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LEGAL ISSUES

ZERO TOLERANCE

Be proactive about sexual harassment policies. BY BRETT SCHNEIDER AND MICHAEL KANTOR



» Construction companies need to take strong measures against sexual harassment.

Unless you have been living under a rock the last few months, you have no doubt heard about the allegations of sexual harassment made against many high-profile personalities, including Matt Lauer, Bill O'Reilly, Roger Ailes, Harvey Weinstein, Kevin Spacey and Louis C.K.

However, Hollywood doesn't have a monopoly on sexual harassment, and lawsuits have arisen in every industry.

As more and more women enter previously male-dominated industries such as construction, employers must be very proactive to protect themselves and their companies from liability for employee claims of sexual harassment.

There are three steps that can help construction companies reduce workplace

harassment – make a plan, communicate the plan and make the plan work.

A Strong Strategy

Preventive measures are about more than playing defense. If you are really committed to reducing liability for sexual harassment, you must think ahead of time about creating a policy that states in no uncertain terms that sexual harassment will not be tolerated. From the foreman to the architect, from plumbers to carpenters, every worker must know that sexual harassment is grounds for dismissal, regardless of title.

Your plan should also define what conduct constitutes sexual harassment and explain that swift investigation of allegations of harassment will occur. The stereotypical

situation of a construction worker whistling at a lady passerby can be considered sexual harassment, and dirty jokes or questions about someone's sex life are also out of bounds. When a complaint arises, a plan of action is helpful.

Consider the full field of circumstances. What is the threshold to investigate an issue? What is the relationship between the complainant and the accused? What is the relevant history? What, exactly, is the accused alleged to have done? How long has the inappropriate conduct been going on? Are there any witnesses or has anyone else been harassed? The devil is in the details in these situations and it is nearly impossible to spot every potential issue while responding on the fly. Making a plan ahead of time is essential.

'Stamping out unwelcome conduct requires a commitment from all of us.'

Communicate the Plan

Once your policy is in place, don't keep it a secret! Remember that briefing you get at the beginning of every flight about the emergency exits and your floating seat cushion? Airlines certainly don't wait until an emergency arises to tell you how to respond and neither should you. Disseminate your anti-harassment policy upon hiring. Even if you are bringing on temporary workers, they must be made aware, as well. This way all of your employees are on notice that you take this issue seriously.

Supervisors and managers should know ahead of time what information they need to gather and what action they need to take if an incident of sexual harassment becomes known or alleged.

Any employees who have been or who are being harassed should be reassured to know they can report the issue and it will be dealt with. Having a policy in place can also provide a legal defense if you are ever faced with a lawsuit alleging that your workplace handled sexual harassment improperly.

If you hire non-English-speaking workers, make certain you communicate your policies in a language they understand. If you own a construction company, keep multiple versions of the policy manual on hand. Failure to comprehend a policy doesn't make it legal – but failure to state your plan effectively and successfully can lead to more trouble.

Many employers compel workers to sign a statement that they have received the policy plan and understand what it means.

Enforce the Plan

Making a plan and communicating it are critical steps, but enforcement is the key to maintaining a safe work environment and avoiding litigation. If your company has an anti-harassment policy but fails to actually take reasonable steps to prevent and promptly correct sexual harassment in the workplace, you will certainly face legal repercussions. Moreover, you need to be ready ahead of time to go a step further and make sure employees are not retaliated against for reporting harassment, even if you determine that the reported conduct does not violate your policy.

Stamping out unwelcome sexual conduct will require a commitment from all of us. It may not make front-page news when a masonry worker is accused of sexually harassing a female co-worker or a foreman makes unwanted advances to a lady electrician. But it will cause a serious issue in the company and could make it into print in numerous publications in the construction industry, which would impact your business.

Recent polls show that nearly half of the working women in the United States have experienced some form of unwanted sexual advances or harassment on the job. At the same time, only 54 percent

of respondents in a different poll believed that the recent headlines would lead to a decrease in instances of sexual harassment.

That's a sad commentary. We might not be able to immediately stop the Bill O'Reillys and Harvey Weinstains of the world, but we can have an enormous impact on the space within our reach and in our industry. By making a plan, communicating the plan and making the plan work we ensure that sexual harassment will not be tolerated within our own sphere of influence. ♦

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