



# The Need for Anti-Bias Policies: New Developments

*New rules highlight ways you can avoid lawsuits.*

BY SZE MIN QUAK AND BRIAN H. KLEINER

**T**he U.S. Supreme Court recently issued new rulings which affect employer liability for discrimination and harassment. These rulings point to the need for employers to have clear anti-discrimination and anti-harassment policies—and training to ensure these policies are understood and obeyed.

## New Rules against Sexual Harassment

The U.S. Supreme Court's new guidelines on harassment are much more specific than previous rules and give victims a greater chance to receive justice. These rules assert the following:

- **Workers can sue** for unwelcome sexual threats by a superior, even if those threats aren't carried out.
- **Employers can defend themselves** by having an anti-harassment policy and a grievance procedure in place.
- **To not be held liable, employers must demonstrate** that they exercised reasonable and prompt care to prevent or correct harassing behavior and that the harassed worker unreasonably failed to take advantage of preventive or corrective opportunities provided by the employer.

The Equal Employment Opportunity Commission (EEOC) has also set forth

new standards of liability in workplace harassment. EEOC guidelines aren't laws but are often used by courts in ruling on workplace issues. The new EEOC guidelines state:

- **An employer can be forced to pay damages** to a worker harassed by a supervisor even if the organization didn't know of the harassment and the victim failed to complain.
- **Organizations should have a written policy declaring that no form of harassment** (or retaliation against anyone complaining about harassment) will be tolerated. The policy should specify the types of prohibited conduct.
- **Organizations should have a complaint procedure** that is strictly confidential and lets workers lodge complaints through several avenues.

## Laws against Discrimination

Federal and state statutes make clear that employers can't discriminate due to a protected characteristic (race, religion, national origin, gender, age, or disability). An employer's motive is key in these cases. To prove a forbidden motive, courts apply this framework:

- **Workers must present a case** that they were wrongfully treated due to a protected characteristic.

- **The employer must explain** why they treated the worker as they did.
- **The worker must show** why the employer's explanations aren't credible.

## Safeguards to Prevent Discrimination & Harassment Suits

- **Investigate and screen** potential workers thoroughly. When you call people for references, ask for examples of how the applicant interacts with peers.
- **Check into** any harassment or discrimination complaint immediately.
- **Post notices** mentioning anti-discrimination and anti-harassment laws.
- **Keep written documentation** of all complaints.
- **Make it clear** that anyone who spots a fellow worker being harassed and fails to report it will be disciplined. Note that forbidden behaviors include racial slurs, unwholesome gestures or drawings, unwelcome jokes, teasing, or touching.
- **Promptly discipline** anyone found guilty of harassment or discrimination.
- **Be sure you have** a written discrimination and harassment policy, procedures for employees to complain, definitions of forbidden behavior, and identification of personnel authorized to receive and investigate complaints. Once a



complete handbook is designed and checked by your attorney, distribute it to all employees and ask them to sign a paper saying that they have received it. Follow up with training to be sure they understand the rules. Update your handbook frequently.

- **Recognize the need** for promptness, thoroughness, documentation, confidentiality, and employee evaluations to provide for clarity and open communication.

- **Approach every case** with this consideration in mind: Would a jury likely find that your response to this complaint was reasonable? If the answer is no, a more complete harassment and discrimination policy is warranted.

*New rules are much more specific than previous ones.*

Having an anti-bias policy in place is one of the best ways to protect your organization from employee lawsuits. Simple planning can do a great deal to improve the chances for a calm, safe, fair work environment. ■

**Resources**

Conroy, Charles, "Sexual Harassment: Don't Let It Destroy Your Organization," *Nonprofit World*, Vol. 10, No. 2.

Doyle, Tanya & Brian Kleiner, "The Most Likely Lawsuits—and How to Protect Yourself," *Nonprofit World*, Vol. 19, No. 1.

Levesque, Joseph, "To Write or Not to Write: Do You Need a Personnel Handbook?," *Nonprofit World*, Vol. 11, No. 3.

Mahoney, John, "Protect Yourself Against Employee Lawsuits," *Nonprofit World*, Vol. 15, No. 2.

These publications are available from the Society's Resource Center, [www.snpo.org](http://www.snpo.org).

*Sze Min Quak is a researcher with special interest in discrimination and harassment in the workplace. Brian H. Kleiner, Ph.D., is a professor of human resource management, Department of Management, California State University, Fullerton, California 92834.*

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