JUSTMANAGEMENT

Every Manager's Update on Employment Law

FAIR MEASURES, INC.

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Your Legal "To Do" List

BY RITA M. RISSER, ATTORNEY AT LAW

Looking back over the past year, we've seen a few trends in employment law. Looking into 2008 and beyond, what action steps can you take to prevent costly lawsuits?

MANDATE (GOOD) TRAINING FOR ALL YOUR REPORTS

The courts are clear: employers who fail to train employees are negligent and can be sued for harassment. But the courts don't uphold just any training – it has to be good training.

In one case, the U.S. government ordered a company to stop computer-based training (CBT) because it didn't give real-life skills. The board found that CBT effectively provided factual information, but did not give employees an understanding of processes or the ability to ask questions about abnormal situations. What was lacking was "training that goes beyond fact memorization and answers the question 'Why?'"

The board told the company to replace computer tutorials with "face-to-face training conducted by personnel with process-specific knowledge and experience who can assess trainee competency."

Of course, when you do live training, make sure it is supported by everyone in the company from the top down. One company lost a case in 2007, in part because the Chairman walked into a harassment prevention training and made an inappropriate "joke."

ADOPT GOOD PROCEDURES FOR HARASSMENT CLAIMS

One good trend for employers – the courts will protect you from suit if you have a proper procedure and follow it. In one 2007 case, a federal Court of Appeals ruled against a victim of harassment who was fired for refusing to work with the accused harasser. The court found the company promptly and fairly investigated her claim, properly warned the accused, and offered

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Ask the Lawyers

- *I got a warning after reporting illegal activity at work – what should I do?*
- *Is a true observation about race considered harassment?*
- *If person on FMLA leave works full work week, when will she run out of leave time?*
- *Employee left hours off the timesheet – do we have to pay him all the hours he worked?*
- *Employee refuses to give us his new home address – what should we do?*
- *Can I check references after I hire someone?*
- *Do harassment laws violate free speech?*
- *Laid off employee says we're going broke – what can we do?*
- *Can they reduce pay of older workers to pay younger workers more?*

Get the answers to these and other questions at www.FairMeasures.com

Big Money*

$16.4 MILLION for discrimination against women and Hispanics to be paid by Los Alamos National Laboratory.

Fresno State University settled a sex discrimination suit brought by woman coach for $3.5 MILLION.

MasTec agreed to pay $12.6 MILLION for failing to pay overtime to employees in 10 states.

$38 MILLION agreed to be paid by Staples for misclassifying assistant store managers as being exempt from overtime pay.

$3.1 MILLION agreed to be paid by a Federal Credit Union for discrimination against an executive who underwent breast cancer treatment. She was forced to return to work immediately after surgery, then demoted, had her hours cut, insurance benefits discontinued and finally quit due to stress.

$28 MILLION agreed to be paid by Chevron Corp. for violating the Foreign Corrupt Practices Act by making illegal kickbacks to Saddam Hussein's Iraq in connection with the UN's oil-for-food program.

$57 MILLION to be paid by Sprint to settle age discrimination claims that company targeted older workers during companywide layoffs.

$12 MILLION agreed to be paid by the state of Connecticut to make its Department of Social Services facilities, equipment and staff more accessible to more than 300,000 disabled clients.

$6.2 MILLION settlement granted to African American lesbian firefighter in Los Angeles for discrimination and harassment.

Fair Measures reports only settlements or awards on appeal – never jury verdicts.

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the victim reasonable options which she refused.

In contrast, if you don't follow procedure, you lose. In another 2007 case, the harasser properly was given a final written warning, and then after harassing again, given a second written warning instead of being terminated. When he harassed a third time, the victim quit and sued. The court said because he was not terminated the company emboldened him to continue harassing. The victim was allowed to take her case to jury trial.

What you should do: If you are in a position to require people to attend training, make it one of their objectives for the coming year. All employees need harassment prevention and all managers should take Managing Within the Law to learn about following proper procedure. If you purchase training, make sure it's good. Cheaper and easier training is not better. Not only will it make you look bad when you get sued, it makes you more likely to get sued in the first place, because people don't learn in cheap and easy training.

Training – good training – is the only way to prevent mistakes and stop costly lawsuits.

Engaging. Interactive. Plain Spoken.
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"Hostile environment" or "Environmental harassment"—

Which is the right term for sexual harassment?

By Ann F. Kiernan and Rita M. Risser, Attorneys at Law

We've heard some trainers recently use the term "environmental harassment" to describe what we've been calling a "hostile environment." Who cares what words trainers use? You would if you were sued for harassment and you learned the wrong terms, because you will be asked if you had any training and what you learned. So we set out to answer the question, "Has the term hostile environment been abandoned by the courts?"

In the two leading U. S. Supreme Court cases on the subject,

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Burlington v. Ellerth and Faragher v. City of Boca Raton (both 1998), the Court noted that the terms "quid pro quo" and "hostile environment" illustrate the distinction between cases involving a carried-out threat and offensive conduct in general. The Court went on to characterize Ellerth's claim as hostile environment. The Supreme Court continued to use the terms in Pennsylvania State Police v. Suders *(2004)*, saying that Ellerth and Faragher "delineate two categories of hostile work environment claims."

Similarly, in the most recent California Supreme Court case, Miller v. Dept. of Corrections (2005), the Court used the terms "quid pro quo" and "hostile work environment harassment," noting that "the two theories of liability are intertwined."

We have been able to find only a handful of opinions in a minority of court cases that use the phrase "environmental harassment."

What you should do: Make sure that your live trainings, webinars and on-line solutions use the term "hostile environment." Fair Measures always uses the language used by the courts, both in our live trainings and webinars.

We prefer not to make up terms that could be subject to interpretation or misinterpretation.

Business Week recently reported on what it costs companies to fight one lawsuit:

$10,000

if settled after the complaint is filed

$100,000

if resolved through summary judgment

$175,000

if resolved after trial

$300,000

if resolved on appeal.

How much does training cost? A lot less than that! Contact us at Training@ FairMeasures.com

Fair Measures specializes in training executives, managers, human resources professionals and individual contributors in practices that prevent costly employee lawsuits, and create respectful workplaces for all employees. Since 1982, we have trained thousands of managers and employees at over 250 of the most respected corporations in America.

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