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## EMPLOYEE HARASSMENT: WHEN THE CUSTOMER ISN'T RIGHT

Employees expect to be protected from harassment and discrimination in the workplace. As an employer, you have a legal obligation to provide a safe workplace to your employees.

We can (or should) all agree that harassment (whether sexual or not) and discrimination are bad. What many businesses may not know is that action is required not only if an employee is on the receiving end of harassment from another employee or manager, but also if a vendor or customer (third party) harasses an employee.

Employees often fail to report harassment because they fear disbelief of their claim, a concern that is compounded if the harassment comes from a "good" client or vendor that the employer fears losing. Too often, employers carry the "customer is always right" thinking too far and fail to



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treat an employee's complaint about harassment from a customer or vendor with the same seriousness it would if the harasser was a co-worker or manager.

There are three areas an employer needs to focus on to protect their employees from harassment and discrimination, regardless of who the harasser is.

### Policy

Employers should have a no-tolerance approach to harassment and discrimination at every level of employee interaction and as a cornerstone of organizational culture. The policy should include education, a reporting process and a commitment to investigating the complaint in a timely matter and without retaliation.

### Investigation

Investigations should be coordinated with an attorney and conducted by a

neutral party. When the offender is an outside third party, your obligation to investigate is no less, but the situation can be more complex. Considerations of the investigation process need to include:

- Ensuring as much confidentiality to the employee as reasonably possible and listening to the complaint in an objective and non-judgmental manner to ensure the objectivity of the investigation.
- Protecting the employee from future interactions with the third party. A complaint does not mean you must terminate the relationship with the customer, but you do need to remove the employee from potential additional harassing or discriminatory activity. This separation can be through schedule changes or changing points of contact for the customer but must not be retaliatory to the employee.
- Creating a plan for the investigation process.

- Documenting all interviews thoroughly and objectively, ensuring that any supporting information (photos, texts, emails, etc.) is collected as part of the process.
- Securing signed statements from all parties interviewed.

Unlike employees, customers may refuse to participate in an investigation. This needs to be documented, as well. An employer can't simply choose not to interview a customer in an effort to expedite the investigation or avoid upsetting a customer.

### Remediation

Once the information is collected, work with your attorney to identify follow-up steps, which could include protective orders of the harassed employee, initiating legal action, or severing the customer relationship. Follow up with the reporting employee to communicate the remediation steps, and ensure that the employee feels protected and is confident that you have their safety in mind. ■

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## FRICION BETWEEN OWNERS? HOW TO NAVIGATE A BUSINESS "DIVORCE"

Friction can arise between owners with diverging visions of their enterprise. In these strange times, unanticipated pressures are putting an increasing number of previously settled and functional ownership arrangements under stress.

The first step when setting up a business (or considering the breakup of a business) is understanding the rights and duties of everyone involved. An operating agreement, a buy-sell agreement or a close corporation agreement may govern the right and duties of the parties. Additionally, statutory duties and common law principles are always lurking on the edges of the governing



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documents. Differences in interpretation of those rights and responsibilities will happen. Minority owners have rights that majority owners do not always respect. Majority owners in a closely held enterprise generally owe a fiduciary duty to the minority owners. They also owe specific limited duties of disclosure and reporting to the minority owners. Minority owners

often feel those rights are not being respected. Thus, distrust or disaffection can grow like weeds.

In a 50/50 ownership deadlock, Ohio allows a court to order the liquidation of the enterprise – which may force a more reasonable and mutually beneficial compromise. But it may end up in the

death of the "golden goose." In most situations, litigation is a blunt and unsatisfying tool and parties are well-advised to resolve their issues without recourse to the courts. But when litigation is needed, it's needed. A sensible outcome in a business ownership dispute usually happens if good litigation counsel is well supported with sophisticated business counsel on both sides.

Ownership split ups are often entangled in related disputes regarding who can pursue certain corporate opportunities, who should be subject to non-competition duties, and who gets customer lists, trade secrets, and other intellectual property. These disputes need to be resolved thoughtfully and be well documented. When one party needs to buy out another, sometimes it is just about a price, and

competing valuation experts often become an expense of the process.

Good questions and thoughtful drafting on the front end of a business formation can avoid a lot of problems. However, no one can anticipate everything. Friction can arise between owners. Legal counsel can help mediate a resolution, explain rights and remedies, help draft changes to any governing contracts, or help resolve issues in court or arbitration when things can't be worked out by other means.

If you need to deal with strains in the ownership structure of your company or better understand owner rights and duties, give your CPM attorney a call. We welcome the opportunity to help. ■



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