

MAINTAINING A HARASSMENT FREE WORKPLACE

By: Lauren M. Bernardi

Sandra, one of your staff members, tells you she is uncomfortable with the behaviour of some of her male colleagues. During work hours they look up “cyberporn” on the Internet and comment on it whenever she enters the room. On one occasion, they pointed to a picture on the computer screen and asked Sandra if she looked as good in black lace underwear. Sandra wants your assistance but does not want to make a formal complaint because she believes it will damage her career. You want to resolve this situation but don’t know how to do so without revealing Sandra’s identity. What do you do?

Unfortunately, this is a common problem with no an easy solution. You need to balance Sandra’s rights and concerns about her career against your legal duty to create and maintain a harassment-free workplace.

Provide Counselling

Your first step in this type of situation is to counsel Sandra about the importance of making a formal complaint. Such a complaint would enable you to fully investigate all of the circumstances surrounding the situation and to educate and discipline the offending employees.

Explain that while you can not guarantee anonymity, you will do your best to maintain confidentiality. This means that only individuals who need to know about the complaint, such as the alleged harassers and any witnesses, will be told about it.

Assure Sandra that as long as her complaint is in good faith, you will protect her from reprisals. But you must follow through on this commitment. Too often, employers go through the motions of creating harassment policies but when someone complains they ignore it, or worse, punish the complainant. Occasionally, the employer goes so far as to fire the complainant. This only exacerbates the problem and can actually cause a reluctant complainant to seek legal action against the employer.

Investigate the Complaint

Even if Sandra is not willing to come forward formally, you may be able to address the matter without her involvement by keeping a close eye on Internet use and staff relations.

If Sandra does make a complaint, investigate the incident immediately. The longer you wait, the more it appears that you are condoning the behaviour. A delay could also create an opportunity for further incidences to occur or important evidence to be lost.

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There are several steps to take when investigating Sandra's complaint:

- (a) *Tell Sandra what remedies are available to her.* This includes an internal investigation, a human rights complaint, or both.
- (b) *Ask Sandra to put the complaint in writing.* This will help solidify the basis of her complaint and will clarify the issues.
- (c) *Consider whether to conduct the investigation internally or to appoint a trained professional.* In less serious cases, you may be able to handle the matter yourself but in many instances an outside investigator is more appropriate. He or she will have specialized training in resolving complaints and will be able to undertake an independent investigation.
- (d) *Interview everyone involved.* This includes Sandra, the alleged harassers and any potential witnesses. Take extensive notes of these interviews to preserve the evidence.
- (e) *Seek legal advice.* If you are investigating the matter internally, you may wish to consult with a lawyer before reaching a decision as to whether or not harassment has occurred and what remedy is appropriate.
- (f) *Take appropriate action.* In some circumstances, transferring the complainant to another location or department punishes him or her. For example, it may result in a less satisfactory job for the complainant or it may make it look as if the complainant was the problem. Conversely, dismissing the harasser without conducting a proper investigation or where circumstances do not warrant it (e.g., where the harassment is relatively minor), can subject you to a wrongful dismissal lawsuit by the harasser. Employees have succeeded in these types of lawsuits in the past.
- (g) *Tell Sandra the result of your decision.* In one case, an employer was found not to have responded properly to workplace harassment because the employer did not tell the victims how it resolved the matter. The victims quit their jobs out of frustration, because they believed the employer had ignored their complaints.
- (h) *Take measures to prevent this from occurring again.* This may involve re-circulating your harassment policy, sending out a memo or conducting an educational workshop.
- (i) *Make sure Sandra suffers no retaliation.* Monitor the work environment to ensure that Sandra is not victimized further by her co-workers or the harassers.

Preventing Further Harassment

Regardless of whether you are able to fully investigate this particular incident, you must still take steps to prevent further harassment.

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Many employers believe that their sole obligation is to respond to harassment complaints but you must also prevent them. There are two basic ways of preventing complaints. One is to create and circulate a harassment policy. The other is to provide education.

The Harassment Policy

Your harassment policy should be written. It is not enough to argue that your staff knows that harassment is not acceptable. You must have a clearly laid out policy that you can rely on should problems arise.

An effective harassment policy:

- (a) states that your organization is committed to providing a harassment-free workplace
- (b) defines harassment and provides examples of what is considered inappropriate behaviour
- (c) outlines the procedure for making an internal complaint
- (d) stipulates the consequences of harassment, such as discipline or termination.

Post the policy prominently and provide a copy to all employees. Re-circulate the policy or send a reminder memo periodically (at least once a year and after a problem such as Sandra's arises).

Education

The second step to preventing harassment is to educate your staff. There is a great deal of confusion and frustration over what people can do or say in the workplace. A well run workshop can help staff voice their concerns and can clarify any misunderstandings. The workshop should be facilitated by someone who is well trained on harassment.

There are several benefits to educating your staff about harassment. It helps meet your duty to maintain a harassment-free workplace, it educates (and hopefully) stops potential harassers and it helps potential victims like Sandra learn effective techniques for responding to harassment. Often learning these techniques enables employees to address the problem themselves without the necessity of a formal complaint.

By properly responding to complaints like Sandra's and preventing further harassment, you can do a great deal to eliminate the costly workplace problem of sexual harassment and will ensure greater harmony in your workplace.

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Balancing your legal obligations and business objectives can be hard. We act as your trusted advisors; not simply as lawyers but as an integral part of your management team. Through our practical advice, workshops and articles, we arm you with the knowledge and tools to address rapidly changing human resource issues.

Above all, we're on your side. We work with you to prevent costly problems and when litigation is necessary, we act as strong advocates to protect your interests.

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About Lauren Bernardi

Lauren is a lawyer and human resource advisor with the Mississauga firm of Bernardi Human Resource Law. Lauren's advisory, training and educational services help managers direct their human resources in a strategically sound and legally appropriate manner. She is an accomplished and entertaining speaker on management and human resource issues.

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