The 2.0 Approach to Sexual Harassment

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It is essential for an employer to take a proactive approach in combating this widespread issue

Recently, the news cycle has been dominated by stories of sexual harassment in the workplace. In some cases, individuals have been harassed on a daily basis, while working on the job.

The presence of sexual harassment in the workplace is troubling. It has caused employers to reflect on how this issue is being dealt with in their own businesses, regardless of the field in which they operate. Not only does this harassment affect individual employees who are being victimized, it also has an impact on other members of the workforce as well as the company at large. The image, reputation and balance sheet of an employer can be seriously impacted by harassment allegations, placing the employer in a particularly challenging situation.

In these circumstances, it is essential for employers to question whether their current workplace policies are sufficient, and whether the right tools, means and resources are available to allow these policies to be effective and reach their objectives on a regular basis.

Employers who are proactive and who understand the serious issues that can result from cases of sexual harassment, often question what else can be done to prevent harassment and what other measures can be taken to intervene effectively and efficiently when cases of harassment do occur.

As is often the case in the area of employment law, acting quickly and proactively can have a positive effect. This is true not only in terms of raising the general level of awareness of employees and other individuals in the work environment, but also by allowing the company to effectively communicate its message and address the harassment at issue.

The following questions and issues are relevant when considering what measures can be implemented, in relatively short order, to address this issue.

As a first step, would it not be appropriate to review existing policies to evaluate whether additional tools could assist those who are responsible for implementing workplace policies? In this regard, it may be appropriate to consider a policy that reinforces the notion that all instances of sexual harassment will be treated seriously, regardless of the position held by the alleged harasser.

Certain policies already provide for a reporting procedure for individuals who witness misconduct. In the case of drug and alcohol policies, witnesses to misconduct are often required to immediately report a violation of company policy. Would imposing a mandatory reporting requirement on those who witness harassment, lead to the employer being made immediately aware of this issue?

Should an investigation be launched by the employer as soon as allegations of harassment are brought to its attention, regardless of the means used and even in the absence of an official complaint?

In addition, can the policy address how the findings of the investigation will be communicated to various parties involved in the investigation? In most cases, adjustments in this regard can be made to an existing policy.

Employers should ensure that their policies are readily available, whether by leaving a copy in an employee lounge or by sending a memo to all employees informing them where electronic versions of the policies are located. In our view, disclosing and communicating employment policies and procedures is vital.

Similarly, employers should consider the introduction of mandatory training for all employees. This type of training can demystify the notion of sexual harassment, as well as address acceptable conduct in the workplace.

One thing is certain. In light of recent events, employers in Québec will need to consider increasing the frequency of harassment training sessions made available to employees.

Similarly, Québec employers will have to place more importance on (and possibly invest more resources in) determining the roles of the various stakeholders identified in the policy as well as the coordination that will take place between them. Those who are victims of harassment and those who witness harassment must know who to turn to, whether it be the employer's human resources department, a joint employer-employee committee or a workplace health and safety committee.

In our view, it is also necessary for employers to ensure that the designated employer representatives who handle harassment issues be adequately trained and know how to handle concerns that are brought to their attention. In addition, we believe that a sufficient number of these employer representatives must be female.

In the era of social media, where harassment allegations are often played out in public rather than in a courtroom, it is essential to be proactive rather than reactive.

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