

# Is Your Company Prepared to Respond Promptly to an Employee Harassment Claim?

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A recent employment law decision, *EEOC v. Xerxes Corporation*, No. 10-1156 (4th Cir. April 26, 2011), reminds employers that it is important to promptly and effectively address allegations of workplace harassment.

## *The Facts of the Case*

In July 2008, the EEOC filed a lawsuit on behalf of three African-American employees of Xerxes Corporation's manufacturing plant in Williamsport, Maryland. The complaint alleged a hostile work environment on the basis of race in violation of Title VII of the Civil Rights Act of 1964. Specifically, the complaint asserted that the employees were the targets of racial slurs and racially derogatory comments, pranks and practical jokes, and threatening notes from their co-workers.

According to the [opinion](#), the company had an anti-harassment policy in place, prohibiting "Sexual, Racial, and Other Objectionable Conduct or Unlawful Harassment." The policy provided specific examples of prohibited conduct and instructed employees to "Immediately report the incident to your supervisor and plant manager."

This decision focused on whether Xerxes acted quickly and reasonably to end the harassment when it learned of it for the first time. Xerxes claimed upon being notified of the alleged harassment, it conducted investigations, took disciplinary action against the alleged harassers, and conducted company-wide training on its anti-harassment policies and complaint procedures.

The lower court found these steps sufficient to excuse Xerxes from liability and granted Xerxes' motion for summary judgment on multiple claims of co-worker racial harassment.

## *The Court's Ruling*

On appeal, the Fourth Circuit outlined that, to survive summary judgment on a claim of a racially hostile work environment, the EEOC "must demonstrate that a reasonable jury could find [the] harassment (1) unwelcome; (2) based on race; and (3) sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere." Additionally, the EEOC was required to present "sufficient evidence of a fourth element: that there is some basis for imposing liability" on the employer.

This factor is important because the EEOC claims the company knew of the racially motivated harassment earlier than the time it took appropriate measures. In focusing on this key fourth

element, the Fourth Circuit examined the point at which Xerxes knew or should have known of the alleged harassment. In doing so, it concluded that a genuine issue of material fact existed as to exactly when Xerxes had notice of alleged harassment, which was sufficient to vacate the grant of summary judgment.

*The Message for Employers*

This decision emphasizes the importance of the timeliness of an employer's response to claims of harassment and discrimination. Courts continue to focus on when the employer was aware or should have been aware of the alleged conduct and how quickly it acted to remediate it. **Slow responses to claims of harassment, discrimination, and retaliation will give rise to litigation.** Therefore, it is not enough to simply have an anti-discrimination policy in place. Employers must have procedures in place that allow them to act promptly in response to an employee complaint and must train their managers how to respond timely and appropriately.

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