

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: HOSTILE WORK ENVIRONMENT

This should be a familiar topic; hostile work environment is a major component of the state required sexual harassment training that supervisors must receive every other year. Both federal (EEOC) and state (DFEH) law make it an unlawful employment practice to harass an employee. To prove a hostile work environment case the claimant must prove that they were subjected to unwelcome harassment, conduct or actions at work that were based on their membership in a protected class, and that the conduct was sufficiently severe and/or pervasive to alter the conditions of their employment. Conversely, incidents of harassing conduct are insufficient if they are occasional, isolated, sporadic or trivial. As stated before, the employment laws are not a code of good conduct.

In discrimination claims, the exposure turns on proving discriminatory intent. In harassment/hostile work environment cases it turns on whether the unwelcome conduct is sufficiently severe and/or pervasive. This means that unless the conduct is incredibly severe, we are looking at activity that has occurred over a significant period of time. Generally the employee will provide a list of often unrelated incidents that they claim combined to create a hostile work environment. Since the employer has a duty to take all reasonable steps necessary to prevent discrimination and harassment, the supervisor has to show how they reacted to each of these allegations. The more frequent and severe the conduct is, the greater the duty that the employer act.

The claimant will have their list of alleged incidents. Co-workers will either help to refute the allegations, or add to them depending on their experiences and observations. The supervisors, assuming that they are not the target of the allegations, will be called on to share and document what they knew about the ongoing conduct, and the steps they took in response to that knowledge. They are in a difficult position. If they claim that they did not know about the conduct they will have to explain why they were not monitoring the conditions of the workplace; if they did know, and allowed the conduct to continue, they will have to explain why they failed to stop the harassment. Under the DFEH the employer is liable for acts of harassment by coworkers and nonemployees only if the employer knew or should have known of the harassment and failed to take immediate and appropriate corrective action. Corrective action means reasonable steps to immediately stop the inappropriate acts, and then permanent remedial steps to insure that the harassment does not reoccur.

It is crucial that the supervisor recognize that their failure to respond to the ongoing situation can be even more dangerous than having allowed the harassment to occur. If the supervisor does not take, and document, reasonable steps to stop the harassment then the acts can become pervasive. The failure of the supervisor to act can be seen as the employer's ratification of the harassing conduct. It is not unusual for the supervisor to find themselves taking the harasser's place in the crosshairs.

Next topic: Who can be liable?