

WEBINAR SERIES

Navigating Sexual Harassment Complaints

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Today's Presenters



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The materials contained in the following presentation have been prepared as general information and to inform the attendees of important employee related situations that may impact their business. Neither this presentation nor any of the materials contained herein are intended as legal advice. Attendees should consult with counsel before taking any actions that may impact their legal rights.

Today's Agenda

- What is sexual harassment?
- What is a sexual harassment complaint?
- What steps should an employer take to address a complaint in the workplace?
- What documentation should the employer retain?
- What are some best practices for addressing sexual harassment or sexual harassment complaints in the workplace?
- What can happen if a sexual harassment complaint is ignored or unresolved?

Webinar Forum

All participants are muted.

Please type questions in the side navigation panel and we will try to address most questions during today's session.

Today's presentation will be posted online at prestigepeo.com/webinars

What is Sexual Harassment?

What is Sexual Harassment in the Workplace?

Generally, there are two types of sexual harassment in the workplace:

- **Quid Pro Quo**

- This type of sexual harassment involves explicit or implicit demands for sexual favors in exchange for some employment benefit or to avoid a negative consequence.
- Similar to disparate treatment claims.

- **Hostile Work Environment (More common type of sexual harassment)**

- This type of sexual harassment involves behavior that creates an intimidating, hostile, or offensive working environment.
- Conduct must create a subjectively and objectively hostile work environment.
- Generally, includes these elements:
 - Unwelcome
 - Pervasive/Severe*
 - Persistent
- Examples: Unwelcome sexual advances, sexual jokes/comments, inappropriate pictures or text messages
- *NY law has a different standard than federal law. In NY, sexual harassment does not have to be severe or pervasive to be illegal. The law will consider each instance of harassment uniquely; however, the situation will still be viewed in terms of a reasonable victim in the same protected characteristics.

What is Sexual Harassment in the Workplace?

- Other behavior that can also be classified as sexual harassment:
 - Gender-Based Harassment- Harassment based on an individual's gender.
 - Ex. Making derogatory comments about a person's gender or assuming they are less capable of doing their job because of their gender.
 - Third-Party Harassment- Harassment from a customer, client, or vendor.
 - Ex. Customer making inappropriate sexual jokes to a client service administrator.
 - Sexual Assault: Non-consensual sexual act or behavior in the workplace.
 - Ex. Groping by a coworker or superior.

What is Sexual Harassment in the Workplace?

- Often, sexual harassment is unreported to companies or other third parties.
 - EEOC statistic shows that 75% of individuals experiencing sexual harassment at work do not report it to their employers.
 - Fear of retaliation is the most common reason for failure to report identified by victims of sexual harassment.
 - EEOC estimates that only 6-13% of sexual harassment victims ever file an EEOC charge.
- Between 2018 and 2021, the Equal Employment Opportunity Commission (EEOC) received 27,291 sexual harassment complaints.
 - Of these complaints:
 - 78.2% of them were women.
 - 43.5% were accompanied by allegations of retaliation as well.
 - Resulted in EEOC recovery of \$300 million for these complainants.
- Statistics aside- Companies can create healthy, respectful work environments where employees thrive and where they feel empowered to bring their concerns forward without fear of retaliation.

What is a Sexual Harassment Complaint?

What is a Sexual Harassment Complaint?

- It is an allegation made by an employee or another individual about inappropriate sexual behavior in the workplace.
- Can be brought orally or in writing.
- Can be brought by the employee experiencing the alleged harassment, by another coworker who witnessed or heard about the alleged harassment or can even be brought through a third-party agency (like the EEOC).
- Generally, includes:
 - Date/Location of Incident
 - Nature of Behavior
 - Names of Individual(s) Involved in the Behavior
 - Potential Witnesses
 - Impact to Employee or Workplace

What steps should
an employer take to
address a complaint
in the workplace?

Steps to Address a Sexual Harassment Complaint

- **Take** all sexual harassment **complaints seriously**.
- When a complaint is brought, it is not for the company to decide at that moment whether the incident or behavior happened. It is the company's obligation to **investigate the complaint**.
 - Sexual harassment complaints are sensitive topics to investigate.
 - Prestige clients can reach out to their HRBP or HRC for assistance in investigating a complaint. You do not have to handle the matter on your own.
 - You can also have a member of your internal HR department, a member of management, or another third party investigate the matter.
- Whoever is conducting the investigation should **speak with the complainant**. The goal is to obtain as many details as possible about the incident. Let them know you are taking their concerns seriously and will be looking into the matter.
- **Evaluate whether you need to separate the accused from the complainant while the investigation is being conducted**. Do they work in the same office space, on the same shifts, or is the complainant at risk for further harassment? The accused's schedule or routine may need to be changed to limit or remove contact from the complainant.

Steps to Address a Sexual Harassment Complaint

- **Speak with witnesses.** The goal is to be able to establish whether the allegations can be corroborated by another party. You may not need to speak with all witnesses; however, you should evaluate which witnesses may have the most information for you and connect with those individuals.
- **Speak with the accused.** Even if no witnesses substantiate that the action or behavior occurred, it is still important to give the accused an opportunity to respond to the allegations against them. Additional information may come to light, they may admit to the behavior, or they may deny that they engaged in any sexual harassment.
- **Decide if corrective action is needed**, and if so, determine what action is appropriate for the situation.
 - Possible corrective actions can be: verbal warning, written warning, policy reminder, suspension, or termination.
- **Take the corrective action(s) you've identified.**
- **Let the complainant know that you have fully investigated the complaint and that the company has addressed the matter.**
 - The complainant does not need to know specifics; however, it is important to communicate with them about the outcome of the investigation.

What documentation
should the employer
retain?

Documentation

- At a minimum, the company should keep a record of the following:
 - Complaint was made- including date
 - Complainant name(s)
 - Witness name(s)
 - Accused name(s)
 - Whether the allegations were substantiated or not
 - What action the company took to address the allegations
 - Documentation of any disciplinary action taken, and any training or policy reminders provided
- Please note: The state of Colorado recently passed detailed legislation requiring employers to keep detailed records on harassment complaints, so Colorado employers may have additional requirements.

What are some best practices for addressing sexual harassment or sexual harassment complaints in the workplace?

Strategic HR

- Strong Handbook Policy
- Sexual Harassment Training (mandatory in several states, including NY)
- Consistent Discipline and Documentation
- Investigate Complaints
- Employee Engagement and Workplace Culture

It's easy to look at the employment law landscape and think there's not much you can do as a business owner to protect your employees and your company. But that is NOT true! There are important steps you can take to protect your employees and business from sexual harassment issues in the workplace!

Employee Handbook

Important Handbook Policies:

- Equal Employment Opportunity (EEO) Policy
 - Outlines organization's protection and equal opportunities for protected classes under federal and state law.
 - Memorializes organization's commitment to treating people fairly.
 - Provides process for reporting allegations of harassing behavior in the workplace.
- Sexual Harassment Policy
 - Outlines appropriate and inappropriate conduct in the workplace.
 - Provides process for reporting allegations of sexual harassment in the workplace.

Employee Handbook

A well-designed employee handbook sets an organization up for success.

- In the event of a complaint in the workplace, the employer can show:
 - They take all complaints seriously.
 - They have an established process for addressing concerns in the workplace.
 - Any legitimate action against any employees- such as termination- was appropriate under the company's policies and procedures and did not violate the law.
- Make sure you have proof (signed acknowledgment page) showing all employees received the handbook.

Employee Handbook

Example:

Sam started with the company on September 15, 2023. Sam received the Company's handbook during her orientation, which explained the company's process for handling harassment complaints. From the beginning of her employment, Sam's coworker, Michael, would make sexual jokes at Sam's expense in front of other employees. Sam complained to her supervisor, Joshua, about Michael's comments. The company spoke with Sam. The witnesses Sam identified confirmed Michael had made many inappropriate sexual jokes about Sam, and Michael denied the allegations. The company ultimately terminated Michael for misconduct and breach of the company's policies.

Sam's employer's handbook has served several important purposes:

- Their company has established a strong policy against harassment in the workplace.
- Sam knew who she needed to contact about her concerns.
- Sam's supervisor, Joshua, knew what he needed to do to respond to the complaint.
- Sam's complaint was appropriately investigated, and corrective action was taken.

Consistent Discipline & Documentation

- Sets expectations for workplace behavior.
- Progressive (typically, but in the case of sexual harassment, may require immediate termination).
- Keep policy reminders, write-ups, and termination form in the employee's file.
- Internal witness to any disciplinary action (preferably another manager or supervisor).

Consistent Discipline & Documentation

Example:

Sam started with the company on September 15, 2023. Sam received the Company's handbook during her orientation, which explained the company's process for handling harassment complaints. From the beginning of her employment, Sam's coworker, Michael, would make sexual jokes at Sam's expense in front of other employees. Sam complained to her supervisor, Joshua, about Michael's comments. The company investigated the complaints but ultimately found that they could only substantiate one inappropriate sexual joke by Michael. The company issued Michael a verbal warning, made him take some training, and issued him a sexual harassment policy reminder. A few months later, the company received another complaint about Michael from another female employee. After investigating and substantiating the matter, the company decided to move forward with termination.

Sam's employer's consistent discipline and documentation has served several important purposes:

- Their company has established a strong policy against harassment in the workplace.
- It shows the company enforces their policies.
- It establishes a record of the steps the company took to address complaints.

Employee Training

- Some states and localities mandate certain trainings. For example, New York and Illinois both have sexual harassment training requirements:
 - for new hires, and
 - on an annual basis.
- Chicago and New York City also have their own training requirements.
- California even requires sexual harassment training to be interactive and that the documentation of the training be kept for a minimum of two years.
- Required trainings typically have specific deadlines, and content requirements.

Employee Training

- Other important employee trainings:
 - Sexual harassment training for all employees, even if not required by state law
 - Harassment & Discrimination Training for supervisors
 - Discipline & Documentation Training for supervisors
- Always keep a log of who has attended training as part of your records (and it is strongly recommended that employees acknowledge and sign off on attending training(s)).

Employee Training

Example:

Dillon was hired on April 15, 2023. Dillon completed the company's mandatory sexual harassment training during his orientation. From the beginning of his employment, Dillon refused to do his job or attend company meetings. After dealing with Dillon's behavior for a few months, on October 23, 2023, Dillon is terminated.

Dillon files a Charge with the EEOC against his employer alleging that he complained of sexual harassment and was fired due to his complaint. Dillon never made a sexual harassment complaint to anyone at the company before his termination.

In their response to Dillon's Charge, Dillon's employer can use Dillon's attendance at this training to show Dillon was aware that they took sexual harassment claims seriously and that Dillon was trained on the company's sexual harassment policies and procedures. While they will still need to argue that Dillon did not make a complaint of sexual harassment, they can show that they take sexual harassment seriously and make sure all of their employees know the expectations for behavior in the workplace.

Investigating Complaints

- If an employee brings a complaint of harassment, you have a duty to investigate that complaint.
- Even if you don't think the complaint has merit, it's important to take all complaints seriously.
- If you receive a complaint, PrestigePEO can help:
 - Report the complaint to us.
 - If you would like, we can investigate the allegations and speak with any witnesses.
 - We are happy to provide practical advice on how to address the allegations and help you identify any corrective action you might need to take, if needed.
 - You should advise the complainant that you've investigated their allegations and taken corrective action. They don't need to know what action you've taken, but they should know you took their concerns seriously and did not ignore them.

Investigating Complaints

Example:

Sam started with the company on September 15, 2023. Sam received the Company's handbook during her orientation, which explained the company's process for handling harassment complaints. From the beginning of her employment, Sam's coworker, Michael, would make sexual jokes at Sam's expense in front of other employees. Sam complained to her supervisor, Joshua, about Michael's comments. The company spoke with Sam. The witnesses Sam identified confirmed Michael had made many inappropriate sexual jokes about Sam, and Michael denied the allegations. The company ultimately terminated Michael for misconduct and breach of the company's policies.

Sam's employer's investigation has served several important purposes:

- It showed their company took Sam's complaint seriously.
- It showed they had an established process for investigating complaints.
- It showed the company took appropriate corrective action based on the outcome of each investigation.

Employee Engagement and Workplace Culture

Let's talk about retaliation:

- Even if a sexual harassment claim has no merit, it is important that the complainant be treated with respect and treated the same as all other employees.
- It's easy for employees to show retaliation, because often it's human nature to feel offended or wronged by another's complaint or to react negatively to complaints in the workplace.
- Sometimes problem employees are also the ones making sexual harassment complaints in the workplace that may or may not have merit.
- When you have a healthy workplace culture and are willing to engage with employees regarding their concerns, you reduce the potential for an EPLI claim or lawsuit.

Employee Engagement and Workplace Culture

- It's important to have a workplace where employees are comfortable bringing forward complaints.
 - Open door policies
 - Require all managers and supervisors to treat all employees with respect
 - Make sure all employees are aware of who they can report complaints to
 - Prestige HRBP and HRCs are resources here for all Prestige clients.
 - Behavior starts at the top - all upper management should be held to the highest standards.

Employee Engagement and Workplace Culture

Example:

Judy and Christina are hired as receptionists on January 15, 2023. Judy works at the Company's Melville office. Christina works at the Company's Garden City location. They are both terrible at their jobs. In June 2023, the regional manager, Anthony, sexually harasses both employees. Judy and Christina complain to their supervisors about the behavior. The complaints are investigated, and Anthony is terminated.

Judy's supervisor is annoyed that she has more work now that Anthony is gone and starts making snide comments to Judy about the situation. Christina's supervisor is supportive of Christina and continues to treat her the same. Both Judy and Christina continue to be terrible at their jobs and by the end of September 2023, both employees are terminated for poor performance.

Christina accepts that she was terminated due to her poor performance, and since she felt she was treated fairly by her supervisor, she does not file a claim. However, Judy is hurt and embarrassed by her supervisor's poor treatment. Judy decides to file a complaint with the EEOC for retaliation.

The company is going to argue that they terminated Judy due to a legitimate, non-discriminatory reason. However, Judy's supervisor has exposed the company to this retaliation claim by treating her differently than she did before Judy complained.

What can happen if a sexual harassment complaint is ignored or unresolved?

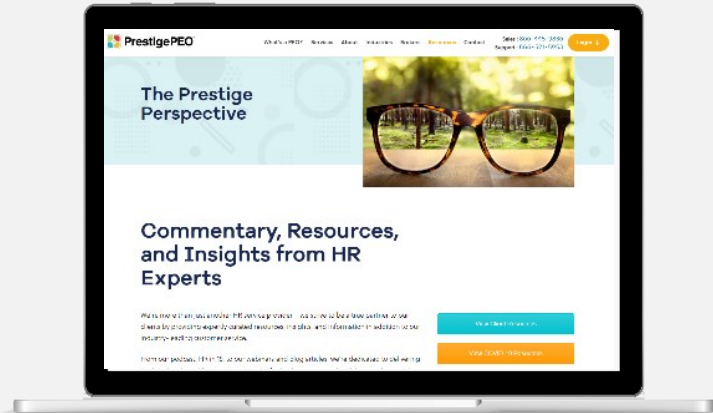
What if a Sexual Harassment Claim is Ignored or Unresolved?

- First, there is a risk that the employee may continue to face sexual harassment or that the harassment may escalate in the workplace, which can result in emotional distress, increased work-related stress, decreased work performance, and it sends a poor message about expected behavior in the workplace.
 - **Employee welfare should be the company's priority.**
- The complainant may exercise their legal rights to file an EEOC charge and the company may face litigation over the claim.
- The company will not have any evidence to show that it took immediate and corrective action to complaints.
- The person accused of sexual harassment may harass additional employees, further exposing employees to unacceptable behavior and the company to increased legal risk.

Need Help?

- **Handbooks:**
 - PrestigePEO clients have access to PrestigePEO’s federal handbook with state addenda.
 - If your organization does not have a handbook, please reach out to your HRBP.
- **HRBP/HRC Assistance**
 - Every client has an assigned HRBP to help provide HR guidance for issues in the workplace
 - HRBPs can provide guidance on disciplinary issues in the workplace.
 - HRCs can assist with sexual harassment complaints.
- **Trainings**
 - PrestigePEO has an LMS platform with a variety of trainings.
- **Compliance Guidance**
 - PrestigePEO has Compliance Updates and other resources for managers on our website.

Questions / Comments / Discussion?



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