Bridging the Gap in Sexual Harassment Prevention: From Theory to Reality

Written policies dealing with workplace discrimination and sexual harassment and the "generally recommended" training sessions are no longer good enough measures to insulate an employer or company from liability (Johnson, 2004). Three landmark Supreme Court cases from 1998-1999 (Kolstad v. American Dental Association, Faragher v. City of Boca Raton, Burlington Industries, Inc. v. Ellerth) set precedence for employers/companies to take a vested proactive interest in discrimination/sexual harassment prevention and by making sexual harassment training a requirement (Johnson, 2004). The theory of sexual harassment prevention and its value is recognized and acknowledged. In reality, an employer/company must cross the "knowing-doing gap" (Perry, Kulik, & Bustamante, 2012, p. 589), go beyond policy-making into actions that count towards "good faith" in court, and have detailed procedures in place that can handle the investigation of an incident.

Employers/companies know about sexual harassment "in theory". Administrators may have been through training, and the entity may have a nicely written policy. However, the "real knowing" is when theory is translated into effective appropriate actions, and when the application and implementation of "theory" proves effective in real situations. Perry et al. (2012) described the "knowing-doing gap" as theories "brought into greater alignment with actions" (p. 590). Perry's et al. (2012) study found that active senior managerial support for sexual harassment prevention and training and relevant, relatable organizational resources were the most effective ways to bridge the "knowing-doing" gap.

The employer/company must make every effort to address sexual harassment before an occurrence should arise and especially after an incident (policies on investigation) occurs in order to show "good faith efforts". Having a written policy and a signed statement that an employee read it is no longer enough (Johnson, 2004). The employer/company must provide active and effective training to all its employees (from upper-level to lower-level positions) in order to avoid liability and punitive damages (Johnson, 2004). The employer/company must make every effort that the employees actually really understand discrimination and sexual harassment laws and issues as outlined in the Equal Employment Opportunity Commission (EEOC) guidelines (Johnson, 2004). Just going through mandatory motions is not adequate. Failure to provide training goes against EEOC guidelines and may even be in violation of the law for some states such as California, Illinois, Maine, Massachusetts, Tennessee, Texas, Utah, and Vermont (Johnson, 2004).

Johnson (2004) also noted that an entity's policy and training should include all forms of discrimination. Training should occur shortly after new hires and periodic refresher courses/activities for all employees are highly advised. The trainer teaching about discrimination/sexual harassment needs to be an expert in these laws and demonstrate knowledge about case law examples. If a situation arises, the courts could question the expertise of the trainer and the quality and content of the training session (Johnson, 2004). Many employers/companies are not aware of this point. An in-person training (as opposed to online) should not impose a post-test that might cause some people to "fail" as this could lead to complications (Johnson, 2004). If that person who "failed" the training test were to be involved in a sexual harassment incident later, the employer/company would be open to liability by having

knowledge that the employee "failed" the sexual harassment training. Training also should not encourage employees to share specific incidences in a large group setting as this also opens up the employer/company to liability and possible lawsuit (Johnson, 2004).

Sexual harassment claims are very real and can happen in any workplace. In 2010, over 11,700 sexual harassment complaints were filed with the EEOC (Trotter & Zacur, 2012). Also in 2010, 12,700 cases were resolved which resulted in some $48 million recovered for the claimants (Trotter & Zacur, 2012). In addition to fully understanding the laws surrounding sexual harassment, having a well written company policy, and having appropriate training for all employees, an employer/company must have an actionable policy and procedure for dealing with sexual harassment once an incident has occurred. This sexual harassment investigative procedure must also be available and disclosed to all employees. It is important to note that section 704(a) of Title VII of the Civil Rights Act protects the whistleblower/claimant/witness (or other persons involved) from retaliation by the employer/company (Trotter & Zacur, 2012).

In order for sexual harassment investigations to be effective and prevent future lawsuit for "negligent investigation", it is important that principles of "due process" and fairness be followed for both the alleged harasser and the alleged victim (Trotter & Zacur, 2012). Expert witness (sexual harassment cases) Bernice R. Sandler suggests inform the alleged harasser of the claims and allow him/her to respond; take copious notes; proceed fairly and equally allowing the same rights for both sides; if one side would like an attorney present, then the other side is entitled to the same; follow through and appraise both sides of the progress; do not procrastinate in investigation as it should be completed within a few days; protect confidentiality; use a neutral or outside experienced investigator (Trotter & Zacur, 2012).

EEOC provides a guide about complaint procedures. It is suggested that a similar guide be included in employee handbooks and orientation materials with a receipt returned to the employer signed by the employee (Trotter & Zacur, 2012). It is important that the intake manager of the case (or the first person to initiate an investigation) treats the alleged victim with respect, consideration, and understanding while at the same time avoiding over-charged emotions (Trotter & Zacur, 2012). That first point of contact sets an impression on the alleged victim, and should the case go to court, it would be advantageous for the employer/company to be seen in the best light. Most importantly, be fair and take the situation seriously.

Dealing with discrimination and sexual harassment should be part of every company's overall risk management plan. It is a good idea to establish experts including legal experts/contacts as resources and network with them before a need arises.

References

Johnson, M. W. (2004). Harassment and discrimination prevention training: What the law requires. *Labor Law Journal*, *55*(2), 119-129.

Perry, E. L., Kulik, C. T., & Bustamante, J. (2012). Factors impacting the knowing-doing gap in sexual harassment training. *Human Resource Development International*, *15*(5), 589-608.

Trotter, R., & Zacur, S. (2012). Investigating sexual harassment complaints: An update for managers and employers. *SAM Advanced Management Journal (07497075)*, *77*(1), 28-37.