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## 6 WAYS FOR CAR DEALERS TO AVOID A \$540,000 SEXUAL HARASSMENT JURY VERDICT

By Lauren R. MacLellan

Many dealers took notice of the recent sexual harassment jury verdict against a Massachusetts Lexus dealer, in which a jury awarded \$500,000 in punitive damages against the dealership although it awarded only \$40,000 in emotional distress damages. Punitive damages are not covered by insurance in Massachusetts, but can be avoided or limited if you take proper measures to prevent, investigate and address allegations of sexual harassment early on. Below are some steps you can take to help you avoid lawsuits, defend against them effectively when they do arise, minimize punitive damages and create a more productive work environment.

1. Post the "Fair Employment in Massachusetts" poster where your employees can see it. It's easy and cheap, so there's no reason not to do it. Posting is required by Massachusetts law and failure to post conspicuously can interfere with your ability to assert the best defense to a sexual harassment claim – the employee didn't raise the issue within the statute of limitations (the timeframe required by law).
2. Have an anti-sexual harassment policy and distribute it to your employees every year. Having a policy and distributing it annually is also mandated by Massachusetts law, so set up a calendar reminder. Have each employee sign off on receipt of the policy (not on acceptance of the policy or agreement to comply with it) and keep the signed acknowledgement in the employee's personnel files.
3. Train employees on discrimination and harassment prevention as well as your policies. Training (or lack thereof) will be taken into account by any jury, court or agency. It shows that you took steps to prevent harassment in your workplace, which can help you avoid lawsuits altogether and can keep a lid on damages, including punitive damages. Training also teaches your employees about your policies and about acceptable and

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unacceptable conduct. Often, juries and judges award punitive damages because a supervisor doesn't address the issue properly or ignores it. So, train your supervisors on how to recognize and address problematic behavior and handle complaints, among other things.

4. If your employee complains of sexual harassment, say thank you. One of the single greatest predictors of whether an employee will consult a lawyer or file a formal complaint is how he or she was treated when complaining internally. If an employee comes to you with a complaint, take it seriously – he or she is probably giving you the opportunity to avoid legal action.
5. Investigate thoroughly and immediately. Part of taking a complaint seriously is following up to investigate whether harassment occurred. Consider whether it's necessary to separate complainant and accused while you investigate. Investigations can be tricky, and a proper investigation can be critically important in determining whether an employee will consult a plaintiff's attorney or file a charge with a state agency,

so you are strongly advised to get legal advice unless you have an HR professional who is experienced in such matters.

6. Avoid retaliation against complainants and witnesses. Retaliation claims are on the rise for the simple reason that they are much easier to prove than discrimination or harassment claims and the employee doesn't have to prove discrimination or harassment to have a viable retaliation claim. Protect complainants and anyone else who cooperates with an investigation by having an anti-retaliation policy and advising everyone involved of that policy. Retaliation complaints, like harassment complaints, should be taken seriously.

These steps – in particular, having an anti-sexual harassment policy, training employees on it, and taking allegations of harassment seriously when they do arise – can help your dealership defend against harassment claims and in some cases may allow you to avoid punitive damages entirely. The law on these matters is complicated, but these simple steps will help your business avoid complications.

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