

Five Steps Governments Should Take to Address Workplace Harassment



Richard K. Zuckerman, Esq.
Chair
Local and State Government Law Section



Sharon N. Berlin, Esq.
First Vice-Chair
Local and State Government Law Section

Seemingly daily harassment allegations being lodged against elected officials, high-level executives and public figures require municipalities to promptly stop this abhorrent behavior and its costly impact on morale, productivity and public perception.

Step 1: Implement an Anti-Harassment Policy. Implementation of an effective policy prohibiting illegal harassment and discrimination is an essential element of a prevention strategy that can preclude municipal liability. See EEOC, *Promising Practices for Preventing Harassment*. The policy should prohibit unlawful behavior based upon any characteristic protected by applicable law,¹ regardless of whether by or toward an employee, applicant or constituent, and clearly explain what is prohibited and why. Victims should be encouraged to report conduct that could eventually become prohibited harassment, and be encouraged to participate in related investigations. While confidentiality cannot be guaranteed, it should be provided consistent with a thorough investigation. The policy should also prohibit retaliation against complainants and investigation participants.

Step 2: Disseminate the Policy. A policy can only be effective when communicated. New employees should receive it when hired; others should receive it annually and whenever it is updated. The policy should be

posted with other policies, on the employer's website, and included in any employee handbook. A signed receipt should be required when the policy is disseminated.

Step 3: Implement an Effective Complaint System. The Equal Employment Opportunity Commission opines that an effective policy welcomes questions, concerns and complaints; encourages early reporting of problematic conduct; respectfully treats all involved; operates promptly, thoroughly and impartially; and imposes appropriate consequences for misconduct. See *id.* It should include multiple avenues of complaint, including about senior management.

Step 4: Train All Employees About the Policy and the Harassment Complaint System. Training should be regularly provided. See *id.*; see also *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998); *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257 (1998). Employees should be educated about unacceptable conduct and its potential consequences; the employer's system for addressing complaints; what to do if one becomes aware of prohibited conduct; and that retaliation is prohibited. Clear, easily understood training, conducted by interactive trainers, in all relevant languages, should be tailored to the workplace and workforce. See *id.*

Because an employer can be liable for conduct committed by a supervisor with authority over the employee (*Faragher* and *Ellerth*, supra), supervisors must be trained to understand that their conduct is held to even higher standards, that they have a special obligation to recognize and prevent harassment, and how to respond if they become aware of it.

Step 5: Promptly Investigate and Remedy Harassment. An impartial investigation should promptly occur when a complaint is received. Where appropriate, swift remedial action must be implemented. The investigator should be experienced and not in the chain of command with the complainant or alleged harasser. Allegations involving senior officials are often referred to an outside investigator.

The investigator should report findings, recommendations and recommend appropriate disciplinary action. The employer should document its response, including corrective or preventative action taken and anti-retaliation warnings issued. The complainant and alleged harasser should be advised about the investigation's outcome, and periodic follow-up should ensure compliance.

These steps, while not guaranteeing perfect behavior, are essential strides towards that worthy goal.

¹Race, creed, color, national origin, sex, pregnancy, gender identity, transgender status, sexual orientation, disability, age, religion, military or veteran status, predisposing genetic characteristics, familial status, marital status, domestic violence victim status, use of a guide dog, hearing dog or service dog.

Richard K. Zuckerman and Sharon N. Berlin are partners at Lamb & Barnosky, LLP.



LAMB & BARNOSKY, LLP

ATTORNEYS AT LAW
TRUST. PERSONAL ATTENTION. RESULTS.

**534 Broadhollow Road
Suite 210
Melville, New York 11747
(631) 694-2300**

www.lambbarnosky.com