

Q&A with Chris Thrutchley: Train all employees on sexual harassment to avoid liability

by Paula Burkes Published: May 4, 2017 12:00 AM CDT



Chris Thrutchley is a shareholder attorney with GableGotwals.

Train all employees on sexual harassment to avoid liability

Q: What can employers do to minimize liability for workplace harassment claims?

A: Regularly train all employees — not just managers and supervisors. Case law is clear on this subject. And the Equal Employment Opportunity Commission (EEOC), the federal agency charged with enforcing anti-discrimination laws, just issued new guidance emphasizing its expectation that employers train all employees regularly. Failing to do so significantly weakens your defense against harassment claims.

Q: Do you have to train nonmanagerial employees?

A: Yes, if you want to have an affirmative defense against harassment claims brought against a manager or supervisor. The U.S. Court of Appeals for the Fifth Circuit joined other circuits in saying that proof of training all employees is essential to your defense.

Q: Is it enough to issue anti-harassment policies or posters?

A: Not likely. In *Burlington Industries v. Ellerth* and *Faragher v. City of Boca Raton*, the Supreme Court declared that employers must exercise “reasonable care” to prevent harassment in order to avoid liability. Most courts hold that merely issuing or posting anti-harassment policies isn’t enough. In *Pullen v. Caddo Parish School Board*, the Fifth Circuit recently ruled that providing most, but not all, employees an anti-harassment policy and training wasn’t enough to avoid a jury trial where the plaintiff claimed she never received the policy or the training.

Q: What more could Caddo have done, and what should all employers do then?

A: It’s not enough to merely issue policies or limit training to managers. You must train all of your employees and make certain you have proof that all employees not only received your anti-harassment policies, but also received adequate training on a regular basis, which is typically considered annually.

Q: So what are the take-aways from all of these cases for employers?

A: Review and update your harassment, discrimination and retaliation prevention policies to conform to the EEOC’s recent pronouncements. Make sure you can prove all of your employees, including temporary employees, have received your policies. Regularly train all employees. Also, enforce and document their participation.