

COMPLIANCE OVERVIEW

Provided by Baldwin Krystyn Sherman Partners

Preventing Workplace Harassment: EEOC Practices for Employers

Harassment is a form of employment discrimination that may violate federal laws like Title VII of the Civil Rights Act, the Age Discrimination in Employment Act and the Americans with Disabilities Act. These laws are enforced by the Equal Employment Opportunity Commission (EEOC).

Following several high-profile new reports of workplace harassment in 2017, the EEOC issued a list of best practices for employers to use in their workplaces to prevent harassment. This list was based on earlier work by the EEOC's Select Task Force on preventing workplace harassment.

The EEOC's document does not create any new legal requirements, but is intended to enhance employers' compliance efforts. This Compliance Overview provides a summary of the EEOC's "promising practices" document.

LINKS AND RESOURCES

- EEOC's [Promising Practices for Preventing Harassment](#) issued in November 2017
- [Full report of the Co-chairs of the EEOC's Select Task Force on the Study of Harassment in the Workplace](#) issued in June 2016

HIGHLIGHTS

EEOC'S CORE PRINCIPLES FOR PREVENTING HARASSMENT

- Committed and engaged leadership
- Consistent and demonstrated accountability
- Strong and comprehensive harassment policies
- Trusted and accessible complaint procedures
- Regular, interactive training tailored to the audience and the workplace

ANTI-HARASSMENT STRATEGY

- Commitment to a harassment-free workplace should be part of an overall strategy of diversity and inclusion.

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.



BALDWIN
KRISTYN SHERMAN

CORE PRINCIPLES

According to the EEOC, five core principles have generally proven effective in preventing and addressing harassment. These principles are listed below, and each is discussed in more detail later in this document.



LEADERSHIP

To achieve a workplace without harassment, employers should consistently demonstrate a commitment to creating and maintaining a workplace culture in which harassment is not tolerated. This should be part of an overall strategy that promotes diversity, inclusion and a belief that all employees in a workplace deserve to be respected, regardless of their race, religion, national origin, sex (including pregnancy, sexual orientation or gender identity), age, disability or genetic information.

Executives and other individuals in positions of authority should lead these efforts and ensure that the workplace has a comprehensive written harassment policy, a complaint system with full resources and an effective anti-harassment training program. The table below provides additional examples of leadership actions an employer may take to show that it does not tolerate harassment in the workplace.

LEADERSHIP ACTIONS	
Inform employees	<input type="checkbox"/> Clearly, frequently and unequivocally state that harassment is prohibited.
Enforce policies	<input type="checkbox"/> Incorporate anti-harassment policy enforcement and compliance into the workplace framework.
Allocate resources	<input type="checkbox"/> Allocate sufficient resources and staff time for effective harassment prevention strategies.
Empower personnel	<input type="checkbox"/> Provide appropriate authority to individuals responsible for creating, implementing and managing harassment prevention strategies.
Assess risks	<input type="checkbox"/> Assess and take steps to minimize or eliminate harassment risk factors.

Train leaders	<input type="checkbox"/> Engage all executives, managers, supervisors and other leaders in harassment prevention and correction efforts.
Establish systems	<input type="checkbox"/> Ensure that the workplace has a comprehensive written harassment policy, a fully resourced complaint system and an effective anti-harassment training program.

ACCOUNTABILITY

Because a workplace culture is manifested by which behaviors are formally and informally rewarded or punished, employers should demonstrate to their employees that they take workplace harassment issues seriously through appropriate responses to harassment and complaints. For example, employers should encourage employees to report harassing behavior and should acknowledge employees' efforts to help maintain a harassment-free workplace. In addition, employers should ensure that individuals who engage in harassment receive prompt, consistent discipline that is proportional to the severity of the harassment.



The principle of accountability also includes exercising appropriate oversight of an employer's harassment policy, complaint system, training, and any related preventive and corrective efforts. The table below provides examples of actions an employer may take to help maximize accountability.

ACCOUNTABILITY ACTIONS	
Review	<input type="checkbox"/> Periodically evaluate strategies to prevent and address harassment. <input type="checkbox"/> Include review and discussion of preventive measures, complaint data and corrective action with appropriate personnel.
Address	<input type="checkbox"/> Ensure that concerns or complaints regarding the policy, complaint system or training are addressed appropriately.
Test	<input type="checkbox"/> Direct staff to periodically, and in different ways, test the complaint system to determine if complaints are received and addressed promptly and appropriately.
Change	<input type="checkbox"/> Ensure that any necessary changes are implemented and communicated to employees.
Seek feedback	<input type="checkbox"/> Conduct anonymous employee surveys to assess whether harassment is occurring or is perceived to be tolerated. <input type="checkbox"/> Partner with researchers to evaluate their harassment prevention strategies.

WRITTEN HARASSMENT POLICIES

Employers should establish a written harassment policy and communicate it to employees in a clear, easy-to-understand style and format. The table below lists some key provisions that employers should include in their written harassment policies.

WRITTEN POLICIES
<i>Should include clear and unequivocal statements that:</i>
<input type="checkbox"/> The policy applies to employees at every level of the organization, as well as to applicants, clients, customers and other relevant individuals;
<input type="checkbox"/> Harassment based on, at a minimum, any legally protected characteristic is prohibited;
<input type="checkbox"/> Employees are encouraged to report conduct that they believe may be prohibited harassment (or that, if left unchecked, may rise to the level of prohibited harassment), even if they are not sure that the conduct violates the policy;
<input type="checkbox"/> The employer will provide a prompt, impartial and thorough investigation;
<input type="checkbox"/> The identity of individuals who report harassment, alleged victims, witnesses, and alleged harassers and other information obtained during an investigation will be kept confidential to the extent possible and permitted by law, consistent with a thorough and impartial investigation;
<input type="checkbox"/> Employees are encouraged to respond to questions or to otherwise participate in investigations regarding alleged harassment;
<input type="checkbox"/> The organization will take immediate and proportionate corrective action if it determines that harassment has occurred; and
<input type="checkbox"/> Retaliation is prohibited, and that individuals who report harassing conduct, participate in investigations or take any other actions protected under federal employment discrimination laws will not be subjected to retaliation.
<i>Should include clear and easy-to-understand descriptions of:</i>
<input type="checkbox"/> Prohibited conduct, including examples;
<input type="checkbox"/> Any processes for employees to informally share or obtain information about harassment without filing a complaint; and
<input type="checkbox"/> The employer's harassment complaint system, including multiple (if possible), easily accessible reporting avenues.

In addition, an employer's written anti-harassment policy should be:

- **Translated** into all languages commonly used by employees;
- **Provided** to employees upon hire and during harassment trainings;
- **Posted** centrally, such as on the company's internal website, in the company handbook, near time clocks, in break rooms and in other commonly used areas or locations; and
- **Reviewed** periodically and updated as needed.

HARASSMENT COMPLAINT SYSTEMS

Effective reporting systems for allegations of harassment are among the most critical elements of an employer’s overall anti-harassment efforts. An employer’s system should include both a means by which individuals who have *experienced* harassment can report the harassment and file a complaint, as well as a means by which employees who have *observed* harassment can report that to the employer. The table below provides additional examples of what an employer should include in its complaint system to maximize its effectiveness.

COMPLAINT SYSTEMS	
Should include:	Details:
Resources	<input type="checkbox"/> Enable personnel to respond promptly, thoroughly and effectively to complaints.
Multiple avenues	<input type="checkbox"/> Include multiple avenues of complaint if possible. <input type="checkbox"/> Include an avenue to report complaints regarding senior leaders.
Responsiveness	<input type="checkbox"/> Provide prompt, thorough and neutral investigations.
Alternative dispute resolution processes	<input type="checkbox"/> Use voluntary alternative dispute resolution processes to facilitate communication and address prohibited conduct (and conduct that could eventually rise to the level of prohibited conduct) early.
Privacy protection	<input type="checkbox"/> Protect the privacy of alleged victims, individuals who report harassment, witnesses, alleged harassers and other relevant individuals to the greatest extent possible, consistent with a thorough and impartial investigation and with relevant legal requirements.
Retaliation protection	<input type="checkbox"/> Include processes to determine whether alleged victims, individuals who report harassment, witnesses and other relevant individuals are subjected to retaliation, and impose sanctions on individuals responsible for retaliation.
Due process protection	<input type="checkbox"/> Ensure that alleged harassers are not prematurely presumed guilty or prematurely disciplined for harassment.
Resolution communication processes	<input type="checkbox"/> Include processes to convey the resolution of a complaint to the complainant and the alleged harasser and, where appropriate and consistent with relevant legal requirements, the preventive and corrective action taken.

Employees who are responsible for receiving, investigating and resolving harassment complaints, or for otherwise implementing an employer’s harassment complaint system, play a significant role in shaping the effectiveness of a complaint system. Thus, employers should ensure that these individuals are well-trained, objective and neutral, and that they have the authority, independence and resources required to receive, investigate and resolve complaints appropriately. Employers should also take steps to ensure that these individuals consistently:

- Take all questions, concerns and complaints seriously, and respond promptly and appropriately;
- Create and maintain an environment in which employees feel comfortable reporting harassment;
- Appropriately document every complaint from initial intake to investigation to resolution;
- Use guidelines to weigh the credibility of all relevant parties to a complaint; and
- Prepare written reports documenting their investigations, findings, recommendations, any disciplinary actions imposed, and any corrective and preventive actions taken.

HARASSMENT TRAINING PROGRAMS

Leadership, accountability, and strong harassment policies and complaint systems are essential components of a successful harassment prevention strategy, but only if employees are aware of them. Regular, interactive and comprehensive training of all employees may help ensure that employees understand an employer’s rules, policies, procedures and expectations, as well as the consequences of misconduct.

A harassment training program may be most effective if it is:

<input type="checkbox"/> Championed by senior leaders
<input type="checkbox"/> Repeated and reinforced regularly
<input type="checkbox"/> Provided to employees at every level and location
<input type="checkbox"/> Provided in a clear, easy-to-understand style and format
<input type="checkbox"/> Provided in all languages commonly used by employees
<input type="checkbox"/> Tailored to the specific workplace and audience
<input type="checkbox"/> Conducted by qualified, live, interactive trainers , or, if not live, at least designed to include active participant engagement
<input type="checkbox"/> Routinely evaluated by participants and revised as necessary

The table below lists the components an employer should include in its harassment training program for all employees.

TRAINING FOR ALL EMPLOYEES	
Should include:	Details:
Descriptions	<input type="checkbox"/> Describe prohibited harassment and conduct that, if left unchecked, might rise to the level of prohibited harassment.
Examples	<input type="checkbox"/> Tailor examples of prohibited harassment and questionable conduct to the specific workplace and workforce.
Duties and rights	<input type="checkbox"/> Provide information about employees’ rights and responsibilities if they experience, observe or become aware of conduct that they believe may be prohibited.

Encouragement	<input type="checkbox"/> Encourage employees to report harassing conduct.
Explanations	<input type="checkbox"/> Explain the complaint process and any voluntary alternative dispute resolution processes. <input type="checkbox"/> Explain the information that may be requested during an investigation. <input type="checkbox"/> Explain the range of possible consequences for engaging in prohibited conduct.
Assurance	<input type="checkbox"/> Assure employees that they will not be subject to retaliation for reporting harassing conduct, participating in investigations or taking any other actions protected under federal employment discrimination laws.
Interaction	<input type="checkbox"/> Provide opportunities for employees to ask questions about the training, harassment policy, complaint system, and related rules and expectations.
Contact information	<input type="checkbox"/> Provide contact information for the individuals or offices responsible for addressing harassment questions, concerns and complaints.

Because supervisors and managers often have greater responsibilities than other employees, employers may benefit from providing additional training to these individuals. Employers may also find it helpful to include other employees who exercise authority, such as team leaders, in additional training. The table below provides examples of how employers may maximize the effectiveness of their additional harassment training programs for these individuals.

TRAINING FOR MANAGERS AND SUPERVISORS	
Should include:	Details:
Information about how to prevent, identify, stop, report and correct harassment	<input type="checkbox"/> Identify potential risk factors for harassment and specific actions that may minimize or eliminate the risk of harassment. <input type="checkbox"/> Provide easy-to-understand, realistic methods for addressing harassment that they observe, that is reported to them or that they otherwise learn about. <input type="checkbox"/> Provide clear instructions about how to report harassment up the chain of command. <input type="checkbox"/> Explain the confidentiality rules associated with harassment complaints.
Unequivocal reminders that retaliation is prohibited	<input type="checkbox"/> Explain the types of conduct that are protected from retaliation, such as: <ul style="list-style-type: none"> <input type="checkbox"/> Complaining or expressing an intent to complain about harassing conduct; <input type="checkbox"/> Resisting sexual advances or intervening to protect others from such conduct; and <input type="checkbox"/> Participating in an investigation about harassing conduct or other alleged discrimination.
Information about consequences	<input type="checkbox"/> Explain the consequences of failing to fulfill their responsibilities related to harassment, retaliation and other prohibited conduct.