

Strategies for Preventing Workplace Harassment and Discrimination[®]

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Can you answer these questions correctly?:

- The law is clear and precise as to exactly what behaviors and/or actions constitute hostile work environment sexual harassment – True/False?
- After an employee complains about a supervisor’s harassing behaviors, the supervisor, with little or no explanation, denies that same employee’s first, second and third choice of vacation week. Is this a petty slight, retaliation on the part of the supervisor or it depends?
- Steve, a client services representative (“CSR”), persists in asking another CSR, Joanne, out to dinner even though she turns him down every single time he requests a date and Joanne has told him several times to stop asking. Steve’s behavior is not at risk for sexual harassment, because sexual harassment may only occur between a male boss and female subordinate – True/False?
- Arlene, Paul and Trish are surgical technicians who work together as a team. Arlene, frequently makes sexual comments to Paul, such as questioning him about his sexual exploits and comments on his physique. Paul seems to find the treatment mildly amusing, but Trish finds it very offensive and wants to avoid the situation. Trish may be a victim of harassment even though none of Arlene’s comments are directed towards her. True or False?

If you are unsure about the answers or your management radar tells you that there are other employee activities/undercurrents within your Practice that could result in a liability, then you need to take action before it is too late. Equal Employment Opportunity Commission (‘EEOC’) charge statistics show there were 30,500 harassment charges filed in 2011, which is almost a 30% increase in the last 11 years. 57% of survey respondents to a Society for Human Resources Management Conference stated that they have been sued by an employee or former employee. Let’s not be one of those statistics.

Your strategic game plan is to ensure that the Practice has a written policy on preventing workplace harassment and discrimination and the policy has been communicated to all employees. Training your staff would be beneficial for all employees, but essential for your managers and supervisors in order for them to better understand the laws and requirements. You want them to proactively spot and discuss with you potential harassment and discrimination before it invades the workplace, the risks become paramount and you’ve paid a high price in lawsuits because you have allowed harassment and discrimination to flourish within the Practice.

Everyone loses when harassment or discrimination occurs. Even if the situation does not trigger a lawsuit, it affects morale (divisiveness increases - disgruntled team members), productivity decreases (due to increased absenteeism, gossiping, poor performance and turnover) and attitudes become more contentious (employees start to take sides). Harassment and discrimination are behaviors and employees are accountable for their own behaviors as well as the resulting consequences. As the Practice Owner and Practice Manager, you need to help your staff to stay aware of their

responsibilities in fostering a respectful work environment, in order to minimize and eliminate the offensive or illegal behavior.

While individuals need knowledge to change behavior, they certainly need to recognize the likely consequences of their behaviors and then base their actions accordingly. The balance of risks and rewards is heavily stacked against offenders and the staff needs to be reminded of this. The Practice is not a frat house, locker-room or a TV reality show but a productive work environment that promotes a team culture. Many people have lost their jobs, faced disciplinary actions and ruined their careers/reputations as well as their personal relationships by engaging in harassing or discriminating activities. What is most important is to recognize and evaluate behaviors that are acceptable, not acceptable or illegal.

As employers, Practice Owners and Practice Managers should take the necessary steps to prevent harassment and discrimination from occurring, such as affirmatively discussing the subject, expressing strong disapproval ('zero tolerance'), informing employees of their right to raise and how to raise the issue of harassment or discrimination (a detailed written policy) and developing methods (meetings, training, etc) to sensitize all concerned.

What should be included in a 'Preventing Workplace Harassment and Discrimination' policy?:

- A commitment to eradicate and prevent harassment and discrimination (for example – 'The Practice is committed to providing a work environment that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive, including sexual harassment');
- What constitutes harassment and discrimination in the workplace under federal and state law or even county ordinances;
- Examples of prohibited conduct and unacceptable behavior;
- A detailed outline of the reporting procedure employees should use;
- An explanation that the Practice will take prompt and appropriate action when investigating the allegation;
- A commitment to handle all complaints, investigations and personnel actions in as confidential a manner as possible;
- Appropriate disciplinary action/penalties (up to and including termination) that the Practice will impose for substantiated violation of the policy;
- A statement that the Practice will not tolerate retaliation against employees who file complaints or those who participated in the investigation;
- Additional resources or contact individuals who are always available for consultation.

Once you have a policy implemented, you will need to communicate it and follow it consistently. A Practice greatly improves its position by having a procedure in place that encourages employees to come forward with complaints. It is crucial that a victim not be required to address complaints to a supervisor who is involved, condones, or ignores the harassment. Victims need to be willing to come forward, thus enhancing the Practice's ability to take prompt and effective remedial action to resolve the issues. And what do most people want as a result of coming forward – they want the harassment or discrimination to stop. It is when the employer fails to take action that the employee or ex-employee files a harassment or discrimination claim.

Any type of backlash to a harassment or discrimination claim is also against the law. At least a third of all cases, brought against employers, claim retaliation. An individual does not need to prove the

original claim of harassment or discrimination in order to win the retaliation suit. In fact, there is a much broader definition, meaning it may be much easier to prove retaliation than harassment or discrimination.

Retaliation can take many forms, but often involves reassigning the employee who filed the claim to a less desirable position or forcing him/her to take a leave of absence. Under no circumstances should the Practice knowingly permit retaliation to occur. The Practice's harassment and discrimination policy should safeguard the rights of the accuser, as well as those of the accused, until a thorough investigation can be performed. However, a policy should also provide for sanctions in the event of a frivolous or bad faith claim.

Should I train my employees? Some states require certain employers to conduct sexual harassment training. For example, California law requires employers that have at least 50 employees to provide supervisors with two hours of interactive sexual harassment training every two years. Connecticut and Maine also require sexual harassment training. And other states, like New Jersey, strongly encourage employers to provide training on preventing workplace harassment and discrimination. Even if training isn't legally required in New Jersey, it will be looked upon more favorably by the courts. Training is a great idea -- your managers/ supervisors will know what the law is and what to do when an employee complains and your employees will know the policy and the procedures in place to raise or handle a complaint. Also, if the Practice finds itself in a lawsuit, you'll be able to demonstrate what steps the Practice took to communicate and educate the employees.

What should you as the Practice Owner or Practice Manager do?:

- Monitor your workplace - talk to your employees about the work environment. Ask for their input. Look around the workplace itself. Do you see any offensive posters or notes? Talk to your supervisors and managers about what is going on. Keep the lines of communication open.
- Take all complaints seriously - if someone complains about harassment or discrimination, act immediately to investigate the complaint. If the complaint turns out to be valid, your response should be swift and effective.

And here is a simple Litmus Test to measure any Behavior/Conduct – be it Appropriate, Inappropriate or Illegal:

- Personalize It – can the behavior/conduct be repeated (experienced, seen or heard) in front of your family?
- Repeated Without Explanation – can the behavior/conduct be repeated without any explanation (stand alone) – what is the Impact vs. Intent?
- Repeated to the Media – can the behavior/conduct be publicized without any embarrassing or adverse consequences to the individual's reputation, your reputation or the Practice's?
- Be oversensitive - If in doubt about whether the behavior/conduct is appropriate or not – then don't do it!

What is the most important thing to remember in the workplace? Encourage your staff to treat other people like they want to be treated! Foster a productive environment where people are treated with respect, dignity and civility!