



# **Sexual Harassment in the Workplace**



**BENEFITS &  
PERKS**



**HIRING &  
ONBOARDING**



**MANAGING  
YOUR TEAM**



**KEEPING  
COMPLIANT**



**RUNNING A  
BUSINESS 101**

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## INTRODUCTION

# Sexual Harassment in the Workplace

Sexual harassment is a serious issue for all types of employers, and shouldn't be overlooked. Besides the obvious possibility of embarrassing and costly lawsuits resulting from sexual harassment and retaliation claims, there are additional reasons to tackle harassment.

Though sexual harassment has been illegal for decades, high-profile cases in the news are a prescient reminder that it can pervade many a workplace. The best defense against sexual harassment is to educate yourself and your employees on how to recognize and ultimately prevent sexual harassment in your place of business.



*“The best defense against sexual harassment is to educate yourself and your employees on how to recognize and ultimately prevent sexual harassment.”*



## PART ONE

# What is Sexual Harassment?

**The EEOC defines sexual harassment as: “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance or creates an intimidating, hostile or offensive work environment.”**

Some people may have a clear picture in mind when they think of the term “sexual harassment”. However, it can occur in a variety of circumstances, some of which may not be common knowledge for your employees. Some aspects which may apply to any incidence of unlawful sexual harassment include (but aren’t limited to):

- ✓ The victim can be anyone affected by the offensive conduct.
- ✓ The harasser and victim do not have to be of the opposite sex, and either harasser or victim may be of either sex.
- ✓ The harasser can be the victim’s supervisor, a supervisor in another area, a co-worker, an agent of the employer, or a non-employee.



## **Sexual harassment claims generally fall into two categories:**

### **1) Quid pro quo**

Translated from Latin to “this for that,” quid pro quo harassment is where a supervisor or manager seeks sexual favors in return for a job benefit (e.g., a promotion or raise) or to avoid a job detriment (e.g., a demotion or pay cut).

### **2) Hostile work environment**

Hostile work environment has become a general term for any type of harassment that involves, per the EEOC, “conduct [that] is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.”



## PART TWO

# Preventing Sexual Harassment

When your company has strong policies against harassment that are clearly communicated and enforced throughout the organization, it helps employees to feel safe in their work environment. This can **boost employee morale and retention**, strengthening the overall health of the company.

Not sure where to begin? While many aspects of preventing sexual harassment in the workplace will require the help of legal counsel to finalize, here's an overview of some steps to help you get started.



*Good morale means employees are productive, collaborate better, miss fewer workdays, and feel more satisfied by their work.*

[LEARN MORE](#)

# Find Out Which Laws Apply to Your Business

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**Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964 and its state and local equivalents.**

Sexual harassment prevention training requirements generally vary by state. For example, Maine and California have both passed legislation that mandates training. In Maine, companies with 15 or more employees are required to receive sexual harassment prevention training, while California's law applies only to companies with 50 or more employees and is required only for supervisory employees. Some states, such as Florida, require training only for specified government employees.

In addition, New York state passed several **measures aimed at preventing sexual harassment** in the workplace on a statewide level. On the local level, New York City has also passed legislation around sexual harassment. The Stop Sexual Harassment in NYC Act, comprised of 11 separate bills intended to protect both public and private employees from sexual harassment in the workplace, was signed into law by Mayor Bill de Blasio on May 9, 2018.

The new **City law requires** private employers with 15 or more employees (including interns) to conduct annual anti-sexual harassment training for all employees employed in New York City, including supervisors and managers.

For additional requirements laid out by the Stop Sexual Harassment in NYC Act, read our blog post on the legislation.

State and local laws may include specific requirements as to the type of information that must be included in the training, when the training needs to be completed, who needs to complete the training, attendance records of trainings, and more. Make sure to look up the laws within your state to determine which apply to your business.

Additionally, anti-harassment laws often require businesses to display posters within the workplace that provide information about the law. Take note of these provisions in any applicable laws so that you can be sure to keep compliant.

Some business owners may find that their company is not subject to any requirements regarding anti-harassment training. Even where this is the case, training all employees is a best practice. It demonstrates a company's commitment to maintaining a harassment-free workplace and reduces the risk of legal claims. Having clear policies and training on sexual harassment can also help foster a healthier, happier workplace, which is always a good goal to aim for.

# Create Clear, Robust Policies

**Do you have clearly written company-wide policies? Here are just a few you should have:**

- ✓ Equal employment opportunity
- ✓ Anti-discrimination
- ✓ Anti-harassment
- ✓ Anti-retaliation

As a best practice, these policies should be included in an employee handbook, and your company's complaint procedure should be outlined in these policies. Encourage employees to report discrimination, harassment, retaliation, or other wrongful conduct as soon as possible so that any incident can be promptly investigated and addressed.

Employers should check the laws where they operate to ensure they're complying with all applicable anti-harassment policies and notice requirements.

For example, New York State's law (mentioned above) will require employers to adopt a sexual harassment prevention policy to be distributed in writing to employees. The New York State Department of Labor will be working with the New York State Division of Human Rights to develop a model sexual harassment policy, and employers'

sexual harassment policy will need to meet or exceed the standards contained in the state's model policy. This law will take effect October 9, 2018.

Even if employers are not required to have written policies, it is a best practice for any business to have an employee handbook that outlines the company policies. The next step is to make sure your company's handbook includes a section on anti-harassment, including sexual harassment.

A robust anti-harassment policy demonstrates that an employer is serious about preventing sexual harassment. In addition, such policy provides a mechanism for internal complaints that helps resolve employee concerns before they escalate into litigation. This policy should:

- ✓ State that the company prohibits harassment, including sexual harassment
  - ✓ Define harassment and sexual harassment, and include examples
  - ✓ Explain how to report concerns of inappropriate conduct, providing employees more than one way to report any concerns
- State that the company prohibits retaliation against any employee in response to filing or responding to a bona fide complaint of discrimination or harassment, appearing as a witness in the investigation of a complaint, or serving as an investigator of a complaint
- ✓ Outline any consequences offenders will face



## STEP THREE

# Communicate Your Policies

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Once you've created your rock-solid company policies, communicate them clearly and effectively to your team.

During the onboarding process, it's a good idea to have employees provide signed acknowledgments that they received, reviewed, and understand the policies. This helps to ensure that everyone understands the policy and is on the same page.

The policies should be redistributed to all employees any time they're updated. However you decide to approach it, make sure that company policies are easily accessible for everyone within your organization.



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# Train Your Supervisors

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**Train your team on your policies and procedures. Educate your managers on policies and how they should uphold them, so they can reinforce the policies with their team members.**

Note that some jurisdictions require employers to conduct sexual harassment prevention training on an annual or other required regular basis.

Employers should review applicable state and local requirements may govern the details of sexual harassment prevention training.

You can approach training in several ways, like a lunch and learn that focuses on one topic at a time, or immersive management training sessions at a company retreat.

There are many resources available to guide you on developing a training plan, even if your state or local laws don't outline the requirements. A quick online search will give you plenty of results to suit whatever your needs may be.

Supervisor training should focus on a supervisor's role and responsibilities, such as knowledge of the policy and procedures, reporting obligations, and refraining from retaliation.

Additionally, create opportunities for managers to relay the information to their employees and train new team members as they onboard as well. As a best practice, you should document employees who receive training by sign-in sheets or other written acknowledgment.

**As a brief outline, sexual harassment prevention training should, at a minimum, include the following topics:**

- ✓ Defining sexual harassment, including examples
- ✓ Employer and individual supervisor liability
- ✓ Conduct outside of the workplace and on social media
- ✓ Retaliation claims
- ✓ Types of remedies
- ✓ Obligation to report
- ✓ Reporting and escalation procedures

## Train the Rest of Your Employees

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Communicating your company's anti-harassment policy to all employees is key, but you don't have to stop there. Whether or not state or local laws require a training for all employees, such training is a good idea.

Bringing all team members together to learn about your company's anti-harassment policies and create awareness helps to enforce respectful behavior, prevent workplace harassment, and hopefully help with retention. Encourage employees to use the internal complaint mechanism.

Additionally, make sure to include all your employees in these trainings, not just full-time workers. Part-time and temporary employees should also be required to attend.



*Make sure to include all your employees in anti-harassment trainings, not just full-time workers.*

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## STEP SIX

# Enforce the Policy Consistently

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**A policy is just words on a page if there's nothing to back it up.**

Once you have put the policy in place and trained the organization, make sure that policy is enforced consistently. All employees should be required to adhere to the company's anti-harassment policy, and be held accountable if they fail to do so.

## STEP SEVEN

# Investigate Internal Complaints Promptly and Take Appropriate Action

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**Similarly, it's important to promptly respond to sexual harassment complaints.**

Addressing any issues in a timely manner is another key element of demonstrating that the policy holds weight, and you're serious about upholding it. When appropriate, conduct a thorough investigation. After the investigation, take the appropriate corrective actions.

## Protect Your Company

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There is no guarantee your company will never face an employment lawsuit. While larger companies often have access to legal counsel, small businesses without these resources can be particularly vulnerable to employment claims. However, you can take steps to protect your company and the employees who work for you in order to reduce risk.

Even if you take all the right steps, it may also be wise to protect your company with **Employment Practices Liability Insurance** (EPLI). EPLI provides coverage for claims made by employees, former employees, and potential employees alleging wrongful employment acts, including sexual harassment.

Justworks provides access to EPLI coverage with one of the leading providers in the industry. An EPLI policy can give you that extra peace of mind knowing that your company has coverage should claims arise.



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## CONCLUSION

# Justworks Can Help

**Justworks** requires EPLI coverage for all its customers because of the sometimes costly nature of wrongful employment practices lawsuits. When you start with Justworks, you're enrolled in coverage under our EPLI policy that covers up to \$1 million per covered claim (subject to an aggregate limit of \$5 million).

In addition, Justworks' customers can store their employee handbook in their docs center, and make the document accessible to team members.

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