

Effective Harassment Policies And Practices Can Be An Employer's Best Defense

By Sara Goldsmith Schwartz — [Schwartz Hannum, PC](#)

With all of the cautionary tales about what can happen when employers don't comply with employment laws, it is nice to hear about an employer whose compliance was rewarded. In *Wilson v. Moulison North Corp.*, a recent opinion by the United States Court of Appeals for the First Circuit, the Court affirmed summary judgment for an employer that took appropriate precautions to prevent harassment in the workplace. In *Wilson*, the Court found that the employer had an appropriate policy against harassment, followed its policy, and as such, could not be found liable for the harassment of an employee.

In *Wilson*, the plaintiff was a former employee of Moulison North Corp. ("Moulison"), an electrical-utility contractor owned by Ken Moulison ("Mr. Moulison"). Moulison had a policy against harassment that directed employees to report harassment to a supervisor or to Mr. Moulison. The policy also provided Mr. Moulison's telephone number.

After the plaintiff began working for Moulison, two co-workers began using racial slurs against him. The plaintiff called Mr. Moulison to complain. The next day, Mr. Moulison visited the work site and confronted the offending co-workers. Mr. Moulison "became irate and berated the men," warning that any further incident of harassment "would result in immediate termination." Mr. Moulison also told the plaintiff to report any further harassment directly to him.

Despite Mr. Moulison's stern warning, these co-workers continued to make racially derogatory comments. Additionally, other co-workers yelled at the plaintiff, contaminated his water bottle, and refused to help him with his work. The plaintiff had numerous opportunities to complain about this to Mr. Moulison and/or his supervisor but failed to do so. The plaintiff complained only to the lead worker on his crew, who did not, in turn, notify Mr. Moulison, the plaintiff's supervisor, or anyone else at the company.

The plaintiff eventually sued Moulison for discrimination under Title VII of the Civil Rights Act of 1964. The plaintiff alleged that Moulison should be liable to him in damages for the initial and subsequent harassment.

First, the plaintiff argued that Mr. Moulison did not mete out sufficient discipline for the initial harassment. The Court rejected this argument. The Court explained that Moulison took prompt and appropriate action by reprimanding the offending co-workers and warning that fur-

ther misconduct would result in termination of their employment. According to the Court, "an employer must be accorded some flexibility" in selecting appropriate sanctions for employee misconduct. The fact that the discipline did not satisfy the plaintiff did not render it inadequate.

The plaintiff next argued that Moulison should be liable for the subsequent harassment because he had complained about it to a co-worker. The Court rejected this argument as well. In particular, the Court determined that the co-worker had no actual or apparent authority to serve as a company representative for such complaints, and accordingly, that the co-worker's failure to report the complaints to management, which never learned of the continuing harassment, did not constitute inaction or neglect by the employer. In the Court's view, the plaintiff's failure to report the continuing harassment to management under Moulison's known and effective policy was "fatal to his claim of employer liability."

The moral of the story is that "doing it right" with employment policies and practices can be an effective shield against prolonged litigation and liability. Thus, *Wilson* serves as a reminder that employers should:

- establish and maintain a harassment policy that complies with all applicable state and federal laws;

- take measures to ensure that all employees are aware of the policy and its procedure for reporting harassment, including training for managers and employees; and

- take prompt action to investigate and remediate any harassment in the workplace.

Contact Schwartz Hannum if you have any questions about *Wilson* or would like assistance in developing, and training employees on, harassment policies and procedures.



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