

# Development of discipline procedures for workplace sexual harassment



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## **Abstract**

Sexual harassment in the workplace is commonplace, with studies estimating that anywhere from 25% to as many as 80% of women experience it in some form during their lifetimes. Sexual harassment and assault at work have severe implications for women and their employers. Steps should be taken proactively to assure that harassment activity and, subsequently, the claims thereof by the development of internal policies that serve to minimize the occurrence of harassment in the workplace. Providing the resources and training as well as the development of the tools needed to prevent and address workplace sexual harassment is critical for making workplaces safer for all workers. Organizations should adopt and enact anti-harassment policies and communicate these policies to employees upon hire as well as periodically throughout employment. Employers should also adopt multi-faceted reporting procedures and systems with periodic testing of the systems to determine their ongoing functionality. For organizations to maintain that discipline for perpetrators of workplace harassment is not only prompt, but also proportionate and commensurate to the severity of the circumstances, it will ensure that the occurrence of such offenses will be minimized.

*Keywords:* Civil Rights Act, EEOC, harassment, human-resources, sexual harassment, Title VII

### Sexual Harassment

Over the last decade, the Me Too Movement (most recently #MeToo) has raised the visibility of sexual harassment and the personal toll it takes on <https://assignbuster.com/development-of-discipline-procedures-for-workplace-sexual-harassment/>

women's lives to unprecedented levels. Sexual harassment in the workplace is commonplace, with studies estimating that anywhere from 25% to as many as 80% of women experience it in some form during their lifetimes (Feldblum, Chai & Lipnic, 2016). Harassment based on sex in any form is a direct violation of Title VII of the Civil Right Act (1964) which states that “unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct is made either explicitly or implicitly a term or condition of an individual's employment” (Civil, 1964). Generally speaking, sexual harassment is characterized as unwelcome sexual advances, requests for sexual favors, or other physical or verbal conduct that may or may not have the purpose or effect to “interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment” (Civil, 1964). This report examines steps that organizations can take to minimize or even eliminate the occurrence of harassment in the workplace in any form.

## Identification

Title VII of the Civil Rights Act (1964) is a federal statute that serves to prohibit discrimination in employment based on sex, religion, race, and national origin, and it applies to all employers that have fifteen or more employees (Civil, 1964). In addition, the law makes it illegal for an individual to retaliate against a person because the person filed a discriminatory complaint, or participated in an employee discrimination or harassment investigation. Title VII not only applies the federal, state, and local governments but also to employment agencies and labor organizations as well (Feldblum et al., 2016). Title VII does provide an individual the right to <https://assignbuster.com/development-of-discipline-procedures-for-workplace-sexual-harassment/>

file a private lawsuit in a harassment situation though the complainant individual must file the complaint of the alleged discrimination with the EEOC within six months of (180 days) of learning of the discrimination or the individual may lose the right to file a lawsuit (Rutherglen, 2015). Despite Title VII's protections, however, many individuals across the country still face sexual harassment in their organizations or places of work (Feldblum et al., 2016).

The term 'sexual harassment' brings to mind sexual advances or acts and comments or jokes relating to sexual activities. In the purest sense, these actions do not, in and of themselves, constitute harassment; however, if the type of conduct is unwelcome, then the label can be applied as these concepts are broader. Any behavior that is deemed unwanted and is aimed at an employee because of the employee's gender can also be considered sexual harassment (Rutherglen, 2015). This means that the conduct does not even have to be of sexual in nature, but because it is directed towards an individual because of their gender, then it would be considered sexual harassment (Rutherglen, 2015).

The Equal Employment Opportunity Commission (EEOC) is a government agency that enforces and administers civil rights laws aimed at avoiding workplace discrimination occurrences. The EEOC investigates any discrimination complaints that are based on an individual's race, religion, national origin, age, sex, sexual orientation, disability, gender identity, genetic information, and retaliation for reporting or opposing any discriminatory practice (Fleischer, 2019). When the EEOC investigates an allegation of sexual harassment, it takes into account all circumstances <https://assignbuster.com/development-of-discipline-procedures-for-workplace-sexual-harassment/>

involved in the allegation, which includes the context in which the alleged incident occurred as well as the nature of the sexual advances (Fleischer, 2019).

Once the investigation is completed, the EEOC then will make a determination on the allegations is made based solely on the facts (Fleischer, 2019). The EEOC also guides on the elimination of some potential ambiguities that may arise in certain circumstances. For instances where harassment has occurred, the victim, as well as the harasser, may be of either sex as the victim does not have to be of the opposite sex. The harasser can be a supervisor, a co-worker, and even a non-employee, but the harassing activity must be unwelcomed by the victim (Feldblum et al., 2016). The victim can be any individual that is affected by the offensive conduct and is not required to necessarily be the individual that was actually harassed, and it may occur without economic injury to or result in the discharge of the victim to be considered harassment (Feldblum et al., 2016).

#### Evaluation

Because there are such variances from case to case regarding relevant facts, there cannot be sweeping generalizations made that can be universally applied in an organization's internal investigations (Fleischer, 2019).

Typically, however, there are at least three factors of conduct that will usually lead to an internal finding of harassment and, thus, the presence of the organization's liability. In and the instance where quid pro quo allegations are proven to be present, and demands for sex acts in exchange for job-related benefits, then there are strong possibilities for liability risks

(Rutherglen, 2015). Secondly, courts usually conclude that sexual  
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harassment exists where conduct was directed intentionally at an employee because the employee's gender superseded as the job requirement as opposed to job performance. Thirdly, when a claim is made illustrating conduct or the presence of statements that reflect a belief that female employees are inferior for the role due to their sex, then a liability exists for the organization (Fleischer, 2019).

Isolated or trivial incidents usually will not give rise to sexual harassment liability as every comment will not necessarily affect the conditions of employment or constitute what is thought of as a hostile work environment (Howarth, 2005). The circumstances must be considered when determining whether conduct is unwelcome or constitutes harassment. Conduct alleged to be sexual harassment must be judged by a variety of factors, including the nature of the behavior, the background experience and actions of the employee, the background, experience and actions of the coworkers and supervisors, the physical environment of the workplace, the type of obscenity used, and an analysis of how a reasonable person would react to the topic in question (Fleischer, 2019). However, rather than making an incorrect decision of whether conduct is appropriate or not, employers should be prepared to take appropriate action when behavior is directed against employees of sex first appears to be offensive or unwelcome (Fleischer, 2019).

Steps should be taken proactively to assure that harassment activity and, subsequently, the claims thereof by the development of policies that prohibit harassment in the workplace (Fleischer, 2019). A written plan is the first step in the establishment of a system prohibiting harassment of any kind. <https://assignbuster.com/development-of-discipline-procedures-for-workplace-sexual-harassment/>

This policy provides employees with notification of what acts are not permitted, informs employees of their rights, and how to find a remedy for the situation if and when harassment occurs (Fleischer, 2019). By establishing the policy safeguards, the organization will have a basis by which to minimize any liability exposure; however, it will not necessarily ensure complete protection. The prevention of harassment within an organization is the best tool to work toward the elimination of harassment in the workplace (Fleischer, 2019).

Organizations are encouraged to take the preventative steps toward avoiding sexual harassment before it occurs (Howarth, 2005). They should communicate these directives to members of the organization that harassment in any form will not be tolerated and can be accomplished by providing training to the employees upon hiring and then annually to convey a consistent message throughout the organization (Fleischer, 2019). The challenge for professional managers and executives is to diminish the inaccurate stereotype attached to women and eliminate the treatment of employees based on gender. It is reducing the propensity for individuals to unlawfully retaliate against an individual for opposing organizational practices that may discriminate an individual based on sex or for their filing a discrimination complaint, for testifying to, or participating in an investigation Title VII (Rutherglen, 2015).

It is essential, from both sides of the claim, for the organization to document everything from a timeline to witnesses to the offending actions themselves. Organizations need to have the appearance of being impartial in a complaint situation, but more importantly, the organization needs to be proactive in <https://assignbuster.com/development-of-discipline-procedures-for-workplace-sexual-harassment/>

ensuring that the offensive activities are eliminated from the workplace (Fleischer, 2019). Even though common sense and good management practices dictate these must be done, the law also requires it. Under Title VII, when an employer causes, condones, or fails to eliminate unfair treatment of women in the workplace, liability may be found (Feldblum et al., 2016).

## Results

Harassment in the workplace can result in substantial costs to companies, including legal expenses, if there are formal charges of harassment, costs related to employee turnover, and costs related to lower productivity from increased absences, lower motivation and commitment, and team disruption (Merken & Shah, 2014). Typically, the amount of financial payouts in settlements is kept confidential, making it difficult to estimate total legal costs related to harassment reliably. The EEOC annually publishes all financial settlements it reaches on behalf of employees. In 2017, for example, the EEOC gained \$46.3 million in monetary benefits for employees concerning sexual harassment charges (U. S. EEOC, 2018). It is likely that these costs substantially underestimate the actual payouts made by employers in response to sexual harassment charges because the EEOC only litigates a small percentage of complaints that it receives (Rutherglen, 2015).

Costs related to employee turnover constitute the most significant economic cost of sexual harassment, considerably higher than costs related to litigation, as replacing an employee can be increasingly expensive (Merken &



Shah, 2014). A meta-analysis of case studies of the cost of employee turnover estimates that the average cost of 16% to 20% of a lower-level employee's annual salary (Merken & Shah, 2014). This percentage drastically increases to 213% of the yearly salary for an experienced managerial and professional staff (Boushey, Heather & Glynn, 2012). Researchers recommend that organizations take steps to implement a zero-tolerance policy that explicitly prohibits any form of harassment (Cooper, Hellriegel & Slocum, 2016). By having the organization's leadership adhering to the system, the team will frequently ensure that all members of the organization understand that perpetrators will be held accountable. By including the employees in the process, there will be a sense of teamwork instilled that will encourage and maintain the desired diverse culture (Cooper et al., 2016).

### Recommendations

Having true diversity involves composing an employment team of different types of individuals, including various genders, religious backgrounds, races, and even different physical abilities and political parties. This can provide a variety of origins and perspectives in the development of ideas and projects within the organization (Miller, 2016). The challenge can then present itself of the resultant pervasive attitudes and actions within the organization that could potentially result in division within the workforce (Cooper et al., 2016). This division will usually lead to individuals or small groups of individuals being isolated. Once isolated, the potential for a harassing situation can quickly arise (Miller, 2016). One method used to prevent this phenomenon is to consider utilizing an occasional employee survey in order to gauge team

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member's thought processes in its infancy to avoid a harassing situation and ultimately losing a critical member of the team (Miller, 2016).

By maintaining diversity even in the upper levels of management, employees will see that there is the opportunity to achieve established individual goals and will be less likely to leave the company's ranks, thus minimizing the likelihood of employee turnover (Cooper et al., 2016). The need to focus on diversity from the standpoint that it is not solely about race is a positive step forward. Developing an effective complaint procedure is a necessary action that can be taken to stop workplace harassment and minimize liability (Cooper et al., 2016). Employees should assist victims of harassment by reporting any observed incidents. The employees should document each event of harassment regardless of the perceived severity involved. Failure of an organization to act on a complaint, irrespective of how severe it is, could result in the organization being held liable (Fleischer, 2019). The goal is for superiors to prevent sexual harassment from occurring in the first place; however, if a harassing event does occur to confront the harassment and stop its occurrence immediately to avoid or at least to minimize the organization's liability exposure (Fleischer, 2019).

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