

HRACUITY®

Are You Protecting Your People?

How to Investigate and Prevent
Sexual Harassment at Your Company



ABOUT HALF of women say they've been sexually harassed at work.

Take a moment to let that **sink in**.

Chances are, some of those women are working at your organization. Some may have even experienced sexual harassment at your company. Take a moment to let that sink in, too.

Now take another moment to learn what you can do to protect all of your people, while making sure your business doesn't become the target of a new hashtagged controversy.

Addressing sexual harassment is as much about ensuring the safety of employees as it is about mitigating risk and ensuring compliance. But if you're worried about only legalities and compliance, you're missing the big picture.

The ability to detect, investigate, and stop sexual harassment can impact productivity, engagement, turnover, and a host of other key performance indicators. Taking proper actions to uncover, prevent, and correct certain behaviors is not only a legal matter — it's a strategic way to help reinforce organizational values and create a culture conducive to generating better business results.

You have a legal, ethical, and financial responsibility to your organization, so people no longer ask, "Where was HR?"

Protecting your people starts with implementing processes to track, investigate, and analyze issues — in the right ways. Read on to discover how to safeguard your people and your organization.

WHAT IS Sexual Harassment?

Given **how often** we discuss sexual harassment, you'd think there'd be no need to still define it.

But there is. Many people continue to hold [misconceptions](#) about what amounts to sexual harassment. So, because you can't effectively address a problem unless you correctly define it, it's worth pointing to [EEOC guidelines](#), which state that unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- + Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment
- + Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals

Two Types of Sexual Harassment

- 1. Hostile work environment:** Occurs when sexual or other discriminatory conduct is severe or pervasive enough to unreasonably interfere with an individual's performance; or when conduct creates an intimidating, threatening, or humiliating work environment; or maintains a situation that affects the employee's psychological well-being (think pin-ups in the breakroom, constant inappropriate jokes, etc).
- 2. Quid pro quo:** A "this for that" type of harassment, which occurs when an employee is forced to choose between giving in to a superior's sexual demands or forfeiting an economic benefit such as a pay increase or continued employment.

WHAT ISN'T Sexual Harassment?

Now that you know what sexual harassment encompasses, it's also important to recognize what it **does not**.

Not all bad behavior, nor a specific number of incidents, rises to the level of sexual harassment. The EEOC examines the entirety of a case, including context, behaviors over time, and severity.

Just because something isn't legally sexual harassment doesn't mean you can simply brush it off.

Even though slights, annoyances, and isolated incidents (single teases, comments, jokes, or derogatory remarks) aren't necessarily unlawful, such actions may still violate your company policy, create an unsafe work environment, and ruin your culture. You should therefore think of such instances as potential early warning signals that must be documented and remediated — because one inappropriate comment today can balloon into a hashtag tomorrow.

At the core of addressing sexual harassment, your goal should be to promote good behaviors and prevent bad ones, regardless of legalities. What's more, the right employee relations case management solution can help you categorize incidents, so you can [respond to issues the right way](#).

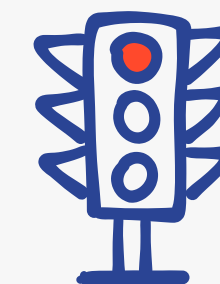
A Guide to Categorizing Issues



Green Light: There's no action required with day-to-day behaviors that fall within expected norms.



Yellow Light: Thoroughly document and closely monitor issues when they deviate from the norm, like offensive comments or disrespect for colleagues. They could indicate more serious trends.



Red Light: Always investigate serious allegations of sexual harassment to protect your employees, your company, and your brand.

A Poster is *NOT ENOUGH*

An educational poster in the breakroom can be part of your strategy to combat sexual harassment — but it should not **actually** be your strategy. Posters, emails, and training alone won't protect your people. Instead, you need a comprehensive approach to help inform your employees and encourage proper behaviors.

5 Key Elements of a Sexual Harassment Program

- 1. A written policy:** Don't bombard your policy with boring legalese. Yes, a well-crafted policy can help create an affirmative defense should your company ever find itself in front of a judge, but your main aim here is to help people truly understand what behaviors are expected, what's at stake for them, and what behaviors won't be tolerated by your organization.
- 2. A complaint procedure:** Be sure to include multiple avenues for people to report issues.
- 3. Training:** Implement programs to raise awareness around expectations related to behaviors, reporting, and consequences. Be especially sure to include bystander intervention training — [41 percent of employed men](#) said they have witnessed sexual harassment at work. As the cliché goes: If you see something, you should say something. Some states may have requirements for training managers or all employees. Either way, it's a best practice to keep track of who attended the sessions. Even better, ask for feedback from employees at the end to measure the effectiveness of your training sessions.
- 4. Communication:** Use a variety of methods to communicate your policy to management and employees. Think town halls, emails, videos, team meetings, and yes, even posters. Be sure to also tailor your messaging. Managers especially require additional messaging to help them handle issues.
- 5. Investigation Procedure:** You must have a prompt, thorough, fair, and consistent investigatory process to ensure that you are able to gather accurate and comprehensive information. But this isn't just important to you — it's also important to your employees. Conducting investigations the right way is an essential means to assure trust among your people. Employees need to feel confident that when they come to you with issues, you have a process that will address them fairly.

Since investigations are often at the heart of addressing sexual harassment, we will now turn our focus to helping you conduct them effectively.

What if *ONLY 45 PERCENT* of Airlines Had Practices to Address Malfunctions?

The above question is obviously ridiculous. Besides, what does it have to do with **employee relations**?

It turns out, only [45 percent](#) of organizations have required practices in place for conducting employee relations investigations. Isn't that just as ridiculous? Imagine if companies treated other parts of their business the same way.

To ensure that investigations are fair, accurate, transparent, and thorough, you must have a standardized process that enables collaboration, provides appropriate levels of confidentiality and accessibility, and secures data. Simply put, consistent processes yield consistent outcomes. What's more, without uniform protocols, tools, and templates, you won't be able to generate case reports that tell complete stories in ways that help [mitigate risk](#) and ensure a greater affirmative defense.

Ideally, an effective employee relations case management solution should have built-in expertise to help guide you through the steps of a sexual harassment investigation.

3-Step Proven Methodology to Investigate Sexual Harassment



PLAN



INVESTIGATE



DETERMINE

Step 1: *PLAN*

To thoroughly address an issue, you must first get a full grasp of it, so your **first step** is to create a dynamic blueprint for organizing key information, which includes identifying issues, interim actions, involved parties, and unknown factors.

At this stage, it's vital to explain to all stakeholders involved in the complaint that while you can't promise complete confidentiality, you will treat the matter sensitively and share information on a need-to-know basis. You also want to assure people that your process is fair, that you will take their concerns seriously, and that they will be safe from retaliation. Given that up to [75 percent of people](#) who have complained about harassment (not just sexual) say they experienced retaliation, it's no wonder so many victims never come forward with their experience.

But it's not just protection against retaliation that's important. You also want to guard against possible continued harassment. This may require voluntary changes of schedule, leaves, or transfers to separate the accuser from the accused before the investigation begins (just be sure that such separation doesn't feel like a punishment or a demotion in retaliation for coming forward).

Meanwhile, employers often make the mistake of requiring employees not to discuss the case with colleagues. While their intention may be good, the request may be a [violation of the law](#). In other words, while you should keep information related to a case confidential, in most cases you cannot require the same of employees — at least not in the United States. Regional privacy regulations vary widely, so consider the country where the employee resides when discussing confidentiality expectations.

Lastly, to investigate sexual harassment claims, you need an objective, discreet, and experienced investigator who understands the law. The person can be internal or external, as long as the individual doesn't allow any preconceived notions or unconscious bias to cloud their judgment.

For example, suppose the investigation shows that a victim was having performance issues at the time of their complaint. It might be easy to assume that the victim lodged their complaint to cover for poor performance; however, an analytical investigator should be capable of exploring different scenarios. Maybe harassment is what caused performance problems in the first place, rather than the other way around.

Finally, don't get overly caught up in whether the allegation rises to the legal standards of harassment. Focus on whether or not there has been a violation of your company policy.

Step 2: INVESTIGATE

To gather facts effectively, you need a process **steeped in best practices**. A standard process doesn't just help ensure compliance — it gives a more complete view into what's going on in your organization.

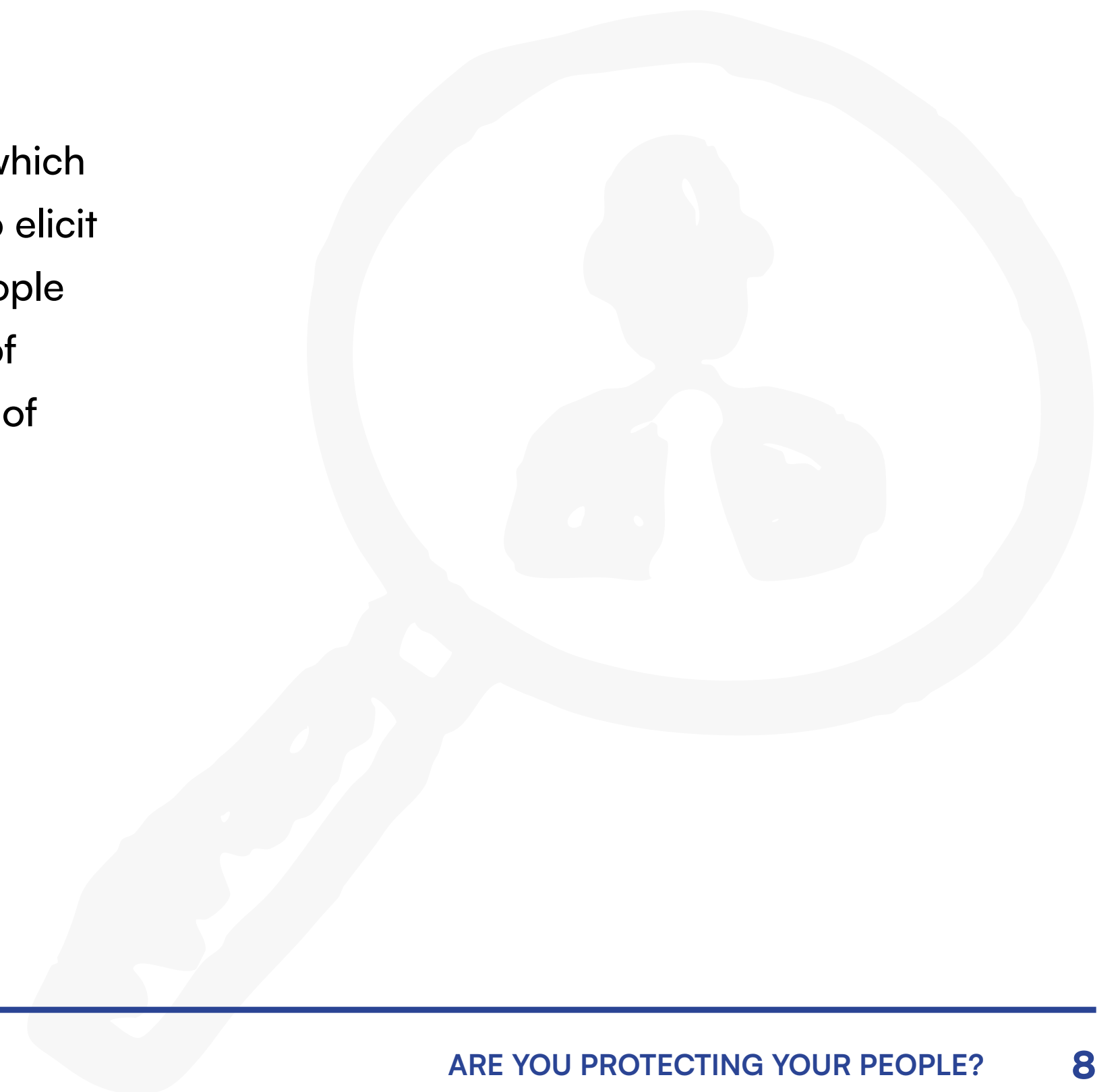
Your [investigation process](#) must be thorough and consistent to send a message to victims — and alleged perpetrators, regardless of eventual culpability — that you take sexual harassment claims seriously. Managing issues consistently is also important to defend against potential claims of unfair treatment and litigation. Just as significantly, uniformity — of process, templates, protocols, and interview questions — helps ensure neutrality, which in turn helps mitigate unconscious bias.

Having consistent protocols is especially important to ensure clarity of expectations, both what your employees can expect out of the process and what you expect from them. What's more, everyone across your enterprise should expect the same experience if they're part of an investigation, regardless of interviewer or circumstance.

An effective way to begin an interview is to describe your investigation process — explain why the person is being interviewed, the nature of the complaint, and that your main goal is to collect relevant facts.

Furthermore, a structured interview process built around best practices will help guide you through which questions to ask and how to ask them objectively to elicit the right information. That includes questioning people about what might have happened both in and out of the workplace. It also includes specifying the order of interviews.

For instance, when a manager is accused of sexual harassment, you may want to consider interviewing other people first to reduce the risk that the supervisor could destroy evidence or threaten others against coming forward. Lastly, the right employee relations system will enable investigators to record observations in ways that facilitate thorough analysis later in the process.



Step 3:

DETERMINE

Once you've conducted a thorough investigation, you've got to **determine the merit** of the claim.

At the end of an investigation, you should have a complete case report that includes details about the allegation, notes from all interviewees and other evidence, copies of your company's related policies, fact-based findings, and a [credibility assessment](#) of involved parties.

A credibility assessment is particularly useful because often, investigators will find there's no smoking gun. In those cases, it's the investigator's role to assess the truthfulness of the individuals who were interviewed. Investigators should be able to draw upon their expertise — just as recruiters and other HR professionals regularly do — to make informed judgments about people's credibility by

corroborating statements through technology or other interviews, reviewing patterns of history or reasons for bias, and considering the logic of the story told and details provided.

With all the above information, you should be able to make a defensible, informed determination as to whether the allegation can be substantiated.

After the Investigation

The main goal of an investigation isn't just to decipher the merits of the claim, but ultimately to guide appropriate remediation to resolve potential issues. When doing so, it's vital that you track communications with relevant parties efficiently and effectively.

Once the investigation is complete and you've made your determination, you've got to remedy the problem. Identify the actions you intend to take and then communicate them clearly to the complainant, the accused, and other parties. Depending on your findings, you should make sure the complainant feels comfortable about returning to work, take steps to correct and prevent bad behavior, and perhaps update policies and training to stave off recurrence.

Additionally, just as you want to ensure consistency of process, the same is true for outcomes. Your case management solution should enable you to [look at data](#) in ways that show how other identical or similar cases have been handled to help ensure fair remediation. For instance, if you previously suspended a manager who made sexist remarks but are now firing a supervisor for making equally inappropriate remarks, you may open yourself up to possible litigation.

Finally, don't forget to follow up with involved parties sometime after a case closes — not only does that show you care, but it's a good way to remain on top of issues and ensure that remediation has been successful. After all, a main goal of your investigation isn't just to uncover potentially bad behavior, but to correct it.

Are You Always **LEGALLY LIABLE** For Sexual Harassment?

Not always. In *Faragher v. City of Boca Raton* (1998) and *Burlington Industries Inc. v. Ellerth* (1998), the Supreme Court distinguished between supervisor sexual harassment that results in tangible employment action (e.g., a firing, demotion, or refusal to promote) and supervisor harassment that does not lead to adverse employment action.

Under a doctrine known as vicarious liability — whereby an employer can be held responsible for the wrongful actions of its employees — companies are always liable when a supervisor's harassment results in tangible employment action. But even when there's no such impact, you aren't automatically off the hook. To avoid getting into legal trouble, you would have to prove that you've made reasonable efforts to prevent and correct sexual harassment. Courts will typically ask the following questions to gauge your efforts:

- + Did your organization know — or should you have known — about incidents or [patterns of behavior](#) that violated your policies?
- + Did you regularly train employees and managers?
- + Have you made it clear to employees that they are obligated to report incidents of harassment?
- + Did you investigate allegations promptly and thoroughly?
- + Have you implemented corrective measures when needed?
- + Did you try to ensure that remediation was successful?

The right employee relations case management solution should enable you to generate reports and access data to answer many of these questions — and not just after the fact. You should be able to tap into a central repository of information proactively to spot red flags and help safeguard your people and your reputation.



HRACUITY[®]

At **HR Acuity**, we're on a mission to help companies discover what's going on in their organizations, and we're serious about helping organizations protect their people.

Although you can't prevent every employee relations issue, you can control how your organization responds. Achieve consistency in the way you track, investigate, and analyze with HR Acuity — the employee relations case management solution. We empower you with structure, content, and tools around documentation, investigations, and analytics in ways that provide accurate, reliable, and uniform experiences for your people. All with software that equips you with built-in expertise to make best practice your process.

Let us show you how we can help you address sexual harassment and a host of other employee relations issues. **[Visit hracuity.com/demo](https://hracuity.com/demo)**.