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Workplace Sexual Harassment: Threat and Opportunity

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Headline stories from Hollywood to our nation's capital – with new revelations virtually daily – are setting off alarm bells for employers throughout the country, and for good reason. It is quite likely that the tremendous media attention on the issue of sexual harassment will result in an increase in complaints against employers and potential claims. That, in turn, certainly raises the specter of additional liabilities for employers. But rather than solely viewing the situation as a threat, employers can instead use the current discussion about sexual harassment as an opportunity – an opportunity to ensure their policies are up to date and appropriate, to better educate and train their supervisors and managers, and to display, and in some cases create, a workplace that demonstrates care for its employees—which reflects a non-threatening, comfortable environment, and which promptly and effectively investigates and resolves complaints.

The United States Supreme Court has facilitated this approach by providing an affirmative defense to protect public and private employers who properly construct, implement and distribute harassment avoidance policies. Such policies should prohibit unlawful workplace harassment of any nature (based on sex, race, religion, age, or any other protected classification). Such policies should inform employees how to submit an internal complaint and seek a remedy for a hostile work environment situation—and should stress no retaliation for good-faith reporting or participating in an investigation. Under the Supreme Court decisions, in many circumstances (including some of those portrayed in the news) an employee who fails to follow the complaint procedure and later files a lawsuit will subject his or her claim to dismissal for failure to exhaust the employer's internal remedy.

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While it is important for employers to understand the nuances among particular types of harassment claims, it is imperative that employers are educated about their potential defenses to claims that may be brought. Likewise, employees need to know how to avail themselves of the policy. If there is no policy currently in effect, an employer should seek the assistance of counsel in drafting one. Furthermore, conducting training on the policy, including recognizing and responding to a complaint, for both management/supervisors and the general workforce, is a central component to reduce risk by communicating what is protected and how employees can safely seek that protection.

Currently Butzel Long is offering reduced, flat fee training sessions that can be tailored to any particular workforce. It is an efficient and cost-effective way to train your workforce and help minimize your risk, and can be conducted at your workplace. These sessions can be as short as an hour in length, but in conjunction with the policy can, for many months or even a year or more, provide the basis to assert a meaningful defense, and importantly, affirm or create a more comfortable, productive work environment for everyone, and reduce an employer's risk and exposure.

Please contact the undersigned or your regular Butzel Long employment attorney who can assist you in providing these essential tools to manage risk and enhance the workplace atmosphere for your employees.

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