



PEMBERTON
LAW



Navigating the Claim

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This presentation is meant to give you some basic information, and nothing in this presentation is intended to be relied upon as legal advice. If you have any questions, please contact your attorney or Pemberton Law.

You Are Being Sued...

What Now?

- Charge of Discrimination
 - Minnesota Department of Human Rights
 - Equal Employment Opportunity Commission
- Civil Claim

*Sexual harassment cases have involved allegations of a man harassing a woman, a woman harassing a man, and people of the same sex harassing one another



Immediate Steps

- Notify your insurance carrier
- Preserve evidence / litigation hold
- Proper notice within organization
- Protection against retaliation if employee remains employed
- Key witnesses should be notified not to talk to anyone until further notice (media, investigators, plaintiff, plaintiff's attorney)



Typical Claims

- **Federal:** Title VII
 - Equal Employment Opportunity Commission
- **State:** Minnesota Human Rights Act (MHRA) §363A.08, typically a hostile work environment claim
 - Minnesota Department of Human Rights



Working with Insurance Counsel

- Communication
- Follow guidance
- Ask for regular updates and keep Board updated in privileged manner
 - **“Closed session pursuant to the Attorney Client Privilege to discuss pending or threatened litigation, Minnesota Statutes Chapter 13D.05 Subd. 3.”**



Working with Insurance Counsel (cont.)

- Closed Session
 - Attorney must be present
 - Session should not be recorded
 - Attorney must make statement on the record in open session prior to closing detailing the reasons why closing is appropriate.
- Help the attorney help you



If No Insurance Counsel

- Do not expect your County Attorney to handle the matter (in most situations)
- Qualified counsel is key



Reservation of Rights Letters

- Even under the best policies you may have categories of damages that are uncovered, such as attorney's fees
- Ask and understand what types of damages are uncovered
- Have a plan to address this liability, ask questions, seek updates



Discovery Phase

- Be organized and systematic in gathering documents or evidence
- Label files and documents well
- Document your process in gathering documents/evidence
 - Did you use key words to search email archives?
 - What databases did you search?
- Respond in a timely manner



Practical Considerations

- **Always ask your attorney first**
 - If the plaintiff continues to be employed, ask your attorney first before disciplining, demoting, reprimanding, terminating, changing work terms/duties, etc.
 - If you get a request from a media outlet
 - If you are contacted by *anyone* seeking information about the claim or the individuals involved in the claim or the underlying facts



Practical Considerations

- Make sure everyone involved understands that email, mail, texts, chat messaging, social media DM's, etc., are all discoverable in litigation
- Communication about anything other than scheduling should include the attorney so that it is protected by privilege



Practical Considerations

- Discovery in litigation is ongoing. Think about how decisions being made regarding other employees/situations might have an impact on the litigation. Consult with your attorney before making decisions that could impact the litigation.
- Most importantly, know that this too shall pass.



Questions?



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