

Effective Harassment, Discrimination, and Retaliation Policies and Interactive Leader-Led Training Are Just Plain Good Investments for Banks

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According to the June 2016 report of the federal Equal Employment Opportunity Commission's (EEOC) Select Task Force on the Study of Harassment in the Workplace, workplace harassment based on sex (including sexual orientation, pregnancy, and gender identity), race, color, national origin, religion, age, disability, and/or genetic information remains a persistent problem. At the same time, HR professionals are often asked: "we have a harassment, discrimination, and retaliation policy (HDRP) on our website, isn't that enough?" and "where is the return on the bank's investment in training?" In July 2016, a federal court of appeals said the answer to the first question is "No." And the Task Force report found that there is a substantial business investment case for widely circulating the substance of HDRP policies and communicating and training all employees on applying it.

While workplace harassment is not simply a "legal" problem, understanding some of its legal underpinnings is important in understanding the business case in support of preventing it. Most often, banks and other employers have HDRP policies. Those policies are key in creating a safe workplace environment and creating a safe harbor for employers against certain kinds of harassment claims. For example, employers can defend against claims of workplace harassment by a supervisor of a subordinate where the subordinate has not been fired, demoted, or suffered any other kind of tangible employment action if the employer exercises reasonable care to

prevent and correct promptly any sexually harassing behavior. Among other things, an employer exercises reasonable care when it implements, distributes and trains its employees on its HDRP policies.

As recently as July 2016, however, a federal court of appeals held that a local school board could not avoid having to go to trial on an employee's sexual harassment claim even though it had an HDRP policy (*Pullen v. Caddo Parish School Board*, 2016 U.S. App. LEXIS 13254). In that case, the school board had posted its HDRP policy on its website and on bulletin boards in its central office and trained a majority of its employees on that policy on a regular basis. Important, however, long time board employees variously said that they had never been given any information or training about sexual harassment, never saw a copy of the policy, were not aware that the policy was available on line, never saw the bulletin board posting, and were never told that they had any duty to report harassment. Worse yet, the alleged harasser, himself, was never directly trained about the policy and never received a copy of it. The court's lesson to the school board: merely having an HDRP policy without widely distributing it and training its employees on its use was not reasonable and trial was the next step.

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The direct costs to employers like the school board who chose not to invest in policies and training is high: compensatory and punitive damage settlements and awards in regulatory and individual employee lawsuits, investigation costs, attorneys' fees and court costs, lost staff time spent in investigations, depositions and trials, and damage to reputation that took years and substantial funds to create. And, those costs, alone, should seemingly provide HR professionals with the answers to the questions noted above that their colleagues so often ask.

But, the Task Force report addressed how investing in HDRP distribution and training was more than simply an act of direct cost mitigation. Instead, the report detailed the indirect and substantial costs that businesses suffer when harassment of any kind becomes a part of an employer's culture. Noting that most cases of harassment go unreported, the Task Force found that employees who suffer at the hands of that harassment, as well as other employees who witness it, often experience impaired psychological, emotional and physical well-being. The Task Force noted that harassment creates a substantial financial toll on a business — reputational harm, brand negativity, decreased employee productivity and business profitability, and increased employee turnover. The indirect costs are, therefore, both substantial and immeasurable.

What is a bank or other employer to do? Among many things, the Task Force asserted that harassment and its costs can be reduced if leaders of institutions get out in front formulating and standing behind effective and current HDRP policies to create a culture of compliance, eliminate retaliation to those who report harassment, and to appropriately discipline all policy violators. The Task Force report

also noted that effective HDRP and manager training must be supported at the highest levels, conducted and reinforced on a regular basis for all employees, and adapted to specific businesses and groups of employees rather than to be "one size fits all."

As to training methodology, the Task Force report stated that, where feasible, training should be conducted by qualified, live, and interactive trainers. The Task Force believed that live trainers who are dynamic, engaging and have full command of the subject matter are the most likely to deliver effective training. Reasoning that since one of the goals of compliance training is to provide employees information about the type of conduct the employer finds unacceptable in the workplace, the report also found that it is important for a trainer to provide examples of such conduct, or have individuals portray scenarios of such conduct, and then be able to answer questions. Just as important, the Task Force reported that compliance training teaches supervisors and managers how to respond to a report or observance of harassment. The Task Force concluded that these can be difficult situations and a live trainer is most suited to work through questions with the participants.

Banks and other employers continue to make strategic investments that they believe will generate positive benefits over the long term and to eliminate costs that subvert those investments. No less strategic is the investment they make in the well-being of their workforce. The courts, the EEOC, and best business practices dictate that businesses strategically invest in creating a positive and profitable workplace and eliminating unnecessary costs by having best HDRP policies and frequently and effectively training their employees in how to comply with them.

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