

*Implementing a Sexual Harassment
Training Policy and Program*
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The Supreme Court of the United States and the Equal Employment Opportunity Commission define sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature."¹ Sexual harassment is prohibited by Title VII as well as by laws in virtually every state. Complaints, lawsuits, settlements, and jury awards are prevalent around the country and are a major concern for both employers and employees.

1. Major Court Cases

The Supreme Court has rendered several key decisions regarding sexual harassment, the most significant being *Faragher v. Boca Raton*,² and *Burlington Indus. Inc. v. Ellerth*,³. The decisions cited are important to employers in that they state that employers may defeat liability in sexual harassment claims in those matters in which the complainant has not experienced an adverse employment action when:

- A. The employer exercised reasonable care to prevent and promptly correct sexually harassing behavior; and
- B. The employee unreasonably failed to take advantage of its preventative or

corrective measures or to otherwise avoid harm.

If the employer takes all reasonable steps to prevent harassment, liability for this claim may be avoided. The Supreme Court advanced this principle further in *Kolstad v. American Dental Ass'n*,⁴ holding that training is an essential component of an effective anti-harassment policy. The *Kolstead* and *Burlington* decisions demonstrate the need for employers to develop and implement comprehensive sexual harassment policies addressing enforcement and training in an effort to defend this type of claim.

2. Creating an Effective Sexual Harassment Policy

The most important aspect of a sexual harassment program is the creation and implementation of a comprehensive sexual harassment policy. This policy must be explicit and routinely communicated to employees. The following are essential aspects of an effective policy.

- A. Notification - The policy should clearly define the type of activity that will not be tolerated by the entity based upon state and federal law. The policy should outline that it applies to all employees to whom immediate notification is essential.

¹ *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986).

² 524 U.S. 775 (1998).

³ 524 U.S. 742 (1998).

⁴ 527 U.S. 526 (1999).

B. Reporting - Reporting mechanisms are essential to an effective policy which is designed to encourage victims of harassment to report the incident without being required to notify the offending supervisor as an initial step in the process. Confidentiality and zero tolerance for retaliation are required.

C. Investigation - The policy should also state that all complaints will be investigated in an impartial and thorough manner. Employers must be sure to follow this aspect of the policy to evidence a commitment to the policy.

D. Implementation - Effective implementation of the policy is as important as the policy itself which must include a comprehensive training program that is well documented and properly communicated to all employees. The company should maintain a complete record of all complaints, investigations, and disciplinary actions.

E. Update - Employers should consult with their attorneys on a routine basis and continuously update the policy in accordance with modifications to any existing law.

F. Human Resources - The role of the human resources department is essential to the effective implementation and enforcement of a sexual harassment policy. It is the duty of HR manager to ensure that a policy is developed, maintained and implemented. The policy must be posted and distributed to all employees. It is also recommended that the policy become a part of the employee handbook and the company provide ongoing training for the proper implementation of the policy.

3. Essential Elements of Sexual Harassment Training

Individual Employers clearly have different needs that need to be addressed in their sexual harassment

policies and related training, but certain elements are likely essential for all employers.

A. The training manual includes practical explanations of federal and state sexual harassment laws, as well as prevention of sexual harassment and its consequences.

B. The training should be presented by expert or experienced trainers who have experience in preventing sexual harassment, discrimination, and retaliation.

C. The training must provide practical examples demonstrating how to prevent sexual harassment, discrimination, and retaliation.

The content of a sexual harassment training program should involve communication to employees in supervisory or management position regarding the fact that they are the role models for the employee group. Managers must be trained to be aware of potential issues before a complaint is filed. Employees should be made aware of their duty to investigate claims immediately in an effort to be proactive in eliminating circumstances that may lead to sexual harassment. All supervisors and managers should be encouraged to seek guidance from executives or the HR department, and to be proactive in their efforts to prevent sexual harassment.

4. Primary Risks

Despite a widespread recognition of the need for sexual harassment policies and related procedures, complaints, lawsuits, settlements, and jury awards remain common place. The Equal Employment Opportunity Commission received 13,136 complaints in 2004.⁵ In addition, complaints from men have

⁵ Equal Employment Opportunity Commission, *Sexual harassment Complaints, 1999-2004* (2005).

been increasing and currently consist of 15.1% of the total claims filed in 2004 which represents an increase from 9.1% in 1992. Sexual harassment is a major issue for all employers and it presents significant liability risks. In order for employers to avoid liability risks they must accept the fact that harassment affects both men and women and the victim of a claim may be any person affected by the conduct. The implementation and enforcement of a strict and effective harassment policy is the first step in preventing and/or defending this type of claim.

This update is a summary for general information and discussion only. It is not a complete analysis and may not be relied upon as legal advice. Please contact William E. O'Gara, Esquire for further consultation at 401-824-5117 or send an email to him at wogara@pldw.com.