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EMPLOYMENT PRACTICES HOTLINE

## The High Price Of Supervisor Inattention

By **Lisa Bee** and **Gerald L. Maatman Jr.**

The owner of a restaurant chain in Denver, Colo., called the EPL hotline with a request for advice on an internal investigation of complaints of workplace harassment. The company employs more than 300 workers at 10 different locations in Denver and its suburbs.

The company has an anti-discrimination-harassment personnel policy which affords employees the opportunity to complain to their own supervisor, or alternatively, to another member of management if the employee feels uncomfortable in addressing their concerns with the immediate supervisor.

Five different employees have asserted complaints within the last two weeks. Three of the employees also allege that they had complained previously to a supervisor, but that nothing was done by the company in response to the complaints. As a result, they say they have suffered from additional acts of workplace harassment and discrimination at the hands of individuals they had previously complained about.

A preliminary investigation by the employer prior to calling the EPL hotline revealed that various supervisors received the prior complaints, but determined to deal with the issues on their own rather than involving the head of human resources.

Clearly, under Title VII of the Civil Rights Act of 1964 and analogous state law (the Colorado Anti-Discrimination Act of 1957), an employer has a duty to promptly investigate any complaint of workplace discrimination and harassment.

If the investigation substantiates the complaint, the employer has a further

duty to institute appropriate remedial measures to ensure that the discrimination or harassment does not reoccur.

The danger in failing to immediately investigate is the potential for additional acts of discrimination and harassment that may be committed by those who would have been disciplined had the employer's policies with respect to the investigation and response to workplace complaints been followed.

Such circumstances create conditions where lawsuits for punitive damages are brought, and are often successful, due to the breakdown in corporate procedures.

In this particular instance, the company needs to conduct an immediate and thorough investigation into the complaints of the five employees.

To preserve the status quo and protect the workplace, the alleged harassers identified by the employer should be suspended with pay pending the outcome of the investigation.

Appropriate instructions should be issued to all relevant individuals affirming the company's commitment to preventing discrimination and harassment in the workplace, and preventing retaliation against anyone who avails him or herself of the complaint procedures offered by the employer.

The investigation undoubtedly will reveal that complaints were made previously and that two or more supervisors failed to pass those complaints along the chain of command pursuant to the company's personnel policies.

A separate investigation should be conducted with respect to what those supervisors learned; how they responded, if

at all, and the manner in which they may have violated the company's complaint procedures.

More likely than not, the supervisors will need to be disciplined because their inattention to the problem and their unwillingness to follow corporate procedures violated the integrity of the company's anti-discrimination program.

By failing to follow corporate procedures, the supervisors exposed the company to additional potential liability, especially if any of the alleged harassers who had been the subject of complaints were allowed to go unchecked and subsequently harassed or discriminated against other employees.

This situation underscores the problem with supervisors who attempt to "go it alone" and who fail to follow a corporation's reporting mechanisms when harassment and discrimination in the workplace are concerned.

It is for this reason that it's in the interests of an employer to train supervisors on a continuous basis as to the manner and method by which to prevent discrimination and harassment. Supervisors need to know how to respond to any internal



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**By failing to follow protocols, supervisors expose a company to additional potential liability after a complaint**

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complaints made by employees pursuant to the company's policies and procedures. This is an area where consistency and adherence to corporate policies are vitally important.

Once the investigation is complete, the alleged victims of harassment need to be debriefed regarding the results of the investigation and any disciplinary measures which the corporation determines to

institute to prevent any re-occurrence of the problems.

More likely than not, this will involve the termination of the alleged harassers if the conduct at issue involved substantial breaches of the company's personnel policy prohibiting discrimination and harassment.

The supervisors who breached corporate policy also will need to be disciplined.

Moreover, it would behoove the interests of the employer to conduct internal training sessions with all members of management to eliminate any confusion about their responsibilities when complaints of discrimination and harassment are made by employees.

These steps will mitigate the employers' exposure to the greatest extent possible. ☐