

LABOUR LAW

How to Prevent and Remedy Sexual Harassment in the Workplace – Part One

By Katharine Batista

This blog is the first part of the 3-part series, 'How to Prevent and Remedy Sexual Harassment in the Workplace'. Part 2 will address how to handle complaints, conduct investigations and take remedial action. Part 3 will address new legislation to look out for.

In 2017, we saw the 'Weinstein Effect', and a deluge of women with their own stories of sexual harassment against men in positions of power has followed. The allegations implicate every industry: entertainment, media, hospitality, politics, law and finance. Now, in 2018,

what we are seeing is the response and employers need to determine what theirs will be.

Use this time as an opportunity to proactively address the issue, rather than play defence. Every business should use this period to examine its internal prevention of and response to sexual harassment allegations. Chief Justice Roberts even recently announced that the judiciary will begin 2018 by carefully reviewing their own policies and procedures for investigating and correcting inappropriate behaviour. Rather than fearing the surge, taking a clear stance not only provides your workforce with

a secure environment in which to work and flourish, but protects your company from costly litigation.

Address Your Company Culture and Educate

Look the culture of your company in the eye. Be honest. What the recent onslaught of sexual harassment allegations shows is that companies are remiss to ignore a harassing culture and hope no one complains. This is the ideal time to address problems because people are acutely aware of the seriousness of the issue – and the potential cost to the company. The simplest way to begin is by training. Consider that training should have two objectives: for your workforce generally, to educate on what behaviour is not appropriate, and for your management and human resources employees, to identify sexual harassment, receive complaints and remediate. When focusing on educating employees, as we have learned, what may seem obviously inappropriate and prohibited to most, is not to some. The key is to deliver the training in a way that is clear and taken seriously. Yes, I'm saying nix the 1980s videos with dramatic re-enactments. When training management and human resources the focus should be on understanding the range of conduct prohibited as sexual harassment, responding to and correcting the



problem, and, of course, conveying that the company does not tolerate it.

Also, your employees should understand that sexual harassment comes in many forms. Under the law, harassment is distinguished between quid pro quo harassment and hostile work environment. Quid pro quo, or this for that, is the type of harassment we have seen much of in the news. The harasser tells the victim that he or she can advance the other's career in exchange for sexual activity. A hostile work environment is

one in which an employee is subjected to conduct because of his or her sex that is severe or pervasive enough to alter the conditions of employment. Most people understand the egregious or severe types of sexual harassment, but some situations may not be so clear. For example, your employees should understand that an employee may have a viable claim even if the majority of the harassing comments were not directed towards the complainant. Alternatively, a single instance of harassment may be enough to support a legal claim if it is severe enough; or you can have an instance of sexual harassment between individuals of the same sex. The law is more nuanced than many may realize, and that is why training is integral.

Evaluate your internal policies and make sure they are compliant with federal, state and local laws. Make sure they are current. For example, your policy should not state that complaints should be reported to Susan the HR Director when there is no longer a Director position and Susan has left the



Katharine Batista

company. Rather, offer multiple people to whom complaints may be reported. Again, thoughtfully consider whether these individuals are actually people other employees will feel comfortable approaching. It probably should not be the office gossip. In addition, make sure you identify, but not exclusively, types of prohibited conduct. Examples are always helpful.

GGI member firm

Offit Kurman

Law Firm, Advisory, Corporate
Finance, Fiduciary & Estate
Planning

More than 10 offices throughout
the United States

T: +1 410 209 6424

W: www.offitkurman.com

Katharine Batista

E: kbatista@offitkurman.com