

Seat At The Table: Your CEO Has Just Been Accused And The Board Must Investigate

Joseph Brennan is the Chief Executive Officer (“CEO”) of Acme Tech Company (“Acme”). Mr. Brennan is a successful, notoriously demanding manager. Per the terms of his Employment Agreement, Mr. Brennan’s total annual compensation is \$900,000 (\$300,000 base salary; an incentive bonus payment in the amount \$300,000 based upon pre-determined performance targets, and \$300,000 in deferred compensation pursuant to the terms of ACME’s Long-Term Incentive Plan for Senior Executives (“LTIP Plan”), which contains a forfeiture provision regarding involuntary termination for “Cause,” as defined under the LTIP Plan.

Bridget Crowley is ACME’s Vice President of Marketing and she reports directly to Mr. Brennan. On October 20, 2014, Crowley contacted ACME’s Director of Human Resources, Margaret Murphy and complained that Mr. Brennan sexually harassed her on August 30, 2014 as she was preparing for a big client presentation. Specifically, Ms. Crowley alleges that Mr. Brennan walked up from behind her as she was rehearsing her speech, grabbed her close around the waist with one arm, grabbed her buttocks with his other arm/hand, whispered in her ear that she looked “so beautiful” and that she “would be great,” and then slapped her on the buttocks two times before releasing his hold of her and walking out of the conference room. There were no witnesses to these allegations. Ms. Crowley also tells Ms. Murphy that she has heard from a co-worker that Mr. Brennan has engaged in similar conduct with other female employees, but that she doesn’t know any of the details.

Ms. Murphy asks Ms. Crowley to submit a written complaint so that she may investigate. Ms. Crowley refuses to put her complaint in writing, telling Ms. Murphy that she fears for her safety and is concerned that she will be retaliated against for coming forward with complaints of harassment against the CEO.

Following her discussion with Ms. Crowley, Ms. Murphy promptly advised Mr. Brennan of the complaint. In turn, Mr. Brennan has reported the allegations to the Board. Mr. Brennan admits to the Board that he stopped by the conference room on the day in question to wish Ms. Crowley “good luck” and “patted her on the back” as a form of encouragement. He denies that he grabbed her buttocks, touched her in a sexual manner, and that he made any inappropriate or sexual comments. He tells that Board that this is nothing more than a disgruntled employee, who knows that her job is in jeopardy after she “screwed up” the big client meeting.

What does the Board do next?