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Hostile Work Environment & Retaliation Prevention Checklist: 5 Steps to a Fair Workplace

*A practical guide for HR professionals and in-house counsel, drawn from the Industrial Court award in *Kuhendran a/l Rajan v American Express (Malaysia) Sdn Bhd*.*

1. **Investigate every grievance independently — and protect the complainant**

Acknowledge all complaints without unreasonable delay. Assign an investigator who has no connection to the accused and is free from influence. Once a complaint is lodged, the employee must not experience any adverse change in treatment, duties, or working conditions. The Industrial Court in *Kuhendran* found that the company had shielded the very supervisor accused of bullying—and that the dismissal was a “malicious act of retaliation” for raising concerns.

2. **Use a Performance Improvement Plan before any discipline**

If performance is genuinely in question, issue a formal PIP with specific, measurable goals and a reasonable timeframe. Allow the employee a fair chance to improve. The court criticised the company for failing to put Kuhendran on a PIP, and for “nitpicking” his every action. Vague, subjective performance claims will not survive scrutiny.

3. **Make show-cause charges specific — and rule out retaliation**

Charges must be clear and detailed enough for the employee to respond

meaningfully. The decision-maker must not be the person accused of misconduct. Critically, examine the timeline: if disciplinary action follows closely after a complaint, the risk of a retaliation finding is high. In *Kuhendran*, the show-cause letter arrived within three months of his complaint to New York — the court called it a “swift maneuver to do damage control.”

4. **Enforce respectful communication — and keep records**

Prohibit sexually charged, derogatory, or humiliating language on all company platforms. Train managers to model these standards and act when breaches occur. Preserve all relevant messages, emails, and chat logs. The court quoted the supervisor’s own sexually charged messages in the award, and found that the company permitted a hostile work environment by failing to act.

5. **Review every dismissal independently before it is final**

Before confirming a dismissal, have someone independent of the investigation review the entire process for fairness, consistency, and any sign of retaliation. Consider whether a less severe outcome is appropriate. The company’s failure to apply an independent lens in *Kuhendran* contributed to the finding that malice was “all over” its actions.

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