

# **Workplace Training: The Importance of Employee Education as a Preventative Measure**

# Overview

- Understanding the Purpose and Benefits of Employee Training.
- Mandated Training Versus Recommended Training: Understanding Federal, State, and Local Law Requirements, As Well As Industry Standards and Best Practices.
- Tailoring Training to Your Audience: Training for Employees, Managers, and Executives.
- Best Practices for Documenting Employee Training.

# Employee Training: Why Bother?



# **Employee Training: Why Bother?**

## **Prevention of Claims Brought Against the Company**

- Review of company policies, including Anti-Harassment and Discrimination Policies, to educate employees regarding lawful and unlawful conduct.
- By educating employees regarding acceptable/unacceptable behavior and the perceptions of others, you can prevent unlawful behavior in the future.

**CLAIMS**



# **Employee Training: Why Bother?**

## **EEOC, MDCR, MIOSHA, and DOL Investigations**

- Two of the first questions asked in most investigations are:
  - Does the employer have an anti-harassment/discrimination policy?
  - Were the employees trained regarding their rights and responsibilities?
- The EEOC outlines the components of an effective anti-harassment/discrimination policy, which includes training.



# Employee Training: Why Bother?

## Lawsuits

- Under *Faragher v City of Boca Raton*, 524 US 775 (1998), and *Burlington Indus v Ellerth*, 524 US 742 (1998), an employer can assert an affirmative defense to avoid liability for hostile environment harassment by a supervisor so long as the harassment has not led to an adverse employment action such as termination or demotion.
- The defense involves proving two elements:
  - (1) the employer exercised reasonable care to prevent and promptly correct the harassing behavior, and
  - (2) the employee unreasonably failed to avail themselves of the employer's preventative or remedial apparatus. *Id.*
- ***Training can help to establish both elements.***

# **Employee Training: Why Bother?**

## **Understanding Concerns and Sharing Perspectives**



# **Employee Training: Why Bother?**

## **Reviewing Company Culture and Policies**

- Training can be a tool for reviewing and reinforcing existing company policies.
- Training can be a tool for “rolling out” new company policies, such as a revised Employee Handbook.
- Use the opportunity to discuss the company’s vision, mission and core values.





# Employee Training: Why Bother?

## Employee Retention/Performance



# **Employee Training: Why Bother?**

## **Societal Expectations**

- For companies in the public eye, it has simply become unacceptable to fail to properly train employees.
- In particular, failure to train employees regarding discrimination, harassment, sexual harassment, and implicit bias has brought negative attention to many well-known companies.
- Look to recent Starbucks example.

# **Employee Training: Why Bother?**

## **Required Under Law?**



# Mandated Training Versus Recommended Training

# **Mandated Training**

## **Federal Law**

- Federal Requirements.
  - No federal training regulation applies to all employers, however certain federal laws and agency regulations may explicitly require training for specific industries or employers. Additionally, training might be implicitly required as the only way to achieve compliance obligations under certain laws and regulations.
- Safety Training Examples
  - Emergency Action Plan – OSHA
  - Hazard Training – OSHA
- Compliance Programs
  - Foreign Corrupt Practices Act and the Sarbanes-Oxley Act
  - Health Insurance Portability and Accountability Act (HIPAA)



# **Mandated Training**

## **Michigan**

- No state training regulation applies to all employers, however certain state laws and agency regulations may explicitly require training for specific industries or employers. It is important to research your particular industry against state requirements.
- MIOSHA



# **Recommended Training**

## **FMLA/ADA and Michigan Persons with Disabilities Civil Rights Act Training**

- Training management and HR on **leave of absence procedures and disability accommodation** to ensure that they respond lawfully to requests for leave and accommodation.
- Training should provide an overview of applicable leave laws, how to handle accommodation and leave requests, notice requirements and employee rights, and job restoration requirements upon the employee's return.
- Mishandling is very common and can result in DOL citations and penalties, along with EEOC charges (disability discrimination is the second most frequent claim in Michigan, accounting for 33.4% of all claims).

# Fair Labor Standards Act (FLSA) Training

- [illegible]

# **Mandated vs. Recommended Training**

## **Discrimination, Harassment, and Retaliation Training**

- Training management and HR on requirements under Title VII of the Civil Rights Act of 1964 and the Michigan Elliott-Larsen Civil Rights Act.
- Training should provide an overview of:
  - Protected classes under federal, state and local law;
  - Focus on the importance of diversity and sensitivity in the workplace;
  - Emphasize the notion of perception as reality;
  - Review real life examples of acceptable and unacceptable behavior;
  - Cover best practices and procedures for handling complaints.

# Mandated vs. Recommended Training

## Sexual Harassment Training

- A recent study found that at least 30% of women have encountered unwanted advances from male co-workers.
- According to the EEOC, 75% of those who experience sexual harassment at work never report, typically because they fear blame, inaction, or retaliation.
- Training should focus on:
  - the types of conduct involved (verbal, non-verbal, physical, and visual);
  - the difference between quid pro quo and hostile work environment harassment;
  - the impact of sexual harassment on the company, managers, and employees;
  - and review complaint procedures for employees.





# Mandated vs. Recommended Training

## Accountability Training for Managers

- This type of specific leadership training should focus on:
  - company values and future goals;
  - the role of management within the company and the notion of leading by example;
  - how to handle performance evaluations;
  - responding to complaints and anti-retaliation.
- Having strong leaders who implement best practices and understand procedures is often the best means of avoiding claims.
- Retaliation claims are the most common type of EEOC charge in Michigan, accounting for 39.6% of all claims.



# **Understanding Your Audience:**

## **Training for Employees, Managers, and Executives**

### **General Employee Training**

- An opportunity to create an inclusive and supportive environment and to bolster loyalty.
- A review of company goals and values, procedures and expectations, and employee rights (but not a roadmap for bringing false claims against the company).
- Review of company complaint procedures.



# Understanding Your Audience:

## Training for Employees, Managers, and Executives

### Management Training

- Review best practices for preventing claims.
- Training regarding consistency in enforcement to prevent disparate treatment of employees.
- Managers should be trained regarding employee performance issues.



# **Understanding Your Audience:**

**Training for Employees, Managers, and Executives**

**Review protocol for responding to claims – “the 6 R’s”**

- Respect
- Restraint
- Rules
- Respond
- Record
- (No) Retaliation

# **Understanding Your Audience:**

## **Training for Employees, Managers, and Executives**

### **Executive Training**

- Learning effective communication.
- Help executives connect to their company and understand its inner-workings. In 2016, “it was estimated that 67% of well-formulated [executive] strategies failed due to poor execution.”
- Understanding leadership styles and their impact on employee performance.
- When to be involved in HR and employment issues.





# **Best Practices for Documenting Employee Training**

## **The Importance of Keeping Training Records**



# Best Practices for Documenting Employee Training

**Required/Suggested Documentation:  
Protect Yourself with a Paper Trail**



# Employee Training: An Ongoing Process

