

When Is A Sexual Harassment Policy And Training Ineffective?

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**Janilyn
Brouwer Daub**
Partner
Higher Education
Practice Co-Chair

As we continue our series on sexual harassment cases, here's a play-by-play of a recent First Circuit case, [Aggannis v. T-Mobile, USA, Inc.](#)

- A customer service rep (CSR) complains to her manager that her team “coach” made a sexual comment about her outfit. Score for the manager who reports this to HR!
- HR follows up, but CSR says it's no longer an issue; she stopped wearing the outfit and doesn't want anything done. HR drops it. Tough call – management has an obligation to act, even if the employee says she doesn't want anything done. But in this case, HR legitimately may have believed the issue was resolved.
- CSR then forwards to HR a sexually-suggestive cartoon sent by the coach. HR counsels the coach, but court deems it discipline-lite.
- The future plaintiff in this case, also a CSR, complains to HR that the coach touched her three times (unwelcome), stared at her in a sexual way, and on the first day they worked together, offered her a ride home. After HR's initial foul of telling Plaintiff to “stick it out” until the next regularly-scheduled rotation to a new coach, HR offers Plaintiff a transfer or paid time-off while HR investigates.
- Plaintiff refuses and quits. Score for the company! Court rules plaintiff was unreasonable in rejecting the offer of paid time-off, nixing her constructive discharge and back-pay claims.
- HR proceeds with internal investigation of plaintiff's claims (good call), and learns a co-worker overheard the coach using the “c” word with two male employees. HR disregards because it wasn't directed at a particular female (bad call).
- HR concludes the coach has boundary issues, but there's no violation of the company's sexual harassment policy.
- In the meantime, plaintiff sues and court sends case to the jury to determine whether there's legally actionable sexual harassment. Even though T-Mobile had a sexual harassment policy, conducted annual training and had a complaint hotline, court rules there is an issue of fact as to whether T-Mobile “exercised reasonable care to prevent and correct promptly any sexually harassing behavior” under the

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Faragher/ Ellerth defense.

What's the end game? Your actions need to speak louder than words. A sexual harassment policy and training isn't worth the paper/PowerPoint it's written on, if the organization doesn't effectively address inappropriate behavior.