

PREVENTION OF DISCRIMINATION AND HARASSMENT

The Policy and the Process

- Adopt a policy consistent with federal and state law, e.g., “Discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability and any other basis prohibited by law will *not* be tolerated. Harassment of any employee by a supervisor, co-employee or non-employee based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by law is against the Company’s policy”
- Clarify the company’s commitment to non-retaliation (the company can be liable for retaliation even where there is no underlying wrongdoing)
- The policy should clarify the company’s policy of limited confidentiality (the company will strive to maintain confidentiality, but the identities of those involved may become apparent in an investigation)
- The policy should be in the company’s personnel handbook and/or by separate written notification available to all employees
- The policy should be backed by a complete complaint handling system – no matter to whom a complaint is directed, it must be supervised by a senior manager
- The complaint handling system must be the responsibility of a senior manager who regularly ensures it is updated, and each complaint is tracked to be sure it is fully addressed

Training

- Employees – concentrate on knowledge of the policy and the process
 - Have regular employee meetings on the policy
 - Be sure it is clear to whom an employee can report a concern
 - Have a default contact (dealer, controller, 800 number) if an employee is uncomfortable about making a complaint to a supervisor
- Managers – be sure they know what to do in the event a situation comes to their attention
 - Every situation that comes to the attention of management is important and requires action
 - Investigate the facts relevant to the matter
 - Always have another manager present during the investigation

The Investigation

- Maintain neutral demeanor with a complainant
- Gather facts from the complainant
 - Determine what the complainant wants
 - Explain the process
- Gather facts from the subject of the complaint
 - Meet personally
 - Explain the purpose and seriousness
 - Focus on actions
 - Get specific responses
- Gather facts from witnesses/persons with knowledge
 - Meet personally
 - Explain the purpose and seriousness
 - Focus on actions
 - Get specific responses
- Remind all about the company’s policies on limited confidentiality and against retaliation
- Evaluate the facts in light of important factors:
 - Was there wrongdoing?
 - Consider the severity of activities
 - Take into account the positions of employees (one employee harassing another is bad; managers harassing employees they supervise is worse)
 - Take into account the continuing nature of conduct (was this a one-time activity; were there multiple occurrences; is the behavior ongoing?)
 - What was the effect on the person complaining?
 - How were similar situations handled?

The Decision

- Should the subject of the complaint be terminated?
- If not terminated, explain any lesser discipline **and**
 - Get the subjects’s commitment to stop the activities, **and**
 - Get the subjects’s commitment to no retaliation, **and**
 - Get a commitment to an apology if requested by the accuser
- Even if no discipline is warranted, get the subject’s commitment to no retaliation
- Close the loop.
 - Meet with the complainant.
 - Explain the resolution Discuss it candidly and discuss the reasons for the decision if requested