Alternative Dispute Resolution and Union Involvement

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Part 1

**Hostile Work Environment Investigation**

**Investigatory Questions**

Taking scenario 2 in check, first of all taking the Samantha stance of not drawing the attention to this particular situation investigation must be done in private room for the sake of confidentiality. Most of the questions to be asked should be open-ended. An investigation should start with Samantha (complainant). Some questions that can be asked from her should be as follow.

1. Tell us in your own words, what happened?
2. Ask her to provide the proof of her emails, Facebook status, chats, etc.?
3. What actions did you take at that point?
4. Why are you hesitant to speaking up for yourself openly?
5. What do you think should be the course of action by the company?
6. What if any derogatory comments accused passed during their workplace interactions?

The next investigative interview may be the person who is accused of harassment. This person should first be told that he is under investigation for his comments on social media. Then he should be asked questions like.

1. Tell us why are you posting these remarks about your coworker on Facebook?
2. How often you are posting such comments on Samantha Facebook comment?
3. Ask him to provide some of his chats, Facebook comments with Samantha.

**Discussion**

**Identification of Scenario 2 as Sexual Harassment**

Comments on social media sites are considered as sexual harassment in the workplace because such derogatory comments place workplace environment at risk. Courts can consider harassment that took place on social media Title "VII hostile work environment claims". "Blakey v. Continental Airlines" focused on sexual harassment pattern in workplace and harassment through gender-based and gender-based statements that were made on Continental Airline's employee bulletin electronic board. In "Amira-Jabbar v. Travel Services, Inc.,” Amira-Jabbar who is black female, brought a claim of hostility in work environment claims that her employer (former) who later become her co-worker posted her photo that was taken at an event related to work on his Facebook account. While the case of Amira-Jabbar is not considered by the courts as sexual harassment, the EEOC position is that same standard can be applied to all cases of harassment. A case related to Amira-Jabbar, employers should take appropriate and prompt actions when they are notified that harassment has been taken place so that they can avoid responsibility for the actions taken by their employees.

Guidance by the NLRB's cannot determine employee's liability of outside workplace sexual harassment an analogy can be taken from high school case of cyber-bullying that help us to determine the liability of the employer in this case. In "Kowalski v. Berkeley County Schools" case courts make liable a school of when they can discipline a student legally for cyberbullying. In this case a senior student from high school, Kara Kowalski created Myspace.com page targeting Shay.N her class fellow. Kowalski invited 100 of her classmate to follow the page and Shay found out about the webpage. Shay's parents filed a complaint of harassment with the school. Shay was feeling very uncomfortable with sharing the same classroom that contains her class fellows commenting on her on Myspace.com page. It was determined by the school that hates website was created by Kowalski which violates the policy of school against "bullying, harassment, and intimidation." The punishment was given to her by the school after which, a lawsuit was filed against the school by Kowalski, and she alleged that the school decided to punishment is First Amendment violation. In this case, the fourth circuit gives the right to the school administration to punish students involved in cyberbullying.

So these Facebook comments may cause Samantha to avoid workplace because of Brody's inappropriate behavior and workplace administration are liable for taking appropriate steps for maintaining workplace environment (Oser, 2004). These questions are legally complaint because they took impartial views from both the complainant and the accused. Also because in this scenario evidence is provided that is easily accessible when asked by any course of law.

Part 2

**Alternative Dispute Resolutions**

**Creating the ADR Process**

Using the example of our present IT base company XYZ, some of the things that are done by our organization are

1. We have written and published policies which not only includes matters like sexual harassment but also matters regarding prohibition concerning discrimination, opportunities of equal employment, the prohibition of gender discrimination, etc. When instructions are in written and published form, people tend to behave in the organization following the norms of that organization (Morse.Law., 2013). First of all, ADR should make the proper definition for what considered as a practice of sexual harassment and how our organization will take its course against the individual involved in such activity.
2. Establishment and distribution of information by companies regarding procedures how the company receives and where to report these issues. Multiple reporting procedures should opt like (e.g., managers, HR, designated trained ombudsmen and external hotline), which provides anonymity to the complainant. Fairness should be followed in matters containing these issues Training should be given to key individuals like managers about, policies, actions required, the process of engaging with the council
3. Companies should give training to all its employees about harassment and discrimination, including biases. The main purpose of this training is to encourage all employees about prompt reporting, and it also emphasizes retaliatory prohibition.

**Non Retaliatory Policies**

Employees face retaliation when they think that they are discriminated and impartiality is not taken place. So it is the duty of an employer to make such ADR policies that make the employees feel that they are treated justifiably. Non-retaliatory policies should be initiated by employers(Morse.Law., 2013). If employers already have sexual harassment and anti-discrimination policies but these policies are unable to address retaliation then current policies should be amended and employees non-retaliatory statements should be encouraged so that employees can come and register their complaints without any fear of punishment and provides just process to report any act of retaliation. Employers should be provided training regarding different case scenarios and how to handle them for example when an employee claims that they are subjected to sexual harassment or any other unlawful activity, the supervisors, managers should counsel the employee about their non-retaliatory obligation. Every counsel given should go through the process of documentation. An employee making a claim of unjust work environment should not be ignored. The employer should engage actively with the employee and tell them their non-retaliatory obligation and process of redress the issue.

**ADR Policy**

ADR practices such as meditation, negotiation, and arbitration, meditation is successfully used in almost everything from little fights to big wars. The main reason that meditation work is that it helps people to resolve their issue by the third neutral party which offers neutral assistance in a relatively safe environment (Resnik, 1994).Meditation deemphasize punishment and guilt and stresses on creating and understanding a plan for people to get along and work in the future. Most people in conflict are motivated by the use of meditation to reach an accepted framework without taking the fight to a serious level that not only cost reputation but also animosity. Conflict is dealt most effectively by mediation in the workplace because it is the most effective and sensible way while being inexpensive and private.

**Similarities in ADR policies**

* It allows the win-win situation on all issues.
* Its main focus is consensus building rather than difference creation and is more future-oriented.
* It does work more effectively and speedily by including impartial and neutral ADR practitioner that is selected and agreed by all participants.
* Participation is voluntarily done by all the participants.
* ADR processes are usually flexible, less structured, and informal
* ADR emphasizes on mutuality and reconciliation.

**Differences**

* No third party involvement in the negotiation while third-party intervention took place in meditation and arbitration.
* Negotiation and arbitration are less time consuming than arbitration.

**Conclusion**

Employers should be provided training regarding different case scenarios and how to handle them for example when an employee claims that they are subjected to sexual harassment or any other unlawful activity, the supervisors, managers should counsel the employee about their non-retaliatory obligation. If employers already have sexual harassment and anti-discrimination policies but these policies are unable to address retaliation then current policies should be amended and employees non-retaliatory statements should be encouraged so that employees can come and register their complaints without any fear of punishment and provides just process to report any act of retaliation

**Refrences**

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