

Cuomo Resignation a Reminder of the Importance of Anti-Harassment Policies, Grievance Procedures and Workplace Investigations

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On Tuesday, August 10, 2021, New York Governor Andrew Cuomo announced his resignation following the New York State Attorney General's investigation into accusations of sexual harassment and inappropriate conduct from several female staffers. The 168-page investigation report found "the governor engaged in conduct constituting sexual harassment under federal and New York State law."

The investigation, findings, outcome, and resultant resignation are a timely and important reminder why it is imperative that employers do the following:

- Have anti-harassment and anti-discrimination policies and grievance procedures in place;
- Properly implement and maintain those policies and procedures;
- Periodically (at least annually) provide anti-harassment and anti-discrimination training, education, and resources to their workforces;
- Make these policies and procedures applicable to even the highest level(s) of the organization (in this case, all the way at the top with Governor Cuomo);
- Pay immediate attention to internal complaints and grievances made by employees, especially those sounding in harassment, hostile work environment or discrimination;
- If necessary and appropriate under the circumstances, promptly and properly conduct (or have conducted by a third-party) an internal, workplace investigation; and
- If necessary and appropriate, decisively take and impose corrective or remedial action, which could include disciplinary action, which is what happened in Governor Cuomo's case.

Some states, such as [New York](#), obligate employers to adopt a sexual harassment prevention policy that, among other things, includes a complaint form for employees to report alleged incidents of harassment, and to provide employees with sexual harassment prevention training.

Other states, like New Jersey, do not mandate anti-harassment policies or procedures, but an employer's effective implementation and adherence to such policies and procedures is considered a "best practice," and it enables the employer to potentially avail itself of certain defenses to employee harassment and discrimination claims established by the New Jersey Supreme Court in the cases of *Aguas v. State of New Jersey*, 220 N.J. 494 (2015) and *Griffin v. City of East Orange*, 225 N.J. 400 (2016), and by the United States Supreme Court in *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998). Under these landmark cases and their progeny, employers may have an affirmative defense against employee claims of harassment and hostile work environment where: (1) no tangible adverse employment action was taken against the employee (for example, termination, demotion or unfavorable reassignment); (2) the employer exercised reasonable care to prevent and promptly address the grieved behavior or conduct (for example, having an anti-harassment policy in place and promptly investigating the employee grievance); and (3) the employee failed to use the reporting procedures put in place by the employer or refused to take advantage of the corrective or remedial opportunities provided by the employer.

The complaints made against Governor Cuomo regarding sexual harassment, the New York State Attorney General's investigation into those complaints, and Governor Cuomo's resignation highlight the importance of this issue. Furthermore, this high-profile example and demonstration of how the process works should prompt employers to revisit their anti-harassment policies and grievance procedures if they have them or, if not, to establish them for the protection and benefit of their business and their workforce.

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