Your Employee Assistance Program is a support service that can help you take the first step toward change.

Harassment and Discrimination

Harassment and discrimination must not exist in your workplace if you are to create a successful workplace environment. Any type of harassment or discrimination (sexual or otherwise) will destroy morale in your workplace, making it harder for your organization to remain competitive. Harassment and discrimination can cause severe personal and financial consequences for employees, and supervisors and for the entire company as a whole.

Basic Understandings

According to the dictionary, harassment occurs when someone is "persistently annoyed", whereas discrimination occurs when "biased outlooks, actions, or treatments" are allowed to exist. Within the workplace context, however, these terms are generally understood to have similar meanings. Organizations frequently will have a single policy prohibiting both harassment and discrimination.

Sexual harassment, defined as "uninvited and unwelcome verbal or physical conduct directed at an employee because of his or her sex", is a common form of harassment encountered in the workplace. There are two types of harassment: 1) "quid pro quo" and 2) hostile environments.

"Quid pro quo" is a Latin phrase that translates as, "something for something" or "this for that". Quid pro quo harassment occurs when supervisors offer an employee favorable treatment or advancement with the expectation that the employee will provide them with sexual favors. Quid pro quo harassment also occurs when sexual favors are extorted from employees in exchange for avoidance of punishment, demotion, or other substandard and unwarranted treatment.

Phrased another way, Quid pro quo harassment occurs when an employee is promised a gain or threatened with a loss. For example, "If you sleep with me, I'll give you the promotion you've been wanting," or "If you don't sleep with me, I'll make sure you get fired." In this type of harassment, the harassing person is a supervisor or manager with direct power over the employee/victim with regard to employment decisions. Sexual favors are made a condition of continued employment or advancement. As a result, the victim of quid pro quo harassment may suffer a "tangible employment effect", which may include loss of a promotion, job or other consequence, if they do not comply with the request for sexual favors. Third party observers can make the case that the tangible employment effect is proof of harassment having occurred.

The second type of harassment, the hostile environment, exists when an employee is unable to work or to be comfortable in the workplace due to verbal comments and/or physically intimidating or threatening behavior, or because of other 'hostile' behaviors that the employee finds offensive. Such other hostile behaviors frequently take the form of verbal or written jokes or materials such as cartoons or pictures that an employee finds offensive when displayed or discussed in the workplace. Often offensive materials comment on personal characteristics including race, age, color, national origin, weight or religion. They may or may not be intended to target particular employees.

Hostile workplace comments, behaviors or materials are considered sexual harassment when they are of a sexual nature. They are considered to be a more general form of workplace harassment when they involve non-sexual personal characteristics. Hostile environment harassment is much more common in today's workplace than quid pro quo harassment.

The "Reasonable Person" Standard

People are individuals by nature. Each person views other peoples' actions and words with a different set of understandings. What is offensive to one person may not be seen as offensive by another. American courts have developed what is known as the "reasonable person" standard in order to allow the consistent workplace guidelines to be developed. In order for an action to be considered illegal harassment, it must be judged to be offensive to any reasonable person who would be placed in a similar situation. Therefore, a one-time behavior will generally not be found to constitute sexual harassment unless it is severe enough to be seen as such by any reasonable person.

Related Laws and Statutes

In order to fully understand harassment and discrimination, it is important to briefly examine some of the United States laws that define and govern these behaviors in the workplace. Important laws regarding harassment and discrimination include Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967 (ADEA), the Equal Pay Act of 1963, and the Americans with Disabilities Act of 1990 (ADA).

These laws apply to employers differently based on the total number of workers that they employ. Title VII and the ADA apply when 15 or more people are employed at a company. The ADEA, on the other hand does not apply until a company has 20 employees. The Equal Pay Act is generally applicable to all employers at all times.

The portion of Title VII that addresses discrimination and harassment (known as Section 703) prohibits employment discrimination based on race, color, religion, sex and national origin. This act was amended with the Civil Rights Act of 1991, which laid out new and much stronger penalties and damages that could be sought in court when discrimination has occurred in the workplace. The Equal Pay Act of 1963 prohibits discrimination based on sex in pay or benefits when a male and female are doing the same job and demonstrate similar skills. The Age Discrimination Act of 1967 prohibited discrimination in the workplace based on age. Finally, the Americans with Disabilities Act of 1990 specifically prohibited discrimination based on disability status and set standards for the provision of reasonable accommodations for a qualified person with a disability in the workplace.

In addition to federal laws governing harassment and discrimination, many states have passed their own laws and statutes regarding harassment and discrimination. Frequently, state harassment and discrimination laws are even more strict than are similar federal laws. For example, some states have added sexual orientation, public assistance status, membership in groups or associations, and military veteran status to the protected personal characteristics list that employers must not consider while making employment decisions. Because each state's laws vary, it is important for each company to become aware of their home state's rules. State laws can usually be obtained by contacting the Department of Human Rights or Labor within each state.

Taken together, the five federal laws regulating harassment and discrimination cover all aspects of employment related discrimination including decisions in the recruitment and hiring process, termination process, compensation and benefit related decisions, transfers or promotions, and any other area that affects a person's employment.

Equal Employment Opportunity Commission (EEOC)

In addition to the Title VII discussed above, the Civil Rights Act of 1964 also created the Equal Employment Opportunity Commission (EEOC: http://www.eeoc.gov/). The mission of the EEOC is to eliminate illegal discrimination from the workplace. As a federal law enforcement agency, the EEOC is charged with investigating claims of harassment or discrimination within the workplace, making decisions as to whether harassment has occurred, and if so, what penalties, including fines or other damages, shall be assigned. The EEOC also helps to educate employees and employers regarding their rights and responsibilities in the workplace.

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