



DELAWARE

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## **RELIGIOUS HARASSMENT**

### **Getting it right: avoiding harassment claims**

by Lauren E. Moak

*As all HR professionals know, there's little you can do to prevent an angry employee from filing a lawsuit. What you can do is be in the best position to defend against a claim if it happens. As a recent case decided by Delaware's federal district court shows us, the employer did everything it should have to address and remedy alleged discrimination, and it paid off with the court's dismissal of the employee's lawsuit.*

#### ***Background***

In January 2008, Robin Neal began the process of converting to Islam. She completed her conversion in March, at which time she began to wear religious clothing to work, including a nikabe (face covering), a khimar (headdress), and an overgarment. She claimed that several months later, in August, her supervisor, Marie Scheib, began making harassing comments about her clothing. The comments occurred several times over the course of several weeks. Neal also alleged that during a meeting about performance problems, Scheib raised her voice and yelled at her.

Uncomfortable with Scheib's comments and her behavior during their meeting, Neal reported her concerns to one or more managers. Over the course of several weeks, her complaint was communicated through her employer's management structure until it made its way to the HR department. HR promptly set up a meeting with Neal to discuss Scheib's alleged misconduct. Two days later, HR followed up with Neal to inform her that (1) Scheib had been spoken to about her conduct and (2) Neal should contact HR immediately if her supervisor engaged in any further conduct that she found to be harassing or otherwise inappropriate.

Scheib ceased making the comments, and Neal made no further

complaints. Neal was subsequently disciplined for various attendance problems and resigned from her job following a leave of absence. She then filed a lawsuit alleging hostile work environment harassment, among other things. Her former employer asked the court to dismiss the lawsuit, arguing it had taken prompt and appropriate action to remedy the alleged harassment. The court agreed with the employer and granted summary judgment (dismissal of the claims without a trial).

### ***Winning at harassment investigations***

To succeed on a claim for harassment, an employee must demonstrate that (1) she suffered intentional discrimination because of a protected characteristic, (2) the harassment was severe or pervasive, and (3) there is a basis for employer liability. An employer will generally be held liable for its employee's harassing conduct if it was aware of and failed to remedy a hostile work environment. By contrast, the employer can avoid liability if it establishes an effective antiharassment policy, encourages employees to report perceived harassment, and acts promptly to investigate and address complaints of harassment.

While it's not always easy to identify allegations of harassment, the employer in this case certainly set a good example for how to address employee complaints. Neal's allegations could have easily been brushed off by an insensitive manager; instead, they were quickly elevated through the employer's management structure to the HR department. Once the complaint was received by HR, Neal was promptly contacted and interviewed. Her allegations were given the weight they deserved, and her manager was counseled. And, almost equally important, the HR manager promptly followed up to notify Neal of the outcome of the investigation and reiterate the need to report any further inappropriate conduct. *Neal v. Genesis Properties of Delaware, Ltd. Partnership, L.P.*, C.A. No. 11-17-SLR (D. Del., June 27, 2012).

### ***Bottom line***

You cannot prevent all lawsuits, but you can keep several things in mind when trying to avoid and preparing to defend harassment suits. First, all employers should have a well-drafted antiharassment policy. All employees — but especially managers — should be trained in reporting harassment. Workers should be trained to report harassment to managers instead of making general complaints to their coworkers. And managers should be trained to quickly convey any complaints to the HR department, regardless of how serious or credible they find the allegations.

Second, HR professionals should give harassment complaints the weight they deserve. There are a lot of places where an investigation can run off the rails. Investigations should be conducted as promptly as possible. While confidentiality should be a consideration — no victim of harassment wants to feel like a spectacle — your attempt to maintain confidentiality should never affect the goal of conducting a full and fair investigation.

Finally, just because the investigation is over, that doesn't mean the allegation is forgotten. The complaining employee should be updated on

the progress of the investigation and briefed on the final outcome. It's important for the employee to know that action was taken so she doesn't assume that her complaints fell on deaf ears. Employees should also be reminded that they have an ongoing duty to report harassment. Those steps will help you avoid litigation when possible and face it head-on if it occurs.

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