

“It’s Been a Minute” – Time to Get Back on the Supervisor Training Horse

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I recently served on a panel with a plaintiffs’ employment law attorney who was sharing some of her favorite supervisor questions in a workplace discrimination or harassment deposition.

One of these is, “Have you ever been trained regarding workplace discrimination and/or harassment?” And the follow-up, “If so, when?”

These questions may serve many purposes as part of a workplace discrimination or harassment lawsuit, but two of the “big ones” are (1) opening the door to a claim for punitive or “punishment” damages in addition to lost wages, emotional damages, and attorney fees; and (2) showing that the plaintiff/employee “acted reasonably” in not reporting the discrimination or harassment internally before filing suit because his/her supervisor had not been trained regarding how to handle such a complaint anyway. Plus, chances are very good if the supervisor has not been trained in this area, the rank-and-file plaintiff/employee also has not been, again making the fact that they did not report the discrimination or harassment internally before filing suit a “reasonable” act. The difference this “reasonableness” concept makes is it removes the usual duty a plaintiff/employee has to make an internal report (in order to allow the defendant/employer an opportunity to try to investigate and remedy the situation) before filing suit, as otherwise the plaintiff/employee’s “unreasonable” failure to do so may be used as a defense in the suit by the defendant/employer.

Failure to conduct regular training (in addition to having an anti-discrimination/harassment policy in an employee handbook no one may have read since their hire date) can make a difference in the type of damages a plaintiff/employee may seek and also may affect the defenses which are available to your company in a discrimination/harassment lawsuit.

My friend on the recent panel served as a reminder that plaintiffs’ employment law attorneys are aware that many companies have pressed “pause” on their supervisor training programs while moving into survival mode due to COVID-19 during the past two years. These attorneys are prepared to take full advantage of this deficit as more workers are returning to the workplace from the comfort of their homes, and EEOC charges and lawsuits are trending upward again.

The purpose of this article likewise is to serve as a reminder as to *WHY* conducting supervisor training on a regular basis (at least every other year) should be a priority as your company returns to its pre-COVID practices and processes.

As your company gets back on the supervisor training horse, some topics to address in addition to discrimination and harassment are (1) how to respond to requests for assistance at work or leave due to a medical issue, (2) how and when to document employee performance issues (rather than waiting to do so once a year in a performance review – which apparently is another practice many employers have “taken a break from” during COVID), and (3) “WHEN (and why!) TO CONTACT HR!” rather than trying to handle certain matters on your own.

We have lots of scary stories to help stress the importance of topic #3 above!

I will close with a shameless plug that Miller & Martin provides this supervisor training, but regardless of the way you decide to provide it, the point is simply to DO IT! We encourage you to get it on the calendar now for some time this year. As for many of you, if one of your supervisors was to be deposed in this discrimination/harassment area this year or next, they would have to say it has been three to five years since they have had any training on these topics (if ever!).

Please feel free to contact Stacie Caraway or any other member of our [Labor & Employment Law Practice Group](#) for assistance in designing or providing this training – BEFORE your workplace *BECOMES* one of our “scary stories.”