

HILL ADVISORY NEWS

“Working with the human side of business”



What is an Appropriate Penalty for 'Admitting Responsibility' for Persistent Harassment ??



“Yes I admit it but I sure learned my lesson!”

- * Warren was a senior manager for a federal government agency. He was responsible for a small staff of young female employees. Four of these employees filed a sexual harassment complaint against Warren making the following allegations
- * Warren called them by specific 'pet' names and constantly made sexual innuendoes and interpretations of words or phrases such as 'coming' and 'give it to her.' Although they asked him to stop, he continued to do so. He often ogled them and persisted to ask them out for coffee or lunch despite their repeated refusals. He displayed photographs of naked women. He took a picture of one employee and suggested she take off her blouse. He then asked her back to his home so he could photograph her nude. He constantly tried to kiss them, pinch them, hold their hand and rub their thighs. He gave one employee a temple massage. He also made 'crude' comments about their physical attributes and clothing. He questioned them about their sex life and asked them "If they were getting enough because he wasn't getting any sex from his wife."
- * Warren asked two of the female employees back to his home to 'skinny dip.' He told one employee not to wear any underwear under her dress. He told another he taught his daughter how to insert a tampon. One employee felt exploited and needed help in dealing with her feelings of embarrassment, humiliation and intimidation. As a result, she began seeing a psychiatrist.
- * Warren denied the allegations regarding assault and inappropriate touching. He did however admit to many of the other incidents including: the temple massage; the use of 'pet' names; displaying nude photographs; the discussion about his daughter; and the comment about not having sex with his wife. Warren stated the 'sexual harassment' complaints had been a good learning experience and he would be careful not to engage in this type of conduct in the future..... As a result of the allegations, Warren was dismissed. He filed a grievance and an arbitration followed.
- * The Canada Public Service Staff Relations Board determined many of the 'harassment' allegations were true. However it was decided the complainants had embellished some of the more extreme allegations regarding assault and offensive language. The Board accepted the allegations of two of the employees which included: the use of 'pet' names, sexual innuendoes and personal questions; ogling; displays of photographs of naked women; and looking down the employees' blouses.
- * However, the Board determined the allegations of the other two employees were less credible. The allegations of: kissing; sexual invitations; touching one woman's thigh; and a suggestion not to wear underwear were not established. One of these employees claimed to have 'recovered' memories during psychiatric treatment which was also not substantiated.
- * The Board noted the four women were much younger than Warren and therefore vulnerable in terms of job security. Warren's behaviour was described by the Board as 'foolish and dangerous.'
- * One Board member stated "I accept that Warren engaged in a course of conduct that was unwelcome and offensive to his junior female staff. He introduced an element of intimacy with sexual overtones into the workplace which was inappropriate to the work environment and which caused his staff discomfort." The Board stated "Talking to his junior female employees about teaching his daughter to use a tampon was almost 'beyond belief' in its' appropriateness. Yet Warren admitted it."
- * However, the Board determined that dismissal was too harsh a penalty given Warren's long service and clear disciplinary record. Therefore, they substituted a six month suspension without pay. The Board stated they were satisfied that Warren could now work with female employees without a problem since they felt he "had learned his lesson".....

*** Does this decision lead one to suspect if a long-term employee (in a supervisory role) is found guilty of persistent harassment but 'admits responsibility' dismissal is too severe a penalty? Does this mean if Warren had 'denied' all the allegations - dismissal would be warranted? What about the employer's responsibility to provide a workplace with zero tolerance for harassment? Should the employer appeal? Let's hear from our readers! ***

Q. Before the 'harassment' investigation begins, we often have a written complaint from the Complainant. Should we pass it on to the Respondent and ask for a response?



* **This process is usually outlined in your policy - so you may not always have a choice. However, if you have a choice, we recommend the initial written complaint not be distributed to the Respondent nor do we recommend you ask the Respondent to reply to it. We say this because usually the initial complaint is written from an emotional versus a factual basis.**

* **When you share that with the Respondent and ask for a response, you get the same sort of response - more emotional than factual. What this tends to do is entrench opinions and emotions and instead of defusing the situation, you are accelerating it.**

* **As an alternative, we suggest you notify the Respondent a complaint has been filed. Then inform the Respondent you will**

* **be interviewing the Complainant in the immediate future, and will produce a statement containing all the allegations against the Respondent.**

* **Tell the Respondent you will be sharing this statement with them allowing enough time for them to consult with a representative of their choice before their interview begins. That way you can ensure the exchange of information is factual versus emotional.**

Q. Can an investigator compel a witness to attend an interview?

* **If the interview is held during normal working hours and the witness is an employee, the witness is compelled to attend the interview.**

* **That doesn't mean the witness is compelled to speak to you while at the interview. Whether the witness speaks to you will depend on whether or not you can understand their fears and be able to diffuse those fears.**

Q. As my company's investigator, what if I end up in court or in front of an arbitrator or tribunal? Will my company represent me or will I be responsible to provide my own counsel?

* **This is a question best answered by your own organization. We suggest that if you have a Legal Department, you pose your question to them. If not, then ask the CEO for a response to this question. Sometimes organizations will provide counsel if you and the employer are on the same pathway.**

* **However, if you and the employer aren't on the same pathway (for any reason) - then whether or not you will have counsel provided by your organization remains a company issue.**



Thanks



Special thanks to the following clients for all their help with various training events over the last few months!

* *Paula Smyth at the Newfoundland Government for arranging the 3 day Harassment Investigation and 2 day Resolution (Level I) workshops last April. We enjoyed presenting these training sessions to the government human resource folks. We had a lot of fun and enjoyed the countryside too!*

* *Paula we also appreciated your invitation to provide your government leaders with the highlights of "What Harassment is and is not" and the liabilities they might face in a complaint process.*

* *Blair Chapman at the Government of Northwest Territories in Yellowknife in May for organizing the 3 day Harassment Investigation (Level I) and 3 day Harassment Investigation (Level II) workshops for a variety of government and union personnel.*

* *Bev Robb at the City of Saskatoon for coordinating the 2 day training session on Harassment and Conflict Intervention in May for employees at the Water Treatment plant..... Also for arranging our annual/semi-annual Harassment Awareness and Prevention sessions for new employees. We are pleased to be the official Harassment trainers for the City and enjoy our on-going relationship with them.*

* *Joe Maciag at Sask Water in Moose Jaw for organizing the 3 day Harassment Investigation and 2 day Resolution (Level I) workshops for employees in May.*

* *Once again - Donelda Patterson at Syncrude for inviting us to participate in their leadership training in June. Specifically - Harassment Awareness/Prevention and Intervention Skills.*



Introducing a "New Series" of Public Workshops

For more information contact Janet in Calgary:

* *Fax/Phone: (403) 254 - 0462*
* *E-mail: jburkett@hilladvisory.com*



Even though *Cam Hill & Associates* are constantly on the move - you can always get in touch with us!!

* *E-mail: chill@hilladvisory.com*
* *Mailing Address: 57B Apple Lane Winnipeg, Manitoba R2Y 2G9*
* *Fax/Phone: (204) 831-7661*
or visit us at our web-site
* *www.hilladvisory.com*