

Sexual Harassment Best Practices, Part 5: Documentation & Recordkeeping



So far, this series on best practices in preventing sexual and other forms of workplace harassment has looked at organizational culture, HR policies, investigation and response procedures and employee training and education. Let's wrap things up with the final element: documentation and recordkeeping.

20 Best Practices

Scrupulous recordkeeping is the part of harassment prevention and liability management that most often gets overlooked. In addition to enabling you to monitor the effectiveness of your prevention efforts, documentation plays a crucial role in your legal defence when things go wrong. The records are the primary evidence of your due diligence in seeking to prevent harassment.

"Harassment records need to be maintained on an ongoing basis and can't be created after the fact," cautions a leading defense lawyer. Best Practices:

1. Create an in-house harassment incident report form listing the key details of complaints and how you responded to them;
2. Make sure the form is completed any time a harassment incident occurs;
3. Make sure the form lists objective, specific facts rather than subjective opinions or justifications;
4. Keep separate forms for related incidents involving the same principles so you have a standalone form for each episode in the series;
5. Keep incident report forms together in a log;
6. Provide the incident report(s) to the person(s) investigating the case;
7. Require investigators to complete incident investigation records listing names of witnesses, other key evidence, findings, etc.;
8. Keep detailed records documenting how complaints were resolved, e.g., whether disciplinary or corrective actions were taken;
9. Keep records documenting any informal resolutions of harassment complaints;
10. Use your records to analyze the effectiveness of your harassment prevention program and identify trends;

11. Keep records of the measures you take to verify the effectiveness of your harassment training and education;
12. Maintain records of harassment training, including who received it, who delivered it, what it covered and the training date;
13. If you engage outside consultants, lawyers or auditors to review your harassment program, talk to counsel about how to ensure the findings they generate are 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;
14. Keep records of internal program review conducted by senior officials and others at your organization;
15. Make employees aware of how you use the personal information about them contained in your harassment records;
16. 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;
17. 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;
18. Notify employees of breaches affecting their personal information;
19. Retain harassment-related information about employees throughout their employment and for at least one year after that; and
20. Use safe methods to destroy your records such as shredding.