Moving your anti-harassment policy to the forefront

By Lisa Knapton

Unlawful discrimination, harassment and retaliation have existed in the workplace for decades. During the last two years, the “Me Too” and “Times up” movements have emerged and grown due to media coverage bringing to the forefront credible accusations against several powerful and prominent people of unlawful, inappropriate conduct directed at employees or potential employees.

Employers have a duty to create and promote a workplace atmosphere free of this unlawful conduct. Unlawful discrimination, harassment and retaliation can lead to issues of low morale and productivity and worse, claims and lawsuits which can lead to consequences to employers and individually named employees. One of the key steps an employer can take to prevent and defend against this unlawful conduct is to develop a written policy against unlawful harassment and discrimination. Once developed and legally reviewed it should be posted and distributed to employees and volunteers who should be trained on it.

The policy should, at minimum, contain the following:

- A policy statement that the member is committed to adhering to this policy and that all of its employees are to comply with the requirements of federal, state and local laws against employment discrimination and harassment.

- Define and give examples of unlawful harassing/discriminating conduct, specifically including sexual harassment.

- Procedures for reporting complaints, which should include or clearly state:
  1. At least two alternative reporting routes (human resources director, department head, chief administrative officer, member attorney) so that employees do not have to take their complaints to the person they are accusing of harassment.
  2. An investigation will be undertaken, as quickly as is feasible, taking into account all of the circumstances of the situation.
  3. That confidentiality will be maintained to the extent possible and consistent with the member’s need to undertake a full investigation but is not guaranteed.
  4. That retaliation by member employees toward any employee bringing a complaint in good faith or for cooperating with the investigation will not be tolerated. Employees who bring complaints may be subject to discipline if the investigation reveals the complaint was made in bad faith.

- Disciplinary actions for violation of this policy.
Employers should post, distribute and train employees on a written policy against retaliation which makes clear that retaliation for engaging in protected activity will not be tolerated. The written policy can be incorporated into the anti-harassment policy or stand-alone. The retaliation policy should, at minimum, contain the following:

- Define and give examples of retaliation.
- Define and give examples of protected activity.
- Procedures for reporting complaints (which should include numbers 1. through 4. of the harassment policy guidance above).
- Disciplinary actions for violation of this policy.

Post the policies in a prominent place such as in the employee handbook, intranet and/or bulletin board and ensure that all employees are trained on them. Employees should be trained on these policies at minimum every two to three years. The training substance and attendance should be documented and maintained in accordance with the WA State Local Government Records Retention Schedule.

WCIA has sample anti-harassment and retaliation policies available for members. See WCIA’s Liability Resource Manual guideline, PER.12 Workplace Harassment, or contact your WCIA Risk Management Representative. The Liability Resource Manual is available through the Member Resources page on the WCIA website: http://www.wciapool.org/member-resources.