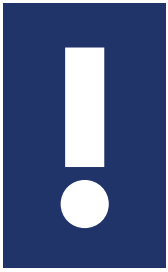


BEST PRACTICES FOR MANAGING  
**SEXUAL  
HARASSMENT**  
— IN THE WORKPLACE —





**SEXUAL HARASSMENT IS ONE OF THE MOST COMMON TYPES OF HARASSMENT IN THE WORKPLACE AND COSTS EMPLOYERS MILLIONS OF DOLLARS EACH YEAR IN SETTLEMENTS, ATTORNEYS' FEES, AND COURT COSTS.**

If you're the owner of a small or medium-sized business, the cost of just one sexual harassment lawsuit could sink your ship. In addition, harassment in the workplace can have a detrimental effect on your company culture and employee morale.



Your staff spends a lot of time together – sometimes as much as or more than they spend at home – so forming relationships is natural. Some of the bonds are harmless but others wander into dangerous territory. It's your job to make sure your organization is a comfortable, respectful, and safe place for everyone to work.

That's why training every supervisor and employee about sexual harassment (and all other forms of harassment and discrimination) is vital. Taking a proactive approach to preventing sexual harassment in your workplace is key to avoiding both repercussions in the office and trouble in the courts.



Sometimes, sexual harassment can happen right in front of you, and you may not even realize it. It can be as simple as repeatedly asking someone on a date or even telling a joke.

# Here are Five Things You May Not Know about Sexual Harassment



1

The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.

2

The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.

3

The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

4

Unlawful sexual harassment may occur without economic injury to or discharge of the victim.

5

The harasser's conduct must be unwelcome.



# Four Ways to Manage Sexual Harassment in the Workplace



Sexual harassment is a form of sex discrimination that violates

## TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.

Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

1

## Create and Communicate a Clear Harassment Policy

No matter the size of your workforce, the first step to preventing workplace harassment is creating an anti-harassment policy that details both unacceptable and acceptable behaviors. If you choose to prohibit employees from dating one another, this is the place you'd put that in writing.

A clear harassment policy lets your employees know what you will or will not tolerate and that you take sexual harassment seriously. **The policy should also include the following:**

- Definition of sexual harassment
- Complaint process and reporting procedures
- Anti-retaliation provisions



Make sure you communicate and review the policy in detail, and then have employees sign to acknowledge they have read and understand it. Keep the signed acknowledgement in each employee's personnel file. In the event you ever need to defend your company against a harassment claim, the fact that you have a policy you can prove your employees know about will help your case.

## ANTI-DISCRIMINATION LAWS

Assure employees they can report an incident of sexual harassment without fear of retaliation. Anti-discrimination laws prohibit employers from taking adverse action against employees who file harassment complaints or participate in an investigation. Adverse action includes demoting an employee, reducing his or her salary or even giving a negative performance appraisal when one isn't warranted.



In 2020,  
**RETALIATION**  
was the most frequently  
filed charge with the EEOC,  
accounting for more than half  
of all charges filed.

### Employers can be proactive about avoiding charges of retaliation by:

- Communicating with human resources professionals prior to taking an adverse action
- Documenting the reason for any adverse employment action against an employee





## 2

# Train Employees about Sexual Harassment in the Workplace

Implement anti-harassment training programs that go beyond your policy. It's important employees understand the basic definition as well as the types of sexual harassment.

## SEXUAL HARASSMENT DEFINED

By definition, sexual harassment can include all of the following:

- Unwelcome sexual advances
- Requests for sexual favors
- Other verbal or physical conduct of a sexual nature that affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment



## Harassment becomes unlawful when:

1. Enduring the offensive conduct becomes a condition of continued employment (quid pro quo) or
2. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive (hostile work environment).

Here's a little more information on quid pro quo and hostile work environment:

### QUID PRO QUO

- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual
- Tangible employment action against the victim (hiring, firing, changes in pay, benefits or work duties)
- Involves monetary loss or change in job (firing, demotion)

### EXAMPLE

Jennifer's boss tells her the only way she's receiving a raise is to sleep with him.

### HOSTILE WORK ENVIRONMENT

- Speech or conduct that is severe and/or pervasive enough to create an abusive or hostile work environment
- Applies to items that are emailed, texted, electronically provided, or displayed in the workplace that interfere with job performance or that create an abusive or hostile work environment

### EXAMPLE

Judith repeatedly emails her team sexually explicit pictures even after a few team members tell her they find them offensive.



### 3

## Train Supervisors about Sexual Harassment in the Workplace

Training your leadership team about sexual harassment policies and procedures is an important component of managing sexual harassment. Meet with them separately from the rest of the staff and focus on making sure they understand how to recognize harassment, respond appropriately, and prevent it when possible.

The company is always responsible for harassment by a supervisor that results in a tangible employment action. But even if it doesn't, the employer may still be held accountable unless it can prove it exercised reasonable care to prevent and promptly correct any harassment and that the employee unreasonably failed to take advantage of the company's complaint or corrective policy and procedures.

### 4

## Investigate Sexual Harassment Claims Promptly and Thoroughly



Train supervisors to take immediate and appropriate action when an employee makes a complaint. Conducting a thorough investigation minimizes potential damages to employees – and your company.

### ✓ PROTECT THE ALLEGED VICTIM

It may be necessary to separate the potential victim from the accused to prevent further harassment or retaliation. Consider transferring the accused party to another position or placing him or her on administrative leave with pay pending the investigation. Be careful about relocating the accuser because that could be interpreted as retaliation.



## ✓ **DECIDE ON AN INVESTIGATOR(S)**

When it comes to choosing an investigator (or team of investigators), employers typically work with experienced HR professionals, and/or legal counsel. It's best to decide on an investigator before you're dealing with an actual claim. The investigator should neither have a relationship with any of the parties involved nor a stake in the outcome. Your state may have special rules regarding who may conduct workplace investigations so always double check those.

## ✓ **CREATE AN INVESTIGATION PLAN**

In order for the investigation to be detailed and efficient, you and/or your team of investigators should create a plan. It should include specifics about the issue, a potential witness list, strong interview questions, and a process for retaining relevant documents.

## ✓ **CONDUCT INTERVIEWS**

Begin by interviewing the accuser and let him or her know that you will be reporting everything to the human resources department but will maintain as much confidentiality as possible with others who may be involved.

In situations as personal as sexual harassment, it's all about perspective. Even two people who sat right next to each other may have different interpretations of what they saw. The main job of the interviewer is to gather facts while maintaining objectivity.

Investigators should look for discrepancies in stories and document everything in the event the case ends up in court. At the end of each interview, the investigator should summarize each person's report and, if possible, submit it to the interviewee for approval and acknowledgement.



## ✓ **DECIDE ON VALIDITY AND CORRECTIVE ACTION**

Once the investigator has completed all the interviews and gathered all the known evidence, he or she should make a decision about whether or not the case is valid. The investigator will also make a recommendation for employment actions against the accused (if the interviewer finds the accused guilty). Corrective action can include everything from training, written warnings, reassignment, suspension, or even termination.

The corrective actions should be appropriate to the level of the offense. For example, remedial training may be appropriate for an employee whose offense is limited to mildly inappropriate comments, while termination may be appropriate for an offender who has made inappropriate physical contact or demanded sexual favors in return for beneficial treatment. In a “he said, she said” case with few witnesses, investigators may find harassment claims inconclusive. In response, the company should consider a revamped company-wide anti-harassment and anti-discrimination training program.

Take steps to remedy any loss the complainant may have suffered because of the harassment, such as denial of promotions or lost wages. If the investigation does not lean in favor of the accuser, ensure that he or she feels as though the investigator handled things fairly. Continue to follow up until the complainant is comfortable again.

## ✓ **FILE WRITTEN REPORT AND AUDIT PROCESS**

Ensure all evidence obtained during the investigation is preserved. Federal regulators require that employers keep personnel records (including performance and disciplinary notices) for at least three years after termination or the duration of any claim or court case involving the employee.



The best time to review your company’s harassment policies and procedures is when you’ve just completed an investigation. What went right? What went wrong? Use it as an opportunity to look for ways to improve the process.

# How a PEO Can Help Your Company with Workplace Investigations

A PEO like FrankCrum can help you prevent sexual harassment in the workplace by helping you create a sound harassment policy, keeping you up to date on changes in regulations with regular webinar trainings, and providing you with guidance on investigating complaints and interviewing employees.

## **ANTI-HARASSMENT POLICY**

An effective policy will include an anti-harassment statement and reporting procedures. Those reporting procedures should specify at least two people with whom an employee can file a complaint. FrankCrum recommends the following be included in the implementation of an anti-harassment policy.

- Provide every employee, at the time of hire, with a copy of the company's anti-harassment policy, preferably as part of the employee handbook.
- Ensure that each employee signs a statement indicating he or she understands and will abide by the company's anti-harassment policy. Save it in the employee's personnel file.
- Provide periodic refresher training on anti-harassment and anti-retaliation policies along with examples of sexual harassment with all employees and supervisors.
- Review the company's anti-harassment policy once a year (at a minimum).
- Enforce the company's anti-harassment policy by investigating all complaints promptly and thoroughly.
- Take corrective action when it is believed that harassment has occurred to ensure it doesn't happen again.



## INVESTIGATION GUIDANCE

If you have a sexual harassment investigation on your hands and aren't sure of the process, we're here to help. Our FrankAdvice support team provides forms and best practices for conducting workplace investigations and interviews. We can also help you stay in compliance with state and federal laws by communicating changes in Equal Employment Opportunity Commission (EEOC) and other agency regulations.

## UNDERSTANDING THE EEOC CLAIMS INVESTIGATION PROCESS

When investigating allegations of sexual harassment, the EEOC looks at the whole record, the circumstances, such as the nature and severity of the allegations, and the context in which the alleged incidents occurred.

**EEOC remedies for complaints regarding sexual harassment or sex discrimination may include:**

- Job reinstatement
- Back pay and benefits the victim should have earned
- Compensatory damages
- Punitive damages
- Liquidated damages (in sex-based wage discrimination) equal to the amount of back pay awarded to the victim

It's important for employers to be aware of just how costly sexual harassment can be. In 1998, hundreds of women who worked on Mitsubishi's assembly line in Illinois claimed their male co-workers fondled them, demanded sexual favors and retaliated against those who didn't comply.

**MORE THAN  
400 WOMEN  
RECEIVED  
\$34 MILLION**

in monetary relief. This remains one of the most publicized sexual harassment cases in history.





# FrankAdvice's FAQ (and Answers) About Sexual Harassment in the Workplace

Q

**We are a small company, just starting out, and I don't have an HR department. I only have one supervisor with whom the employees could potentially make a claim. What should I do?**

**My receptionist feels the driver of a delivery company is harassing her. Do I have to do anything about it since the harasser is not my employee?**

A

Allow the employees to come to you, the owner, as a second contact. If that is not a viable option, we suggest you train a team leader on how to handle sexual harassment complaints and have that person be the second point of contact.

Yes, your company is responsible for having a workplace that is free from harassment. That includes harassment from vendors, customers, or any other third parties. We recommend you contact the delivery company and let them know of the alleged harassment.







**Is it automatically considered sexual harassment if one employee asks another employee out on a date?**

If the employee asks in a polite way without any sexual propositions or anything the other employee might consider inappropriate, then it's likely not unlawful harassment. However, if the employee who's asking is turned down and continues to ask, this could be considered unlawful harassment.

**If an employee claims he or she is being harassed, should I ask the employee to submit the complaint in writing or via email so they don't change the story later on?**

Many companies have policies requiring employees to submit complaints in writing. However, this could create a challenging situation if the employee is too embarrassed or scared to write out the complaint. In the court's eyes, a verbal complaint is just as valid as a written one. If this is the case, you, as the employer, should document the employee's account, ask them to review it for accuracy and sign it.

**What happens if the alleged harasser is a manager who is vital to a department? Can we transfer the accuser who is an entry-level employee to another department?**

No. If you alter the accuser's position in any way, he or she could construe it as retaliation. If you have to move someone to separate the two parties from each other, the manager should be the one you choose. Depending on the nature of your business, scheduling the manager to work an alternate shift could be a better solution.



# The Importance of Preventing Sexual Harassment in the Workplace

Sexual harassment in the workplace harms you and your whole workforce, even those who aren't directly involved. You want your staff to feel like they're treated well, with respect and dignity. Those who engage in, condone, or ignore sexual harassment are in direct conflict with standard company values.

In addition to moral reasons for preventing sexual harassment within your company, you must remain in compliance with Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on sex (including gender identity, change of sex and/or transgender status). You also must remain in compliance with similar state civil rights laws and fair employment laws.

We can help you create the harassment policies that will best protect your business and your employees. We can also answer any questions you might have about the investigation or EEOC claims process.



Do you have additional questions about how to protect yourself and your employees?  
**Be sure to [check out our webinar on sexual harassment in the workplace.](#)**



Partnering with FrankCrum grants you access to a team of HR experts.  
**If you have questions about any HR-related issues, call 1-866-697-6576.**

The purpose of this information is to assist in the discussion of risk, concerns and general requirements. It is not legal counsel, tax advice or judgment of a business's compliance or non-compliance. It is recommended that you seek qualified tax and legal counsel familiar with your particular circumstances before taking any action.

