

Sexual Harassment: 100 Best Practices



For decades, HR managers have played a key role in implementing measures to prevent sex harassment in the workplace. But last year's accusation firestorm is a wake-up call signifying that the things we're doing now aren't working. So, what practices *are effective* in preventing harassment? To answer that question, we've boiled down the wisdom from leading research studies, real-life corporate experience and government guidelines into a list of Best Practices that you can use to combat sex (not to mention most other forms of) harassment at your organization.

Hierarchy of Objectives

To "combat" sex harassment, organizations must take steps to achieve not one but 3 simultaneous sets of objectives, in the following order of preference:

Objective 1-Prevention: The paramount goal is total prevention and ensuring a completely harassment-free workplace where all employees are treated with courtesy, dignity and respect.

Objective 2-Effective Response: While preventing sex harassment complaints, incidents and problems is the preferred objective, you also need to be able to respond to them fairly, swiftly and effectively in case prevention fails.

Objective 3-Compliance: The third rung on the ladder is compliance and minimizing your organization's liability risks for any sex harassment that it fails to prevent.

Note: For simplicity's sake, we may refer to these objective collectively as "sex harassment prevention."

The 5 Types of Measures

The measures organizations must implement to achieve the above 3 objectives fall into 5 basic groups:

- Culture and leadership;
- Sex harassment policies;
- Harassment complaints and response;
- Training and education; and
- Recordkeeping and documentation.

Let's look at the Best Practices, specific actions, for each area.

1. Culture & Leadership

It's well recognized that prevention starts at the top of the organization with senior management's clear and consistent commitment to establish a culture in which sex harassment isn't tolerated. Best Practices for demonstrating that commitment:

1. Clearly, frequently and unequivocally stating that harassment is prohibited;
2. Having the CEO sign and endorse the organization's harassment policy;
3. Making compliance with the organization's sex harassment policy a criterion for performance review;
4. Making compliance with and enforcement of the policy a criterion for hiring officers, senior managers and supervisors;
5. Listing compliance with the policy on all job descriptions;
6. Requiring vendors to comply with the policy while engaging your employees;
7. Requiring clients and customers to comply with the policy while engaging your employees;
8. Budgeting and allocating sufficient resources for ongoing training, prevention and enforcement activities;
9. Allocating sufficient staff time for such activities;
10. Designating appropriate individuals to be responsible creating, managing, implementing and enforcing prevention activities;
11. Giving those individuals the authority they need to carry out those responsibilities;
12. Assessing harassment risk factors and the steps taken to eliminate or minimize them as part of regular organizational business risk assessment;
13. Seeking and studying feedback to assess if harassment is occurring or is being tolerated, e.g., via regular anonymous employee surveys;
14. Reviewing previous harassment incident reports to become familiar with the organization's culture;
15. Using both quantitative and qualitative information to assess the effectiveness of the organization's prevention program and activities via regular review of incident reports, complaint data, employee feedback, etc.;
16. Periodic outside review of the prevention program by a third party auditor;
17. Inclusion of women and minorities in senior leadership positions;
18. Holding senior leadership and high performers strictly accountable for their own personal conduct and transgressions, e.g., by making sex harassment policy violations "just cause" for termination.

2. Sex Harassment Policies

The second key element in prevention is a clear, comprehensive and consistently enforced sex harassment policy. One of the key lessons from the recent eruption of sex harassment and misconduct complaints in Canada and the US is that the vintage 1990s/2000s anti-harassment policy is out of date and needs to be rethought. Best Practices for what to include in your policy:

19. A strong opening statement that harassment based on sex (or any other characteristic protected from discrimination by human rights laws) is unacceptable and will not be tolerated;
20. A clear statement of the organization's commitment to prevention and ensuring a harassment-free workplace;
21. An unequivocal statement that the policy applies to:

- Employees at every level of the organization;
 - Employees of all status including full-time, part-time, volunteer, temporary, etc.;
 - Job applicants seeking employment with the organization;
 - Contractors, clients, customers and others outside the organization that the organization's employees might encounter while performing their job duties;
22. A clear definition of what is sex harassment, including *quid pro quo*, hostile work environment and cyber harassment;
 23. Specific examples of sex harassment, e.g., uninvited touching, promises or threats to induce sex, displaying or transmitting sexually graphic material, continually asking out a co-worker after clear prior refusals, telling unwelcome dirty jokes, etc.;
 24. A statement that sex harassment can occur not just within the physical confines of the workplace but off the premises, e.g., during business travel and/or online;
 25. A statement that sex harassment can be committed by or be targeted against any gender;
 26. A clear definition of what is *not* sex harassment, e.g., constructive criticism, mutual attraction, etc.;
 27. An extension of the ban on harassment to include other forms of sexual misconduct including not just outright assault or violence but also dating abuse, stalking, revenge porn, exceeding the limits of sexual consent, etc.;
 28. A delineation of the specific responsibilities of all organizational employees—managers, supervisors, employees, etc.—in prevention;
 29. A description of processes or mechanisms that employees can use to share or get information about harassment without filing a formal complaint;
 30. A description of the organization's harassment complaint system which includes multiple avenues that are easily accessible;
 31. A statement that employees should report conduct that they believe may be prohibited harassment even if they're not sure the conduct actually crosses the line;
 32. Assurance that the organization takes all complaints seriously and will provide a prompt, impartial and thorough investigation in responding to them;
 33. Assurance that the organization will seek to keep the identity of individuals who report harassment, as well as alleged harassers, victims and witnesses confidential to the extent allowed by law;
 34. Assurance that information obtained via the investigation will be kept confidential to the extent allowed by law;
 35. A statement that employees are encouraged to respond to questions or otherwise take part in investigations involving alleged harassment;
 36. A statement that the organization will take immediate and proportional corrective action against individuals it determines to have engaged in prohibited harassment;
 37. A description of the steps the organization will take to support employees who report and/or are found to be the victims of harassment;
 38. An unequivocal and strongly worded statement reassuring employees that retaliation is banned by law and that they will suffer no reprisal of any type for reporting harassment in good faith, even if the investigation finds the complaint to be without merit;
 39. A statement that reporting harassment known to be untrue or without regard to whether it's true is deemed an act of bad faith that may lead to disciplinary consequences.

How you carry out your policy is just as important as what it says. Best Practices for implementation:

40. Regularly distribute the policy to all organization personnel at every level and regardless of employment status;
41. Give a copy of the policy and explain what it says and means to all new personnel as part of their orientation;
42. Make sure the policy is easily accessible, i.e., included in your HR handbook and posted on your intranet;
43. Ensure the policy is easily accessible to persons with disabilities;
44. Translate the policy into all languages used by your employees at work;
45. Post or keep copies of the policy in break rooms, near time clocks and in other areas commonly frequented by personnel;
46. Designate a person or function to ensure circulation and review of the policy in their department or work area;
47. Distribute copies of the policy to all vendors, contractors, clients and customers with whom your employees regularly interact;
48. Ensure that managers and supervisors discuss and reinforce the policy at staff meetings;
49. Periodically review the policy to ensure it's up to date and effective;
50. Get the CEO to sign and regularly review the policy.

3. Harassment Complaint & Response

A highly disturbing new research study shows that among the over 50% of Canadian women say they've experienced sex harassment at some point during their careers, less than 30% of them actually came forward to report it, citing fear of retaliation and the perception that the complaint would just be ignored or dismissed anyway. Unfortunately, the mechanisms typically that organizations typically use to receive and investigate harassment complaints only serve to deepen these apprehensions, e.g., by requiring employees to report harassment to their supervisors or others who may be implicated or simply failing to have a transparent system that their employees understand and trust. The key to remedying this crucial problem is by establishing a complaint filing and response system that is prompt, thorough and fair. Best Practices include:

51. Providing multiple avenues for employees to register complaints, including an avenue for complaining about their immediate superiors and/or senior managers;
52. Offering alternative dispute resolution procedures that employees can use to seek redress for harassment without filing a formal complaint, e.g., mediation;
53. Creating a hot line that employees can use to report harassment complaints anonymously;
54. Designating specific employees to serve as harassment complaint or contact officers;
55. Instructing employees how the system works, including how to file complaints and how complaints are processed after they're received via inclusion of a description in the harassment policy;
56. Verifying that employees actually do understand and are willing to use the system, e.g., via anonymous surveying;
57. Ensuring the system is accessible to employees with disabilities;
58. Ensuring the system can be used by employees who don't speak English;
59. Assurance that the organization will keep the identity of individuals who report harassment and alleged harassers confidential to the extent allowed by law;
60. Assurance that the organization will keep the identity of witnesses confidential to the extent allowed by law;
61. Assurance that information obtained via the investigation will be kept

- confidential to the extent allowed by law;
62. Using investigators that are experienced, well trained and, above all, independent and neutral;
 63. Following investigation procedures that are fair to both accuser and accused;
 64. Ensuring that the accused are notified of and given the chance to respond to the allegations against them;
 65. Interviewing all relevant witnesses in accordance with the principles of procedural fairness;
 66. Requiring investigators to summarize their findings in a written report;
 67. Notifying all parties of the investigation's findings;
 68. Imposing appropriate discipline on employees found to be guilty of harassment violations;
 69. Demonstrating full support for harassment victims, e.g., via referral to counseling at the organization's expense and/or crediting of leave taken as a result of harassment;
 70. Ensuring that witnesses and complaining employees are protected against any and all form of retaliation or reprisal;
 71. Actively seeking employee feedback on the system, e.g., via exit interviews or anonymous surveys;
 72. Using both quantitative and qualitative information to assess the effectiveness of the system via regular review of incident reports, complaint data, employee feedback, etc.;
 73. Periodic outside review of the system by a third party auditor.

4. Training & Education

The fourth critical component of prevention is providing appropriate sex harassment training and education. Best Practices include ensuring that training:

74. Is furnished to all personnel at every level of the organization;
75. Is part of the initial orientation or training an employee receives when starting employment;
76. Is regularly reinforced, repeated and refreshed;
77. Is delivered in a clear, easy-to-understand format and style;
78. Is delivered by a competent and effective trainer;
79. Is tailored to your workplace and workforce;
80. Explains all aspects of your organization's harassment policy, including:
 - What harassment means;
 - Specific examples of prohibited conduct;
 - Where harassment can occur;
 - Who can commit it;
 - Encouragement to report harassing conduct;
 - Assurances of non-retaliation for reporting harassment;
 - How your complaint system works;
 - How complaints are investigated;
 - Information that may be requested during an investigation;
 - The potential consequences of harassment violations;
 - Contact information for the individuals responsible for handling harassment complaints at your organization;
 - Where employees can go to get additional information or ask questions.
81. When provided to managers and supervisors, harassment training also includes:
 - Information about how to prevent harassment;

- Instructions for investigating harassment complaints;
- Risk factors for harassment and measures to eliminate or minimize them;
- Instructions about how to report harassment up the chain of command;
- Explanation of the complaint and investigation system's confidentiality rules;
- Strong cautions against retaliating against complainants or witnesses; and
- Explanation of the legal risks of failing to carry out their harassment duties.

82. Is followed by steps to verify that employees actually understood their training, e.g., with quizzes or exercises requiring trainees to demonstrate what they learned;

83. Is monitored via exit interviews, anonymous surveys or other employee feedback mechanisms;

84. Is evaluated for effectiveness via use of quantitative and qualitative methods such as review of incident reports, complaint data, employee feedback, etc.;

85. Is periodically evaluated by a third party auditor.

5. Recordkeeping & Documentation

The fifth element of sex harassment prevention is one that often goes overlooked: scrupulous recordkeeping. Records enable you to keep track of your prevention efforts and monitor their effectiveness. And if things go wrong, documentation will play a critical role in your legal defence by furnishing evidence of your due diligence in rooting out harassment. "Harassment records need to be maintained on an ongoing basis and can't be created after the fact," cautions a leading defence lawyer. Best Practices:

86. Create an in-house harassment incident form listing the key details of complaints and how they were responded to;

87. Make sure the form is completed any time a harassment incident occurs;

88. Keep scrupulous incident investigation records listing names of witnesses, other key evidence, findings, etc.;

89. Keep detailed records documenting how complaints were resolved, e.g., whether disciplinary or corrective actions were taken;

90. Keep records documenting any informal resolutions of harassment complaints;

91. Maintain records of harassment training, including who received it, who delivered it, what it covered and the training date;

92. Keep records documenting the measures you took to verify the effectiveness of your harassment training and education;

93. If you engage outside consultants, lawyers or auditors to review your harassment program, talk to counsel about how to ensure they're privileged and shielded from disclosure to government officials, employees, unions and others who might seek to use them against you in legal proceedings against your organization;

94. Keep records of internal program review conducted by senior officials and others at your organization;

95. Make employees aware of how you use the personal information about them contained in your harassment records;

96. Do not disclose such information to third parties without the employee's consent except to the extent you're required to do so under the law, e.g., disclosing an employee's harassment records to law enforcement, or to carry out legitimate and necessary employment functions;

97. Retain harassment-related information about employees throughout their employment and for at least one year after that;

98. Take measures to keep personal information secure including physical controls, e.g., locks and barriers, technology controls, e.g., encryption and passwords, and administrative controls, e.g., access limitations and information removal policies;
99. Notify employees of breaches affecting their personal information; and
100. Use safe methods to destroy your records such as shredding.