

An Employer's Resolutions for the New Year – A Mini-Series from the Employment Matters Blog.

Resolution #1: Don't let your Workplace be the Next Headline: Review and Refresh your Non-Harassment Policies and Training.

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Welcome (almost) to the New Year: a time of renewal, a fresh start, a clean slate, and a time to make and hopefully keep resolutions. A "New Year's Resolution" is, of course, a commitment in the coming year to change an undesired trait or behavior, to accomplish a goal or otherwise make a material improvement.

Toward this end, we thought it appropriate to launch a mini-series of some compliance-related resolutions employers might consider for 2018. In fact, we can't think of a better way to close out 2017 than with a series devoted to a collective resolution to make 2018 a year devoted to cleaning out the cobwebs and achieving (better) employment law compliance.

We recognize, given the complexity of our legal landscape and the challenges of managing human relationships in the workplace, complete employment compliance is a worthy but perhaps unattainable goal. But that doesn't mean 2018 can't begin on the right foot.

We thought it appropriate to start our resolutions mini-series with this headline: Don't let your workplace BE the next headline.

How do you achieve that? With some attention to the basics: training your workforce about what is – and isn't – acceptable in your office. We all know what that means (from a legal perspective). But given the daily headlines about bad workplace behavior, isn't it time to really, really, really make training count?

We think resolution number one for 2018 is train like you mean it. Lip service isn't enough to protect employers anymore and it shouldn't be. Given the ease with which sexual harassment claims can be asserted, it makes better sense to implement truly mindful training that goes to the core of preventing workplace behaviors that lead to claims in the first place.

There is another (good) reason to revisit your training programs. While the law may provide some employers with a defense that the employer had an effective anti-harassment and reporting procedure in place, that defense is only as good as the procedures in the first instance. Think about how much better it would be to actually dust off, review, modernize and effectively (and repeatedly) communicate those policies and strengthen (if necessary) the reporting mechanisms. Even better, leadership should be prepared to articulate why those policies are consistent with the employer's culture (if that is actually true).

Frankly, while the reporting mechanism should be thoughtful, if employees do not feel comfortable using it because of retaliation or prospective career suicide, the mechanism itself becomes merely utilitarian, but not useful for its intended purpose. At best one or two employees may come forward; at worst, a lawsuit ensues – or far worse – employees flee to more welcoming work environments.

So, looking forward to 2018, here are a few resolutions that might make your non-discrimination, non-harassment training program a profit-driver, rather than an anticipated defense to an employment claim:

- Dust off your sexual harassment policy and look at it in a new light. Is it current? Is it modern? Does it fit within your culture? Are enough lines of reporting (and reporting mechanisms) available to your employees? Do those lines of reporting actually make sense given your organizational structure, your geographic locations and the talent of your personnel to appropriately recognize and respond to reports?
- Plan your training for the year. If possible, do the training live and in small groups. We recognize that we live in an online world. But there is little substitute for practicing important personal workplace communications in this context.
- Your leadership should be front and center at the training sessions. They should be engaged (no phones, no laptops) and should be prepared to participate actively and effectively.
- Consider adding an anti-bullying component to your training. While only required (thus far) for certain employers in California, a clear message about acceptable behavior in the workplace goes a long way toward cultural education.

Training should not be defensive – it should be proactive. Ultimately, it should also reflect an employer's culture and core values. Consider mindful training a worthy resolution for 2018.

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