

## Gavel to Gavel: Protecting the workplace from harassment

By: Chris Thrutchley



No employer wants to subject a business to liability for workplace harassment. Not only can a harassment judgment prove costly to the business's bottom line, workplace harassment can cost businesses plenty in the areas of lost productivity and employee turnover, as well.

Two Supreme Court decisions, *Burlington Industries v. Ellerth* and *Faragher v. City of Boca Raton*, as well as recent decisions such as *Pullen v. Caddo Parish School Board* (5th Cir. 2016) make clear the steps employers must take to protect employees from harassment in the workplace as well as help the business avoid liability for a supervisor's harassment.

The key is to develop and implement antidiscrimination policies and practices that prove a business is exercising reasonable care to prevent and promptly correct any harassing behavior.

The first step is to review and update harassment, discrimination and retaliation prevention policies. Moreover, it is not enough to just formulate policies; employers need to be able to prove that all of their employees, including temporary workers, have received the policies.

The next step is to have a training program that includes all employees, not just managers and supervisors. All employees should be educated on what constitutes harassment and the company's policy against harassment in the workplace. The courts have consistently found that training only specific employees significantly weakens an employer's defense of a harassment claim. Additionally, the Equal Employment Opportunity Commission recently issued new guidance that emphasizes its expectation that all employees be trained regularly. It's a good idea to document employee participation and maintain those records.

The third step is making sure that every employee knows in writing – policies – and during training what the actual procedures are for reporting harassment, as well as understands how it will be investigated. Employers need to make sure that employees know exactly to whom they should report harassment and have knowledge of what actions that individual will take when he or she receives a harassment report. Posting a notice in the break room isn't enough.

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