

# The McKenzie Mailer

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Volume 7, Number 1

## UPCOMING EVENTS

### **BECOME PHR/SPHR CERTIFIED**

**HRCI Certification  
Preparation classes  
will start on February  
8, 2007, and will be  
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**Watch for the HR Florida  
Review Magazine –  
Winter/Spring Edition to be  
published soon.**

**The Feature Article was  
written by Bob McKenzie.**

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## **Discrimination & Harassment Why Do Some People Still Not Get It?**

Why are discrimination and harassment still in the news? It seems like every week there's another article in the newspaper describing a discrimination or harassment lawsuit. Last year there were 75,000 discrimination complaints filed with the Equal Employment Opportunity Commission (EEOC). The EEOC also filed 417 lawsuits on the behalf of complainants collecting over \$107 million in monetary benefits for plaintiffs. This amounts to about \$257,000 per case in addition to the legal fees necessary for the companies to defend themselves. The total above does not include those filed privately. The average number of employment related lawsuits filed per year is well over 30,000. Both large and small companies are included in these lawsuits and a majority of these suits are filed against companies with less than 100 employees.

During an investigation of a discrimination complaint conducted recently, when a witness was asked if there had been other discrimination complaints made against the company, the witness, who was in a management position, stated that a "little colored boy" had filed a discrimination complaint about a year earlier. It turns out the "little colored boy" is 24 years old and 6 feet, 3 inches tall. The irony of his statement was lost on him as he repeated the same phrase three times during the conversation.

With all of the news and publicity about the pitfalls of bias in the workplace, why is it that workers are still being discriminated against and harassed? It's a question often asked when facilitating discrimination and harassment seminars. At a recent session, one of the participants replied, "Stupidity!" Another participant piped in, "Ignorance!" Yet another said, "Arrogance!" And all of these responses are correct. It's as if the people who are discriminating against employees have lived in a spider hole for the last 20 years. Many people still just don't get it, often times because of ineffective communication.

### **Corporate Leadership**

It's obviously to the advantage of corporate leaders to deter biased behavior, if not for moral reasons, for financial ones. The average jury award against employers in the settlement of a discrimination lawsuit can triple when attorney fees and litigation costs are added to the mix. Even when a charge of discrimination is merely filed with the EEOC – regardless of whether it is founded or unfounded – the company in question still loses. The time and expense involved with interviewing witnesses, collecting data from records and files, responding to the EEOC, and compiling all of the necessary back-up records is staggering, not to mention of great distraction to employees.

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Two Supreme Court decisions in 1998 made it clear that employers can be held liable for biased behavior on the part of their supervisors and managers. In contrast to football coach Vince Lombardi, the Justices concurred that the best defense is a good offense. According to the rulings, all employers should have a comprehensive discrimination and harassment policy that's clearly visible to all employees and the policy should be communicated to the employees through orientation and training programs. The policy should contain instructions on how to file a complaint and also prohibit retaliation against those who file a complaint or participate in an investigation. The court also recommended that any complaint be promptly investigated and that swift remedial action be implemented. If the communications process is followed and the employee fails to utilize the complaint process set up in the policy, the company has an affirmative defense to the complaint.

If proper policy and procedure is followed, it sends a strong message to employees that discrimination and harassment are unacceptable under any circumstances. Common sense dictates that those who feel comfortable in their work environment will be more productive. After all, when people are subjected to offensive behavior on the job, how can they possibly work at a high level of productivity?

### **Retaliation Claims on the Rise**

One of the tenets of Equal Employment Opportunity legislation is protection for those who register a complaint of harassment or discrimination. According to the EEOC, "As long as the complaint of discrimination or harassment is based on a reasonable belief that the opposed practice(s) was unlawful, it is protected. The charge of discrimination does not have to be found valid in order for protection to apply. To permit an employer to retaliate against a charging party based on its unilateral determination that the charge was unreasonable or otherwise unjustified would chill the rights of all individuals protected by the anti-discrimination statutes." Retaliation can take many forms from the obvious firing of an employee for raising a complaint to more subtle things like giving the complainant the silent treatment or undesirable work assignments.

### **Prevention is the Key**

Remember, as an employer, it's your reputation at stake. Therefore, it is in the best interest of your organization to *encourage* those who feel they are the victim of harassment or discrimination to register a complaint and then conduct a prompt and thorough investigation. And if you find unacceptable behavior, stop it through appropriate disciplinary action. If you already have solid policies and procedures in place, make sure they're explained to every employee, from the CEO down to the entry level employee. No one is immune from being accused of bias. So if your company doesn't have a discrimination and harassment policy in place, develop one, then communicate it and provide training for your employees.

In today's business environment, ignorance is not bliss and, in fact, can be quite costly – financially and otherwise.