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Anonymous Threats Cannot Be Ignored

Employee complaints based on anonymous harassment pose special problems for employers. How do you uncover the source of the problem when no one is able to identify who acted inappropriately? One employer learned the hard way what not to do and what should be done.

A black female employee complained to her supervisor about receiving an anonymous note in her mailbox. The note appeared to be a federal hunting license authorizing the holder to hunt and kill black people day or night, with or without dogs. There was also a hand-drawn stick figure with a noose around its neck. The supervisor first reported the incident to his manager, but neither reported the incident to Human Resources. They also did not document the incident or interview anyone. Following this cursory investigation, nothing further was done as no one was able to identify a suspect. No one even notified the complaining employee that the matter was closed.

Not hearing anything about her complaint, the employee called an employee hotline and also reported the incident to the police. Her calls triggered a new investigation by the Human Resource department, but no useful information turned up. Human Resources then ended its investigation concluding that the incident was isolated. It later turned out that the on-site managers and supervisors were aware of earlier incidents of targeting of black employees, but did not disclose them.

Eight months later, the employee received a similar threatening note and immediately reported it. She asked why cameras had not been put in the area. The same threat was received by several other black employees, who also reported it. This time cameras were installed. Nothing turned up and the investigation again was closed. The police fingerprinted employees so that in the future any notes could be dusted for prints.

The targeted employee then sued alleging a hostile environment. While the district court granted the company's request for summary judgment, the appeals court reversed. The



appeals court was critical of the company's actions and set out guidance on what should have been done.

First, the company failed to recognize that the racially tinged death threats created a hostile work environment. The threats should have been immediately reported to the police. Second, while the company had a discrimination policy, its supervisors and managers did not follow it. Employers must train supervisors and managers on what they are to do if they receive a complaint and they must be held accountable for enforcement of the policies. Third, the response to the threats was not prompt, was not calculated to end the harassment, information about past incidents was not timely disclosed, and employees were not interviewed on a timely basis. Fourth, no additional protection for the employee was provided, cameras were not installed, and security personnel did not offer to walk the employee to and from the parking lot. Finally, the targeted employee was not told what was happening with the investigation. The court faulted the company for not doing enough to ensure the safety of its employees and to eliminate the hostile work environment.

It is imperative when there are complaints of harassment, especially those involving physical threats, that they be taken seriously, even to the extent of notifying police. A thorough investigation must be conducted, appropriate remedial steps must be taken, and the complaining employee must be advised of the outcome of the investigation. An anonymous threat does not excuse the employer from treating the matter seriously. While the culprit may not be identified, steps can be taken to ensure the safety of employees, to reinforce company policies, and to provide a safe work environment. The lack of an adequate response can not only result in liability, but it can also leave employees believing that the company does not care about them, resulting in poor morale and possible lawsuits.

Questions or Assistance:

If you have questions regarding either of these changes, please contact Gary Starr at gstarr@goodwin.com or (860) 251-5501 or Gabe Jiran at (860) 251-5520 or gjiran@goodwin.com.

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