



Workplace Feature

Sexual Harassment in the #MeToo Era

by
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Sexual harassment claims in the workplace are costly from a defense perspective, and can be even more costly in the court of public opinion. It is important to know the different types of harassment that can exist in the workplace, and what you can do to be proactive against such claims.

Harassment in the workplace takes three primary forms: quid pro quo, hostile work environment, and third-party harassment. Quid pro quo harassment means this for that. Typically, an individual in a position of power uses that position to obtain sex. It also can arise in the context of a supervisor demanding sexual favors in exchange for a promotion or favorable work assignment.

Second, harassment can take the form of a hostile work environment. A hostile work environment is an environment that is intimidating or hostile to work in for women or another protected class. It is defined as unwelcome conduct that unreasonably interferes with an individual's job performance, or creates an intimidating, hostile, or offensive working environment, for a protected class. In training managers, it is important to recognize and train that what may be welcome to oneself, may not be welcome to another, and what may be welcome in one setting may not be welcome in another. Similarly, conduct that was once welcome can be unwelcome and illegal.

The third category is third-party sexual harassment, which includes vendors, contractors, or customers. Employers must be conscience to respond to claims of harassment even if the harassment is from outside the company but still occurs during working hours.

The keys to a good defense include having a good harassment policy, repeated employee training, and a thorough investigation of all complaints.

There are a few factors to consider in evaluating whether you have a good sexual harassment policy. First, the policy should be in your handbook and reviewed with every employee at the time of hire.

The policy should prohibit discrimination and harassment on the basis of race, color, sex, religion, age, national origin, disability, gender identity, sexual orientation, pregnancy, or any other legally protected status under federal, state, or local law. The policy also should define harassment and give some specific examples. Each employee should understand the way to report harassment, and have more than one reporting channel. Each manager or supervisor who receives a complaint must be

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required to report it to Human Resources immediately for investigation. Lastly, the policy should clearly state that employees will not be retaliated against for honest reporting of harassment.

Employers should include sexual harassment training for all employees as part of the new hire orientation. Additionally, the training should be performed regularly to remind all employees of the policy and their obligations to report and investigate. Importantly, all supervisors and managers should be included in the training.

Lastly, every sexual harassment complaint that is received should be thoroughly investigated. Supervisors can receive training to learn how to conduct a thorough and complete investigation, but a key part of any investigation is taking steps to ensure there is no retaliation for honest participation in an investigation.

Just having a sexual harassment policy is no longer enough. While still important, employers must train, implement, and take action upon reports to help prevent all types of workplace discrimination and retaliation.

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