

Condo Lifestyles[®]

THE SOURCE FOR INFORMATION ON COMMUNITY ASSOCIATIONS, CONDOS, TOWNHOMES, CO-OPS & HOAS \$8.95

by Rebecca Canary-King, Esq. and Howard S. Dakoff, Esq.

For more information, contact Rebecca Canary-King at rcanaryking@lplegal.com or
Howard Dakoff at hdakoff@lplegal.com.

Four Steps to Take Now to Prevent Workplace Harassment

Condominium associations, homeowner associations and residential cooperatives, as employers, have an obligation under the law to protect their employees from workplace harassment.

Workplace harassment includes sexual harassment and harassment based on any characteristic protected by state, federal, or local law (including Title VII, the Illinois Human Rights Act, and the Chicago Human Rights Ordinance for Chicago employees). Protected characteristics under these laws include race, color, national origin, age (over 40), pregnancy, sexual orientation, gender identity or expression, religion, disability, and more.

The best way to manage workplace harassment is to prevent harassment before it occurs. Not only will these steps help associations avoid a harassment claim, taking these steps can also provide a defense for such a claim. Employers can defend against a claim of harassment if they can show: (1) it took reasonable care to prevent and promptly correct any sexually harassing behavior, and (2) the employee failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. In addition to exposing the employer to legal liability, workplace harassment creates

Allowing workplace harassment exposes employers to legal liability, distracts employees from their job duties, and is simply wrong.

unhappy employees, distracts from work to be done, and is simply wrong.

Below is a list of practical steps associations can take now to prevent workplace harassment.

1. Consider all Individuals in the Workplace

Associations should be aware that employees are protected from harassment from anyone they interact with in their workplace. That includes fellow employees, board members, contractors, vendors, and yes, unit holders and their guests.

Consider a recent case against Costco, where in 2016 a federal jury awarded a former

employee \$250,000 after she was harassed and stalked by a Costco customer. The alleged harassment included unwelcome touching, unwelcome advances, and stalking. Although the employee reported the customer's conduct to Costco management, the store took no effective action to prevent the harassment. As a result, the employee got her own restraining order against the customer, and Costco ended up paying much more in damages than the customer was spending in the store.

Associations can take a lesson from Costco in preventing harassment at their condominiums: the unit holder is not always right. The steps below should be taken with this understanding in mind.

REPRINTED WITH PERMISSION OF MCD MEDIA / FOR MORE INFORMATION ON CONDO LIFESTYLES... PLEASE VISIT WWW.CONDOLIFESTYLES.NET OR CALL 630-932-5551.

2. Implement an Anti-Harassment Policy.

A foundational piece of any plan to prevent workplace harassment is a robust anti-harassment policy. At a minimum, anti-harassment policies should include the following elements:

- A statement that harassment is against the law and against association policy
- The definition of harassment under the law
- Examples of behavior that could constitute harassment: whether verbal, written, physical, and online
- A complaint process for employees, including multiple individuals that employees can report to if they believe harassment has occurred
- A statement that employees who report harassment, oppose harassment, or participate in the investigation of a claim are protected from retaliation

Anti-harassment policies should be distributed to all employees, preferably as part of their onboarding process. Employees should be asked to sign an acknowledgment that they have received the policy, had the opportunity to ask questions, and understand its contents. This policy can then serve as a reference when an employee makes a complaint, and to support disciplinary action if necessary.

3. Conduct Anti-Harassment Training(s)

For Employees: Illinois law requires all employers to conduct annual anti-harassment trainings for all employees. But these are not just a legal formality. A successful anti-harassment training can help employees understand appropriate workplace behavior and empower them to oppose and report harassment before a situation escalates.

For Managers and Supervisors: While not required by law, training managers to respond properly to harassment complaints can help ensure that complaints are handled correctly from the outset. Managers should understand what to do when an employee reports, their unique role in preventing harassment, and potential liability should they engage in harassment.

For the Board: Board members also have a unique role in preventing and responding to harassment. They also can, when unchecked, engage in harassment themselves, which can

Associations should be aware that employees are protected from harassment from anyone they interact with in their workplace. That includes fellow employees, board members, contractors, vendors, and yes, unit holders and their guests.

be imputed to the Association. Tailored trainings for your board will help all members understand this heightened role and responsibility.

4. Plan Now For Handling Harassment Complaints

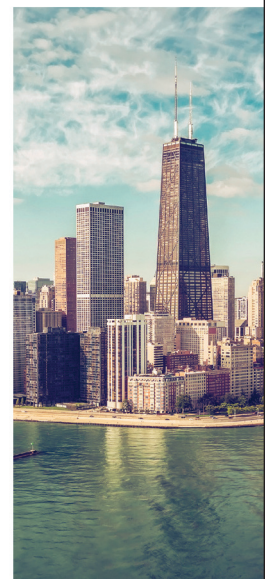
It is important to have a plan in place for handling a complaint when it occurs. When an Association receives a complaint, particularly a serious one, it is crucial that the complaint is timely investigated and corrective action is taken. Generally, handling an investigation into a harassment complaint will include the following steps:

- Determining an appropriate (and neutral!) investigator
- Identifying witnesses to the alleged behavior, if any
- Maintaining confidentiality of the complaint and the investigation to the extent possible
- Gathering a documentary and audio/visual evidence, if any
- If substantiated, deciding appropriate corrective action. Corrective action can include disciplinary action if the accused is an employee.
- Communicating the results of the investigation to both the complainant and accused

- Documenting all parts of the investigation, including any interviews
- Preventing retaliation against the complainant and any participants in the investigation

Allowing workplace harassment exposes employers to legal liability, distracts employees from their job duties, and is simply wrong. Condominium associations, homeowner associations and residential cooperatives should be proactive in preventing this harassment before it occurs in their buildings.

While the above list is not exhaustive, it is a starting point to help boards to understand the steps they can take now to prevent harassment. ■



Trust us; we've heard it all.

We have practiced condo law for more than four decades.

LPLEGAL.COM



Howard Dakoff
hdakoff@lplegal.com
312.476.7556

Laura Marinelli
lmarinelli@lplegal.com
312.476.7595

2 N LaSalle St
Suite 1300
Chicago, IL 60602

REPRINTED WITH PERMISSION OF MCD MEDIA / FOR MORE INFORMATION ON CONDO LIFESTYLES... PLEASE VISIT WWW.CONDOLIFESTYLES.NET OR CALL 630-932-5551.