

# #MeToo And The Need For Sexual Harassment Training And Sexual Harassment Investigations

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Preventing sexual harassment is not only the right thing to do, but legally necessary to prevent significant legal liability from attaching to employers. If your company is wondering how to minimize liability in the event of a sexual harassment situation in the workplace, it is important to understand what harassment means, legally, and to appreciate the need for staff training as well as maintaining policies for investigations.

## ***Sexual Harassment – Understand the laws and train your staff***

Sexual harassment, by definition, includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Such conduct is considered unlawful when submission to such conduct is explicitly or implicitly a term or condition of employment, when submissions to or rejection of such conduct is used as a basis for employment decisions, and when such conduct unreasonably interferes with the affected person's work performance, or creates an intimidating, hostile or offensive work environment.

The #MeToo movement shows how critical it is to view conduct from the perspective of the affected person. The focus is on the recipient's interpretation of the behavior, and his or her level of comfort or discomfort with the conduct, particularly when such conduct might be construed in any way to be of a sexual nature.

All levels of staff need to be trained, with zero tolerance as the overarching message. Retaliation against a victim must be strictly prohibited both for filing a complaint or lawsuit alleging sexual

harassment, or for resisting sexual advances. Again, consider the viewpoint of the affected person, as even perceived retaliation must be avoided.

### ***Sexual Harassment Investigations – Know the steps to take:***

If an allegation is made, employers must properly investigate the conduct in order to take corrective action and to limit the company's liability.

Begin with policies to set the standards. Specify a formal reporting procedure which may involve human resources, management, in-house counsel, and/or external counsel, and define every process for receipt of complaints, for preserving documents, for initiating an investigation, for preparing a report, and for instituting a code of conduct for treatment of the parties involved. The procedures must also safeguard the privacy of the victim and to the extent possible, prohibit any type of retaliation.

Due to the potential for litigation to arise, it is recommended to bring an outside attorney investigator in to perform an independent workplace investigation, as the attorney-client and work-product privileges may apply to investigations, allowing employers to make transparent and confidential personnel determinations.

### ***An investigation must commence immediately after an allegation is received, starting with these steps:***

- Interviews with the parties involved and witnesses should be taken and memorialized.
- Interim actions should be taken as appropriate to the circumstances to prevent any further harm from occurring.
- Any relevant documents, emails, and phone records should be requested, obtained, and preserved.

The investigation should be conducted, documented and committed to a formal written report that sets forth the findings and conclusions. Finally, the Complainant should be notified of the investigator's determination, and any appropriate corrective actions should be taken.

#MeToo shined a spotlight on sexual harassment, and employers and HR professionals can prevent sexual harassment from occurring in their workplaces by providing training and setting expectations of conduct. Understanding the law and having the right policies in place will streamline the steps to take when corrective action is required, and when legal liability is at stake.

Since this article was originally written, it has been exciting to see that companies and employers generally have prioritized addressing the workplace issues raised by the #MeToo movement in various ways: an uptick in requests for legal help in updating workplace policies, an increase in calls for live, on-site training, and a rise in requests to conduct independent workplace investigations. Generally, it can be said that the movement has created a welcome awareness that is likely to be permanent.

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