

# Sexual Harassment Best Practices: Part 2: Creating an Anti-Harassment Policy



A policy banning sexual and other forms of workplace harassment has become a staple of the HR manual/code of conduct. But as the recent Harvey Weinstein-inspired outburst of complaints makes painfully clear, simply having a written policy doesn't prevent sexual harassment. While the gap between policy and actual conduct applies to any problem, it's more pronounced with sexual harassment. The policy template most employers use dates back to the 1990s and early 2000s when awareness of the problem became universal. And while the sexual harassment has evolved in the subsequent decades, the policy purporting to prevent it hasn't.

## **The Moral**

The sexual harassment policy, vintage 2001, has become tired, stale and preachy and needs to be revised for modern times.

## **32 Best Practices**

The key to refurbishing and re-energizing an old, worn out anti-harassment policy is to address not only 21<sup>st</sup> century work conditions and technology but also modern understandings about how and why sexual harassment happens and what must be done to prevent and respond to it effectively. Best practices dictate ensuring that your policy includes: ([Click here](#) for a Model Sexual Harassment Policy that you can adapt.)

1. A strong opening statement that workplace harassment based on sex (or, for that matter, any other personal or professional characteristic) is unacceptable and will not be tolerated;
2. A clear statement of the organization's commitment to prevention and ensuring a harassment-free workplace;
3. An unequivocal statement clarifying whom the policy applies to, namely:
  - Employees at every level of the organization;
  - Employees of all status including full-time, part-time, volunteer, temporary, casual, 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;
4. A clear definition of what constitutes sex harassment, including *quid pro quo*

- sexual favours for advancement, hostile work environment and cyber harassment;
5. Specific examples of sexual 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.;
  6. A statement clarifying that sexual harassment can occur not just within the physical confines of the workplace but off the premises, e.g., during business travel and/or online;
  7. A statement that sexual harassment can be committed by or be targeted against any gender, sexual preference or gender identity;
  8. A clear definition of what does *not* constitute sexual harassment, such as constructive criticism, mutual attraction, consensual romance, etc.;
  9. Specific language banning *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.;
  10. A delineation of the specific responsibilities of organizational employees—managers, supervisors, employees, etc.—in preventing and responding to harassment;
  11. A description of processes or mechanisms that employees can use to share or get information about harassment without filing a formal complaint;
  12. A description of the organization's harassment complaint system which should include multiple avenues that are easily accessible;
  13. A statement that employees should report conduct that they believe may be prohibited harassment even if they're not sure the conduct actually does cross the line—the attitude should be “when in doubt, report”;
  14. Assurance that the organization takes all complaints seriously and will provide a prompt, impartial and thorough investigation in responding to them;
  15. 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;
  16. Assurance that information obtained via the investigation will also be kept confidential to the extent allowed by law;
  17. A statement encouraging employees to respond to questions or otherwise take part in investigations involving alleged harassment;
  18. A statement that the organization will take immediate and proportional corrective action against individuals it determines to have engaged in prohibited harassment;
  19. A description of the steps the organization will take to support employees who report and/or are found to be the victims of harassment;
  20. 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;
  21. 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:

22. Regularly distribute the policy to all organization personnel at every level and regardless of employment status;
23. Give a copy of the policy and explain what it says and means to all new personnel as part of their orientation;
24. Make sure the policy is easily accessible, i.e., included in your HR handbook and posted on your intranet;

25. Ensure the policy is easily accessible to persons with disabilities;
26. Translate the policy into all languages used by your employees at work;
27. Post or keep copies of the policy in break rooms, near time clocks and in other areas commonly frequented by personnel;
28. Designate a person or position to ensure circulation and review of the policy in their department or work area;
29. Distribute copies of the policy to all vendors, contractors, clients and customers with whom your employees regularly interact;
30. Ensure that managers and supervisors discuss and reinforce the policy at staff meetings;
31. Periodically review the policy to ensure it's up to date and effective;
32. Get the CEO to sign and regularly review the policy.