. This kind of training is particularly important as it may alert employers to problems before they become unmanageable.

While the 95-page report may seem unwieldy, it is in fact a blueprint for employers to use to implement a cohesive anti-harassment program that aligns with the EEOC's expectations and requirements. Employers should take note of the task force's recommendations, and see the report as an opportunity to reduce the risk of a costly adverse judgment.

While many of the strategies proposed in the report require long-term vision and implementation, there are many steps employers can, and should, take right now to begin to comply with the guidelines contained in the report. While there may be more work ahead for some employers, the short-term strategies described above provide a strong first step towards compliance.

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[1] EEOC, Select Task Force on the Study of Harassment in the Workplace, Executive Summary and

Recommendations (June 2016), available at
https://www.eeoc.gov/eeoc/task_force/harassment/report_summary.cfm

[2] EEOC, Select Task Force on the Study of Harassment in the Workplace, Executive Summary and Recommendations (June 2016), available at
https://www.eeoc.gov/eeoc/task_force/harassment/report_summary.cfm; EEOC, Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace (June 2016), available at https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.

[3] Christina Folz, No Evidence That Training Prevents Harassment, Finds EEOC Task Force, Society for Human Resource Management (June 19, 2016), available at https://www.shrm.org/hr-today/news/hr-news/pages/eeoc-harassment-task-force.aspx.

[4] EEOC, Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace (June 2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf. The $164.5 million figure does not account for monies paid to employees or former employees due to court awards and settlements in workplace harassment cases filed in state or federal court.

[5] EEOC, Select Task Force on the Study of Harassment in the Workplace, Executive Summary and Recommendations (June 2016), available at
https://www.eeoc.gov/eeoc/task_force/harassment/report_summary.cfm

[6] EEOC, Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace (June 2016), available at
https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.

[7] The National Labor Relations Board, The NLRB and Social Media (last visited Oct. 24, 2016), available at https://www.nlrb.gov/news-outreach/fact-sheets/nlrb-and-social-media.

[8] EEOC, Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace (June 2016), available at
https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.

[9] Christina Folz, No Evidence That Training Prevents Harassment, Finds EEOC Task Force, Society for Human Resource Management (June 19, 2016), available at https://www.shrm.org/hr-today/news/hr-news/pages/eeoc-harassment-task-force.aspx.

[10] EEOC, Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace (June 2016), available at
https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.