

Workplace Harassment & Discrimination:

How to Recognize It, What to Do About It



By Rosemarie L. Hill

“Well, I didn’t see that one coming!” These or similar words are often heard by managers who first confront an employee accused of illegal harassment or discrimination in the workplace. Many times they are followed by, “We were just joking, and everyone knows that. And (the accuser) even was a big part of the fun.”

Some of your employees will not understand the complaints or those who raise them. George truly believes that Susie is going along with his sexist, gender-based joking, because she enjoys it and thinks as he does. It never occurs to him that Susie’s behavior is driven by fear of reprisal, being ostracized, or even losing her job.

Your employees believe their “good-natured ribbing” about being Muslim, Jewish, Catholic, fundamental Baptist or Buddhist, is just plain funny. They are appalled that anyone would accuse them of acting illegally. Maybe they understand that their behavior is rude or even hurtful (and sometimes they may mean it to be), but illegal? No way!

Protections Under the Law

Yet, such behavior is often illegal under a number of laws. First among them is Title VII of the Civil Rights Act of 1964, which essentially prohibits discrimination and harassment in the workplace

based on race, color, religion, sex or national origin. The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years or older from employment discrimination based on their age. The ADA, or Americans with Disabilities Act, prohibits workplace discrimination against certain applicants and employees who have physical or mental disabilities.

So what do the laws forbid? Basically, it is unlawful to discriminate against any individual in regard to recruiting, hiring, promotion, work assignment, performance measurements, work environment, training, discipline, discharge, wages and benefits, or any other term, condition or privilege of employment if that discrimination is based on a person’s inclusion in a protected category. In other words, if discrimination occurs because of their religion, race, sex, color, national origin, disability or age. Illegal harassment is simply a form of illegal discrimination. It is illegal to harass a person based on their inclusion in one of the above protected categories.

There are other state and federal anti-discrimination laws as well, and all are complicated. Jury decisions and appellate court interpretations have made them even more so. Be aware that most states have laws similar to the federal ones, and that all contain various and differing threshold requirements which determine whether a company is subject to the acts.

What Employers Should Know

Employers must take action now. If an employer waits until a lawsuit has already developed, he or she will be scrambling both to defend the lawsuit and to implement practices aimed at preventing the behavior in the first place.

There is no 'one response fits all' when it comes to assuring that your company is not allowing illegal discrimination in the workplace.

Following, are some best practices:

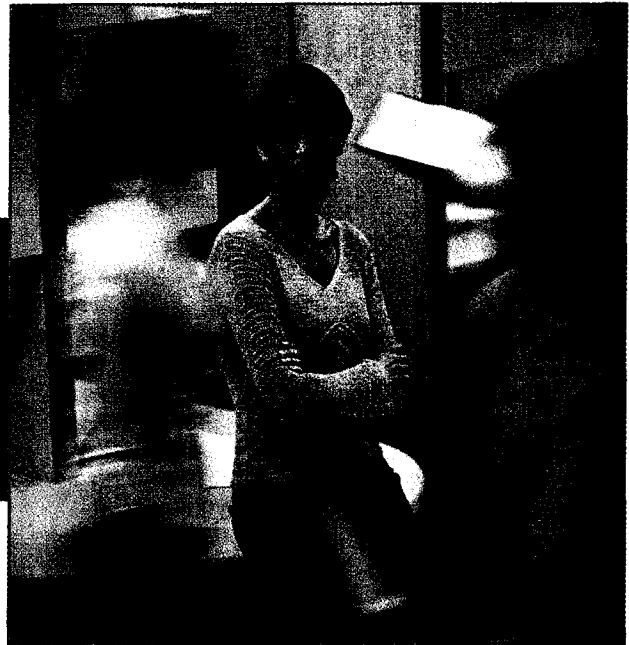
- Understand the laws.
- Appoint a human resources manager or other appropriate staff member to guide the company on each law and to coordinate training sessions so other employees understand them.
- Have a system in place that instructs employees, in writing, how to report illegal discrimination.
- Perform an immediate, fair and impartial investigation of any complaint, and forbid any form of retaliation against an employee who files.
- Take prompt, corrective action, which can range from a finding that there is no corroboration of the alleged behavior to termination – and possible criminal charges.

Test Your Legal Knowledge

If you assume your company is “safe” and that you know how to handle illegal discrimination issues, below are a few scenarios to help clarify your certainty and assess your ability to answer these and similar questions/complaints regarding discrimination in the workplace.

Must an employer:

- Allow an employee to discuss his or her religious beliefs with co-workers and attempt to convert them to his religion? What if he or she only does it on break or at lunch?
- Allow an employee a certain number of breaks in the work-day in order to pray?
- Let an atheist employee skip the company-required prayer meeting? What if the required meeting is for prayer or for any quiet meditation/reflection?
- Allow someone to trade shifts every Sunday, because his beliefs require him to not work and instead attend religious services?
- Allow an employee to wear a wedding ring because religious beliefs insist on the practice, even though it violates safety standards?
- Discipline every employee who makes smutty jokes or comments at work?
- Discipline an employee who won't stop asking a co-worker for a date, despite repeated refusals?
- Promote a woman over an equally qualified man because the



- manager over the new position works better with women?
- Forbid an employee from reading *Playgirl* magazine in the break room during lunch?
- Give an older worker special training because she just “doesn't get new technology” as quickly as her younger co-workers?
- Allow an employee to move into a bigger office because, by doctor orders, he needs more space and light as a result of Seasonal Affective Disorder, even though it's not his turn for the move?

The legal response for each of these scenarios (and a thousand others employers face each day) is driven both by applicable laws and the facts of the scenario. There is no “one response fits all” when it comes to assuring that your company is not allowing illegal discrimination in the workplace. The smart company will assure that its administrators actually understand the laws and their requirements and will assess each situation under those laws as fairly and consistently as possible.

When faced with any of the above issues or scenarios, seek advice as early as possible in the process, consulting human resources managers or other personnel who have special knowledge and training of the laws. If necessary, consult with your attorneys, whether inside or outside the company. It will save the company a lot of time, money, headache, heartache, and heartburn if the issues are handled wisely. Talk and think before action is taken, but begin investigation and consultation immediately upon learning of a possible problem—and do not delay reaching a decision. ●

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