Sexual Harassment Prevention TOOLKIT

Introduction to Sexual Harassment and Workplace Misconduct

• Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), and the Americans with Disabilities Act of 1990 (ADA). Harassment is “unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.”

• Harassment becomes unlawful (under federal law) when: 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. See www.eeoc.gov/laws/types/harassment.cfm

• Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that adversely affects the employee’s employment terms or conditions or creates an intimidating, hostile or offensive working environment.
  - Quid pro quo (“this for that”) harassment is generally considered so egregious that a single incident would be “gross misconduct”.
  - A hostile work environment arises when unwelcome conduct unreasonably interferes with an employee’s performance or creates an intimidating environment. Such conduct does not need to be directly tied to a job benefit.

Harassment Facts and Myths

These facts and myths are excerpted from a RISK eNews article by the Nonprofit Risk Management Center. The article is available at www.nonprofitrisk.org/resources/e-news/workplace-harassment/

• Some highly inappropriate workplace conduct might not be illegal conduct. To constitute illegal workplace harassment, conduct must create an environment that “would be intimidating, hostile, or offensive to reasonable people.” (Source: EEOC)

• Victims of illegal harassment include, but are not limited to, the person harassed in the workplace. Anyone affected by illegal conduct is a potential victim of harassment.

• Any employee is a potential victim of sexual or other forms of illegal harassment—regardless of their sex, status, sexual orientation or identity. Harassment’s costly price tag includes mental and physical harm to the survivor—including consequences that survivors might suffer throughout their lives—as well as economic damage to our society.

• Illegal harassment negatively impacts all employees in the form of poor morale, low productivity, and increased turnover, not to mention financial and reputational harm.

• Any employee, volunteer, contractor, client or visitor might be a perpetrator of illegal harassment for which your nonprofit can be held legally and financially liable. If allegations are made, no one should be given a special pass or be considered above suspicion.

Questions about the material in this Toolkit? Contact NRMC at 703.777.3504 or info@nonprofitrisk.org.
• **Illegal harassment may be found even when the target has not suffered tangible, economic injury**, such as a demotion or termination of employment.

• **Workplace harassment too often goes unreported.** According to a report from the EEOC, common “workplace-based responses” by victims of harassment include avoiding the harasser, denying or downplaying the gravity of the situation, and attempting to “ignore, forget or endure the behavior.” The report includes an astonishing statistic: “roughly three out of four individuals who experienced harassment never even talked to a supervisor, manager, or union representative about the harassing conduct.”

• **Retaliation is strictly prohibited.** Federal and state anti-harassment laws also prohibit retaliation against an employee for filing charges of discrimination, participating in an investigation, or opposing employment practices the employee reasonably believes are illegal or discriminatory.

**Tips for Developing or Updating Workplace Conduct Policies**

Review your anti-harassment policy using the following as a guide:

1. Is the policy written broadly to prohibit all unlawful workplace harassment such as harassment based on religion, national origin, sexual orientation, disability and other protected factors under state and federal law?

2. Does the policy go further than legal requirements to match the requirements of funders and our agency’s professed values and beliefs?

3. Is the policy written in plain, easy-to-understand language?

4. Does the policy list examples of what is and what is not sexual harassment?

5. Does the policy list several persons to whom a complaint can be filed and indicate how to contact them? Does this section contain a provision allowing any employee to bypass their supervisor in the event the supervisor is the harasser?

6. Does the policy avoid any language that might discourage complaints (such as requiring complaints to be submitted in writing or made to someone inaccessible to some employees)?

7. Can employees in remote locations or field offices easily avail themselves of the protections afforded by the policy?

8. Does the policy explain illegal retaliation and specifically prohibit retaliation?

9. Does the policy promise confidentiality to the maximum extent possible?

10. Does the policy require a timely investigation of allegations and state that the employee complaining of harassment will be informed of the results of the investigation?

11. Has the policy has been helpful—or a hindrance—when actual complaints of harassment are made? Ask: what changes should we make to ensure that the policy is a helpful tool that supports our values?

12. Is the policy consistent with other policies at our agency that pertain to employee conduct?
**Tips on Incident Handling**

There are generally three phases to the handling of a complaint or incident regarding workplace harassment:


The article “How to Handle an Employee Complaint of Harassment” from Nolo press offers helpful tips for handling a complaint. These include:

- **Don’t pass judgment or make assumptions.** Gather as much information as you can, but don’t jump to conclusions.
- **Don’t allow retaliation.** Everyone involved in the investigation should understand that retaliation is strictly prohibited.
- **If you need to suspend the alleged perpetrator—to get to the bottom of the matter, do it with pay.**
- **Look for evidence.** Remember that you’ll need to interview the person who complained as well as the person accused of harassment, but there are often witnesses who can shed light on what happened.
- **Keep notes,** including statements made by interviewees.

**LGBTQ+ Issues in the Workplace**

The EEOC “interprets and enforces” Title VII’s prohibition of sex discrimination as “forbidding any employment discrimination based on gender identity or sexual orientation.” According to the EEOC, these protections apply regardless of any contrary state or local laws.

According to the EEOC, “While Title VII of the Civil Rights Act of 1964 does not explicitly include sexual orientation or gender identity in its list of protected bases, the Commission, consistent with Supreme Court case law holding that employment actions motivated by gender stereotyping are unlawful sex discrimination and other court decisions, interprets the statute’s sex discrimination provision as prohibiting discrimination against employees on the basis of sexual orientation and gender identity.”

The Commission “has taken the position that existing sex discrimination provisions in Title VII protect lesbian, gay, bisexual, and transgender (LGBT) applicants and employees against employment bias.” See: [www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm](http://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm)

Examples of LGBT-related claims that the EEOC views as unlawful sex discrimination include:

- Failing to hire an applicant because she is a transgender woman.
- Firing an employee because he is planning or has made a gender transition.
- Denying an employee equal access to a common restroom corresponding to the employee's gender identity.
- Harassing an employee because of a gender transition, such as by intentionally and persistently failing to use the name and gender pronoun that correspond to the gender identity with which the employee identifies, and which the employee has communicated to management and employees.
- Denying an employee a promotion because he is gay or straight.
- Discriminating in terms, conditions, or privileges of employment, such as providing a lower salary to an employee because of sexual orientation, or denying spousal health insurance benefits to a female.
employee because her legal spouse is a woman, while providing spousal health insurance to a male employee whose legal spouse is a woman.

- Harassing an employee because of his or her sexual orientation, for example, by derogatory terms, sexually oriented comments, or disparaging remarks for associating with a person of the same or opposite sex.

- Discriminating against or harassing an employee because of his or her sexual orientation or gender identity, in combination with another unlawful reason, for example, on the basis of transgender status and race, or sexual orientation and disability.

**EEOC Resources**


- EEOC Resources on Harassment (Fact Sheet, Q&A) - [www.eeoc.gov/employers/smallbusiness/resources_harassment.cfm](http://www.eeoc.gov/employers/smallbusiness/resources_harassment.cfm)


- Harassment Prevention and Respectful Workplaces Training - [https://eeotraining.eeoc.gov/profile/web/index.cfm?PKwebID=0x25479b9f&varPage=attendee](https://eeotraining.eeoc.gov/profile/web/index.cfm?PKwebID=0x25479b9f&varPage=attendee)
  
  - *Leading for Respect: How Supervisors and Managers can Create Respectful Workplaces* – “Rather than dwelling on legal standards and what NOT to do, this training will focus on WHAT TO DO – the words and actions that promote respect and fairness, and participants’ responsibility for contributing to respect in the workplace.”

**Third-Party Harassment Resources**


Additional Resources


- Bystander Intervention Training – [www.ihollaback.org/resources/bystander-resources/](http://www.ihollaback.org/resources/bystander-resources/)