

Harassment 101: How to Handle Complaints

Sexual harassment law demands that executives not only avoid inappropriate words and actions, but also take seriously complaints of harassment by their colleagues, even their superiors. A case in point: Earlier this month CNA Financial Corp. announced the resignation of its top life-insurance executive, Jack Kettler, and his deputy, Robert Teske. Mr. Kettler was accused of making "offensive comments" to two female employees; Mr.

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Teske, of failing to act on the women's complaints.

Equal Employment Opportunity Commission guidelines require employers to investigate complaints of sexual harassment "promptly and thoroughly." Based on a review of relevant court cases and on my investigative work for corporate counsel over the past two decades, here are some practical suggestions for minimizing the legal, internal and public-relations fallout from sexual harassment charges:

- *Move quickly to begin an investigation.* It's tempting to wait until the dust settles, but companies can help protect themselves from liability by starting an investigation immediately — preferably within 24 hours of a complaint. In the case of *Nash v. Electrospace System Inc.*, a federal district judge praised the accused company for wrapping up its investigation quickly. "The investigation and transfer were accomplished within one week of [the plaintiff's] first complaints," the court noted. "Surely this [promptness] reflected a prudent response to an unpleasant situation." An appeals court, upholding the district court's ruling in favor of Electrospace, called the company's response "prompt and sensitive."

- *Interview potential witnesses, as well as people who may be aware of a pattern of harassment.* Such testimony is critical, especially when the alleged harasser denies the charge. And co-workers can provide important corroborating or exculpa-

tory details, such as each individual's demeanor at the time of the alleged act, whether the harasser had the opportunity to commit it and whether there existed a broader pattern of behavior. If the accuser is a young female secretary, for example, an investigator should consider interviewing her young female predecessors.

- *Carefully regulate the alleged harasser's contact with accusers and potential witnesses.* Soon after a female employee of Astra USA filed a sexual harassment complaint against the unit's chief executive, he reportedly called her and asked if she felt her job was "in jeopardy" and if she "felt pressured." Later, the CEO reportedly summoned a female employee to his hotel room, told her he was going to fire another complainant, then directed her to sign an affidavit stating that he had not harassed her. Such overtures are clearly inappropriate, but even routine contact should be minimized or prevented until the situation is resolved. If it's practical, remove both accuser and accused from the workplace, making clear to their colleagues that the separation does not imply any prejudgment but is simply a way to minimize pressure on everyone concerned.

- *Choose the sequence of interviews carefully.* The first investigative step is interviewing the accuser to learn about specific alleged acts, dates and other details. If the alleged harasser is likely to cooperate with the investigation or admit the harassment, interviewing him next could lead to a quick, informal resolution of the situation. But if the alleged harasser is considered hostile and the accuser says there is a pattern of behavior, it's probably best to interview other witnesses first.

- *Conduct interviews far from prying eyes.* While an investigation is in progress, employee interest in who is under suspicion, who is assisting the investigation and what they're saying is always intense. Even an interview's duration may be fodder for office gossip. To limit speculation and preserve confidentiality, conduct all interviews in a private area, preferably off site. Ask all employees, whether interviewed or not, to refrain from rumor and speculation, which can only hurt morale,

productivity and the company's public image.

- *Ask for documents and other hard evidence.* In one case I worked on, a series of inappropriate messages in birthday cards from a boss to an employee were an important break in the investigation. Ask the complainant, alleged harasser and witnesses for any documents — notes, hotel receipts and the like — that might corroborate or refute an accuser's claims. Voice and e-mail messages can also provide concrete evidence that harassment has occurred.

- *Reveal details about the allegation to interview subjects only when absolutely necessary.* A company risks a defamation charge if "raw," unconfirmed information obtained during a sexual harassment investigation leaks.

- *Investigate thoroughly, but don't let investigations drag on.* A major law firm, Baker & McKenzie, challenged the veracity of a secretary who complained about a partner's alleged groping — only to find later that a number of similar complaints had been made against the same partner. In 1994 a jury ordered the firm to pay its former employee several million dollars. In press interviews after the verdict, one juror cited the firm's failure to follow up on the prior complaints. Yet an overlong, overzealous investigation can do as much damage as a perfunctory one. If victims believe that a company's internal resolution process has failed because the investigation drags on, they may go outside the organization to seek satisfaction. That can escalate the seriousness of a situation that could have been resolved had the investigation been completed in a timely manner.

A badly managed sexual harassment investigation can seriously damage any organization — internally, in the courts and in the public eye. But a prompt, thorough, professional investigation can help preserve, even enhance, the credibility of its leadership, the morale of its workers and the value of its stock.

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