

TRAPS TO AVOID: Not Taking Harassment Complaints Seriously



When a worker complains of harassment on the job, it's easy to dismiss the complaint offhand or conduct a superficial investigation—especially if you don't think there's a basis for the complaint or the worker complaining is a 'difficult' employee. But giving such complaints short shrift is a big mistake, even if it's ultimately determined that the complaint was unfounded. That's the lesson an Ontario employer recently learned.

Employer Penalized for Botching Harassment Investigation

A worker for a furniture company claimed that he was subjected to harassment and discrimination based on his colour, such as being assigned what he considered to be 'menial' tasks. He discussed his concerns with his supervisor, the HR manager and the new Director of Sales. But none of them ever got back to him. He was then fired. The worker sued the company for discrimination and harassment based on colour and reprisal for firing him for complaining about this mistreatment.

The Human Rights Tribunal found that the worker hadn't proven that he was the victim of discrimination or harassment. But it also concluded that the company failed to take any steps in response to his complaints. For example, the company didn't investigate his claims or even conduct a follow-up interview with the worker to clarify the nature of his complaints. Instead, there was 'complete inaction' by the company, said the Tribunal. It concluded that the company failed as an organization to act reasonably in addressing the worker's complaints in an adequate and appropriate manner.

The Tribunal also found that the company terminated him at least partly because he raised these issues and exercised his rights under the *Human Rights Code*, which was an act of reprisal. So the Tribunal ordered the company to pay the worker more than \$55,000 in lost wages and \$15,000 in damages for injury to his dignity, feelings and self-respect. And because it was clear that the company's managers didn't know how to respond to complaints of this nature, the Tribunal also ordered the company to hire a human rights expert to review and revise its human rights policies and train members of management to ensure future compliance with the human rights laws. And it ordered a now former company executive to take a human rights course prepared by the Ontario Human Rights Commission [*Morgan v. Herman Miller Canada Inc.*].

SOLUTION: Follow Company Procedures for All Complaints

Morgan is an interesting case because although the Tribunal found that the worker wasn't the victim of discrimination or harassment, it concluded that he was nonetheless harmed by not having his allegations taken seriously. In fact, the only thing the company did in response to his complaints was fire him, which was an illegal reprisal.

Thus, the lesson from this case is that employers should have procedures for handling discrimination, harassment and similar complaints and must ensure that staff follow those procedures for *all* complaints, regardless of who makes them or how unlikely the claims may appear to be. Supervisors, managers and anyone to whom workers may bring such allegations must be trained on those procedures. They should be instructed to take all complaints seriously, thoroughly investigate them and document their findings. Then if they conclude that the complaints are unfounded and the worker takes legal action, it's unlikely that a court or tribunal will hold the company liable for damages for a faulty investigatory process.

In addition to the things the company should *do* when a worker makes a complaint, the company *should not*:

- Wait too long to investigate it;
- Rely on a biased or incompetent investigator;
- Fail to get both sides of the story;
- Forget to interview third parties who may have witnessed key events or conversations;
- Fail to gather all relevant information before making any conclusions;
- Ask 'leading' questions—that is, questions that suggest a correct answer—when interviewing witnesses or the parties involved; and
- Interview witnesses in front of each other.

Insider Says: For another example of an employer that didn't properly handle a harassment complaint, see 'Test Your OHS I.Q.: How Should an Employer Respond to a Harassment Complaint,' Jan. 2011, p. 6. And here are six tips for reducing the risk of workplace harassment and violence.

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Morgan v. Herman Miller Canada Inc., [2013] HRT0 650 (CanLII), April 18, 2013