

“#MeToo - What is Old is New,” FLCAJ

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You have to be living under a rock if you have not heard of the #MeToo movement. Although stories of sexual harassment in the workplace are nothing new and the law prohibiting sexual harassment has been around for almost 30 years, it seems as though stories of sexual harassment in the workplace are being told with ever increasing frequency, and to some extent that is true.

According to the Equal Employment Opportunity Commission (EEOC), one in four women experience sexual harassment in the workplace, and in 2018 alone, there were over 13,000 new charges filed with the EEOC where an employee alleged harassment based on sex. While the majority of employees who experience sexual harassment in the workplace will never file a formal complaint, 75% of harassment victims claim they have experienced retaliation when they reported it. So what is an employer supposed to do when an employee makes a complaint alleging harassment based on sex? Because sexual harassment lawsuits cost employers millions of dollars every year, some of which can be avoided, certain best practices should be followed as outlined below.

First, if you do not have an anti-harassment and anti-retaliation policy, create one and enforce it.

Having a sexual harassment policy in place provides guidance both for the employer and the employee about what behavior is and is not acceptable in the workplace. An effective policy also provides information about what to do in the event an employee either witnesses or is subjected to harassment or retaliation so an employee understands the process and what steps should be taken. In addition, a good policy makes clear to employees that they will not be retaliated against for reporting any violation of the policy which is done in good faith.

Second, train your employees, especially your managers about sexual harassment and how to prevent it.

Preventing harassment starts at the top. Employers must be committed to a respectful workplace that is diverse and inclusive, and employers must be committed to holding those employees who violate the workplace policies accountable. Simply put, an employer that tolerates harassment will have more it.

Third, employers should devote sufficient resources to ensuring compliance and the handling of any complaints.

Employers should ensure that any anti-harassment and anti-retaliation policies are effectively communicated to employees and with frequency. Employees should know what to do if they observe or are the victim of harassment or retaliation. In addition, employers should create a process for investigating complaints, which is prompt, objective, thorough, and to the extent possible, confidential. Employees should be reminded if they see something, say something.

Finally, remember preventing sexual harassment is the employer's burden.

Employers must prioritize prevention. Effectively combating sexual harassment and retaliation is a process that requires ongoing adherence. The process should be tested periodically to ensure it is working effectively and that mechanisms are in place to handle complaints and prevent retaliation because as the old saying goes, an ounce of prevention goes a long way!