

# Lack of training should not be the winning argument in employment litigation.

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Employment claims can be difficult and expensive to defend and can result in high awards to the employee making the claim.

In a recent claim settlement, an employee claimed she was subjected to insulting gender-based comments on an almost daily basis, creating an environment where harassment was pervasive. She did not complain about these comments, claiming when she had complained to Human Resources (HR) a decade earlier, she was told by supervisors in her work group not to complain to HR, but to handle things “in-house.” To prove a hostile work environment, the claimant must prove the employer knew or should have known about the harassing behavior. We have some defenses if the employee does not complain and the municipality has a clear policy regarding harassment that is communicated to the employee. In the above case, the last documented time the employee had any harassment training was in 2009. This made it difficult for us to argue that the employee should have known to bring complaints to HR’s attention. All trainings should be documented in the employee’s personnel folder. In claims we have a saying, “if it isn’t in the file, it didn’t happen”; it is hard to defend a case without documentation.

While all employees should have regular training on harassment, it is especially important for supervisors and managers and that they bring employee complaints to HR for investigation. Employers (supervisors and managers) have a legal duty to investigate discrimination complaints that are alleged to be based on protected class status, which federal law describes as: age, disability, equal pay, genetic information, harassment, national origin, pregnancy, racial color, religion, retaliation, gender and sexual harassment. Appropriate action needs to be taken to address any sustained allegations. WCIA does provide periodic trainings for supervisors on a variety of topics, including employment liability prevention. In addition, WCIA’s pre-defense program can be utilized to provide advice on specific complaints by or about employees.

Whether the complaint is sexual harassment, discrimination based on belonging to a protected class or failure to accommodate a disability, it is important that all complaints be investigated.