



## How To Fulfill Sexual Harassment Obligations And Reduce Liability Risk

Most employers know that they can be held legally liable for sexual harassment occurring in their workplace. However, many may not know that there's a way to considerably reduce their exposure to liability. The courts have actually laid out a road map of sorts when it comes to reducing employer risk for sexual harassment liability.

*Employers that have demonstrated this reasonable and responsible action are less likely to be held legally liable for damages.*

In 1998, the U.S. Supreme Court made it quite clear that laws related to sexual harassment weren't made in an effort to enable employer vs. employee lawsuits, but rather as a motivation for employers to take reasonable and responsible action in preventing sexual harassment. Employers that have demonstrated this reasonable and responsible action are less likely to be held

legally liable for damages. Here are the practices and policies every employer should abide to fulfill their obligation in preventing workplace sexual harassment, thereby reducing their liability risk:

- A comprehensively written policy against sexual harassment should be in place to demonstrate the concern, stance, and dedication to the prevention of sexual harassment on the part of the employer. This policy should clearly define sexual harassment and give examples of what constitutes sexual harassment. After the policy is read, the employee should know that either gender may be victim; either gender may per-

petrator; and that sexual harassment is dictated by victim perception, not whether or not the perpetrator intended the behavior as harassing.

- Legal terminology and otherwise obtuse language should be avoided when composing a sexual harassment policy. It should be written in a manner that an average employee would comprehend. In most cases, if the wording is such that a high school senior would have difficulty comprehending it, then it's too complex. Employers should also be mindful of non-English speaking employees and publish translations accordingly.
- Make sure that the sexual harassment policy identifies which employees or department should be contacted to initiate the complaint process; outlines the complaint and investigation process from start to finish, including any appeal process; and identifies what the penalties are for sexual harassment. Retaliation should also be addressed. It should be clear that retaliation against a complainant will not be tolerated and that retaliation is a form of harassment too.
- More often than not, an employer isn't held liable because of the actual harassment, but rather because they failed to have or apprise their employees of the complaint procedure or failed to respond when the complaint procedure was utilized. So, never write a complaint off or disregard it. Each and every complaint should be viewed as a serious matter and investigated

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with a process that's consistent and that's reasonable for all involved.

- While many employers feel comfortable that their policy is adequate, the best policy in the world is useless if an employee can claim that they've never laid eyes on it. Therefore, orientation of new employees should include a signature that the new employee has received, read, and understood the sexual harassment policy.
- Of course, there must be ongoing exposure to the policy for employees to realize that their employer is actually serious about sexual harassment and the enforcement of consequences. Sources of exposure may include periodic sexual harassment summaries through brochures or educational pamphlets, newsletter articles, in-service training, and employee meetings.
- It's also crucial that any employee in a supervisory position be trained not only to enforce the sexual harassment policy, but as someone that could be a harasser themselves. Often, especially in medium to larger businesses, the employer will not be the one to first receive a

complaint. Yet, employers are strictly liable if supervisors engage in subordinate harassment or fail to enforce the harassment policy. Keep in mind that many people engage in behaviors that are overlooked by individuals they come across in their personal life and thereby feel that the same behaviors will be overlooked at work too.

The most often used excuse when an employee is accused of sexual harassment is that they weren't the only employee that has acted in such a way. Sadly, while the above statement in no way excuses the behavior, it's often true. And, it's this type of environment that tolerates or overlooks sexual harassment that substantially increases the liability risk of the employer. Simply having a policy will not hold weight in court. It must be comprehensive and there must be employee exposure and employer enforcement. While simple steps, these do require a time and resource commitment for the policy to be applied in a manner that will reduce sexual harassment liability risks for employers and reduce the frequency of sexual harassment incidences for employees.



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