League of California Cities
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It Can Happen to #YouToo: Harassment Claims Against City Officials

9/13/2018

Presented by:

J. Scott Tiedemann & Tammy Letourneau

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League of California Cities | September 13, 2018

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Agenda

- Initial Response to Harassment Complaint
- Preparing for an Investigation
- Understanding the Investigative Process
- Taking Action after Investigation
- Preventing Harassment
Unlawful Harassment
Unfortunately Still Takes Place....
Case Study:
City of Glenn
Cast of Characters

- Assistant City Manager: Tammy Letourneau
- Subject: Cameron Ganz, Council Member
- Complainant: Randi Cooper, Assistant
- Co-Worker/Facebook Friend: Alex Lee
- Mayor: Morgan Garcia
- Outside Legal Counsel: Scott Tiedemann
It is outrageous that Cameron Ganz is “standing up” for women’s rights…
He sexually assaulted me and countless women!!! #MeToo
City Receives #MeToo Complaint

- Tammy is notified by Alex about a controversial #MeToo Facebook post by his co-worker, Randi, with whom Alex is Facebook friends.
- Randi brings an attorney to her interview and files a formal complaint.
What Do We Do First?
What Do We Do First?

Suggested Notification Order

- City Attorney/Legal Counsel
- Law Enforcement
- Mayor
- Legislative Body
- Media Relations Specialist
- Subject
What Do We Do First?

Notifications

1. City Attorney/Legal Counsel
2. Law Enforcement
   - Coordinate criminal & administrative investigation
3. Mayor
What Do We Do First?

Notifications Contd.

4. Legislative Body
   – Is closed session possible?
   – Pending Litigation Exemption
   – Ensuring Subject is not prematurely notified
   – Getting authority to conduct investigation
What Do We Do First?

Notifications Contd.

5. Media Relations Specialist
   - Anticipate publicity of allegation
   - Anticipate blind-siding media tactics

6. Subject
   - Avoids retaliation
   - Aids management of bad press
How to Prepare for Investigation?
How to Prepare for Investigation?

Investigative Duties

• Legal duty to conduct investigation
  – Regardless of subject
  – Regardless of complainant’s cooperation

• Authority to conduct investigation
  – Subject attendance?
  – Government Code
  – Political Reform Act
  – Common Law
Retaining the Investigator

• Attorney Investigator
  – Attorney-client privilege
  – Work-product doctrine

• Private Investigator
  – Cost efficient

• Appointing/Hiring Investigator
  – City Manager or Legislative Body?
What is the Investigative Process?
What is the Investigative Process?

Investigative Process

• Coordinates with criminal investigation
• Gathering facts
  – Documentary and physical evidence
  – Interviews (Multiple)
• Evaluating facts
• Reporting
• Rules applicable to investigation
What is the Investigative Process?

DFEH Workplace Harassment Guide

• Basic Steps Required to Conduct Fair Investigation
  – Interviews: complainant, accused, witnesses, other fact gathering
• Confidentiality: Cannot Promise or Require Complete Confidentiality
• Promptly Start & Conclude Investigation Balanced by Fairness to Parties & Need to be Thorough
• Type of Questioning
  – Open-ended; No interrogation/cross-examination
• Making Credibility Determinations- Nine Credibility Factors
• Burden of Proof
• Documentation of Witness Interviews, Investigation Steps and Findings
• Reach a Reasonable & Fair Conclusion Based on Evidence Collected

What is the Investigative Process?

Managing Bad Press and Confidentiality

• Balance between:
  – Confidentiality and keeping Complainant informed

• Anticipate Open Comments Section at Council Meetings

• Public Records Act Requests
  – Exemptions & privileges
What Happens After Investigation?
Corrective Actions

• Remedial Measures
  – Making Complainant whole
  – Training of supervisors
  – Revise policies to address the misconduct

• Protect Against Retaliation
What Happens After Investigation?

Disciplinary Process

• Discipline of elected officials is Limited:
  – AB1661: Elected officials required to receive harassment prevention training and education
  – Formal motion of censure
How to Prevent Harassment?
Prevention

Training

• AB 1825 – Supervisors
  – Recommend providing to all employees

• AB 1661 – Local Agency Officials
  – Training under AB 1825 meets requirement

• Implement/Update Prevention Policy
What Happens After Investigation?

Policing

• Executives and Council Members are the first line of defense:
  – Report All Complaints/Potential Complaints Immediately
  – Take All Complaints/Potential Complaints Seriously
  – Monitor the Workplace
  – Be a Good Role Model and Create Good Role Models
Conclusion (T.R.U.S.T)

Conclusion

• Trust
  – Your staff
  – The process

• Recognize the Rules
  – Follow the administrative procedures
  – Follow the DFEH Guidelines
Conclusion Contd.

• Understand
  – The need to maintain confidentiality
  – The pressures of an investigation
  – The complexity of the investigative process

• Speak in Solidarity
  – Speak through City’s representative

• Troubleshoot any Training
  – Train and police your city
  – Revise policies to address the misconduct
Thank You!

**J. Scott Tiedemann**  
Managing Partner | Los Angeles Office  
310.981.2000 | stiedemann@lcwlegal.com  
https://www.lcwlegal.com/our-people/scott-tiedemann

**Tamara Letourneau**  
Assistant City Manager | City of Costa Mesa  
714.754.5099 | tamara.letourneau@costamesaca.gov