Client Alert: Anti-Sexual Harassment Training: What Works and What Doesn't

BY BOWDITCH & DEWEY • NOVEMBER 21, 2017

Last week, Saturday Night Live paid homage to beleaguered Human Resources professionals across the nation by introducing us to "Claire from HR" during Weekend Update. If you haven't seen the sketch yet, click here. Claire (played by Cecily Strong) arrives to provide a brief anti-sexual harassment training – a "little HR quiz" just to "make sure we're all on the same page" – to co-anchor Colin Jost. After revealing that she hasn't slept in three days – it's been a "crazy week" in HR – Claire begins her tenth training of the day with the topic of office romances:

What is the appropriate way to handle a workplace relationship?

A. inform someone at HR
B. lock her in a room and make her look at it.
C. bully her out of the entire industry.

Colin answers "A", much to Claire's relief. The training then descends further into parody, culminating with the use of a male doll in a suit to demonstrate where a certain body part should be kept during work (noting that there are "no wrong answers here just super-wrong answers"). The late night anti-sexual harassment training is obviously hyperbole, intended to draw laughs at the notion that people in the workplace could be so blatantly ignorant – about how to conduct themselves and treat others – that they would answer any of the questions wrong.

In reality, most harassment in the workplace occurs in more subtle ways, requiring a nuanced approach to training employees how to prevent, detect and respond to it. Given the recent outpouring of (mostly) women and men coming forward to share their experiences of sexual harassment in the workplace, it is more important than ever for employers to reevaluate and rethink their approach to training. In doing so, employers should consider the following:

- **Live Training vs. Online training:** For many employers, online training software provides an efficient, cost-effective way to ensure that all employees receive training on an annual or at least "regular" basis. Employees click through a series of questions for about an hour in the comfort of their own workspace, perhaps while distracted with other work. Upon satisfactory completion, employees may even receive a certificate confirming that they have been trained on how to identify and respond to harassment in the workplace. The shortcoming of this training method is that employees are sitting alone behind their computers and not interacting with one another. At its core, harassment is an issue of human interaction, whether face-to-face, by phone, or in writing. Online modules may be helpful to familiarize employees with the employer's policies regarding harassment, and to supplement other training methods from time to time, but should not be used in lieu of live, interactive training, especially in the case of managers and supervisors.
- **Interactive Discussion vs. Multiple Choice Q&A:** Multiple choice questions are useful for "breaking the ice" with

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employees during training and getting them to participate. But as anyone in HR knows, most real-life situations involving harassment in the workplace are not as simple as "A, B, C or D." Take Claire's first question above, for example. Colin readily answered "A," given that choices "B" and "C" were completely outlandish; but is disclosure to HR necessarily required in every instance of a romantic encounter between employees? The answer may depend on the nature of the encounter, duration of the relationship, and the respective positions of the parties involved, such as their level in the hierarchy and whether they work in the same department. Training should provide employees with the opportunity to talk through the different variables that may be involved in a situation, and the impact that any related company policies may have on the analysis. (Now is a good time to consider implementing a Consensual/Romantic Relationships Policy if you don't have one.)

- **Get Comfortable With Sexual Lingo:** Training on the subject matter of sexual harassment will inevitably include the use of words and phrases that may be uncomfortable for employees to hear and use among each other. In order to facilitate a meaningful training with real-life scenarios, the trainer cannot be someone who easily blushes or stammers at the names of private parts or sexual acts (or someone who needs to pump hand sanitizer directly into his/her mouth after asking a question, like Claire from HR). A good trainer must make employees feel comfortable with the uncomfortable.

- **Give Trigger Warnings:** Some employers may grumble about this one, but if you are planning to provide a comprehensive sexual harassment training (which you should), consider providing a trigger warning in advance. While not legally required, the burden of providing a simple trigger warning is low, demonstrates sensitivity, and empowers victims to feel like they have a choice about whether to participate in a portion of a training that may be particularly upsetting to them.

- **Emphasize that Retaliation is Prohibited:** Many individuals are now publicly sharing painful stories of sexual harassment in the workplace, but a common thread is that the incidents occurred years ago and the individuals have moved on with their careers. Most victims of sexual harassment-even if they hashtag "me too" on their social media accounts-remain in the shadows in their current workplace out of fear of retaliation or "career suicide." The victim may ultimately leave, but the perpetrator remains and nothing is ever done to stop it. Talented employees leave. Productivity and morale suffer. The only way to break this cycle is to remind employees during every training that they will not be retaliated against for coming forward on behalf of themselves or others, and encourage them to report any concerns to HR.

While there is no one-size-fits-all approach to anti-harassment training, and they are not a panacea, there are tangible improvements that employers can make to provide more meaningful programs, centered around interactive participation by employees, that take into account the unique aspects of their organizational culture, size, hierarchy, and industry. The time has come for employers to make a harassment-free work environment a priority as opposed to a back-burner issue.

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