

Preventing the “Weinstein” in your Organization: Common Pitfalls in Complying With State and Federal Harassment Laws

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As seemingly daily revelations surface of sex harassment allegations in the entertainment/media industry it is imperative for organizations to learn from the mistakes of others when it comes to sexual harassment in the workplace. The plethora of harassment complaints in is not a recent dilemma. In fact, there have been federal and state laws prohibiting “harassment” in the workplace for over 30 years. In this regard, on June 19, 1986, the U.S. Supreme Court ruled unanimously that sexual harassment violated federal laws against discrimination and that companies could be held liable for sexual harassment committed by supervisors — even if the company was unaware of the harassment.

Yet, despite the long-term establishment of harassment law, problems persist with establishing compliance/investigation protocols, which inevitably result in very high jury verdicts or insane settlements. I present you Mr. Bill O’Riley. So, what are the common mistakes employers make in preventing and responding to allegations of harassment?

With nearly 100 years of combined experience, the Sandberg Phoenix Employment Team as found the following:

- Failing to Have a Harassment Policy for all forms of harassment and for all protected groups, not just sex.
- Failure to set zero tolerance policy during new employee orientation.
- Failure to make violation of harassment policy an immediate termination offense in misconduct policy.
- Failure to use every opportunity available to reassert your zero tolerance harassment and retaliation policy.
- Failing to provide a multichannel complaint procedure.

- Failure to extend harassment policy to the computer, e-mail, phone, social media, and off-duty policies.
- Failing to provide routine (at least once a year) and through harassment/retaliation training.
- Failing to immediately investigate all complaints regardless of severity.
- Failing to designate an independent investigator.
- Failing to conduct a complete and objective investigation-drawing an early conclusion and investigating to support the conclusion.
- Failure to properly document the investigation.
- Failure to maintain, as confidentially as possible, the investigation.
- Retaliating against accusers and witnesses in any manner.
- Failing to take interim measures during investigation. Failure to take immediate action to remedy the situation during the investigation.
- Failing to take the correct prompt remedial measures regardless of the status of the wrongdoer.
- Failing to thank and follow up with the accuser and all witnesses.
- Not holding customers, vendor's employees, owners and supervisors to the zero tolerance policy.
- Failing to fully recognize all the risks such as off-duty and off-site conduct.