

Harassment policy good idea for small firms

By Nora Lockwood Toohar
Staff writer

Smart solo practitioners and small law firms should adopt anti-harassment policies for their own firms.

That's the advice of several employment law experts, who say that small firm attorneys often forget they are business owners, subject to the same employee concerns as other employers.

Firms that employ 15 or more employees are covered by Title VII and the ADA, and those with 20 or more are covered by the ADEA, said Laura V. Farber, an employment lawyer and partner at Hahn & Hahn in Pasadena, Calif.

Firms that have at least \$500,000 in gross annual sales and two or more employees involved in interstate commerce are covered by the Fair Labor Standards Act as amended by the Equal Pay Act.

And law firms that are exempt from federal employment discrimination laws because of their size may still be subject to state anti-discrimination statutes.

"States can have employee thresholds which are different than the thresholds for the federal statutes," said Alan Thayer, an employment lawyer and partner at Innovative Law Group in Eugene, Ore.

In Oregon, for example, the

state law banning discrimination against individuals with disabilities kicks in at six employees.

In California, small firms are subject to a variety of state statutes banning workplace discrimination, according to Farber.

Even solo practitioners may be liable for common law wrongful termination or constructive discharge based on intolerable working conditions.

"No person is immune," Farber said.

She recommended that firms adopt policies to avoid the most common claim against an employer - sexual harassment.

But ideally the policy will address all types of harassment, including harassment based on race, ethnicity or sexual orientation.

"I personally think it's prudent to have a harassment policy that deals with all forms of harassment," Farber said.

Beyond the legal reasons, firms should consider the business benefits of anti-harassment policies, said Jeff Hirsch, an associate professor at University of Tennessee College of Law and co-author of the Workplace Prof Blog.

An anti-harassment policy is a good way to make it "clear to your employees what they can and can't do, and what they should and shouldn't do," he commented.

Farber agreed: "It will help you from a morale standpoint, especially in a small shop, where folks may feel you can't do anything about certain conduct."

Plus, she said, "Just from the standpoint that we should be the ones setting the standard and we are the ones pursuing or defending these claims, we should make sure our own shop is following the law as best we can."

Spell it out

Farber suggested adopting a simply written policy that addresses all forms of harassment prohibited by state and federal law, and establishes a complaint procedure that doesn't require the employee to complain directly to his or her supervisor.

The policy should also require prompt investigation of all complaints and state that there will be no reprisal for making a complaint.

"It doesn't have to be long and complicated. For example, it can just say 'we don't support harassment on the grounds of x, y or x. And if you feel you're being harassed, here's what we do,'" she explained.

The reporting mechanism is a critical aspect of the policy, according to Thayer, who said it may help prevent false claims.

"You don't want the employee to claim the reason 'they fired me was because I was harassed,'" he said. "So the reporting mechanism is very important."

Thayer advises solo and small firm lawyers to find someone outside the law firm that an employee can complain to, such as a peer in a different firm.

The reason to go outside the firm, he said, is that in a small law firm, if the senior partner is the subject of sexual harassment complaints, "it wouldn't do any good to report to anybody [in the firm] because everybody is scared of him."

Thayer said that many solo and small firm lawyers haven't adopted anti-harassment policies because they haven't thought about it, or they are concerned about the expense.

"In some ways, it's the shoe-maker's kids' problem," he said. "In the employment area, like a lot of legal areas, there are traps for the unwary."

Thayer's firm plans to launch a series of free CLE programs as a professional courtesy for fellow bar members in the Eugene, Ore., area, including employment law programs.

Questions or comments can be directed to the writer at:
nora.toohar@lawyersusaonline.com