HRxaminer

Examining practical HR issues business owners and managers encounter every day

We Can't Ignore It Any More!

Arlene Vernon

While we think that everyone in our organization understands what they can and can't say and what they can or can't do regarding harassment, discrimination, joking, pushing the limits, etc., there are still those who cross the line on appropriateness.

In May, the Minnesota Supreme Court ruled on a harassment case (Rasmussen v. Two Harbors Fish Co.) that employers need to be aware of. I've read about this in several places, but Steve Marino's Employment Newsletter simplified it in a way that I thought would be easiest to share.

"The Supreme Court in Rasmussen made the following three key rulings:

- The fact that a supervisor makes inappropriate sexual comments to both male and female employees isn't a defense to sex harassment claims;
- The fact that employees didn't suffer adverse employment action (e.g., loss of promotions, pay or hours) because of their unwillingness to engage in talk of a sexual nature or engage in sexual acts isn't a defense to sex harassment claims; and

- An individual who is the sole owner of an employer and whose conduct subjects the employer to liability for sex harassment cannot be individually liable as an aider and abettor."

The first two points are what I want to focus on. (The third point means you can't sue the company and the owner separately for harassment when the owner is the company.)

The first bullet addresses that if an employee makes inappropriate potentially-harassing comments to both males and females, it's still harassment. "Equal opportunity" harassing (my sarcastic term) to all genders is still considered harassment. The harasser isn't only liable when targeting one gender.

The second bullet is much broader in impact. The federal law and our policies have always required that the employee's employment status or condition be impacted by the harassing behavior in order for harassment to exist. But the Minnesota Supreme Court expands this to consider offensive behavior to be harassment even if our pay, job, position, employment, etc. is not affected.

The bottom line for employers is to create as much of a zero tolerance policy as possible for any behaviors, comments, suggestions, attitudes, etc. that lean toward being harassing, demeaning, or discriminatory.

Based on my experience with clients, management is still inconsistent in holding their employees accountable for inappropriate comments and behaviors. This is especially prevalent in close-knit groups, long term employees, relaxed employment settings. Those positive environments that we strive to develop can also be environments which are ripe for crossing the line.

So, be straight forward with your employees who seem to be approaching that fine line.

1. Let them know that you will hold them accountable for crossing the line.

2. Let them know what the ramifications are for their continuing this behavior (disciplinary action up to and including termination of employment).

3. Document any meetings or discussions on this topic.

Sometimes it doesn't pay to be the tolerant boss. That tolerance/inaction could lead you to defending a law suit on why you allowed inappropriate behavior to continue when you knew it was going on.

Steve's article concluded with "we recommend that every employer that has supervisors provide training to all supervisors."

I've conducted Harassment and Respect in the Workplace training for managers and employees at many organizations. If you've never provided this training, if it's been a while, or if your harassment policy needs work, call me.

About Arlene Vernon

Arlene has provided HR consulting and management training services to over 300 organizations since starting HRx, Inc. in 1992.

If you're seeking a hands-on, practical HRxpert to assist your organization with employee relations, policy development, strategic HR activities or fun/doable management training, call on Arlene – Your HRxpert.

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