

How to Reduce Harassment in the Workplace? Questions Employers Should Pose

Tim K. Garrett



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How Can an Employer Reduce Workplace Harassment?

- + Prevalent Question in Culture
 - ▶ #MeToo
 - ▶ #Timesup
 - ▶ But has been a recognized claim since 1986
- + Savvy employers know:
 - ▶ Must have policy prohibiting unlawful harassment
 - Publicized
 - With effective complaint procedure
 - ▶ Should conduct training
 - Managers
 - At least train those charged with enforcement
- + But, Studies show that policy + training not effective
- + Why?
- + Today's Presentation – Practical Guidance
 - ▶ Three questions employers should ask in trying to "cultivate a healthy workplace environment"

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Refresher

- + What is unlawful harassment?
- + A form of "unlawful discrimination," meaning some differing treatment based upon protected characteristic
- + The differing treatment creates a "hostile work environment" based upon that protected characteristic
 - ▶ Unwelcome and severe or pervasive conduct
 - ▶ Directed toward another based on that persons' "protected status"
 - Race, sex, religion, age, disability, etc.
 - Including the employee's "protected activity"

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Elements of Claim

- ✦ Victim member of protected “class”
(expansive reading in today’s culture)
- ✦ Harassment based on protected class
- ✦ Harassment unwelcome and severe or pervasive (objectively and subjectively)
- ✦ Special elements depending on job title of alleged harasser
 - ▶ If manager and if tangible job action – no defense
 - ▶ If manager and hostile environment – defense
 - ▶ If co-worker – employee has to prove negligence

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Factors Considered

- ✦ Is conduct verbal or physical or both?
- ✦ Frequency of conduct – single incident or pattern?
- ✦ Patently offensive or “ambiguous”?
- ✦ Co-worker or manager?

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Examples

- ✦ “Leering”
- ✦ Shoulder massage or suggestive touching/hugging
- ✦ Leaning over – getting in personal space in offensive manner
- ✦ Inappropriate jokes
- ✦ Taking about personal sex life

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Questions to Ask

- + Do employees perceive the anti-harassment policy has integrity?
- + Do employees perceive the training as merely litigation risk avoidance, or as an attempt at properly cultivating a healthy workplace?
- + Do employees perceive commitment “at the top”?

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Do Employees Perceive the Policy Has integrity?

- + This is revealed in the small details, not the “big” complaints.
- + Do management’s actions inform employees that management cares about their concerns?
 - ▶ Or, are seemingly “minor” complaints dismissed as unimportant
 - ▶ In life we learn the seemingly little things become the big things
 - ▶ Seat-belt story
- + Enforcement must balance the interests of various constituencies
 - ▶ Victim
 - ▶ Alleged harasser
 - ▶ Other employees
 - ▶ Process itself
 - ▶ Balance under-reacting (management does not care) and over-reacting (complaints potentially can become misused)
 - ▶ Example – what do you do with anonymous complaint?

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Training – Merely Litigation Risk Avoidance?

- + Is training for information or for transformation?
- + Information
 - ▶ Here are the rules and policies
 - ▶ Don’t do that
 - ▶ No wonder training not effective
- + Worse – here are the rules, obey or we get sued (or you get fired)
 - ▶ Fear-based only (parent example)
 - ▶ Compliance suffers – message could be heard – “cover it up”
 - ▶ Message also – Company cares only about its risk, not about its employees
 - ▶ Not a healthy narrative
 - ▶ “Most valuable asset” policy
- + Transformation – What are the reasons for the rules? What are the purposes behind policies?
 - ▶ Can our management team articulate those deeper purposes?

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Training – Merely Litigation Risk Avoidance? (cont'd)



Barney Fife or Andy Taylor?

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Training – Merely Litigation Risk Avoidance? (cont'd)

- + Barney Fife or Andy Taylor?
 - ▶ Rules are primary (Barney)
 - ▶ Relationships are primary (Andy)
- + What relationships do the rules really serve?
- + Analysis can be scary but also transforming
- + Leads to a more fundamental question: What is our work really for? Is my work only for me?
 - ▶ If Company message is do this for Company's "bottom line," then such selfish view is promoted, not rebutted.
 - ▶ Can we have a workplace that recovers the idea that human work is not merely a job but a calling
 - ▶ Not merely about my own advancement but also about the good of the community in which I serve
 - ▶ Leads to strong "other-mindedness" in our work
 - ▶ Dr. Martin Luther King, Jr.: "Life's most urgent and persistent question is 'What are you doing for others?'"

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Do my employees perceive this tone "at the top"?

- + This transformation process can only be accomplished if there is commitment from the very top of the organization.
- + Drug testing policy example
- + Each individual is the greatest contributor to the type of workplace she would want to work in
 - ▶ And the most influential
 - ▶ Those considered "leaders"
 - will have greatest impact on cultivating this type of community
 - But only if actions reinforce the ideals.
- + "I cannot hear what you are saying because your actions speak so loudly."

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Questions to Ask To Cultivate Healthy Workplace - Recap

- ✦ Do employees perceive the anti-harassment policy has integrity?
 - ▶ (Do we show we care?)
- ✦ Do employees perceive the training as merely litigation risk avoidance, or as an attempt at properly cultivating a healthy workplace?
 - ▶ (Is our care "other-minded" or "team-oriented"?)
- ✦ Do employees perceive commitment "at the top"?
 - ▶ (Do our actions as managers/leaders conform to our professed ideals?)

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Thanks!

Questions?

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Tim K. Garrett
(615) 742-6270
tgarrett@bassberry.com



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