

## 36 No. 1 Emp. Alert NL 1

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### Barriers to Harassment Reporting: How To Overcome Them

**1.1#** During a conversation with an employee about putting together a project team, she casually mentions that a co-worker sometimes makes her uncomfortable. Your antennae go up and you ask her for examples. What you hear horrifies you. The person in question has been making wildly inappropriate comments and conversation with her for months and this is the first you're learning of it. Just as bad, in the course of your investigation, six more people provide similar stories. You provide training on sexual harassment and have mechanisms in place for reporting misconduct—why didn't these employees use them?

It's not just the big companies like CBS where this scenario is playing out. It recently happened at a small nonprofit that prides itself on a transparent, family-like culture. Executives there were shocked when multiple women came forward to say "me too" following the termination of an employee for harassment. What, they asked themselves, were they doing that discouraged, rather than encouraged, these employees to come forward?

#### **Fear and distrust**

Beth Langley, an attorney in the Greensboro office of **Brooks Pierce** says employees generally don't report their harassment concerns for two reasons—fear of retaliation or a belief that nothing will be done. "Both of those issues are due to lack of trust in the process and a perception that reporting will not make a difference."

Diane Rosen, an attorney with Ortoli Rosenstadt LLP, says HR departments themselves can sometimes be the biggest barrier to reporting harassment. "HR is part of management and therefore, there is a concern (often accurate) that reporting to HR is the same as reporting to the boss. Internal HR protocol is rarely open to employees, which raises many questions for a victim. Who will find out? Can that person retaliate? Will HR really take steps against a powerful person in the organization? If so, what steps and to what end? Does management have an interest in brushing something under the rug to protect the company?"

#### **Shame**

An additional barrier, Rosen says, is shame. "Victims (particularly those new to the work world) may feel that they are to blame. They ask themselves, 'Did I encourage the harasser?' Or they fear that by speaking up they risk categorization as a 'whiner,' 'complainer,' or 'snowflake.' Victims may get bad advice from colleagues including: 'Don't bother, HR doesn't care.' 'The perpetrator has been doing this forever, so there is no point.' 'It is just part of corporate life—toughen up, or you will ruin your career.' "

#### **Poor reporting mechanisms**

Patrick Quinlan, CEO of Convercent, a provider of ethics and compliance software, says sometimes it's the reporting mechanisms themselves that are obstacles "Those reporting harassment or other ethical gaps in the workplace are often

in states of anxiety, pain, or confusion. So when employees go to report, the process needs to feel comfortable and easy in order to encourage reporting, rather than make an already difficult situation more convoluted.”

His firm uses a simple question to facilitate reporting. “[T]he reporting process is short and sweet, starting with a very simple question: ‘*what happened?*’ Because of this, employees feel empowered to tell their own story, rather than being forced to categorize or label it upfront,” he says.

“By starting with the story of what happened, Convercent has found that those reporting are more inclined to share lengthier anecdotes and additional details, allowing investigations to happen more quickly and the investigation committee to have a more complete view of the situation at hand.”

Christina Zaberto, an HR manager with Associated Human Capital Management, a payroll and HR services organization, encourages employers to consider tech-driven options such as anonymous reporting apps. “These tools are quick and easy to use and thereby increase the likelihood of someone reporting an incident in real-time. This leads to HR or management receiving more accurate information as well as the ability to act quickly if necessary.”

### **Sparse communication**

Sporadic training and communication also can be a problem. “Educating employees about reporting procedures requires more than flyers, blast emails or a tab on the website,” Rosen says.

Zaberto agrees. “Annual harassment prevention training is always helpful (and mandatory in some states) but [you need to] reinforce the policy throughout the year. As an HR Manager, I schedule monthly check-in meetings with employees so that I give them an opportunity to speak to me about any concerns if they have them. Employees can be hesitant about going to HR for fear of looking like a ‘tattle tale’ or ‘cry-baby.’ I try to eliminate that stigma by letting them know why it’s important for me and the company to hear their concerns and that I actually want to and need to hear them—that’s what I’m here for.”

Rebecca Kiki Weingarten, founder of TradeCraft Coaching, a professional and personal development firm, recommends regularly reminding employees about reporting mechanisms, including during onboarding, at weekly/monthly meetings, in yearly reviews, before holiday parties and before employee travel.

### **Enforcement**

Lastly, perhaps the biggest barrier to reporting (as well as the easiest to solve) is perceived lack enforcement of anti-harassment policies. For this reason, Langley says, consistent follow up is vital whenever an employee makes a report. “Although employers should not publicize the discipline meted out for substantiated reports of harassment or discrimination in workplace, employees are observant enough to know when harassment goes unchecked. Each individual who reports harassment should receive personalized communication of the results of the investigation. If the harassment was substantiated, the employee should be assured that the employer will not tolerate any form of retaliation, and that the offending individual was disciplined.”

### **The bottom line**

Employers can’t fix what they don’t know is broken, which makes employee reporting of misconduct critical. Employers should review their reporting policies and procedures to ensure they are convenient, user-friendly, transparent and likely to engender trust among their employees.

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