

Investing in Harassment Prevention

Workplace harassment is unwelcome conduct from a boss, co-worker, a group of co-workers, vendor, or customer whose actions, communication, or behavior mocks, demeans, puts down, disparages, or ridicules an employee. Physical assaults, threats, and intimidation are forms of harassment.

Harassment may also include offensive jokes, name calling, offensive nicknames, and offensive pictures or objects. Interfering with an employee's ability to do his or her work is also considered harassment.

Harassment can also be experienced by employees who are not the target of the harasser because of the workplace environment that can develop and they experience as a result of his or her actions.

According to the US Equal Employment Opportunity Commission (EEOC) harassment becomes illegal when:

- ❖ Putting up with the offensive and unwanted actions, communication, or behavior becomes a condition of continued employment; or
- ❖ The behavior is severe and pervasive enough to create a work environment that any reasonable individual would find intimidating, hostile, or abusive.

Harassment against individuals is also prohibited in these specific situations.

- “Retaliation for filing a discrimination charge,
- “testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or
- “Opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.”

Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.

Demeaning an employee for any aspect of their parental status, appearance, weight, habits, accent, or beliefs can be considered harassment and can add to a claim about a hostile work environment.

How Rampant is it?

There is no way to know for sure just how rampant the various types of harassment are in the workplace. Undoubtedly, many go unreported to the employer or the EEOC. Others are adequately handled by the employer without government intervention.

Other claims go to attorneys, and they are able to settle the claim but even cases that go to attorneys often file an EEOC claim, too. Thus, employers get hit twice by the same lawsuit.

According to the EEOC, in fiscal year 2014, 30% of the charges filed with the EEOC alleged the issue of harassment on various bases, such as race harassment or harassment on the basis of disability. Sexual harassment claims totaled 6,862 of which 17.5% were made by male employees.

Employers paid \$93.9 million in 2014 to settle harassment claims and \$35.0 million in damages for sexual harassment claims in 2014.

Preventing Workplace Harassment

In any case of workplace harassment, the employer's behavior must meet a certain standard in the eyes of the law. Just posting an anti-harassment policy, while a positive step, is insufficient to prove that an employer took workplace harassment seriously.

The employer needs to work with HR and the EAP to develop a harassment policy; train the workforce using examples that make inappropriate actions, behavior, and communication clearly defined; and enforce the policy.

If harassment is mentioned to a supervisor, observed by a supervisor, or done by a supervisor, the employer is particularly liable if an investigation was not conducted.

A clear policy gives employees the appropriate steps to take when they believe they are experiencing harassment. The company must be able to prove



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that an appropriate investigation occurred and that perpetrators found guilty were suitably disciplined.

Education is Vital

Developing and implementing an effective workplace policy is key in preventing harassment. Education is also important. People have to know there is a policy and what it says. The employer's position on harassment should be contained in a clear policy statement, distributed to all employees, posted on bulletin boards and provided to all managers, supervisors and new employees.

However, leadership is absolutely critical to any effective harassment policy. With a well-developed policy, senior management has a chance to demonstrate a proud corporate commitment to fair and equal treatment of all employees.

Managers must take a lead role in reminding staff (in newsletters, annual reports, at meetings, etc.) that harassment is against company policy and the law. *Again, HR and the EAP can work with the employer to meet this objective.*

While getting buy-in from management is vital, it's important for *everyone* to be on board. Each individual, from the CEO to middle-management, to the typical employee, and to the person being harassed and to bystanders. *Everyone* is responsible for maintaining a respectful, harassment-free workplace.

One way of achieving this goal is for HR and the EAP to offer periodic in-person and/or online trainings to remind employees and management of the importance of everyone being "on board" in not tolerating harassment.

Policies that Work

Harassment policies that work do each of the following:

❖ Provide a clear definition of harassment.

According to the EEOC, "Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

"Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information."

Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people. (Examples of when harassment becomes illegal were listed previously.)

❖ **Encourage employees to come forward with complaints.** How a policy sounds and is structured is important. Management has to demonstrate its commitment to eliminating all forms of harassment.

❖ **Ensure acceptance by all staff, unions, and employee associations.** This can only be developed through consultation, input, and feedback. Time taken here will be more than repaid down the road.

❖ **Include guidelines** for individuals seeking advice about making a sexual or other type of harassment complaint.

❖ **Maintain confidentiality** of complaints and protect employees from retaliation.

❖ **Designate a person or persons to hear complaints.** These individuals should be viewed by other employees as neutral but as having the authority to act. If possible, have more than one person assigned to this important, sometimes emotionally taxing, job.

❖ **Lay out the steps.** Effective harassment policies provide a step-by-step description of what happens in the company when a complaint of harassment is made. To encourage prevention, also spell out the disciplinary consequences for harassing an employee.

❖ **Guarantee a fair and prompt reaction** to anyone with a complaint of harassment.

Sample of Workplace Harassment Policy

The harassment prevention policy below is a **sample only, developed by the Alberta Human Rights Commission for educational purposes.** It is *not* intended to reflect the needs of all employers. Rather it is meant to provide employers with general guidelines for the major provisions that should be included in an effective policy.



Employers will need to work with HR and the EAP to adapt this policy or create entirely separate policies that best suit their individual organizations.

Harassment Prevention Policy: ABC Widget

ABC Widget, in co-operation with its unions, is committed to a healthy, harassment-free work environment for all employees. ABC Widget has developed a company-wide policy intended to prevent harassment of any type, including sexual harassment, of its employees, customers and clients, and to deal quickly and effectively with any incident that might occur.

Harassment occurs when an employee is subjected to unwelcome verbal or physical conduct because of race, religious beliefs, color, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, income, family status, or sexual orientation. Laws prohibit workplace harassment based on these grounds. These are all examples of harassment that will not be tolerated at ABC Widget.

ABC Widget also will not tolerate the display of pornographic, racist or offensive signs or images; offensive jokes based on race, gender or other grounds protected by law that result in awkwardness or embarrassment; and unwelcome invitations or requests, whether indirect or explicit.

Sexual Harassment

Protection from sexual harassment is included under the ground of gender. Unwanted sexual advances, unwanted requests for sexual favors, and other unwanted verbal or physical conduct of a sexual nature constitutes sexual harassment.

Sexual harassment can include such things as pinching, patting, rubbing or leering, “dirty” jokes, pictures or pornographic materials, comments, suggestions, innuendoes, requests or demands of a sexual nature. All harassment is offensive and in many cases it intimidates others. It will not be tolerated at ABC Widget.

Next Steps

The following steps illustrate how to proceed if you are being harassed:

1. Tell the harasser that their behavior is welcome and ask them to stop.
2. Keep a record of incidents (date, times, locations, possible witnesses, what happened, your response). You do not have to have a record of

events in order to make a complaint, but a record can strengthen your case and help you remember details over time.

3. Make a formal complaint. If, after asking the harasser to stop their behavior, the harassment continues, report the problem .

Harassment Complaint Process

1. Once an internal complaint is received by ABC Widget, it will be kept strictly confidential. Appropriate action will be undertaken immediately to deal with the allegations. Action taken may include mediation. If a grievance is filed through the union, the union will advise you of the steps they will be taking.

2. The Department Manager or Director of Human Resources will interview you as well as the alleged harasser and any individuals who may be able to provide relevant information related to your allegations. All information collected will be kept in confidence.

3. If appropriate, ABC Widget will attempt to resolve the complaint by mediation. If mediation is not successful, an investigation will be undertaken by an investigator designated by ABC Widget.

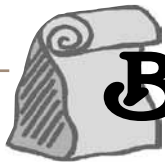
4. If the investigation reveals evidence to support the complaint of harassment, the harasser will be disciplined appropriately. Discipline may include suspension or dismissal, and the incident will be documented in the harasser’s file. No documentation will be placed on the complainant’s file when the complaint has been made in good faith, whether or not there was a finding of harassment.

Editor’s note: This is an abbreviated version of a sample harassment policy. The Alberta Human Rights Commission’s complete policy can be found at https://www.albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/sheets/hr_and_employment/Pages/harassment_policy_sample.aspx

Summary

Prevention is the best tool to eliminate harassment in the workplace. Employers should clearly communicate to employees that unwelcome harassing conduct will not be tolerated.

Additional source: Susan Heathfield, writer for the Human Resources section at The Balance, co-owner of TechSmith Corporation, and a management consultant.



Workplace Harassment Prevention Toolkit

The following are some sample guidelines for preventing and identifying harassment in the workplace. (This guide is not all-inclusive.)

What determines if the harassing conduct is severe or pervasive?

Whether an instance or pattern of harassing conduct is severe or pervasive is determined on a case-by-case basis with consideration paid to the following factors:

- The frequency of the unwelcome conduct;
- The severity of the conduct;
- Whether the conduct was physically threatening or humiliating, or a mere offensive utterance;
- Whether the conduct unreasonably interfered with work performance;
- The effect on the employee's psychological well-being; and
- Whether the harasser was a superior within the organization.

Each factor is considered, but none are required or dispositive.

What should you do if you witness or are subjected to harassment?

1. An employee who witnesses or believes that he or she has been made the target of harassment should report the harassment as soon as possible to a managing official.
2. An employee may initiate the administrative inquiry process by contacting a supervisor who will conduct an investigation intended to gather information to determine what action, if any, should be taken. This information is not intended for legal or criminal prosecution.



3. If the employee feels comfortable contacting the harasser he or she should inform the harasser that the conduct is unwelcome and must stop immediately.

4. Employees should also maintain a record of relevant events and communications between all parties in the event another incident arises and further action is necessary.

5. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

Is an employee who brings a harassment claim protected from retaliation or reprisal?

Yes. The National Institutes of Health (NIH) is committed to promoting and maintaining a work environment free from discrimination and retaliation. Reprisal for participation in the EEO process is prohibited. If an employee wishes to file an EEO complaint of reprisal he or she may contact the OEODM office within 45 calendar days of the alleged occurrence(s) of retaliation discrimination.

Source: National Institutes of Health. For more information, see https://www.edi.nih.gov/sites/default/files/public/EDI_Public_files/guidance/toolkits/employees/employees-workplace-harassment-prevention-toolkit03.pdf.