

# Revamping Your Harassment Policies Before You Face Workplace Issues

by SHAYDA ZAERPOOR LE

In light of the current focus on harassment in the workplace, as well as the renewed attention on employee trainings and mitigating and responding to employee complaints, now is a good time to revisit or potentially revamp your workplace policies on these issues.



Workplace policies prohibiting discriminatory behavior are often, and justifiably, focused on the legal parameters around prohibited conduct and legal definitions. While these types of policies get the job done, some revision can provide your employees with more affirmative tools and helpful information, and can serve the organization in encouraging desired behaviors, rather than just prohibiting illegal ones.

First, think beyond legal definitions. This may be unexpected advice from an employment lawyer, but consider that the audience for the policy is typically going to be someone without legal training and may be someone without significant experience or even awareness of issues surrounding harassment. The average employee is more likely to read the legal definition for harassment and instead default to a subjective evaluation of what would feel like harassment to him or her. Conversely, policies that provide information in plain language are more likely to be understood, appreciated and followed. For example, the policy can explain that harassment has both an objective and subjective component, and that the circumstances and the perspective of the individual are relevant to the evaluation.

Similarly, the organization's policies and definitions should highlight more than just sexual harassment. Although some types of discriminatory behavior are more prevalent than others, employees need to understand that differential behavior based on any protected status or activity is implicated. Again, helping employees to understand that the phrase "protected class" covers many additional categories and considerations beyond just gender, race, age or disability, can help them to appreciate that workplace behavior can also implicate many types of people. Military status, use of leave, family relationship or issues of domestic violence are all examples of protected categories that an average employee may take for granted.

Next, highlight your standards. You can craft a policy about behavior that is legally impermissible, or behavior which can result in legal liability for the organization, but a thoughtful owner or management professional can also identify additional behavior that you do and do not want to see from your team members. Although legal compliance is an important and sometimes difficult undertaking, it is also the floor for workplace behavior. In fact, highlighting behaviors that the organization is choosing to prohibit or respond to can be a powerful tool in mitigating and avoiding subsequent illegal behavior. Setting the bar higher for workplace conduct can ultimately make it easier to maintain

compliance with legal requirements. It also communicates to employees that you will not tolerate unacceptable (and unproductive) behavior, even if such behavior is not unlawful.

In addition, consider providing examples of behaviors or statements which can be problematic, or which are more commonly misunderstood. Most, if not all, employees will understand that it is illegal to ask or require another employee to submit to a sexual advance as a condition of a workplace term or benefit. However, many employees may not appreciate that a social invitation or a request for a date may feel like an uncomfortable advance, particularly if it is declined and subsequently repeated. Similarly, many employees may not understand that comments about gender-based stereotypes are generally not permissible, even where they do not relate to sexuality or physical attractiveness. The organization need not list out every example of behavior or language that you want to prohibit, but providing some examples of behaviors you would like to discourage can help to shape the culture.

The organization's policies also outline what actions you require in the event of an actual or possible violation. Although no company wants to receive a

complaint or allegation of harassment, it is likely to become a much larger problem when issues of harassment go unreported—complaints are in fact preferable to silence. To that end, it is important to have a complaint policy which helpfully outlines what types of issues must be reported, such as instances where an employee has credible information about an issue, not simply instances where the employee was affected by or witnessed the event. It should also explain where reports can be lodged, what resources might exist for an employee to request assistance or accommodations while the complaint is under review, and an assurance that all complaints are pursued and investigated. These policy components can help to assure employees that information of this nature can and should be freely reported. In addition, your policy should make clear that retaliation is prohibited following the lodging of a complaint or participation in an investigation. But beyond that assertion, employees are likely to feel much more encouraged by this protection when the policy

makes clear that it does not simply prohibit retaliation in the form of outward hostility, but also protects against more nuanced workplace issues such as shift assignments, work allocation and even the cold-shoulder.

A robust and user-friendly policy can be an important component of keeping employees informed about appropriate behavior, as well as helping them to feel comfortable and confident enough to provide you with the necessary information which is essential to taking appropriate steps and mitigating instances of potential harassment.

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