



Harassment & Discrimination: Combatting #MeToo

In June 2016 the U.S. Equal Employment Opportunity Commission published a report from the “Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace”. The report focuses on the prevention of unwelcome conduct based on characteristics protected under our employment civil rights laws, even before such conduct might rise to the level of illegal harassment. The EEOC’s Select Task Force was activated in early 2015 with the final report being presented June 2016, just before the #MeToo movement first appeared.

Many good discussions, examples and conclusions came out of this report and are used here in an abbreviated form (access the full report - https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm)

Workplace Harassment Remains a Persistent Problem

Almost fully one third of the approximately 90,000 charges received by EEOC in fiscal year 2015 included an allegation of workplace harassment. This includes, among other things, charges of unlawful harassment on the basis of sex (including sexual orientation, gender identity, and pregnancy), race, disability, age, ethnicity/national origin, color, and religion. While there is robust data and academic literature on sex-based harassment, there is very limited data regarding harassment on other protected bases.

Workplace Harassment Too Often Goes Unreported

Common workplace-based responses by those who experience sex-based harassment are to avoid the harasser, deny or downplay the gravity of the situation, or attempt to ignore, forget, or endure the behavior. The least common response to harassment is to take some formal action – either to report the harassment internally or file a formal legal complaint. Roughly three out of four individuals who experienced harassment never even talked to a supervisor, manager, or union representative about the harassing conduct. Employees who experience harassment fail to report the harassing behavior or to file a complaint because they fear disbelief of their claim, inaction on their claim, blame, or social or professional retaliation.

There is a Compelling Business Case for Stopping & Preventing Harassment

When employers consider the costs of workplace harassment, they often focus on legal costs, and with good reason. Last year, EEOC alone recovered \$164.5 million for

workers alleging harassment –and these direct costs are just the tip of the iceberg. Workplace harassment first and foremost comes at a steep cost to those who suffer it, as they experience mental, physical, and economic harm. Beyond that, workplace harassment affects all workers, and its true cost includes decreased productivity, increased turnover, and reputational harm. All of this is a drag on performance – and the bottom-line.

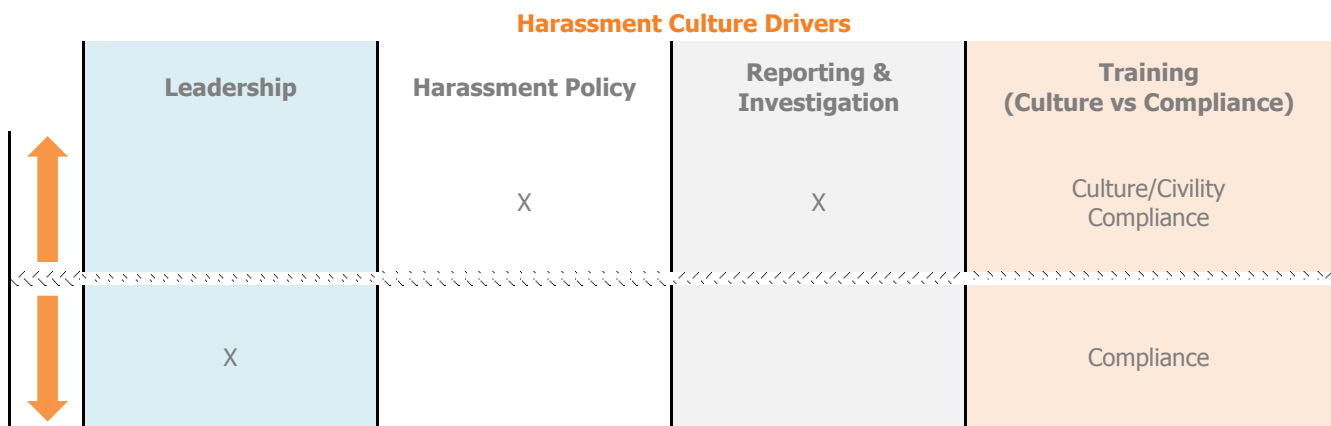
It Starts at the Top – Leadership & Accountability are Critical

Workplace culture has the greatest impact on allowing harassment to flourish, or conversely, in preventing harassment. The importance of leadership cannot be overstated – effective harassment prevention efforts, and workplace culture in which harassment is not tolerated, must start with and involve the highest level of management of the company. But a commitment (even from the top) to a diverse, inclusive, and respectful workplace is not enough. Rather, at all levels, across all positions, an organization must have systems in place that hold employees accountable for this expectation. Accountability systems must ensure that those who engage in harassment are held responsible in a meaningful, appropriate, and proportional manner. Additionally, those whose job it is to prevent or respond to harassment should be rewarded for doing that job well (or penalized for failing to do so). Leadership means ensuring that anti-harassment efforts are given the necessary time and resources to be effective.



In our OneBeacon risk control consulting visits it is not uncommon to find the scenario illustrated below where all the typical controls are in place, at least on paper. The seat of organizational power seems to back the harassment and non-discrimination policy because it is in the policy and procedure manual along with a process for reporting violations & conducting investigations and some regulatory mandated training. However, when you look closer the seat of power's voice & action is often silent on this subject. By simply meeting regulatory guidelines it does little to show the rest of the organization (and the outside world) that this is an important topic. We need to see and hear management proactively driving this topic and integrating it into the daily operations and processes.

In the illustration below, the wavy line represents a basic acceptable level. The farther above the line you are the better. Below the line is not acceptable, yet this is where we typically find the Leadership rating for harassment.



Training Must Change

Much of the training done over the last 30 years has not worked as a prevention tool – it's been too focused on simply avoiding legal liability. We believe effective training can reduce workplace harassment, and recognize that ineffective training can be unhelpful or even counterproductive. However, even effective training cannot occur in a vacuum – it must be part of a holistic culture of non-harassment that starts at the top. Similarly, one size does not fit all: Training is most effective when tailored to the specific workforce and workplace, and to different cohorts of employees. Finally, when trained correctly, middle-managers and first-line supervisors in particular can be an employer's most valuable resource in preventing and stopping harassment.

New and Different Approaches to Training Should Be Explored

We heard of several new models of training that may show promise for harassment training. "Bystander intervention training" – increasingly used to combat sexual violence on school campuses – empowers co-workers and gives them the tools to intervene when they witness harassing behavior, and may show promise for harassment prevention. Workplace "civility training" that does not focus on eliminating unwelcome or offensive behavior based on characteristics protected under employment non-discrimination laws, but rather on promoting respect and civility in the workplace generally, likewise may offer solutions.

Evaluate Your Entity's Harassment Controls

The informational checklists provided below will enable local government to critically compare their current policies on harassment to those suggested in the report "Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace".

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Checklist One: Leadership and Accountability

The first step for creating a holistic harassment prevention program is for the leadership of an organization to establish a culture of respect in which harassment is not tolerated. Check the box if the leadership of your organization has taken the following steps:

- Leadership has allocated sufficient *resources* for a harassment prevention effort
- Leadership has allocated sufficient *staff time* for a harassment prevention effort
- Leadership has assessed harassment risk factors and has taken steps to minimize those risks

Based on the commitment of leadership, check the box if your organization has the following components in place:

- A harassment prevention policy that is easy-to-understand and that is regularly communicated to all employees
- A harassment reporting system that employees know about and is fully resourced and which accepts reports of harassment experienced and harassment observed
- Imposition of discipline that is prompt, consistent, and proportionate to the severity of the harassment, if harassment is determined to have occurred
- Accountability for mid-level managers and front-line supervisors to prevent and/or respond to workplace harassment
- Regular compliance trainings for all employees so they can recognize prohibited forms of conduct and know how to use the reporting system
- Regular compliance trainings for mid-level managers and front-line supervisors so they know how to prevent and/or respond to workplace harassment

Bonus points if you can check these boxes:

- The organization conducts climate surveys on a regular basis to assess the extent to which harassment is experienced as a problem in the workplace
- The organization has implemented metrics for harassment response and prevention in supervisory employees' performance reviews
- The organization conducts workplace civility training and bystander intervention training
- The organization has partnered with researchers to evaluate the organization's holistic workplace harassment prevention effort

A reminder that this checklist is meant to be a useful tool in thinking about and taking steps to prevent harassment in the workplace, and responding to harassment when it occurs. It is not meant to convey legal advice or to set forth legal requirements relating to harassment. Checking all of the boxes does not necessarily mean an employer is in legal compliance; conversely, the failure to check any particular box does not mean an employer is not in compliance.

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Checklist Two: An Anti-Harassment Policy

An anti-harassment policy is a key component of a holistic harassment prevention effort. Check the box below if your anti-harassment policy contains the following elements:

- An unequivocal statement that harassment based on any protected characteristic will not be tolerated
- An easy-to-understand description of prohibited conduct, including examples
- A description of a reporting system – available to employees who experience harassment as well as those who observe harassment – that provides multiple avenues to report, in a manner easily accessible to employees
- A statement that the reporting system will provide a prompt, thorough, and impartial investigation
- A statement that the identity of an individual who submits a report, a witness who provides information regarding a report, and the target of the complaint, will be kept confidential to the extent possible consistent with a thorough and impartial investigation
- A statement that any information gathered as part of an investigation will be kept confidential to the extent possible consistent with a thorough and impartial investigation
- An assurance that the employer will take immediate and proportionate corrective action if it determines that harassment has occurred
- An assurance that an individual who submits a report (either of harassment experienced or observed) or a witness who provides information regarding a report will be protected from retaliation from co-workers and supervisors
- A statement that any employee who retaliates against any individual who submits a report or provides information regarding a report will be disciplined appropriately
- Is written in clear, simple words, in all languages commonly used by members of the workforce

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Checklist Three: A Harassment Reporting System and Investigations

A reporting system that allows employees to file a report of harassment they have experienced or observed, and a process for undertaking investigations, are essential components of a holistic harassment prevention effort.

Check the box below if your anti-harassment effort contains the following elements:

- A fully-resourced reporting process that allows the organization to respond promptly and thoroughly to reports of harassment that have been experienced or observed
- Employer representatives who take reports seriously
- A supportive environment where individuals feel safe to report harassing behavior to management
- Well-trained, objective, and neutral investigators
- Timely responses and investigations
- Investigators who document all steps taken from the point of first contact and who prepare a written report using guidelines to weigh credibility
- An investigation that protects the privacy of individuals who file complaints or reports, individuals who provide information during the investigation, and the person(s) alleged to have engaged in harassment, to the greatest extent possible
- Mechanisms to determine whether individuals who file reports or provide information during an investigation experience retribution, and authority to impose sanctions on those who engage in retaliation
- During the pendency of an investigation, systems to ensure individuals alleged to have engaged in harassment are not "presumed guilty" and are not "punished" unless and until a complete investigation determines that harassment has occurred
- A communication of the determination of the investigation to all parties and, where appropriate, a communication of the sanction imposed if harassment was found to have occurred

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Checklist Four: Compliance Training

A holistic harassment prevention effort provides training to employees regarding an employer's policy, reporting systems and investigations. Check the box if your organization's compliance training is based on the following structural principles and includes the following content:

Structural Principles

- Supported at the highest levels
- Repeated and reinforced on a regular basis
- Provided to all employees at every level of the organization
- Conducted by qualified, live, and interactive trainers
- If live training is not feasible, designed to include active engagement by participants
- Routinely evaluated and modified as necessary

Content of Compliance Training for All Employees

- Describes illegal harassment, and conduct that, if left unchecked, might rise to the level of illegal harassment
- Includes examples that are tailored to the specific workplace and the specific workforce
- Educates employees about their rights and responsibilities if they experience conduct that is not acceptable in the workplace
- Describes, in simple terms, the process for reporting harassment that is experienced or observed
- Explains the consequences of engaging in conduct unacceptable in the workplace

Content of Compliance Training for Managers and First-line Supervisors

- Provides easy-to-understand and realistic methods for dealing with harassment that they observe, that is reported to them, or of which they have knowledge or information, including description of sanctions for failing to use such methods
- Provides clear instructions on how to report harassing behavior up the chain of command, including description of sanctions for failing to report
- Encourages managers and supervisors to practice "situational awareness" and assess the workforces within their responsibility for risk factors of harassment

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