

A Reminder Regarding the Importance of Supervisor Training

By Adam Santucci

August 10, 2011

This post was developed with the assistance of Kelly Horein, a Summer Associate with McNees Wallace and Nurick LLC. Ms. Horein will begin her third year of law school at Boston University School of Law in the fall, and she expects to earn her J.D. in May 2012.

According to the Equal Employment Opportunity Commission (EEOC), employees filed a record number of workplace discrimination charges last year. As a result, it is now more important than ever for employers to take steps to prevent unlawful discrimination and harassment in the workplace.

Most savvy human resource professionals know that they must maintain antidiscrimination policies with adequate reporting procedures to help avoid liability. However, it is just as important to train supervisors and managers regarding the implementation of those policies. Unfortunately, when times get tough, employers are often forced to cut costs and training is usually one of the first items on the chopping block. If your organization scaled back training during the economic downturn, it may again be time to rally support for supervisor training.

Effective training for supervisors and managers actually helps reduce costs in the long run, because it helps supervisors prevent claims before they are filed. The United States Supreme Court and the EEOC have emphasized the importance of supervisor training in the context of discrimination and harassment claims. Indeed, training is recognized under the law as an essential part of an "affirmative defense" to claims that supervisors engaged in harassment. If an employee alleges that harassment by a supervisor created a hostile work environment, then the employer may raise a two-part defense. An employer is not subject to strict liability for a supervisor's conduct where the employer can show that (1) the employer took reasonable measures to prevent harassment and promptly correct it when it occurred and (2) the employee failed to take advantage of established mechanisms for filing complaints.

Human resources professionals can be instrumental in helping their employers take "reasonable measures to prevent harassment." However, the Third Circuit Court of Appeals, which covers Pennsylvania, has stated that in order to show that an employer took such reasonable measures, the employer must do more than simply adopt an antidiscrimination policy.

Effective training is critical.

According to the EEOC'S Enforcement Guidance on Vicarious Employer Liability For Unlawful Harassment by Supervisors, it is important to train all supervisors and managers, regardless of whether they are the staff members designated to take complaints. Although no courts have definitively established how frequently supervisory training must be provided, employers who have been successful in having claims dismissed typically offer annual training sessions. Employers should also offer additional training sessions if they modify their antidiscrimination policy or hire new supervisors. It is also important for employers to document when training sessions are conducted, who attends those sessions, and the content of each session.

In fact, employers should provide discriminatory harassment training to all employees, not just supervisors and managers. The fact that an employee knows how to properly file a harassment complaint demonstrates that the employer took reasonable measures to educate its employees and, thus, prevent harassment.

In an increasing number of cases, employers are winning discrimination lawsuits on the basis of their preventive training programs. This point is critical for senior management to understand: regular, effective antidiscrimination and anti-harassment training can generate significant cost savings.

McNees Wallace & Nurick's Labor and Employment Group has developed discrimination and harassment training materials for employers, and can help employers develop effective training programs, which incorporate their specific antidiscrimination policies. You can contact McNees by [clicking here](#).

© 2011 McNees Wallace & Nurick LLC

This document is presented with the understanding that the publisher does not render specific legal, accounting or other professional service to the reader. Due to the rapidly changing nature of the law, information contained in this publication may become outdated. Anyone using this material must always research original sources of authority and update this information to ensure accuracy and applicability to specific legal matters. In no event will the authors, the reviewers or the publisher be liable for any damage, whether direct, indirect or consequential, claimed to result from the use of this material.