

When sexual harassment accusations fly, investigate and discipline right away

Here's a lesson learned from an employer that responded correctly when an employee complained about sexual harassment. Not only did it conduct a thorough investigation that helped it win a lawsuit, but it also prevented another potential sexual harassment claim when it discovered even more egregious behavior—from the original complainant himself.

Recent case: Sydell worked for Telezone as a telemarketer. His supervisor, a lesbian, allegedly told him that she would have gone for a man like him if she weren't gay.

After she gave him a risqué invitation to her birthday party, Sydell complained to management. The invitation featured a half-naked woman on the cover. Sydell suspected there would be strippers at the party and feared that one of them might be the mother of his children, who happened to be a stripper.

The company investigated the complaint. Sydell's boss admitted she distributed the invitation at work. But she also told management that Sydell was distributing bootlegged pornographic DVDs at work that featured another Telezone employee. Both Sydell and his supervisor were terminated under the company's anti-harassment policy.

Sydell sued, alleging he had been forced to work in a sexually hostile work environment.

He lost after the company argued he couldn't have been offended by the invitation, given his own side business selling porn.

Plus, Telezone acted fast, investigated the complaint and took almost immediate action designed to stop the harassment. By firing Sydell for his activities, it also was arguably working to prevent future sexual harassment claims based on the DVDs. (*Pettiford v. Telezone*, No. B227791, Court of Appeal of California, 2nd Appellate District, 2012)

Final note: Telezone did everything right. It had a policy in place that employees clearly used when confronted with harassment. It thoroughly investigated each claim, following up on new evidence as it came to light. Then it fired both the supervisor who handed out the invitation at work and the complainant, who was himself engaged in conduct that could create a sexually hostile work environment.

During the course of a single investigation, it ended one potential form of harassment and prevented another from creating a hostile environment for other employees who had not yet complained.

Training key to winning sexual harassment lawsuits

Train all your employees on your anti-harassment policies. That's the best way to defend yourself against harassment lawsuits.

Employers can avoid liability for sexual harassment by showing that both of the following occurred:

- The employer exercised “reasonable care” to prevent and correct the harassment.
- The employee who claims he or she was harassed unreasonably failed to take advantage of the employer’s complaint reporting procedure.

The key is showing that the employee unreasonably failed to take advantage of your complaint procedure.

That’s why it is so important to train all employees about your reporting procedure.

Training should include a discussion of the concept of harassment—that it involves more than just sexual remarks. Explain to whom and how complaints should be made, as well as the investigation process, the possible outcomes and what remedies are possible.