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Defining, mitigating, and reducing harassment in the workplace

- » Read about what the Equal Employment Opportunity Commission describes as harassment.
- » Understand which employees are protected against harassment.
- » Examine several recent settlements involving harassment, and learn how to deter that type of behavior at your place of employment.
- » Learn to be proactive in teaching employees about anti-harassment policies is an important step in mitigating harassment.
- » Read about tips for writing an anti-harassment policy that can give clear instructions to employees on the definition of harassment, steps to take to report harassment, and consequences for harassment.

You do not have to look very long or hard lately to find cases of harassment in the workplace. Employees are increasingly coming forward to report harassment by a manager, employee, faculty member, student, or



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even a customer. Surprising to many is the fact that the number of charges of alleged harassment filed with the Equal Employment Opportunity Commission (EEOC) has increased each year over the last three fiscal years (FY) from 26,820 in FY 2014 to 27,893 in FY 2015 to 28,216 in FY 2016. Keep in mind that these totals do not include reports filed with state or local Fair Employment Practices agencies.

To understand what is involved in such cases, one must first be aware of what the federal government defines as “harassment.”

Definition

If an organization employs 15 or more people, Title VII of the Civil Rights Act and the Americans with Disabilities Act provide coverage for employees. For companies employing 20 or more people, the Age Discrimination in Employment Act also provides coverage. Per the EEOC, harassment is defined as:

Unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. Harassment becomes unlawful where (1) enduring the offensive conduct becomes a condition of continued employment, or (2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

If an organization is a covered federal contractor or subcontractor required to abide by regulations under the jurisdiction of the Office of Federal Contract Compliance Programs (OFCCP), then sexual orientation, gender identity, and protected veteran status are classifications that are also protected. Unlawful conduct could take the form of offensive jokes, slurs, name calling, physical threats, insults, or even the use of pictures or objects.

Recent settlements

B&H Foto was ordered to pay \$3.2 million in back pay and interest in a case that was reviewed by the OFCCP in August 2017. The OFCCP not only alleged that the company was discriminating against female, African-American, and Asian job seekers and employees in hiring, compensation, and promotion decisions, but also that B&H Foto gave these groups unequal access to the company's restroom facilities and routinely subjected Hispanic workers to harassing conduct.

Another August 2017 settlement involved Ford Motor Company, which was investigated by the EEOC. Ford agreed to pay up to \$10.125 million to settle a case involving a group of individuals at two of the company's Chicago-area facilities. The EEOC found that the organization subjected female and African-American employees to sexual and racial harassment.

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Harassment policy tips

The primary goal and best practice for all organizations is to have an environment that is respectful and does not tolerate discrimination or harassment. Taking

preventive measures, such as implementing anti-harassment policies, disseminating an effective complaint process, and regularly providing anti-harassment and unconscious bias training to all employees, is key to creating a respectful

and engaging workplace. The EEOC offers the following tips for developing an effective anti-harassment policy:

- ▶ Clearly define what is considered harassment, and make clear that it is illegal and will not be tolerated. The EEOC recommends that examples of conduct that is prohibited be listed.
- ▶ Explain the process for reporting harassment. The EEOC recommends that at least one person be designated to receive complaints of harassment who is outside an employee's chain of command.
- ▶ The policy should state that, to the greatest extent possible, the confidentiality of employees who report harassment or assist in an investigation will be protected.
- ▶ The policy should also state that employees will not be subject to punishment or adverse action or treatment for reporting harassment or assisting in an investigation.
- ▶ Outline the consequences of violating the harassment policy, which may include termination.

Best practices for prevention

Having an anti-harassment policy helps mitigate incidents, but other practices should be implemented to reduce the likelihood of harassment occurring in the workplace, such as these five best practices:

1. Creating and disseminating anti-harassment policies. This can be done through the employee handbook, company intranet, email, or mailings. In addition, ensure that policies are posted in cafeterias and other common areas in facilities.
2. Setting examples from the top levels of the organization of respectful behavior toward all individuals. Embedding into the culture that harassment will not be tolerated and that the organization will be a workplace that is respectful of all employees is the responsibility of senior leaders.
3. Regular training regarding equal opportunity compliance, harassment, inclusion, and respect is a must to build an engaged and productive workforce. All members of the leadership team and their respective units must take part in regular training to emphasize the importance of policies and define the actions that are considered harassment.
4. Holding managers accountable for effectively handling any inappropriate behavior that is witnessed by others. Management must clearly

demonstrate that there will be no retaliation against employees who file harassment claims.

5. Having specific consequences for unwelcome behavior in your organization. Detailing in your firm's human resource policies the specific consequences of harassing behavior is necessary to ensure that discipline is consistently enforced.

For a company to be competitive in the global market, its workforce must be highly engaged, and the removal of fear of harassment is a critical step in creating this type of culture.

Harassment in the workplace is not only illegal—and financially costly to an organization—but also can impact the morale of employees, causing them to either leave or

be less productive. Organizations should take steps to ensure that their workplace is free of offensive behaviors by being proactive when it comes to providing training on anti-harassment policies with all employees.

For a company to be competitive in the global market, its workforce must be highly engaged, and the removal of fear of harassment is a critical step in creating this type of culture. An organization must have preventive steps in place, including creating and disseminating its anti-harassment policy to all employees and creating an environment where all people feel welcome and respected. ☉

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