





Fishel Downey Albrecht & Riepenhoff LLP (FDAR) is a mid-sized Columbus, Ohio, based law firm with a statewide practice. FDAR represents hundreds of clients, with facilities in nearly three-fourths of Ohio's 88 counties, as well as out-of-state and international clients with an Ohio presence.



Have a Basic Understanding of the Law

- What is sexual harassment?
- Meritor Sav. Bank, SFB v. Vinson, 477 U.S. 57 (1986).
- Are there other forms of unlawful harassment
- Welcomeness by alleged victim.
 - There is an affirmative requirement that the plaintiff prove at trial that she had shown "by her conduct... that the alleged sexual advances were unwelcome." <u>Vinson, 477 U.S. 57</u>
- Off duty conduct.
 - Succar v. Dade County School Bd., 229 F.3d 1343 (11th Cir. 2000)
- What happens if a lawsuit is filed?

3 FD PISHEL DOWNEY

Set Expectations for the Workplace

- What is the Employer's policy?
- Consistent enforcement of the policy.
- Distribute and educate employees on the policy.Should be done periodically.
 - · Give examples of possible violations.
- Make sure the policy has various ways to report allegations.
- Make sure supervisors and HR know their responsibilities.
 - EEOC n. Hacienda Hotel, 881 E2d 1504 (9th Cir. 1989)
 Vance n. Ball State Unin., 570 U.S. 421 (2013)
- Don't promise confidentiality.

Don't Ignore Allegations or Signs of a Problem

- The Employer has certain legal and practical responsibilities.
- The law and workplace expectations aren't the same.
 <u>Debord v. Mercy Health Sys. of Kansas, Inc.</u>, 737 F.3d 642, 650 (10th Cir. 2013)
- Once the Employer is put on notice, it must act.
 <u>Sanders n. Madison Square Garden, L.P., 525 F. Supp. 2d 364 (S.D.N.Y.</u> 2007).
- Know the policy and set expectations.
- Even if there is no unlawful harassment, there still could be misconduct.

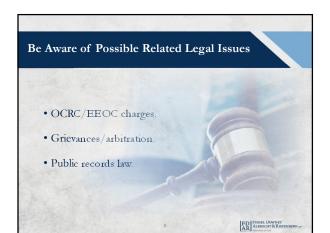
FD AR ALBRECHT & RIEPENHOF

FD FISHEL DOWNEY ALBRECHT & RIEPS

Always Investigate Allegations of Alleged Harassment

- The investigation depends on the allegations.
- Remember legal restrictions.
 - Garrity/Piper.
 - Search of computers, phones, etc.
 - Social media posts.
 - Collective bargaining agreements.
- What to do with the alleged harasser and victim.
- Document all steps of the investigation.
 [FD] FINHE DOWNEY
 [AR] ADMAGGING REPS.





Don't Overreact

- Not every allegation requires a full blown investigation.
- Ensure concerns about sexual harassment don't become an excuse for discrimination.
- All workplace relationships are not prohibited.

FD AR ALBRECHT & RIEPS

Avoid Common Misperceptions

- He's too valuable to the organization.
- We only have to protect women from sexual harassment.

10

- We can't do anything about a "he said, she said" situation.
- We can't do anything about a customer's behavior toward employees.
- She can handle herself.

Be Smart, Don't Be Dumb

- Use common sense and encourage employees to do so as well.
- Would you want your spouse or child to be exposed to this conduct in the workplace?
- Are you okay if your conduct ends up on the front page or described to your spouse?
- Employees should be encouraged to report allegations.

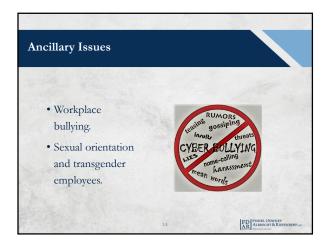
11

FD AR ALBRECHT & RIEPENHOS

FD AR ALBRECHT & RIEPS

Take Proper Action Based on Facts

- The Employer's duty is to take prompt remedial action based on facts.
- Wilcox v. Corr. Corp. of Am., 852 F.3d 1283 (11th Cir. 2018).
- Take action necessary to ensure the harassment ends.
- Explain to the alleged victim the findings and steps that have been taken.
- Consult with legal counsel.





Workplace Bullying

- Not all employees who face bullying in the workplace have actionable sexual harassment claims against their employers.
- Under federal employment discrimination laws, only employees who are bullied or harassed because of their sex can assert claims for sexual harassment
- A supervisor who bullies all of his or her employees using gender-neutral language or tactics is not in violation of Title VII because he or she treats men and women equally poorly.
 - <u>Acosta v. Hilton Grand Vacations Company</u>, LLC, Civil Action No. 4:15-cv-00495, 2017 WL 1173583 (D.S.C. Mar. 30, 2017)

14

FD ALBRECHT & RIEPENHOFF

LGBTQ+ Sexual Harassment

- Same-sex sexual harassment is actionable under Title VII.
 - Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998).
- Employers should prohibit expressly all forms of harassment, whether between members of the opposite or the same sex, with no consideration as to the sexual orientation of the harasser.
- If a harasser harasses both men and women alike and does not choose victims based on their sex, such harassment does not technically violate Title VII and most state anti-discrimination laws.

FD AR ALBRECHT & RIEPENHOFF

LGBTQ+ Rights

- Sexual harassment can include bullying
 - Jokes or derogatory comments about transgender people
 - Repeated and intentional use of the wrong name or pronouns
 - Invasive, disrespectful personal questions may constitute harassment
- Denying access to facilities consistent with your gender identity can constitute discrimination.
- Employers cannot demand medical or legal documentation of your gender as a condition of restroom access, or limit you to using a specific restroom separate from other employees.
- Agencies also cannot require you to use facilities that are unsanitary, potentially unsafe, or located at an unreasonable distance from your work station.

16

FD FISHEL DOWNEY ALBRECHT & RIEPS

