

Building a Workplace Harassment Policy That Keeps You and Your Employees Safe



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In a small business where everyone works together closely, accusations of workplace harassment can be toxic—to your employees, your morale, your turnover, your reputation, and even your finances. But the right workplace harassment policies and procedures can help you prevent such behavior, and also make sure that you're in the best possible position if accusations of harassment in the workplace do arise.



What is harassment in the workplace?

Workplace harassment includes [sexual harassment](#), but also goes beyond it. The [U.S. Equal Employment Opportunity Commission \(EEOC\)](#), the federal agency that enforces antidiscrimination laws, says there are multiple types of workplace harassment, including unwelcome behaviors on the basis of:

- Race or color
- Sex or gender
- Pregnancy
- Religion
- National origin (country of birth)
- Disability

- Age
- Genetic information

State and local workplace harassment laws may add to this list. For example, [the NYC Human Rights Law](#) also protects veterans and active service members, and LGBTQ people. Generally, harassment laws forbid employers from demoting, transferring, or otherwise retaliating against employees who complain about harassment, including harassment of others.

Federal law recognizes two types of workplace harassment. In the first type, victims must put up with the harassment in order to keep their jobs, or gain certain advantages at work. The second type includes behaviors that create a working environment that a reasonable person would find hostile, abusive, or intimidating. This may be interpreted broadly. The California Supreme Court has ruled that [one employer created a hostile work environment](#) when it tolerated a practice of subordinates voluntarily trading sexual favors for promotions.

The federal statute of limitations for workplace harassment—the deadline by which victims must start a lawsuit—is usually 180 days for employees of private businesses. This means that business owners who are worried about litigation need to move fast when they spot problems like racial harassment in the workplace. Even better, they can help prevent those problems by creating strong policies.

What goes into writing your policy?

When drafting a workplace harassment policy, start by finding out what your state requires. In the wake of the #MeToo movement, some states ([California is one](#)) have passed laws requiring employers to distribute their policies, sometimes with specified language.

The EEOC suggests, in its [anti-harassment policy checklist](#), that employers start by stating that they won't tolerate workplace harassment. The policy should then:

- Clearly explain what is considered harassment in the workplace, with examples
- Promise a quick, thorough, and fair investigation
- Outline penalties for harassment or retaliation
- Guarantee as much confidentiality as possible
- Promise protection from retaliation

- Explain the procedure for reporting harassment, ideally providing several ways to make complaints

A model policy from the Society for Human Resources Management also suggests language about how the employer will handle consensual relationships between coworkers, as these relationships also affect the overall work environment.

You can create your own workplace harassment policy ([this example](#) is specific to California) or [get help from an attorney](#). Either way, both the federal requirements, and any additional state or local requirements, need to be incorporated into your written policy. Your state's department of labor is a good resource for state-specific guidance.

How does your policy affect your workplace?

Paula Brantner of [PB Work Solutions](#), a Silver Spring, Md., consulting firm focused on training and toxic workplace prevention, says it's important to customize your policy to reflect your own goals—including the kind of workplace you want.

"If [you] seriously want to prevent the conduct from ever happening, there needs to be a way to address conduct that doesn't cross the legal boundaries, but is nonetheless not part of a culture that the company wants to have," says Brantner.

Jennifer Shaw of the [Shaw Law Group](#) in Sacramento, Calif., adds that having a policy that only covers illegal behavior actually can hurt you.

"Number one, you are creating a situation where you're not going to be able to stop conduct before it becomes illegal," she says. "Number two, when you tell someone they violated your policy, by definition, you've admitted they violated the law, which is a liability issue for you."

Amy Oppenheimer of the Berkeley, Calif., [Law Offices of Amy Oppenheimer](#) adds that, especially with a small business, the policy should provide the contact information of an outside person who can take complaints against the business's leader. "The most vulnerable situation is that they are conducting themselves in a way that would be considered inappropriate or harassing," she says.

No matter what your policy says, experts agree that it's most effective when reinforced with regular training—required in some states—as well as genuine

accountability. [Jim Spielberger](#) of [McGrath & Spielberger, PLLC](#) in Charleston, S.C., advises clients to keep records of investigations—and not just because it could be useful in court.

"If you go back to that employee that said they were harassed, and you say, 'Listen, these are the steps we took'... that person is going to be much happier," says Spielberger. "They were taken seriously."

And workplace harassment—or even the potential for workplace harassment—needs, first and foremost, to be taken seriously. By having a documented anti-harassment policy in place, you are protecting both your business and its workers, while helping to create the kind of workplace environment you want your business to have.

[Get help crafting your Workplace Harassment Policy](#)

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