Counterintuitive: what businesses can do to encourage complaints

The U.S. Equal Employment Opportunity Commission received 7,609 sexual harassment charges in 2018, which represents a 13.6 percent increase from 2017. In the wake of the #MeToo movement, this is perhaps unsurprising. As a default position, many companies believe that receiving a workplace complaint of sexual harassment is a problem, and that receiving a larger number of complaints indicates an even bigger problem.

To the contrary, a complaint is information about a problem, not a problem itself. Unreported problems are actually one of the biggest issues facing employers, which leads to the conclusion that complaints are preferable to silence.

Against this backdrop, what can an employer do to encourage internal complaints?

1. Stop reacting to complaints as if they are catastrophes. Employee complaints are an opportunity for the organization to review behavior, address existing problems, educate employees who may misunderstand appropriate workplace behavior (including the employee raising the complaint), and improve internal processes. If you have an appropriate process for responding to complaints, you will be prepared when one arises and be able to respond thoughtfully and meaningfully. A measured process includes responding to employees promptly, thanking them for bringing the issue forward and allowing the opportunity for review, expressing that the organization takes complaints seriously and will investigate (without promising or commenting on a likely outcome), and stating that the organization will follow up throughout the process and at the conclusion invite questions.

2. Work to ensure that employees understand what will happen when a complaint is made. We do not want employees to hold back complaints for fear that they will not be taken seriously or that "nothing will happen in the end," but we also do not want employees to refrain from raising complaints because they misunderstand the process and "don't want to get anyone fired." Therefore, in advance of receiving complaints, provide an explanation of your process. Include an outline of the steps involved and possible outcomes within your written policies - how an employee can make a complaint, to whom, what happens next, what a typical review or investigation looks like, who might be involved in that process, interim measures that might be available to a complainant or respondent, and range of potential discipline that may result if a concern is substantiated. Incorporate this information into onboarding and training, and consider providing periodic updates at staff meetings or via email to remind employees of the process.

3. Suggest outcomes, when appropriate, that are solution-focused. As an employment lawyer who conducts outside investigations, I encounter many instances when a complainant or respondent indicates the desire for a less formal process to allow for a facilitated conversation with others involved rather than a discipline-oriented outcome. Similarly, in investigations where the conclusion is that no policy was violated, the employer may still wish to proactively meet with the affected individuals and identify possible solutions for more positive future interactions. When employees appreciate that raising a complaint can lead to a productive outcome and not just finger-pointing followed by discipline, the more willing they may be to raise concerns proactively.

4. Utilize the power of managers and supervisors. Managers and supervisors are often the first line of defense for addressing problematic behavior - that is their job. Human resource professionals and supervisory employees should treat complaints as an opportunity, not a problem, and refrain from commentary that might indicate a distaste for complaints or a preference that they not be raised. Otherwise, managers and supervisors who perceive that the organization dislikes complaints could be more likely to (consciously or subconsciously) indicate the same to the employees they supervise. Through both formal training and informal conversation, arm your managers with appropriate tools and language for how to respond to complaints. It can take courage and cause anxiety for an employee to come forward with a perceived concern - whether or not that concern ultimately ends up being substantiated. It is therefore critical that the employee not be met by a manager with unintended or flippant statements that might convey that the concern is not a big deal, that the manager himself or herself would not be personally offended by such behavior, that the concern raised is simply a harmless personal idiosyncrasy about that particular employee, or that a conversation about the concern will not be accommodated or will be a one-time discussion that cannot be raised again.

5. Discourage and prohibit behaviors that might dissuade complaints. In the wake of the #MeToo movement, many of us have heard stories of potentially well-intentioned efforts to prevent discrimination against women by reducing or limiting interactions with women. For example, some men fearing a potential complaint have reduced work interactions with women, including work travel, mentoring, or work-related social activities such as one-on-one dinners or lunches. This itself is a form of discrimination against women, and such behaviors are all but certain to discourage an employee from raising a complaint.

Ultimately, all businesses prefer to reduce incidents leading to complaints. However, for those problems that exist, we are better armed to address and resolve such issues when our employees are willing to raise complaints and allow us the chance to explain, address or alleviate an issue that is important to both the health of the organization as well as the individual complainant.

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