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Subject: HR Alert: The costs of not stopping harassment

The EEOC has published a document entitled: “Enforcement Guidance: Vicarious Liability of Employers for Unlawful Harassment by Supervisors.”

The following is an excerpt from that document:

f. Assurance of Immediate and Appropriate Corrective Action

An employer should make clear that it will undertake immediate **and appropriate corrective action**, including discipline, whenever it determines that harassment has occurred in violation of the employer's policy.

Remedial measures should be designed to **stop the harassment, correct its effects on the employee, and ensure that the harassment does not recur**. These remedial measures need not be those that the employee requests or prefers, as long as they are effective.

In the case that is described below, the employer (Chrysler Corp.) was deemed (by the Seventh Circuit) to have responded in a “shocking thin” manner to allegations of harassment. The employee/plaintiff alleged over 70 incidents of harassment over a 3 year period. By not responding more appropriately to STOP the harassment, Chrysler will be writing checks for both compensatory damages and punitive damages.

When allegations of harassment or discrimination are made, it always is in the employer’s best interest to take all reasonable actions to stop the harassment.

Source: the law firm of Franczek Radelet P.C.

Workplace harassment may occur over an extended time period in circumstances where it is difficult to identify the individual(s) responsible for the harassment. **In these situations, an employer should increase its remedial efforts over time. Continuing the same ineffective measures could lead to a finding of recklessness and a punitive damages verdict.**

Otto May, Jr., a pipefitter at one of Chrysler’s assembly plants, filed a hostile work environment lawsuit claiming he was victimized by co-worker racist and anti-Semitic harassment. At the conclusion of a seven-day jury trial, the jury awarded May \$750,000 in compensatory damages and \$3.5 million in punitive damages. The District Court vacated the jury’s verdict on punitive damages. On appeal, the Seventh Circuit Court of Appeals reinstated the jury’s punitive damages verdict. ***Otto v. Chrysler Group, LLC***, (August 23, 2012).

According to the Seventh Circuit Court of Appeals, May was entitled to punitive damages under 42 U.S.C. §1981a(b)(1) if sufficient evidence established that Chrysler acted with reckless indifference to his federally protected rights. The Seventh Circuit found that “[t]he jury reasonably determined that Chrysler’s *actions* did not add up to a good faith effort to end May’s harassment, and, much less, that its actions were (at least) reckless.” (Emphasis in original.)

In the face of more than 70 harassment incidents over a period of more than three years, **the Seventh Circuit characterized Chrysler’s response as “shockingly thin.”** The record showed that Chrysler’s response included two meetings of skilled tradesmen to remind them that harassment was unacceptable, it reviewed plant entry and exit data to narrow the field of potential suspects, and it retained a handwriting analyst in an effort to identify the person(s) responsible for graffiti and notes.⁽¹⁾

Chrysler, however, did not interview any of the 19 employees May suspected of being involved in the harassment. In the Seventh Circuit’s view, it was reckless for Chrysler to “not increase its (meager) efforts over a long stretch of time in the face of remarkably awful harassment.”

This decision serves as an important reminder that harassment complaints must be promptly responded to with appropriate remedial actions that are reasonably calculated to end the harassment. **If the harassment continues**

after certain employer actions, those actions should be modified and intensified, rather than continuing with a strategy that is ineffective in ending the harassment. As the Seventh Circuit stated, “talking a good game will not immunize an employer from a judgment that it was reckless.”

(1) **The handwriting expert told Chrysler that it was possible that May himself was writing the notes. Also, May asked Chrysler to install surveillance cameras to watch his tool box so that the culprit could be identified; Chrysler did not install cameras. One would think that, given the handwriting expert’s statement that May could be writing the notes upon which the harassment claims were based and given that the company had not identified a culprit via its other responses, installing a surveillance camera would have been reasonable. And, it probably would have been a lot less expensive than the costs of compensatory damages, punitive damages, or attorney’s fees.**