

5 Tips For Employers From The Donald Sterling Scandal



Law360, New York (May 06, 2014, 12:15 AM ET) -- The recent scandal involving Los Angeles Clippers owner Donald Sterling has been well-publicized. Sterling's indefensible racist comments resulted in unprecedented penalties from the National Basketball Association, which announced that Sterling will be banned for life from the NBA in addition to being fined \$2.5 million. Based on the outspoken reaction to Sterling's comments received by the NBA from his employee-players and coaching staff, colleagues, fans and the public, NBA owners are being strongly urged to force Sterling to sell the team. These are the harshest penalties ever imposed on an owner for any professional sports organization.

The magnitude of these penalties should serve as a reminder and lesson to all employers and management that their actions and comments, whether directed at employees or others, could have drastic consequences for a business.

Here are five practical tips for all employers to consider in the wake of this scandal.

Sound Anti-Discrimination and Anti-Harassment Policies

In the face of a discrimination or harassment complaint, having well-drafted, clear and comprehensive anti-discrimination and anti-harassment policies provide a central defense for employers. Specifically, such policies should include detailed guidelines for reporting discrimination or harassment to immediate supervisors and alternatives for reporting discrimination or harassment if the immediate supervisor is the discriminating or harassing party.

Employers should make it abundantly clear that complaints may be made orally or in writing and that each complaint, informal or otherwise, will be thoroughly investigated. Based on recent events, employers should seriously consider implementing a zero-tolerance policy for any form of discrimination or harassment. Anti-discrimination and anti-harassment policies should be distributed to all employees at the inception of hiring and should be acknowledged by all employees in writing at the beginning of employment. Employers need to continuously revisit and update their employment policies to ensure

that they cover all characteristics protected by federal, state and local laws. Most importantly, however, employers must honor and adhere to those policies in an evenhanded manner.

Consistent Training

Even the best-drafted employment policies will only help employers avoid liability from potential discrimination or harassment claims if management and other employees are trained to recognize potential discrimination and harassment in the workplace as well as on how to properly respond under such circumstances.

Simply having comprehensive employment policies in a handbook or posted on a wall in the break room is not enough these days. Employers should be proactive in providing regular training sessions for all employees — from senior executives to entry-level employees — to ensure that everyone, owners included, understand that discrimination is strictly prohibited. These training sessions are a good method for employers to reinforce their written policies and remind employees of their reporting obligations on an ongoing basis. These training sessions also provide employers with a good opportunity to reinforce their commitment to mutual respect amongst all employees, regardless of their position or role with the company.

Prompt Action

Employers can't just talk the talk, they must walk the walk. When faced with a complaint, whether oral or in writing, it is important to send a clear and consistent message that the company takes all allegations of discrimination, harassment or other wrongful or inappropriate conduct extremely seriously.

Again, employers should have clearly defined reporting procedures in place that allow employee complaints to be promptly investigated. In this regard, employers must make employees aware of the internal complaint procedures in place and their obligations to follow such procedures, so that remedial action can be taken to address any issues in a timely fashion. As the NBA demonstrated with the swift and decisive action it took towards Donald Sterling, this goes a long way in establishing credibility with your employees, colleagues and customers.

Don't Forget Social Media and Smartphones

Social media use has made it increasingly difficult for employers to define the parameters of the employer-employee relationship. It is clear, however, that employees' emails, posts, tweets and blog entries that constitute unlawful harassment or discrimination are not out of bounds and can lead to potential employer liability.

Employers must ensure that their employment policies cover conduct over social media and that all employees, management and owners are properly educated and fully appreciate the consequences — not only with respect to their own communications within the workplace — but also the

communications they have outside of work. As we learned in the case of Donald Sterling, such communications can undermine a lucrative business very quickly.

Remember, social media use leaves an obvious trail that is easily followed by employees and others outside of your company. Also, remember that almost every employee comes to work these days with a smartphone that is capable of recording a conversation. Most states permit only one-party consent to recording a conversation, which simply means that only the party recording the conversation has to have knowledge and consent to the recorded conversation.

As such, employers should be mindful of their applicable state laws, and operate under the assumption that their statements to employees and others are being recorded. At a minimum, employers should be guided by the fact that their conversations certainly could be recorded. It is therefore a good rule of thumb to not utter words, specifically offensive or inappropriate remarks, that you would otherwise regret if those communications were heard by anyone listening in on your conversation.

Listen Up

The best way to avoid employment lawsuits is to forge strong, mutually respectful relationships with your employees. Employers should maintain an open-door policy where employees feel empowered to raise concerns and feel confident that those concerns will be addressed in an appropriate fashion pursuant to the written policies in place at the company. Listening to your employees' concerns will improve employee morale and allow employers to quickly identify problematic issues before they negatively impact your business, or worse, erupt into a scandalous news headline.

Conclusion

The communications made by Donald Sterling are terribly unfortunate for multiple reasons that far exceed the employer-employee relationship. These types of scandals, however, can be a valuable lesson for employers and employees alike.

The recent events have forced employers to take a closer look at their employment policies and position toward these issues and to take measures toward improving upon their employment policies, where and if necessary. Having taken the first step in discussing and evaluating these issues, the key for employers is to promptly implement any necessary policy changes and to follow the lead of the NBA in responding to any form of discrimination or harassment in a prompt and decisive fashion.

While it is always best to ensure compliance with the law before any complaint is filed, the simple reality is that discrimination and harassment cases are on the rise and seem to be more apparent within the sports and media entertainment industries in recent years. Regardless of the nature of your business, having internal employment policies and practices will not only create an equal opportunity workplace free of discrimination and harassment, but will also help serve to better our society as a whole.

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