

How to Maneuver Through #MeToo and Sexual Harassment in the Workplace

Sexual harassment has become more highly scrutinized in recent months and with the #MeToo movement, we expect this issue to be more prevalent going forward. Below we have outlined some best practices to help companies put themselves in the best positions to minimize the chance of having a complaint, as well as steps on how to swiftly take action if a complaint is made.

Culture Check – What Can We Do Better?

1. Create and communicate a clear policy regarding sexual harassment in the workplace so that employees have realistic expectations as to what conduct is not acceptable and know that they have more than one reporting option, including an option of anonymity.
2. Consider creating a stand-alone “bystander” policy. Note that managers are required to take action if they witness inappropriate behavior while non-managers should be encouraged to do so.
3. Provide regular training to employees. Special care should be taken to ensure that all managers understand that their knowledge is attributed to the company so that “confidential” disclosures to them, or conduct that they witness, must be reported and acted upon. In addition, HR staff and any employees who may be designated as investigators should receive focused training to ensure that they are up-to-date on best practices. For companies that may not have HR departments, training should be offered that specifies what resources are available to assist when inappropriate conduct is reported.

A Formal Complaint Has Been Filed – Now What?

1. Ensure that complaints are responded to promptly.
2. Determine whether an internal or external party should handle the investigation. Anticipate claims that the inside investigator may be biased. No matter who handles the investigation, it should conclude with a comprehensive, final written report.
3. While the investigation is ongoing, make sure that the harassment is not continuing. If any personnel changes need to take place during the investigation, these changes must not appear to be punitive toward the complainant. If it is determined that the alleged harasser should be suspended, carefully consider whether to suspend with or without pay (this becomes much trickier if the suspended party is an exempt employee).
4. Handle expectations. Note that it is rarely possible to keep complaints and investigations completely confidential, but you can promise that the matter will be handled as discreetly as possible.
5. No retaliation! Continuously remind all involved parties that any retaliation is prohibited and ensure that they know how to report it.
6. Don't let the complainant dangle. Let the complainant know when the investigation is complete (or if it's taking longer than anticipated when you anticipate concluding it). Do appreciate that it is a balancing act to determine how much to disclose about the findings, and whether disciplinary action is to be taken. We suggest discussing this with your legal counsel.

January 10, 2018

How Brownstein Can Help

For questions or concerns with any issue related to sexual harassment in the workplace, please feel free to contact Michael Freimann, Lisa Hogan or any member of our Employment and Labor team.

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This document is intended to provide you with general information regarding best practices for sexual harassment policies in the workplace. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.