

E-GUIDE

Recognizing and Preventing Harassment: 5 Scenarios to Test Your Awareness



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ABOUT THIS GUIDE

While we make every effort to provide the most accurate, up-to-date information at the time of publication, employment laws are constantly changing, and this material is subject to change.

Recognizing and Preventing Harassment: 5 Scenarios to Test Your Awareness

Now, more than ever, businesses need to put harassment prevention front and center. The stakes are simply too high, especially during this time of heightened awareness, legal action and hybrid workforces.

In 2020 alone, the [Equal Employment Opportunity Commission \(EEOC\)](#) received more than 24,200 sexual harassment charges and obtained \$137.3 billion in monetary benefits for victims.

Ensuring a harassment-free work environment is a critical first step toward prevention. But how can you be certain which situations constitute harassment, putting your business at risk? And what constitutes bad behavior that, although not harassment, still requires your attention?

Let's look at five possible scenarios.

Scenario #1:

A new employee makes a joke while talking to a coworker, “I’m glad there are no men on my team. Maybe we’ll actually get something accomplished.”

Is it harassment?

No. Although the comment was inappropriate for the workplace, it’s not considered harassment. The legal definition of harassment specifies that the offensive behavior must be pervasive. In this case, the new employee may have been nervous, and the incident was isolated. A verbal warning by the employee’s supervisor should suffice.

Scenario #2:

A vendor keeps flirting with your receptionist. Lately, he’s getting more persistent and aggressive, even after several refusals by the receptionist.

Is it harassment?

Yes. Harassment by non-employees, such as vendors and customers, is prohibited like any other form of workplace harassment. You should take whatever action necessary to protect the receptionist from the vendor, even if it means selecting a different vendor.

Scenario #3:

A manager has quite the temper and is constantly spouting off. He calls employees on the team names like “moron” and “stupid” and throws folders around the office.

Is it harassment?

No. Basically, this is an “equal opportunity” jerk. Again, based on the legal definition of harassment, the offense must be based on a legally protected characteristic, such as age, race, sex or religion. Nonetheless, the behavior is inappropriate and warrants discipline, up to termination.

Scenario #4:

An employee consistently overhears a group of her coworkers in the lunchroom making racial jokes. They don’t engage with her, but she can’t help but hear them.

Is it harassment?

Yes. Harassment doesn’t have to be directed at a particular individual. An employee can deem a fellow worker’s behavior offensive or unwelcome, even if they’re not personally involved. Intervention and discipline is needed to stop the unpleasant lunchroom banter.

Additionally, harassment doesn’t always occur at work. Claims may result from any activity related in any way to the person’s employment. This includes business trips, tradeshow and happy hours.



DID YOU KNOW?

Sexual harassment gets most of the headlines, but lawsuits are filed every day alleging harassment based on age, race, color, religion, national origin, gender, disability and other protected characteristics. Managers should take all types of harassment seriously.

Scenario #5:

A female server hugs a male bartender at the beginning of each shift – and is often “touchy feely” and makes the male coworker uncomfortable.

Is it harassment?

Yes. Harassment isn’t gender- or role-specific. Females can harass males, and harassment can occur between people in the same positions. The stereotypical portrayal of a male boss harassing a young, female subordinate is just one type of harassment. The male server’s supervisor needs to intervene in this situation.

Defining Workplace Harassment

Harassment includes any physical or verbal conduct demonstrating hostility toward someone based on age, race, color, religion, national origin, disability or any other legally protected status (e.g., sexual orientation). Harassment can occur in person, in writing, by email, by text message or any other form of communication. Harassment can be physical, verbal or visual.

Examples of harassment include but are not limited to:

- Unwelcome comments
- Offensive jokes
- Threats
- Insults or name-calling
- Negative stereotyping
- Unwelcome physical contact
- Displaying derogatory pictures

Rank does not matter — any employee can be liable for harassing another employee. For example, harassment can occur between two employees, by an employee against a supervisor, or by a manager against another manager. Harassment also can be committed by a non-employee, such as a vendor, customer or independent contractor.

In its most obvious form, harassment occurs through direct contact between the alleged harasser and the victim. However, a claim of a harassment can be brought by any employee who is affected or offended by the conduct — even a witness.

Understanding When Bad Workplace Behavior Is a Legal Concern

While the five scenarios illustrate the range of situations that can be considered workplace harassment, they only touch on the details. Here's some additional guidance to help you understand what constitutes harassment.

For harassment to be unlawful under federal anti-discrimination laws:

- The harassing conduct must be related to the victim's association with a legally protected category, such as age, race, color, religion, national origin or disability. Harassment based on something other than a person's protected status most likely will not violate federal statutes.
- The conduct must be uninvited or unwelcome. Conduct is "unwelcome" if the victim of harassment did not solicit it or found it undesirable or offensive. This can be communicated in many ways, such as:
 - Grimacing or frowning
 - Turning away or backing up
 - Pretending not to hear or see the comments or conduct

Although an employee's active participation in harassing conduct may indicate welcomeness, the situation may not be that clear-cut. The victim may go along with harassment, or not actively oppose it, out of fear of losing his or her job, being ridiculed or having a complaint not taken seriously. In this case, a claim for harassment is still possible.

With sexual harassment, it is often difficult to determine whether conduct was unwelcome. Most sexual conduct is private, without witnesses. In these instances, the credibility of the parties or any other persons with knowledge about the alleged harassment will come into play.

The conduct must be "severe or pervasive" enough to create a hostile, intimidating or offensive work environment; interfere with a person's work performance; or otherwise affect the person's employment conditions and opportunities. Some of the factors that determine this are:

- The frequency of the conduct
- The severity of the conduct
- Whether the conduct was physically threatening or humiliating
- Whether the conduct unreasonably interrupted the employee's work performance
- The context in which the harassment occurred
- Any other relevant factor

Keep in mind that federal law does not prohibit simple teasing, offhand comments or isolated incidents that are not "extremely serious."

Additionally, harassment doesn't always occur at work. Claims may result from any activity related in any way to the person's employment. This includes business trips, tradeshow and happy hours.

Take a Proactive Approach to Prevent Harassment

What about your business? Are you doing enough to prevent the comments, gestures and behavior that could expose your workplace to a costly and time-consuming lawsuit? The EEOC, federal and state courts, and employment law experts all agree that harassment training is the most effective way to prevent workplace harassment and avoid liability.

Before that, however, you should develop and distribute a written no-harassment policy that clearly explains the types of conduct that are prohibited. The policy should state that the company will not tolerate harassment based on age, race, color, religion, national origin, sex (including sexual orientation, gender identity or pregnancy), disability or genetic information including family medical history.

For the most comprehensive approach possible, your policy should address harassment committed by anyone in the workplace, including executives, managers, coworkers and non-employees (such as vendors and clients). Include definitions and examples of harassment, an overview of employee rights in the workplace and solid communication that the company has zero tolerance for all forms of workplace harassment.



HELPFUL TIP

Practice "open-door" communication that encourages employees to come forward with complaints or concerns. This can help you address inappropriate behavior before it escalates.

Conduct Regular Training That Resonates

Regular workplace training plays a vital role in [preventing workplace harassment](#). But not all training is the same. To be effective, you want to use training materials that engage your employees and emphasize the importance of personal accountability. Here are a few tips:

- Find something that speaks to your employees. If need be, review a series of harassment videos and programs to find the best match. Consider your workplace culture, and select timely information that employees can relate to.
- Make it interactive. Keep your employees engaged with the material being presented to make the training memorable.
- Update your material. Find a video or program that is fresh and current. Outdated clothing, situations and conversation (think teal pantsuits, a wood-paneled breakroom or expressions like “You look rad”) can take away from the overall message.
- Track your training. Maintain detailed records of every training session you hold. Ask employees to sign a log and then take attendance to ensure everyone is present. Keep these records handy for easy reference and additional training when necessary.

What to Do When You Receive a Complaint

Despite your harassment-prevention efforts, incidents can still occur. And if they do, you must be prepared to respond. Handling harassment allegations can be challenging, but a step-by-step process can ensure you cover all the bases.

Follow these guidelines if you ever receive a complaint:

- 1 **Listen to the details** — and let the employee know you take his or her concerns seriously.

It's important to get a complete picture of what occurred. While you're listening to an employee's complaint, avoid questioning its truthfulness or drawing conclusions. Instead, let the employee do most of the talking.

Reassure your employee that you take his or her complaint seriously, and never downplay or make light of any situation or concern raised.

2 Prepare a written report outlining the details.

Careful documentation is essential, so gather all the information as presented to you by the employee.

3 Make sure the harassment stops.

To avoid an uncomfortable situation at the workplace while the complaint is being investigated, you may choose to have the alleged harasser work from home if working on-site or go on leave. Point out, too, that retaliation against the person reporting will not be tolerated.

4 Conduct a full investigation.

You can designate a qualified individual within your company to handle the investigation. This includes interviewing all involved employees and possible witnesses, gathering evidence and presenting the facts. If an internal investigator is not available, consider hiring an attorney or off-site consultant who can be objective about the case.

5 Act quickly.

Timing matters with sensitive workplace issues. You should respond to all incidents or complaints of harassment as quickly as possible. In fact, the EEOC urges employers to respond within 48 hours of receiving a complaint.

Take Control of Harassment with the Right Resources

As a small business owner, you're responsible for providing a safe, productive work environment for your employees. The issue of harassment should never be taken lightly or ignored. Follow the proper, preventative measures by instituting a written no-harassment policy and, just as important, educating your staff on illegal behavior and how to avoid it.

Find the Resources You Need to Establish and Reinforce Anti-Harassment Policies, and Provide Interactive Training To Employees.



Harassment Prevention at Work: Self-Guided Training

Self-paced training uses relatable examples and exercises, and interactive quizzes, to emphasize the types of harassment and tactics for addressing it. Available in two downloadable formats: LMS or HTML5/web-based.



Harassment Training Smart App

Web-based training provides six training modules that can be shared with a group or emailed to staff with step-by-step instructions.

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