EMPLOYERS: THE EEOC HAS RECOMMENDATIONS FOR MORE EFFECTIVE HARASSMENT TRAINING

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Now that sexual harassment allegations have been front and center in the news, the question is what are employers doing about it? Most employers have policies, complaint reporting procedures, and some form of training in place. Yet, workplace harassment remains a serious issue in all workplaces.

Most harassment training focuses on legal definitions of harassment and serves as a defense for employers to avoid legal liability. The training is treated as a perfunctory obligation, consisting of a “check-the-box” form of training, including programs of different lengths and content, such as going through a PowerPoint, an on-line question and answer format, or a lecture about legal definitions of harassment. Such training often comes across as boring or not relevant to the employees’ workplace. What employees know is not the issue; instead the challenge is to create a respectful, appropriate workplace environment that eliminates not only illegal harassment, but also inappropriate conduct.

The EEOC conducted a study and issued the “Select Task Force on the Study of Harassment in the Workplace” finding that sexual harassment is a persistent problem that often goes unreported.¹ The EEOC found that although research on what is “effective” training is limited, training that is more likely to be effective “must be part of a holistic effort” endorsed company-wide that includes leadership and accountability. Subsequently, the EEOC published and is close to final approval of a “Proposed Enforcement Guidance on Unlawful Harassment”² (”the 2017 Proposed Guidance”) incorporating, many examples of all types of harassment and specifically, its recommendations for more effective training.

The 2017 Proposed Guidance provides that effective training should include:

- Descriptions of unlawful harassment and conduct that, left unchecked, might rise to the level of harassment.
- Provide information about employees’ rights and responsibilities if they experience, observe, or otherwise become aware of conduct that they believe may be prohibited. Explain consequences of engaging in unacceptable, inappropriate conduct.
- Customize training to the specific workplace and industry, using examples common in the work environment.
- Explanations of the complaint process, including multiple avenues for employees who believe they experience unacceptable conduct to report the conduct.
- Explanations of the range of possible consequences for engaging in prohibited conduct.

In addition, the EEOC recommends the following principles for effective training:

- Conducted and reinforced regularly for all employees, in multiple languages as used by employees.

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• Conducted by qualified, live, and interactive trainers. Live trainers facilitating interactive discussions about conduct that the employer finds inappropriate, and conduct that is appropriate using examples common in the workplace.
• Utilize different learning styles, including visual and auditory.
• Routinely evaluated by participants and revised as necessary.

The EEOC also recommends that managers and supervisors have additional training in handling inappropriate conduct that they observe or have received a report, or for information that they know about. Managers need skills to deal with these situations since they are most likely to receive complaints, and have clear directives as to reporting to upper-level personnel.

If we are truly going to change our culture and protect people from harassment, training needs to focus on unacceptable behaviors, rather than be limited to legal definitions to avoid legal liability. A respectful work environment encompasses much more than conduct that is illegal. Effective training resulting in employees knowing the employers’ expectations for not only inappropriate, but also appropriate conduct, should have an impact in creating a more respectful workplace.

For years, Engelmeier & Umanah has recommended and conducted customized training facilitated by live trainers to incorporate different learning styles, interactive exercises and discussions, and highly participatory sessions. Our training focuses on creating a respectful workplace environment beyond what the law requires of employers. In our experience, effective training results when participants are engaged and interact with their co-workers to learn and appreciate differences, and appropriate conduct. To learn more about training workshops designed to create a respectful work environment contact Engelmeier & Umanah attorneys. Also available is a program called Respect Effect with separate programs for supervisors and employees, each designed to address their differing needs. www.respect-effect.com