



Preventing and correcting workplace harassment: Guidelines for employers

J. Bret Becton^{*}, J. Bruce Gilstrap, Maurice Forsyth

College of Business, University of Southern Mississippi, 118 College Drive, Hattiesburg, MS 39406, U.S.A.

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Abstract In recent years, the number of harassment claims filed with the EEOC has declined overall, but this fact masks a frightening reality: though claims involving some types of harassment have declined, claims for other types of harassment—especially nontraditional forms of harassment—have actually increased. Therefore it remains necessary for employers to maintain a current anti-harassment program, which should consist of the following elements: (1) a clear anti-harassment policy; (2) an explicit statement of prohibited behaviors that can be considered harassment; (3) a complaint procedure that encourages employees to come forward with harassment complaints; (4) protections for complainants and witnesses against retaliation; (5) an investigative strategy that protects privacy interests of both the alleged victim and the accused offender and ensures confidentiality to the extent possible; (6) periodic management training and employee awareness programs that continue to communicate the organization's position on this issue; and (7) measures and processes to ensure prompt corrective action to stop ongoing harassment, and appropriate remedial and disciplinary actions for offenders. In this article, we provide best practice recommendations concerning each of these elements.

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1. Harassment in the workplace

Four female bank tellers complain to management that their female service manager and another female bank teller are sexually harassing them. The tellers allege that they regularly endure lewd and/or graphic sexual comments, gestures,

pictures, and inappropriate touching and grabbing. They also allege that their manager makes invasive comments about their bodies and sex lives and has suggested they wear sexually provocative clothing in order to attract or retain customers and to advance in the workplace. One of the tellers complains: "I hate my job. The clothing they wear. . .the never-ending comments, gestures, images. . .you cannot escape it. Going to work is demeaning and humiliating."

Despite complaints being made to management about the work environment, the reports are not

^{*} Corresponding author

E-mail addresses: bret.becton@usm.edu (J.B. Becton),
bruce.gilstrap@usm.edu (J.B. Gilstrap),
maurice.forsyth@usm.edu (M. Forsyth)

investigated and no action is taken. As a result, at least one of the tellers decides to quit her job rather than endure continued harassment. Ultimately, the four employees determine that their best option is to file a sexual harassment complaint with the U.S. Equal Employment Opportunity Commission (EEOC).

But does their complaint have any merit? All of the employees involved are women. None of the behavior seems overtly sexual in nature. There were no explicit demands for sexual activity or favors in exchange for promotions or raises. The behavior probably doesn't reach the level of harassment. Surely these thoughts went through the collective heads of management when these complaints were explained to them—and perhaps this is why they took no action.

The scenario described above is based on an actual same-sex harassment case brought by the EEOC against Wells Fargo Bank (*U.S. Equal Employment Opportunity Commission v. Wells Fargo Bank*). The result? In the final EEOC analysis, management was deemed wrong. Wells Fargo agreed to pay \$290,000 to settle the complaint and entered into a 2 year consent decree under which they would take mandated preventative steps such as conducting annual anti-discrimination training, issuing procedures for reporting and investigating harassment complaints, reporting complaints to the EEOC, and taking disciplinary measures against the managers who failed to take action. Sadly, all of this could have been averted. Wells Fargo could have easily stopped this behavior before the issue rose to the level of an EEOC complaint. Organizations everywhere must endeavor to prevent and correct workplace harassment of all types.

The fact that this case involved somewhat atypical complaints is important. While traditional harassment claims have been on the decline for decades, other types of harassment claims have increased. For example, while sexual harassment claims have been trending downward considerably since 1997, national origin harassment claims have been on an upward trend over the same period. Also, the basis for harassment claims continues to expand to include more unconventional claims such as same-race harassment, same-sex harassment, sexualized hazing, sexual orientation harassment, and social media harassment. While the EEOC does not compile statistics on these types of harassment claims, trends and anecdotal evidence suggest that they are on the rise. For example, the percentage of men alleging harassment has steadily risen over the past 2 decades and this increase may be due in part to increases in same-sex harassment claims (Smith, 2009; Swanton, 2010). Furthermore, successful claims of same-race harassment resulting in

relatively large judgments such as *Johnson v. Strive East Harlem Employment Group et al.* and *Weatherly vs. Alabama State University* suggest employers must take such claims very seriously. Likewise, recent cases concerning claims of harassment via social media or other electronic communications have resulted in settlements or penalties ranging from \$1.6–2.3 million (Farrell, 2012). Finally, the EEOC recently filed two historic sexual harassment cases based on sexual orientation (Smith, 2016). Therefore, organizations must remain vigilant in their efforts to prevent harassment of all types. Maintaining a comprehensive anti-harassment program is an essential part of that vigilance. This article aims to provide organizations with clear and practical guidance on how to do so.

2. Harassment defined

Harassment is a form of discrimination that violates a variety of employment laws such as Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990. According to the EEOC, harassment is unlawful when “enduring the offensive conduct becomes a condition of continued employment, or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive” (“Harassment,” n.d.). Retaliatory harassment is also prohibited under these laws, whether it be in response to individuals for filing a discrimination charge; for testifying or participating in any way in an investigation, proceeding, or lawsuit; or for opposing employment practices that they reasonably believe discriminate against individuals.

3. Best practice recommendations for anti-harassment programs

A fundamental step in preventing and remediating harassment is the presence of a comprehensive anti-harassment program. The EEOC (1990) *Policy Guidance on Current Issues of Sexual Harassment* advises that employers should:

Take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

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