



Workplace Harassment

In 2012 alone, the US Equal Employment Opportunity Commission ordered that \$365,400,000 (that's 365.4 million dollars!) be paid out for discrimination and harassment charges. No wonder companies are working to be more proactive in preventing harassment. But how do you prevent harassment from occurring? What sorts of policies should be in place? What should managers do to protect their employees? And if a complaint is filed, what will we do?

Important to know

- ✓ Explain what is acceptable behavior in the workplace and what is not
- ✓ Apply the benefits of harassment training
- ✓ Define the various types of harassment, including sexual harassment
- ✓ Assist in creating a harassment policy
- ✓ State some ways to prevent harassment
- ✓ Demonstrate some ways to protect yourself from harassment
- ✓ Know what to do if you are harassed or accused of harassment
- ✓ Understand the complaint process, from the complaint to the reply, to mediation or investigation, to a solution
- ✓ Identify situations where mediation is appropriate, and understand how mediation works in those situations
- ✓ Describe appropriate solutions for a harassment incident
- ✓ Know what to do if a complaint is false
- ✓ Help your workplace return to normal after a harassment incident

Policy and Procedure should Cover

- ✓ Defining harassment
- ✓ Other prevention strategies
- ✓ Nipping it in the bud and protecting yourself
- ✓ What if it happens to me?
- ✓ What if it's happening to someone else?
- ✓ Someone has filed a complaint against me!
- ✓ Addressing a complaint
- ✓ Handling false complaints
- ✓ Mediation
- ✓ Investigating a complaint
- ✓ Making the decision and creating solutions
- ✓ After it's over

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EXAMPLES OF PROHIBITED BEHAVIOR

In addition to the Federal and State laws, employer's policy requires us to maintain a workplace free from discrimination and harassment. Employer should consider any type of behaviors to never be acceptable in its work environments even if welcome by employees participating in that behavior.

DESCRIPTION OF SUPERVISOR'S 'TRAINING PROGRAM OBJECTIVES'

The learning objectives of the training mandated by California Government Code section 12950.1 shall be: 1) to assist California employers in changing or modifying workplace behaviors that create or contribute to "sexual harassment" as that term is defined in California and federal law; and 2) to develop, foster and encourage a set of values in supervisory employees who complete mandated training that will assist them in preventing and effectively responding to incidents of sexual harassment.

Towards that end, the training mandated by California Government Code section 12950.1, shall include but is not limited to:

- (1) A definition of unlawful sexual harassment under the Fair Employment and Housing Act and Title VII of the federal Civil Rights Act of 1964. In addition to a definition of sexual harassment, an employer may provide a definition of and train about other forms of harassment covered by the FEHA, as specified at Government Code section 12940, subdivision (j), and discuss how harassment of an employee can cover more than one basis.
- (2) FEHA and Title VII statutory provisions and case law principles concerning the prohibition against and the prevention of unlawful sexual harassment, discrimination and retaliation in employment.
- (3) The types of conduct that constitutes sexual harassment.
- (4) Remedies available for sexual harassment.
- (5) Strategies to prevent sexual harassment in the workplace.
- (6) "Practical examples," such as factual scenarios taken from case law, news and media accounts, hypothetical based on workplace situations and other sources which illustrate sexual harassment, discrimination and retaliation using training modalities such as role plays, case studies and group discussions.
- (7) The limited confidentiality of the complaint process.
- (8) Resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment.

- (9) The employer's obligation to conduct an effective workplace investigation of a harassment complaint.

- (10) Training on what to do if the supervisor is personally accused of harassment.

- (11) The essential elements of an anti-harassment policy and how to utilize it if a harassment complaint is filed.

NOTE:

Either the employer's policy or a sample policy shall be provided to the supervisors. Regardless of whether the employer's policy is used as part of the training, the employer shall give each supervisor a copy of its anti-harassment policy and require each supervisor to read and to acknowledge receipt of that policy.

'BEST PRACTICES' eLEARNING CHECKLIST

Effective harassment eLearning can teach harassment prevention, resolution skills, clarify an employer's harassment policy/complaint process to supervisors and non-supervisors and create a learning experience very similar to live training.

Use this checklist for reviewing/selecting eLearning training for your firm and clients.

Name of eLearning training program:

Audience: Supervisor _____ Non Supervisor _____ Both _____

Length of core program:

Does the eLearning course include the following:

1. Yes _____ No _____
Episodic video scenarios that begin in the introduction lesson and continue through the course's post-test are used to increase awareness and to provide resolution skills building activities
2. Yes _____ No _____
A virtual coach (with over 10 years of designing and delivering on-site harassment training experience) to answer supervisor's and non-supervisor's FAQ's
3. Yes _____ No _____
A female and male narrator
4. Yes _____ No _____
Narrators coach the learner without lecturing or preaching, and frequently refer to and clarify their employer's harassment policy and complaint process
5. Yes _____ No _____
The supervisor course meets California mandated supervisor harassment training requirements, if applicable
6. Yes _____ No _____
Includes diverse and contemporary workplace scenarios
7. Yes _____ No _____
Interactive activities keep the learner engaged by having them frequently apply content and resolution skills demonstrated during the course
8. Yes _____ No _____
Separate and/or additional training lessons, in supervisor and non-supervisor versions, that are used to provide additional video scenarios and content and to reinforce the "core" course's content, learning objectives and resolution skills

9. Yes _____ No _____
Participants learn and apply objective methods to recognize subtle sexual harassment, when the recipient has not said, "stop"
10. Yes _____ No _____
The Supervisor course includes content and a skill-building activity that teaches them how to appropriately receive a harassment complaint, respond to the complainant's concerns and questions, and to avoid costly mistakes
11. Yes _____ No _____
The Supervisor course includes content and a skill-building activity that teaches them when and how to intervene to stop behavior prohibited by their employer's harassment policy, when no complaint, and to effectively deal with a hostile harasser
12. Yes _____ No _____
The Non-supervisor's course includes content that dramatizes how employees can help or hinder the resolution of harassment situations
13. Yes _____ No _____
The Non-supervisor's course includes content that dramatizes how employees create and can prevent retaliation situations
14. Yes _____ No _____
The course is built using a directed learning path that prevents the learner from bypassing content and activities
15. Yes _____ No _____
An audio and non-audio version of each course (Section 508 compliant)
16. Yes _____ No _____
Course is personalized with in depth information to include:
- a. Yes _____ No _____
Employer's policy against harassment and complaint process
 - b. Yes _____ No _____
An email link in the course to client's complaint department if the participant wants to ask a question about policy and complaint process or needs guidance
 - c. Yes _____ No _____
Display of in-house contact information which includes their title, telephone number and email address
 - d. Yes _____ No _____
Display of a 'clarification' of client's policy and complaint process document that includes each employer's answers to supervisor and non-supervisor FAQ's

17. Yes _____ No _____
Course can be customized with an executive introduction video and video scenario dramatizing client's work environment situations
18. Yes _____ No _____
Includes a hosted solution that provides learner completion tracking to assure documented compliance
19. Yes _____ No _____
Includes "I agree" documentation buttons that the learner clicks to verify that they have read and understood their employer's policy, complaint process, content of the course and know who to contact for guidance
20. Yes _____ No _____
Is SCORM, AICC and Section 508 compliant
21. Yes _____ No _____
Includes option to customize text on pages, PDF files, flash scenarios and landing page
22. Yes _____ No _____
Content, i.e., discussion questions and their answers, receiving complaint and intervention skills and techniques, how to identify subtle harassment when the recipient has not said stop; that has been field-tested in at least 100 on-site harassment training programs delivered to a cross-section of white and blue collar workplaces
- Has SME expertise to write, produce and create customized flash and video scenarios
23. Yes _____ No _____
Number of video and/or still picture (with audio) scenarios in core program: _____
(I recommend a minimum of 25 different scenarios for supervisors and 12 for the employee course)

Total of this eLearning program's 'Best Practices' responses:

'Yes' _____ 'No' _____

POST INVESTIGATION REVIEW

Review your investigation by answering the following questions to determine if issues exist that can or do affect the resolution of the complaint and/or indicate that a healing process should occur.

1. How many others are aware of or have heard rumors about what happened and who was involved?
2. How did witnesses and employees view the complainant and accused prior to the complaint and its investigation? Now?
3. Did other issues exist in the workplace or between the complainant and accused prior to the complaint that were creating problems, (i.e., low morale, high turnover, intergroup conflict, low trust, poor communications, etc.) that negatively impacted the workplace? If yes, how? Should that/those issue(s) be addressed as part of or separately from the investigation and/or healing process? If yes, how?
4. How do employees feel about how the investigation was conducted, if aware of the investigation? Can those feelings impact the complainant/accused after the investigation is concluded?
5. How do witnesses feel they were treated during the investigation?
6. What impact, if any, did the investigation and/or its resolution and/or corrective action, if applicable, have on employees, management, workplace and/or others, (i.e., clients, vendors, etc.)? If there was a negative impact, how and when should that be addressed?
7. Does the complainant, accused, witnesses and employees understand what [sexual] harassment is and how the City and County of Denver's [sexual]/non harassment policies and complaint procedures work?
8. Do any witnesses have current or future concerns about retaliation because of their participation in the investigation?

The answers to these questions may require the employer to take additional actions, beyond their initial investigation and its resolution to resolve other workplace issues.

HEALING PROCESS

Healing employees and the workplace impacted by harassment/discrimination complaints/investigations is a critical but often neglected aspect of most employers' harassment/discrimination investigation and resolution process.

The healing process, in the context of this program, includes all of the processes an employer uses to:

- a. Investigate (sexual) harassment/discrimination complaints
- b. Resolve (sexual) harassment complaints/situations
- c. Identify, correct and/or resolve the harm done (if any) by [sexual] harassment/discrimination that occurred
- d. Heal work relationships impacted (if any) by [sexual] harassment/discrimination and/or the investigation and resolution of harassment/discrimination complaint

(SAMPLE) HEALING PROCESS GUIDELINES FOR PREVENTING TITLE VII RETALIATION COMPLAINTS

If the complainant and his/her harasser will work together after the investigation and there are unresolved issues between them, it is important to facilitate a healing process between them. Before setting up and facilitating the meeting:

1. Talk with legal and their manager about documentation, what they will want to know about what the complainant and accused talked about, how their supervisor will monitor their work environment to ensure that there is no retaliation and that the prohibited behavior stops, how will they determine if this healing process is successful, and how will the harasser be held accountable if he/she does not stop doing unwelcome behavior and/or retaliates against the recipient, witnesses and/or others.
2. Ask the complainant and accused who would he/she like to facilitate that meeting and ask each person to provide the facilitator with an outline of what each person wants to talk about and accomplish during that meeting.
3. Identify an effective facilitator. He/she will have in depth knowledge of [sexual] harassment and legal issues, the healing process and be skilled in conflict resolution.
4. Before the meeting the facilitator should talk with the investigator, legal, complainant and accused; write a meeting agenda, identify specific issues that need to be resolved, establish ground rules for the meeting, and identify each party's

responsibilities during the meeting.

5. The goals of the facilitated meeting typically include:
 - a. Each party listens and tries to understand, though he/she may not agree with what is said, what the other party says.
 - b. The accused takes responsibility for doing his/her unwelcome behavior.
 - c. Determine if there are any misunderstandings, if applicable, and identify methods to avoid, recognize, and resolve them in the future.
 - d. Agree on how they will treat the other person in the future.
 - e. Identify communication techniques to effectively and respectfully talk about issues in the future.
 - f. Agree on what each person will do to create a professional and respectful work relationship between them.

Important:

The key objectives of this meeting are to teach them how to talk directly to each other, listen effectively, create a mutual understanding, and to improve their work relationship.

Guidelines for Applying the Law

In order to improve the application of the law and make it easier to administer, the EEOC has developed several guidelines that are to be used in determining whether a violation of the law has taken place.

Guideline #1: Each case reviewed on its merits: In determining whether alleged conduct constitutes sexual harassment, the Commission looks at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action is made from the facts, on a case by case basis.

Guideline #2: Employer responsibility for sexual harassment by supervisory personnel: an employer is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence.

It is important to note that, pursuant to current U.S. Supreme Court authority, while courts may impose strict liability on employers in circumstances where harassment by a superior results in any adverse tangible employment action such as termination, demotion or any other significant change in employment status, an employee may still bring a claim for sexual harassment even in the absence of a showing of adverse employer action, if all other required facts for such a claim are present. However, in such a case the employer may defend such a claim by proof that it exercised reasonable care to prevent and promptly correct any sexual harassing behavior and that the victim unreasonably failed to take advantage of any

preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

The Commission examines the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

Guideline #3: Employer responsible for co-worker sexual harassment: an employer may be held liable for sexually harassing conduct of co-workers where the employer, or its agents, or its supervisory employees, knew or should have known of the harassing activities unless the employer can demonstrate that it took immediate and appropriate corrective action to stop it. Thus, employers are not held strictly liable, (e.g., liable without any showing of negligence), for co-worker sexual harassment.

Guideline #4: Employer responsibility for non-employees: an employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

In reviewing such cases, the Commission considers the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

Guideline #5: Employers may be liable for sex discrimination for those not receiving advantages: where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but were denied that employment opportunity or benefit.