

Good employment policies can guard against bad facts

by Reed Hardesty

A female employee at a member's swimming pool complained to management about ongoing harassment from male coworkers. The complaint was investigated and afterwards immediate mandatory anti-harassment training was required for all swimming pool employees. After the training, the female employee received anonymous phone calls demanding to know if she was the one who complained and was the cause of the new training. She followed policy and notified Human Resources of the phone calls.

Human Resources then conducted an investigation into the retaliation complaint. The employee went out on leave with a doctor's note due to work stress that was aggravating a prior condition. The retaliation investigation revealed a lead worker might have pressured another worker to make the phone calls to the employee in retaliation for the training and the initial complaint. Following the retaliation investigation, management demoted the lead worker. The female worker did not want to return to work at the pool. Management utilized a separation and release agreement with a payment to the employee.

Management with this WCIA member did many things right. They had a defensible anti-harassment policy and a complaint process. The member responded with additional training when the culture in the department showed policy may have not been followed in practice. The member made good use of outside investigations under the direction of an experienced employment defense attorney through the WCIA Pre-Defense Program. When the member received actionable evidence, it took steps to reinforce its policy that harassment was not acceptable within the organization and that the violators of the policy would receive consequences.

Bad actors and bad facts are not always the defining elements in employment related claims, even if they are the most memorable. Having good personnel policies and utilizing them in practice are the key elements of employment liability claim defense. In this case, the member was motivated, capable and practical. A good liability result was obtained in spite of bad actors and bad facts. The key is using good policies, training to your policies and calling WCIA for outside analysis when bad facts arise in your organization.