

Harassment by Customers

Employers Must Pay Close Attention to Growing Concern

By Charles B. Baldwin, Esq. and Matthew S. Effland, Esq.

By now, most employers are familiar with the risks of liability associated with claims of harassment in the workplace. As a result, employers typically do what they can to minimize the risk of co-worker or supervisor-subordinate harassment through some combination of training, written policies and effective complaint procedures.

After all, it is often easier, cheaper and better for morale when a company stops workplace harassment early on through aggressive discipline, reassignment or other employment mechanisms. But what if the source of the harassment is not internal, but rather is coming from the one area every business needs to survive – its customers?

Going to court

Conventional wisdom insists that “the customer is always right.” In the context of workplace harassment, however, conventional wisdom can be damaging from both a legal and public relations standpoint. Several recent cases from across the country highlight the fact that employees are growing more willing to file with the Equal Employment Opportunity Commission (EEOC) and take their customer-based harassment claims to court:

- In 2005, a former employee of a garden center was allowed to take her case to trial when a Wisconsin court found open questions of whether the company took sufficient steps to protect her and other female employees from a regular customer. The employee claimed that she had to regularly hide from the customer, who would shop two to three times each week, to avoid his touching and/or staring at her, which the company knew but did nothing about.
- In July of 2006, an Arkansas court allowed an African-American’s race harassment claim against his employer to proceed as to a claim of customer harassment, even though a second claim against the store for a supervisor’s alleged harassment was dismissed. The employee claimed he had raised the customer’s behavior with his supervisor, who had taken no action.
- In March of 2006, Judge Hamilton of the Southern District of Indiana found in favor of a company on allegations of customer harassment. Nevertheless, the court found that the EEOC’s guidelines clearly impute liability for employers in situations where customers engage in harassment and the company fails to take steps after learning of the improper behavior.

The key to minimizing the risks associated with complaints of customer harassment is for businesses to train their managers and supervisors to recognize that, in some instances, the customer is not always right – and may be absolutely wrong. Supervisors in particular should be trained to recognize inappropriate behavior and be instructed that it is their responsibility to guard against circumstances that could lead to a harassment complaint. They should be taught how to approach customers engaged in questionable activity and intercede on behalf of their employees.

Being prepared

Training on customer-based harassment can and should be included in the regular harassment training conducted by the company, and should emphasize the following:

- Supervisors should be trained on how to field complaints – that is, how to tactfully listen to what could be graphic descriptions of harassment; how to ask “who, what, when, where, how and why” questions so that he or she can determine what should be done, if anything, in the time between when the complaint is reported and the investigation begins; and how to appropriately document complaints received or behavior observed.
- Supervisors also need to be aware that statements by employees that they are uncomfortable with or offended by certain customer behavior are often enough to “state” a complaint. If supervisors are unclear about the nature of a complaint, they should be taught to ask questions seeking clarification.
- Supervisors must learn to keep the information imparted to them as confidential as possible, or expect disciplinary action if they publicize details outside of the need-to-know circle. This is important not only from the standpoint of the employees, but also will help limit the likelihood of a defamation action brought by the customer.

In a situation where a manager or supervisor is made aware of a harassment complaint and does not advise senior management or the human resources department of the problem so they can investigate, the company is placed in an extremely vulnerable position. If the anti-harassment policy lists managers or supervisors as the appropriate persons to whom to complain, a company will be hard pressed to avoid liability for claims reported but never investigated. Consequently, it is imperative for any manager or supervisor who receives notice of a potential harassment problem to report the matter immediately to senior management or to the human resources department.



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