



FEATURE



## Higher-Ups Harassing

[By Jack Lord]

Your company probably has a no harassment policy. Your human resources department does a good job of making sure that new employees receive a copy and review it. HR also makes sure training about the policy occurs at least every couple years for company supervisors, or even for all of the employees in the company. When someone makes a complaint that he or she has been harassed by another hourly co-worker based on a protected category, such as race, sex, or religion, HR also jumps right on it, investigates that claim, and determines what happened. If they find out that some harassment occurred, prompt steps are taken to fix the problem and to discipline the offenders.

So what happens when the person being complained about — the person who has been inappropriately touching other employees or looking at pornography at work or making racially derogatory jokes — is high up in the chain of command? Do HR and fellow upper managers follow all of the “best practices” described above? Or, as can happen at companies around Central Florida, does the fact that someone in upper management is the one subjected to scrutiny change the effectiveness of the investigation and discipline process?

The law holds employers to an even higher standard of care when it comes to employment harassment complaints about employees with supervisory authority than it does when the complained of harassment is done by someone who is not a supervisor. Yet, it is often the case that the higher up an employee works in an organization, the more difficult it is for HR and other management employees to confront and discipline that employee when he or she screws up.

When a complaint comes in about a senior manager or officer, here are some practical steps a company can take to make sure the situation is handled with both the political sensitivity that may be required and also the appropriate degree of attention with respect to the discipline that should be meted out:

- Bring in an independent, third-party investigator without ties to

upper managers. This person will not be inhibited by office politics. This person’s report will also be less subject to attack — on cross-examination by the employee’s lawyer or by the EEOC — than an investigator who is beholden to the accused harasser for a raise, bonus, or promotion.

- Have the third-party investigator create a report outlining the investigation, the findings, and recommendations for any discipline that may be warranted for higher management employees. If it was found that the president of the company did indeed make those very naughty sexual remarks to the receptionist, then strong disciplinary action should take place. It will be easier to carry this out if the recommendation comes from a third party. Of course, failure to follow the independent investigator’s written recommendations could have their own negative consequences as well.
- During trainings with upper managers about the no harassment policy, be sure to talk about the investigation process. Let the higher-ups know that they too are subject to investigation and that, though it may be uncomfortable for everyone, once the company finds

out about a complaint, it will have no choice but to investigate.

- Make sure upper level managers and officers get training on the fact that information technology — such as computers, internet access, and phone systems — belongs to the company and is always subject to search by the IT department. An executive’s BlackBerry is not immune from search.
- Be proactive with sensitivity and diversity training for senior management. Letting them know in advance what is expected of them — and how their actions can be highly damaging to the company to the tune of hundreds of thousands of dollars — can prepare them for why the company is responding in a particular way to an employee’s complaint.

As with all employees, the actions of senior managers and officers must be promptly investigated and dealt with when an employee complains of prohibited harassment. Taking steps in advance to ensure that upper-level employees know why the policies are important, and having a plan in place on how to deal with such complaints, will go a long way toward preventing a jury from finding liability and a high level of damages for senior management’s actions.



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**About the Author**

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