

Crafting an Effective Modern-Day Sexual Harassment Policy

As an employer, how your company handles a sexual harassment issue can have a direct impact on morale, productivity, and revenue. The rise of the #MeToo movement leaves companies under a microscope regarding how they handle and if they tolerate sexual harassment. In response, many companies have moved to a policy of zero tolerance. Unfortunately, the extreme nature of zero tolerance still fosters an environment where the employees are hesitant to report harassment. Employees don't want to report a minor incident in fear that it will cost someone their job or that they will be viewed as a tattletale in the workplace. Due process in the workplace is not a right, but the swift nature of a zero-tolerance policy puts companies in a sticky situation. Low grade sexual harassment, in turn, goes mostly unreported.

Oftentimes, sexual harassment and sexual assault are associated with each other despite the clear differences. There should be a zero-tolerance policy for sexual assault but there are varying degrees of sexual harassment, which demands a more nuanced approach. The consequences of sexual harassment should be in proportion to the severity of the harassment. The danger of zero-tolerance sexual harassment policies are that an off-color comment is treated the same as more severe harassment that creates a hostile environment and impacts an employee's productivity. In order to avoid liability and a potential public relations nightmare, there are certain guidelines that employers should follow to craft an effective sexual harassment policy.

1. Have a sexual harassment policy.

One of the biggest mistakes that businesses make is not having a sexual harassment policy at all. The absence of a sexual harassment policy will be construed against an employer if an employee is fired with a "zero-tolerance" approach to sexual harassment. A sexual harassment

policy protects the employer just as it protects the employees. Having a sexual harassment policy is evidence that the employer exercised reasonable care to prevent and promptly correct harassing behavior. Having a policy in place also holds employees to a reporting procedure so an employer can reasonably react. The reporting procedure should clearly provide a way for the reporting employee to outline the alleged experience with the harasser and the cornerstones should be: time, location, details, and witnesses. The legal grey area expands exponentially when there aren't clear rules that employees and employers are expected to follow.

2. Clearly define what sexual harassment is to your company.

Clearly defining what sexual harassment means to your company helps employees know the scope of what crosses the line of sexual harassment. A defense can potentially be brought to shield companies from liability after they adopt an anti-harassment policy that is clearly defined and informs employees of their reporting procedures.

3. Establish the chain of command and reporting procedures.

An established chain of command is important for several reasons including understanding the official relationships between employees and employers. Establishing a clear chain of command allows for a clear definition if the case at hand is *quid pro quo* sexual harassment. *Quid pro quo* sexual harassment occurs when an employee in an authority position over another offers or hints that he or she will give the employee something in return for the satisfaction of a sexual favor.

4. Regularly hold trainings with an ever-evolving policy.

While sexual harassment might not change through the times, the reporting procedures and technology may change. Many states also have varying requirements regarding how frequently employers are required to hold sexual harassment training for their employees. It is

important to know what the requirements are in your company's locations and to comply with the requisite training schedules.

No sexual harassment policy can completely shield a business from liability but staying proactive in crafting a policy can help negate consequences. Employers can avoid poor morale in the workplace, a damaged reputation, and subsequent legal defense cost.

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