

Harassment Prevention
Made Simple
Facilitator's Guide



© TrainingABC 2015

For Preview

Getting Started:

Harassment in the workplace is a serious topic. It causes a myriad of workplace issues including absenteeism, employee turnover, depression, illness, embarrassment and humiliation. In addition, an individual named in a harassment complaint could lose their job, their reputation and even their career.

Harassment is also a difficult topic to discuss. The subject is embarrassing for most people and therefore it makes them very uncomfortable. However, it is also a very important legal topic and it needs to be addressed in every organization. The most important first step to a harassment prevention program is to put the participants at ease. They will feel uncomfortable and on edge. Let them know that you understand that the topic is an uncomfortable one, but that it is imperative that it gets discussed.

Before, during and after the training it is crucial that you take the topic seriously. There will be participants who want to tell jokes or belittle the process. Don't get angry but be firm about the policy and never laugh or smile at a joke. The participants will key off you and decide if the organization is serious about stopping harassment.

- Put the participants at ease.
- Stress the seriousness of the topic.
- Be firm and don't laugh or smile at jokes. Participants will key off of you!



Hostile Environment Harassment:

Workplace harassment occurs when people are treated poorly or unfairly because of a perceived difference. The harassment can become illegal when it is continuous and unwanted, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment, and is directed toward a "Protected Group" of employees.

Question: Ask the participant's to list the major protected groups..

The protected groups:

- Race, Color and National Origin
- Religion – either because of a person's faith or beliefs or pressure to join or convert to a faith.
- Disability – either mental or physical
- Family status which includes marital status and pregnancy.
- Gender
- Age – (for employees 40 and over)
- Sexual Orientation

In addition, local laws and organizational policies prohibit the harassment of many other groups of employees. Some local laws prohibit harassment due to gender identity, political affiliation and physical appearance and most organizations prohibit harassment of any type towards any employee.

Stress to the participants that your organization has a zero tolerance policy towards harassment and that they should report any instances to a higher ranking manager or human resources as soon as it occurs.

The Reasonable Person Standard:

The courts have adopted the "Reasonable Person Standard" when addressing harassment. In other words, would a reasonable person find the behavior offensive?

The fact is that most behaviors (when they are continuous and unwanted) that treat a co-worker poorly or unfairly because of a difference meet this standard. The safe way to avoid harassment is to avoid these types of behaviors entirely.

Question: Ask the group to define the "Reasonable Person Standard"?



Facts about Hostile Environment Harassment:

Hostile Environment Harassment can occur between:

- Employees of the same or different genders
- A manager harassing an employee
- An employee harassing a manager
- Employees of the same rank

Question: Ask your group who can be the harasser and victim of Hostile Environment Harassment. Make sure that they understand that anyone can be a victim or harasser regardless of their sex or position.

Harassing jokes, comments or other behavior can create a hostile work environment even if they aren't directly targeted at the individual making the harassment complaint. This means that telling jokes and making comments that do not offend a co-worker can still be considered harassment if they offend "bystanders" – co-workers who are not involved in the conversation but are affected by being in the work environment where the behavior(s) occurred.

Harassment is not limited to just co-workers. Harassment can also occur with individuals not directly employed by an organization.

- Contractors
- Consultants
- Patients
- Delivery persons
- Vendors
- Sales persons

- Customers
- Sales persons

Question: Ask your group what non-employee groups could be involved in a harassment complaint in your workplace?

Harassment can occur anywhere that an employee represents their organization.

- Work parties
- Dinner with clients
- Conferences
- Trade shows
- Sales calls
- Charity events

Question: Ask the group to list some examples of places and events that Harassment could occur in your organization.

Behaviors that lead to Illegal Workplace Harassment:

Question: Have your group list as many behaviors as possible and fill in ones that they might have missed?



Unacceptable behaviors that could lead to Harassment

It's important to note that these behaviors all by themselves probably don't constitute harassment. The legal standard of harassment requires the behaviors to be continuous, unwanted and meet the "reasonable person standard" discussed on the previous page.

- Sending offensive or harassing emails
- Viewing offensive websites
- Using social networking sites for harassing or offensive behavior.
- Verbal, physical or cyber bullying including ridicule, mockery, insults, put-downs, threats or physically blocking a person's movement or ability to work.
- The use of demeaning or offensive names such as "towelhead", "homo" or "sweetheart" or the use of slurs or epithets like "You Jews are sure tight with money."
- Gossiping or spreading rumors about co-workers.
- Telling insensitive jokes that are demeaning or degrading to a particular race, culture, sex or any other protected group.
- Menacing looks or gestures intended to threaten, intimidate or humiliate a co-worker.
- Sexual Harassment which includes any continuous, unwanted behavior of a sexual nature whether physical, visual or verbal.
- Making disparaging comments about a person's job ability such as "He is too old to understand technology."
- Texting pictures, messages or videos that offend, denigrate or harass a co-worker.
- Excluding or isolating someone from work-related activities and assignments because of a non work-related reason such as their race, religion, gender or sexual orientation.
- Using crude or offensive language
- Making derogatory comments about a person's sexual orientation
- Making jokes or comments about a person's physical attributes
- Inappropriate remarks or jokes about a woman's pregnancy
- Offensive gender based comments or behaviors that denigrate people simply because of their gender, such as "A woman's place is in the kitchen, not the boardroom."

The Consequences of Harassment



Harassment can result in disciplinary actions.

- Written warnings
- Suspension
- Demotion
- Termination

Sexual Harassment can have very serious consequences. Make sure that your employees taking the training completely understand these repercussions.

Retaliation

It's also illegal to retaliate for a harassment complaint. This can also lead to disciplinary actions up to and including termination. Retaliation is an extremely important part of a harassment policy. Make sure that you stress that retaliation for a complaint is illegal and unacceptable. Retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation is strictly prohibited by law.

Question: Ask your group to define and describe instances of retaliation?

Prevention of Harassment



What can you do to prevent Harassment? It's simple.

- Leave offensive behaviors at the door
- Treat everyone with respect
- Speak up when you see harassment.

Studies show that simply asking the harasser to stop will end the harassment 90% of the time. Many times the employee has no idea they are offending others. Once they understand how their behavior has affected someone else they will stop.

There are some situations where the harasser should not be confronted.

- The victim feels uncomfortable with confronting the harasser
- The harassment is threatening in nature
- The harassment is aggressively physical
- The harasser has been confronted but has continued the harassing behavior
- The harassment is Quid Pro Quo

In these instances the harassed employee should contact a manager, supervisor or the human resources department. Every organization should provide a complaint procedure for their employees so that they know exactly who to contact when they are harassed.

The best way to confront a co-worker who is engaging in behavior that is offensive is with respect. Without being accusatory or losing your temper, tell your co-worker that their behavior makes you feel uncomfortable or offends you.

For Example: “John, could I talk to you for a moment? I’m a person who is sensitive about my personal space and hugs make me feel uncomfortable.”

Question: Ask the group to describe a way to confront a co-worker? What would they say?

Conducting a harassment training session is never easy, but if you take it seriously and cover the material thoroughly it will make your workplace a safer, happier and more productive place. Make sure that you provide them with a copy of your organization’s Harassment policy and that you have them sign a copy for their records. In addition have them sign the acknowledgement of training included in this facilitator’s guide.



Post-Test Quiz

1. (True / False) In order for an offensive act to rise to the level of illegal harassment it needs to be continuous and unwanted.
2. (True / False) Hostile Environment Harassment can occur even if the victim is not directly harassed, but is only a bystander to offensive behavior.
3. (True / False) Making jokes or comments about a co-worker who is over 40 years old is ok because age harassment is not protected by law.
4. (True / False) A sales person for another organization cannot be a victim of harassment because they do not work for your organization.
5. (True / False) Because a work party is after hours, harassment cannot occur there.
6. (True / False) The first step to stopping harassment is telling the offender that their conduct is unwanted.
7. (True / False) Pregnancy and marital status are considered “Protected Groups” by the courts.
8. (True / False) Harassment is only illegal if it is threatening or violent.
9. (True / False) Retaliation for a harassment complaint is not illegal.
10. (True / False) Harassment via email or texting is just as illegal as harassment in person.
11. (True / False) The “Reasonable Person Standard” asks if a reasonable person would find the behavior offensive and is a term used by the courts when addressing Harassment.
12. (True/False) Repeatedly asking a co-worker to attend your church is OK if you ask respectfully.
13. (True/False) Demotion is a possible result of a Harassment claim.
14. (True/False) Customers are exempt from harassment and cannot contribute to a hostile work environment.
15. (True/False) Calling a co-worker a “homo” is ok if the person is actually heterosexual.

Answer Key:

1. (**True** / False) In order for an offensive act to rise to the level of illegal harassment it needs to be continuous and unwanted.
2. (**True** / False) Hostile Environment Harassment can occur even if the victim is not directly harassed, but is only a bystander to offensive behavior.
3. (True / **False**) Making jokes or comments about a co-worker who is over 40 years old is ok because age harassment is not protected by law.
4. (True / **False**) A sales person for another organization cannot be a victim of harassment because they do not work for your organization.
5. (True / **False**) Because a work party is after hours, harassment cannot occur there.
6. (**True** / False) The first step to stopping harassment is telling the offender that their conduct is unwanted.
7. (**True** / False) Pregnancy and marital status are considered “Protected Groups” by the courts.
8. (True / **False**) Harassment is only illegal if it is threatening or violent.
9. (True / **False**) Retaliation for a harassment complaint is not illegal.
10. (**True** / False) Harassment via email or texting is just as illegal as harassment in person.
11. (**True** / False) The “Reasonable Person Standard” asks if a reasonable person would find the behavior offensive and is a term used by the courts when addressing Harassment.
12. (True/**False**) Repeatedly asking a co-worker to attend your church is OK if you ask respectfully.
13. (**True**/False) Demotion is a possible result of a Harassment claim.
14. (True/**False**) Customers are exempt from harassment and cannot contribute to a hostile work environment.
15. (True/**False**) Calling a co-worker a “homo” is ok if the person is actually heterosexual.

Sample Harassment Policy

Note: This is only a sample policy and has not been reviewed by an attorney. Although, it closely resembles policies in place at many organizations, it is not a substitute for legal advice and should be reviewed by legal council before distribution.

It is our organization's policy to maintain a workplace free from discriminatory harassment. Any form of unlawful discrimination, including harassment based on race, color, national origin, religion, age, gender, disability, sexual orientation or any other characteristic protected by federal or local law, is stringently prohibited. Any employee who engages in any form of discriminatory harassment will be subject to disciplinary action, up to and including termination. In addition, this organization strictly prohibits harassment towards or by customers, contractors and any other individual not directly employed by our organization.

A. Sexual Harassment

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, as well as other conduct of a sexual nature when: 1. The submission to or rejection of such conduct is made a condition of the employee's continued employment, or used as the basis for any employment decisions affecting the employee; or 2. The conduct, if unwelcome and severe or pervasive, creates an intimidating, hostile or offensive working environment, or unreasonably interferes with an employee's work environment.

Examples of behavior that could, if unwelcome and continuous or severe, constitute sexual harassment, besides sexual advances and requests for sexual favors include, but are not limited to:

- Unwanted flirting
- Suggestive whistling
- Leering
- Catcalls
- Long stares and sexually suggestive looks
- Using crude or offensive language
- Making derogatory comments about a person's sexual orientation
- Making jokes or comments about a person's physical attributes
- Inappropriate remarks or jokes about a woman's pregnancy
- Shoulder massages
- Hugging
- Back scratching.
- Gossiping or spreading rumors about sexual topics
- Engaging in sexual conversations that are overheard by others

- The use of demeaning or offensive
- Viewing or posting of sexual pictures, magazines, posters, videos or images
- Sending sexually explicit emails
- Viewing sexually-based or pornographic websites
- The use of Social networking sites for sexually-based messages or pictures
- Offensive gender based comments or behaviors that denigrate people simply because of their gender
- Texting or “sexting” sexually explicit messages or pictures via your cell phone

B. Other Types of Workplace Harassment

Any conduct based on a person's race, color, religion, gender, national origin, age, disability, sexual orientation or any other characteristic protected by local or federal law is considered harassing if it creates a hostile, intimidating or offensive work environment, or unreasonably interferes with an employee's work performance.

Discriminatory harassment can be verbal, non-verbal or physical. Examples of behavior that may, if unwelcome and continuous or severe, constitute other discriminatory harassment include, but are not limited to:

- Verbal, physical or cyber bullying including ridicule, mockery, insults, put-downs, threats or physically blocking a person's movement or ability to work.
- The use of demeaning or offensive names
- The use of slurs or epithets
- Gossiping or spreading rumors about co-workers.
- Telling insensitive jokes that are demeaning or degrading to a particular race, culture, sex or any other protected group.
- Menacing looks or gestures intended to threaten, intimidate or humiliate a co-worker.
- Making disparaging comments about a person's job
- Excluding or isolating someone from work-related activities and assignments because of a non work-related reason such as their race, religion, gender or sexual orientation.
- Sending offensive or harassing emails
- Viewing offensive websites
- Using social networking sites for harassing or offensive behavior.
- Texting pictures, messages or videos that offend, denigrate or harass a co-worker.
- literature, pictures or cartoons based on a protected characteristic
- Any physical aggression based on a protected characteristic.

Harassment can occur anywhere that an employee represents their organization. This includes work parties, dinner with clients, conferences, trade shows, sales calls and charity events. In Addition, Harassment is not limited to just co-workers. It can also occur with individuals not directly employed by an organization such as patients, contractors, consultants, delivery persons, sales persons, vendors and customers.

C. Reporting Harassment and Discrimination

Any employee who believes that harassment has occurred should report the incident immediately to Management or Human Resources. Our organization takes harassment and discrimination extremely seriously and will conduct a prompt, thorough investigation of all harassment complaints. Appropriate action will be taken based on the investigation. Any employee found to have engaged in any form of harassment or discrimination will be subject to appropriate disciplinary action, up to and including employment termination. Every conceivable effort will be made to handle all complaints and investigations with as much discretion and confidentiality as possible. In addition, this organization will not tolerate any retaliation against any employee for reporting harassment, making a harassment complaint or participating in a harassment investigation or legal proceeding pertaining to the harassment.

Employee: (please print)

Employee: (signed)

Date:

For Preview Only

Common Questions and Answers about Harassment from the EEOC:

<http://www.eeoc.gov/policy/docs/harassment-facts.html>

Title VII of the Civil Rights Act (Title VII) prohibits harassment of an employee based on race, color, sex, religion, or national origin. The Age Discrimination in Employment Act (ADEA) prohibits harassment of employees who are 40 or older on the basis of age, the Americans with Disabilities Act (ADA) prohibits harassment based on disability, and the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits harassment of an employee based on genetic information. All of the anti-discrimination statutes enforced by the EEOC prohibit retaliation for complaining of discrimination or participating in complaint proceedings.

The Supreme Court issued two major decisions in June of 1998 that explained when employers will be held legally responsible for unlawful harassment by supervisors. The EEOC's Guidance on Employer Liability for Harassment by Supervisors examines those decisions and provides practical guidance regarding the duty of employers to prevent and correct harassment and the duty of employees to avoid harassment by using their employers' complaint procedures.

1. When does harassment violate federal law?

Harassment violates federal law if it involves discriminatory treatment based on race, color, sex (with or without sexual conduct), religion, national origin, age, disability, genetic information, or because the employee opposed job discrimination or participated in an investigation or complaint proceeding under the EEO statutes. Federal law does not prohibit simple teasing, offhand comments, or isolated incidents that are not extremely serious. The conduct must be sufficiently frequent or severe to create a hostile work environment or result in a "tangible employment action," such as hiring, firing, promotion, or demotion.

2. Does the guidance apply only to sexual harassment?

No, it applies to *all* types of unlawful harassment.

3. When is an employer legally responsible for harassment by a supervisor?

An employer is always responsible for harassment by a supervisor that culminated in a tangible employment action. If the harassment did not lead to a tangible employment action, the employer is liable unless it proves that: 1) it exercised reasonable care to prevent and promptly correct any harassment; *and* 2) the employee unreasonably failed to complain to management or to avoid harm otherwise

4. Who qualifies as a "supervisor" for purposes of employer liability?

An individual qualifies as an employee's "supervisor" if the individual has the authority to recommend tangible employment decisions affecting the employee *or* if the individual has the authority to direct the employee's daily work activities.

5. What is a "tangible employment action"?

A "tangible employment action" means a significant change in employment status. Examples include hiring, firing, promotion, demotion, undesirable reassignment, a decision causing a significant change in benefits, compensation decisions, and work assignment.

6. How might harassment culminate in a tangible employment action?

This might occur if a supervisor fires or demotes a subordinate because she rejects his sexual demands, or promotes her because she submits to his sexual demands.

7. What should employers do to prevent and correct harassment?

Employers should establish, distribute to all employees, and enforce a policy prohibiting harassment and setting out a procedure for making complaints. In most cases, the policy and procedure should be in writing.

Small businesses may be able to discharge their responsibility to prevent and correct harassment through less formal means. For example, if a business is sufficiently small that the owner maintains regular contact with all employees, the owner can tell the employees at staff meetings that harassment is prohibited, that employees should report such conduct promptly, and that a complaint can be brought "straight to the top." If the business conducts a prompt, thorough, and impartial investigation of any complaint that arises and undertakes swift and appropriate corrective action, it will have fulfilled its responsibility to "effectively prevent and correct harassment."

8. What should an anti-harassment policy say?

An employer's anti-harassment policy should make clear that the employer will not tolerate harassment based on race, sex, religion, national origin, age, disability, or genetic information, or harassment based on opposition to discrimination or participation in complaint proceedings. The policy should also state that the employer will not tolerate retaliation against anyone who complains of harassment or who participates in an investigation.

9. What are important elements of a complaint procedure?

The employer should encourage employees to report harassment to management before it becomes severe or pervasive.

The employer should designate more than one individual to take complaints, and should ensure that these individuals are in accessible locations. The employer also should instruct all of its supervisors to report complaints of harassment to appropriate officials.

The employer should assure employees that it will protect the confidentiality of harassment complaints to the extent possible.

10. Is a complaint procedure adequate if employees are instructed to report harassment to their immediate supervisors?

No, because the supervisor may be the one committing harassment or may not be impartial. It is advisable for an employer to designate at least one official outside an employee's chain of command to take complaints, to assure that the complaint will be handled impartially.

11. How should an employer investigate a harassment complaint?

An employer should conduct a prompt, thorough, and impartial investigation. The alleged harasser should not have any direct or indirect control over the investigation.

The investigator should interview the employee who complained of harassment, the alleged harasser, and others who could reasonably be expected to have relevant information. The Guidance provides examples of specific questions that may be appropriate to ask.

Before completing the investigation, the employer should take steps to make sure that harassment does not continue. If the parties have to be separated, then the separation should not burden the employee who has complained of harassment. An involuntary transfer of the complainant could constitute unlawful retaliation. Other examples of interim measures are making scheduling changes to avoid contact between the parties or placing the alleged harasser on non-disciplinary leave with pay pending the conclusion of the investigation.

12. How should an employer correct harassment?

If an employer determines that harassment occurred, it should take immediate measures to stop the harassment and ensure that it does not recur. Disciplinary measures should be proportional to the seriousness of the offense. The employer also should correct the effects of the harassment by, for example, restoring leave

taken because of the harassment and expunging negative evaluations in the employee's personnel file that arose from the harassment.

13. Are there other measures that employers should take to prevent and correct harassment?

An employer should correct harassment that is clearly unwelcome regardless of whether a complaint is filed. For example, if there is graffiti in the workplace containing racial or sexual epithets, management should not wait for a complaint before erasing it.

An employer should ensure that its supervisors and managers understand their responsibilities under the organization's anti-harassment policy and complaint procedures.

An employer should screen applicants for supervisory jobs to see if they have a history of engaging in harassment. If so, and the employer hires such a candidate, it must take steps to monitor actions taken by that individual in order to prevent harassment.

An employer should keep records of harassment complaints and check those records when a complaint of harassment is made to reveal any patterns of harassment by the same individuals.

14. Does an employee who is harassed by his or her supervisor have any responsibilities?

Yes. The employee must take reasonable steps to avoid harm from the harassment. Usually, the employee will exercise this responsibility by using the employer's complaint procedure.

15. Is an employer legally responsible for its supervisor's harassment if the employee failed to use the employer's complaint procedure?

No, unless the harassment resulted in a tangible employment action or unless it was reasonable for the employee not to complain to management. An employee's failure to complain would be reasonable, for example, if he or she had a legitimate fear of retaliation. The employer must prove that the employee acted unreasonably.

Harassment Training Acknowledgement

I have attended (your organization name) Harassment training and I acknowledge the following:

1. I understand (your organization's name) policy on Harassment.
2. I understand the definition of Hostile Environment Harassment and I know that it is illegal.
3. I will not engage in behaviors that result in illegal workplace harassment.
4. I understand that there are very serious employment repercussions if I engage in harassment.
5. If I feel that I am being harassed I have the right and am encouraged to file a complaint in accordance with (your organization's name) complaint procedure.

Signature:

Print Name:

Date:

For Preview Only