



SENTINEL  
RISK ADVISORS

**#notyoutoo: Safeguard Your  
Business and Employees  
from Harassment**

# Harassment Policy Checklist

All employers should have a policy prohibiting unlawful harassment. A well-designed harassment policy does more than prevent harassment and protect employees—it has the potential to minimize employer liability and protect corporate and individual assets.

However, all harassment policies are not created equal. In fact, poorly drafted policies can make defending claims more difficult. A sound policy, on the other hand, will help your company defend itself, and its stakeholders, in court should an employee take legal action for a hostile environment created by supervisory personnel. This defense requires proving two important things:

1. The employer exercised reasonable care to prevent and correct any harassment promptly.
2. The complainant unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer, or to otherwise avoid harm.

The following bullet points outline essential elements of a well-drafted policy.

- **The policy should be written and distributed to all employees on a regular basis.**

Harassment claims are frequently accompanied by accusations that the employer ignores, tolerates or even condones harassment. An explicit policy prohibiting harassment that is clearly and regularly communicated to employees discourages such accusations and helps minimize liability for harassment.

What is considered a “regular” basis? Most experts agree—annually is best. Consider working this into the first staff meeting after the new year, or add it to your company’s annual meeting schedule.

- **Employees should sign an acknowledgement confirming they read and understand the policy.**

Having a policy acknowledgement on file for each employee is an effective means to place the employer in a position to assert the affirmative defense against liability for a hostile environment created by supervisory personnel.

# What should be in a harassment policy?

- ✓ **An unequivocal statement that unlawful harassment will not be tolerated, that all harassment reports will be investigated and that, if harassment is found to have occurred, remedial action, including appropriate disciplinary action, will be taken.**

These principles are the essence of what it takes to minimize liability for unlawful harassment. Putting them in the policy reminds the employer how to minimize liability and discourages accusations that the company tolerates harassment. In cases where the first notice of the alleged harassment is a lawsuit or charge from the Equal Employment Opportunity Commission (EEOC), this properly—and strongly worded—statement discourages accusations that the claimant did not promptly report the alleged harassment because the employer would not have done anything about it.

- ✓ **An unequivocal statement that retaliation against any employee who reports perceived harassment, or who participates in an investigation as a witness or in any other capacity, is prohibited and will not be tolerated.**

- ✓ **A requirement that all employees immediately report perceived unlawful harassment by following the employer's reporting procedures.**

Stale claims are difficult to investigate and often impossible to corroborate or disprove. Omitting this requirement breeds stale and false claims. Including it not only discourages them, but also helps the employer defend them.

It is also essential that employees be able to report harassment incidents to someone other than their immediate supervisor. There should be a number of acceptable people whom the employee may report harassment claims to.

- ✓ **Expressly identify the individuals to whom harassment reports should be made, and advise how these individuals may be reached.**

An important key to minimizing employer liability is to increase the likelihood that harassment reports will be made to individuals who are trained to handle them and who can be trusted to carry out their duties appropriately.

*Select these individuals carefully and require all employees to report harassment to them.*

# What should be in a harassment policy? (continued)

The policy should identify more than one person to whom reports can be made and encourage employees to pick the one with whom they would be most comfortable speaking. This will preclude the possibility that the policy requires or encourages employees to report the harassment to the individual who happens to be the harasser. This is especially important for establishing the affirmative defense for supervisory hostile environment claims. Finally, identifying at least one woman to whom the report can be made enhances the value of the policy in defending harassment claims.

## ✓ **The policy should define sexual and other types of unlawful harassment by definition and examples.**

The recent attention on sexual harassment has caused some employers to overlook the other types of unlawful harassment when developing or revising harassment policies. The policy should define not only sexual harassment but also other unlawful harassment, specifically harassment based on race, color, religion, gender, pregnancy, national origin, age, disability, and genetic information. Covered federal contractors and subcontractors with contracts entered into or modified on or after April 8, 2015 should expressly include sexual orientation or gender identity as unlawful bases for harassment.

Defining unlawful harassment lets employees know exactly what kind of conduct may get them in trouble. Employees often do not understand that what is welcome workplace banter to one is harassment to another. Defining harassment using examples helps them avoid conduct that might be perceived as unlawful harassment. It also minimizes the chance that employees who are disciplined for harassing conduct will contend that they had no idea their conduct was improper.

The policy also should expressly state that the prohibition against unlawful harassment applies to all management (including the CEO, president and other high-ranking officials), supervisory personnel, coworkers and non-employees. No member of the organization is immune.

# What should be in a harassment policy? (continued)

Finally, use definitions of harassment which are adapted from the definitions set forth in the EEOC's Guidelines on Discrimination Because of Sex and proposed Guidelines on Harassment Based on Race, Color, Religion, Gender, National Origin, Age or Disability. Using these definitions discourages accusations from claimants that the definitions are inadequate or otherwise improper.

## ✓ **Keep your policy direct and concise.**

Harassment policies which are distributed to employees are not the place to set forth statements about how supervisors and managers should respond to harassment reports. Harassment policies also should not describe investigative procedures or outline appropriate remedial action. These important items should be set forth in documents which are distributed only to supervisors or managers.

## Harassment Training is Key to Prevention

The EEOC has very specific recommendations on how to conduct harassment training, a critical tool in fostering a culture of accountability for your company. Sentinel strongly encourages you to conduct regular, ongoing training with employees, managers and executives of the company.

The EEOC is a great resource for training, and there are third-party training providers that have the EEOC's blessing, as well. That's significant, because should a complaint result in litigation or an EEOC investigation, your company's ability to show that it took proactive steps to stem harassment will most surely be considered.

### **Harassment Training Tips and Tactics**

- Choose a training program that is three hours for employees; four hours for managers.
- Ensure that company leaders attend the training, as well. This sends a strong signal to employees, and helps to cultivate a positive culture representative of an harassment-free environment.
- Choose a training program that gives examples of what harassment is, and what it isn't.
- Cover the consequences of engaging in unacceptable conduct.
- Cover reporting procedures and the investigation process.

# Model Workplace Harassment Policy

Harassment of any employee in the workplace by management (including the president and other executives), supervisory personnel, co-workers, or non-employees (including contractors, customers, or vendors) on the basis of race, color, religion, sex (including pregnancy, gender identity, transgender status and sexual orientation), national origin, age, disability, genetic information, veteran status or other characteristic protected by applicable law is a form of discrimination that violates the law and company policy. Harassment is prohibited and will not be tolerated. No personnel are immune from this policy.

If you believe that you are being or have been unlawfully harassed, you must immediately report the perceived harassment according to the reporting procedure below. All reports of perceived unlawful harassment will be investigated, and, if it is found to have occurred, appropriate disciplinary action up to and including termination of employment will be taken. Consideration also will be given to remedial action necessary to eliminate unlawful harassment and remove any detriment suffered by the affected employee as a result of unlawful harassment.

Retaliation against employees who report perceived unlawful harassment, or who participate in investigations as witnesses or in other capacities, also violates the law and company policy. Such retaliation is prohibited and will not be tolerated and must be reported immediately according to the reporting procedure below.

## **Workplace Harassment Defined**

Unlawful harassment may include:

1. Verbal, nonverbal, or physical conduct that shows hatred, belittlement, or hostility because of race, color, religion, national origin, sex (including pregnancy, gender identity, transgender status and sexual orientation), age, disability, veteran status or other protected characteristic when it creates an intimidating, hostile, or offensive working environment; unreasonably interferes with an individual's work; or adversely affects an individual's employment opportunities.
2. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment; submission to or rejection of the conduct is used as the basis for employment decisions; or the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

# Model Workplace Harassment Policy (continued)

Examples of types of behavior that may violate this policy include:

**Verbal/written:** Offensive comments, including slurs or ridicule of another's culture, accent or appearance; humor, jokes or teasing about protected class characteristics, including comments about the individual's body; intentional or persistent failure to respect an individual's gender identity (e.g., intentionally referring to the individual by a name or pronoun that does not correspond to the individual's gender identity); threatening, intimidating or abusive words or acts; rumors about other employees; whistling. Sexual harassment also includes propositions, innuendo, flirtation, suggestive or sexist comments, or continued advances or other unwelcome conduct after the conclusion of a consensual relationship. Sexual harassment can include conduct between members of the same sex.

**Visual/graphic/non-verbal:** Pictures, posters, signs, cartoons, computer transmissions/email/social media or online postings/texts; display of objects; graffiti; vandalism; exclusion.

**Physical:** Touching, pinching, patting, brushing the body, assault, impeding access.

## Reporting Procedure

If you believe that you are being unlawfully harassed or retaliated against or you observe or otherwise become aware of such conduct in the workplace, immediately report the incident to one of the following individuals: \_\_\_\_\_.

This procedure does not require reports to be made to your supervisor or to anyone who you believe is participating in the conduct. Instead, you may choose from the above-listed individuals the person with whom you would be most comfortable speaking. Supervisors and managers who become aware of perceived harassment or retaliation must immediately report such matters to \_\_\_\_\_.

Disciplinary action, up to and including termination of employment, may result against supervisors and managers who fail to respond immediately and appropriately to the allegations.

All reports of alleged harassment or retaliation will be investigated. Under no condition will the investigation be conducted by or under the direction of the person reported to have engaged in this alleged harassment or retaliation.



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