

# Introduction to the Model Sexual Harassment Policy, Model Sexual Harassment Investigation Procedures, and Best Practices

The majority of women in the workforce experience sexual harassment at work. The most widely used survey of harassment of women at work, asking women if they have experienced gender harassment in the workplace including unwanted sexual attention, sexist comments, and offensive behavior, found that 58% of working women have experienced sexual harassment.<sup>1</sup> In other studies, female physicians experience sexual harassment at a rate of 37%,<sup>2</sup> federal employees experience sexual harassment at a rate of 44%,<sup>3</sup> and 60% of females working in the restaurant industry have experienced sexual harassment.<sup>4</sup> Just as concerning, a study found that 75% of persons who made complaints of harassment faced retaliation.<sup>5</sup>

The #metoo and #timesup movements brought this issue to the forefront, as women related their personal experiences, exposed perpetrators, and challenged the status quo. In response, in 2018 the Washington State Legislature passed Senate Bill 6471 requiring the Washington State Human Rights Commission to convene a stakeholder work group to create model policies and best practices related to sexual harassment in employment. This process included gathering ideas and input from business, agribusiness, labor, farmworker advocates, human resource professionals, attorneys, and victim advocates. The materials created from those ideas and input include a Model Sexual Harassment Policy and Complaint Procedure, and Model Sexual Harassment Investigation Procedures. Also included is a compilation of Best Practices that can be used along with the Policy and Procedures to create a comprehensive sexual harassment prevention strategy. The Human Rights Commission wishes to thank all work group participants for their work on this important issue.

If you have had no sexual harassment complaints in your workplace, this may be good news. However, it may also mean that your current practices are not working as well as they might, and your policies and procedures could use updating. When you implement an effective anti-harassment policy and procedures, do not worry if the number of harassment complaints increases, at least in the short term. This is a good thing – it shows that your policy and procedures, together with a culture of intolerance for harassment, is working, and that you are developing an atmosphere in which employees feel confident about coming forward with issues. If you continue to have an effective policy and procedures, and implement the best practices

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<sup>1</sup> Ilies, R., Hauserman, N., Schwochou, S., and Stibal, J. Reported incidence rates of workrelated sexual harassment in the United States: Using meta-analysis to explain reported rate disparities. *Personnel Psychology*, 56(3), 607–631. <https://doi.org/10.1111/j.1744-6570.2003.tb00752.x>. Irwin, J. (2002)

<sup>2</sup> Frank, Bragan, Schiffman, Prevalence and Correlates of Harassment Among US Women Physicians, *Journal of the American Medical Association*, 354 (1998)

<sup>3</sup> USMSPB (U.S. Merit Systems Protection Board). Update on Sexual Harassment in the Federal Workplace. <https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1500639&version=1506232&application=ACROBAT>. (2018)

<sup>4</sup> The Restaurant Opportunities Centers United Forward Together. *The Glass Floor: Sexual Harassment in the Restaurant Industry*, 6 (2014)

<sup>5</sup> Cortina & Magley, *Raising Voice, Risking Retaliation: Events Following Interpersonal Mistreatment in the Workplace*, 8:4 *J. Occupational Health Psychol.* 247, 255 (2003)

outlined below, your complaint numbers should drop in time, your workplace will be safer, and you will have a happier and more productive workforce.

The best reason for utilizing the Model Sexual Harassment Policy and Complaint Procedure and Model Sexual Harassment Investigation Procedures, and implementing the Best Practices? It is the right thing to do. Beyond that, the financial reasons against allowing a workplace to tolerate harassment are abundant. Employers spend a great deal of money answering administrative complaints, hiring attorneys, defending lawsuits, and settling cases. For example, between 2010 and 2015, employers paid \$698.7 million dollars in the Equal Employment Opportunity Commission's (EEOC) pre-litigation enforcement processes.<sup>6</sup> This does not include payouts from private settlements; one insurance study estimated that of the 19% of claims filed against small and mid-sized companies that resulted in a payout, defense and settlement costs average \$125,000 per claim.<sup>7</sup> Litigation is even more costly. Examples include: a jury award for \$168 million against a hospital for sexual harassment and retaliation;<sup>8</sup> a settlement of \$800,000 against the state of Washington for sexual harassment;<sup>9</sup> an \$11.6 million jury verdict for verbal harassment and retaliation;<sup>10</sup> a \$30 million jury verdict for sexual and physical assault for grocery store employees;<sup>11</sup> a settlement against a Washington city for sexual harassment for \$580,000;<sup>12</sup> a jury verdict of \$41.3 million for sexual assault;<sup>13</sup> a \$610,000 jury verdict against a bank for quid pro quo harassment;<sup>14</sup> a \$10.6 million jury verdict for verbal harassment and retaliation.<sup>15</sup> And, at the time of this writing, *The New York Times* just posted a story of a \$9.5 million dollar settlement against CBS for sexual comments and retaliation toward a television actress.<sup>16</sup>

There are additional costs when employees are subjected to harassment. A study involving just costs to federal employers showed significant financial impacts in two years on individual productivity (\$93.7 million); lost days in the form of sick time (\$14.9 million); resignations and the subsequent costs of recruiting, hiring and training a replacement (\$24.7 million); and loss of group productivity (\$193.8 million).<sup>17</sup> And when harassment claims are made public, an

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<sup>6</sup> EEOC Select Task Force on the Study of Harassment in the Workplace, 18 (2016)

<sup>7</sup> Hiscox, The 2015 Hiscox Guide to Employee Lawsuits: Employee Charge Trends across the United States, 6 (2015)

<sup>8</sup> *Chopourian v. Catholic Healthcare West, California* (2012)

<sup>9</sup> *Lizee v. State of Washington/DSHS* (2003)

<sup>10</sup> *Sanders v. Madison Square Garden* (2007)

<sup>11</sup> *Gobar v. Ralphs Grocery Company* (2002)

<sup>12</sup> *Hill v. City of Aberdeen* (2013)

<sup>13</sup> *Alford v. Aaron's Rents* (2011)

<sup>14</sup> *Paty v. Puget Sound National Bank (Key Bank)*

<sup>15</sup> *Ingraham v. UBS Financial Services* (2011)

<sup>16</sup> *The New York Times*, More sexual harassment trouble at CBS (Dec. 13, 2018)

<sup>17</sup> US Merit System Protection Board, *Sexual Harassment in the Federal Workplace: Trends, Progress, Continuing Challenges*, n. 16, at 26. (1994)

organization suffers reputational harm, which could lead to reduced recruitment and retention<sup>18</sup> and lower sales.<sup>19</sup>

There is also significant cost to the victim: depression, stress, anxiety, and PTSD, as well as eating disorders, reduced self-esteem, anger, fear, and drug or alcohol abuse.<sup>20</sup> In addition, physical problems such as headaches, sleep issues, gastric issues, nausea, weight issues, and cardiovascular issues can occur.<sup>21</sup> Sexual harassment victims might also face job loss, family issues, job dissatisfaction, absenteeism, and having to seek mental health counseling or legal advice.

Because of the importance of this issue, we hope to make this process easy for employers. Remember that these are *model* documents and *best* practices. They are not mandatory, but are available for your use. You may adopt the entire Model Policy and Investigation Procedures if you wish, and just fill in the blanks. Or you can take parts of the Policy and Procedures, and use those parts to implement your own policy or revise your current policy. You can also take the Policy and Procedures and then revise them to fit your business needs. Read through the Best Practices. Check off the ones you already implement, choose practices that make sense for your business that you can put into place soon, and plan to adopt more of them in the future.

The Best Practices, Model Sexual Harassment Policy and Complaint Procedure, and Model Investigation Procedures are intended to help an employer make it clear that sexual harassment will not be tolerated, that reporting sexual harassment is encouraged, that there will be a prompt and fair investigation of sexual harassment allegations, and that retaliation will not be tolerated against anyone participating in the process.

Remember however, that the Best Practices, Model Sexual Harassment Policy and Complaint Procedure and Model Investigation Procedures do not constitute legal advice, and employers are encouraged to consult with an attorney for legal advice. The adoption of these Practices, Policy, and Procedures does not create an affirmative defense or safe harbor to a complaint of sexual harassment.

Thank you for your interest in the Model Sexual Harassment Policy and Complaint Procedure, Model Investigation Procedure, and Best Practices. Implementing them will not only improve your business practices, but will undoubtedly improve the life of someone who works for you.

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<sup>18</sup> Jeremy Sierra *et al.*, Brand Response-Effects of Perceived Sexual Harassment in the Workplace, 14 J. Of Bus. & Mgmt. 157 (2008)

<sup>19</sup> Porath, MacInnis & Folkies, *Witnessing Incivility Among Employees: Effects on Consumer Anger and Negative Inferences about Companies*, Journal of Consumer Research (Vol. 37) 292-303 (Aug. 2010)

<sup>20</sup> Cortina & Leskinen, *Workplace Harassment Based on Sex: A Risk Factor for Women's Mental Health Problems, Violence Against Women and Mental Health*, 81 (2013)

<sup>21</sup> Cortina & Berdahl, *Sexual Harassment in Organizations: A Decade of Research in Review*, 1 The Sage Handbook of Organizational Behavior, 469, 481 (2008)

## Best Practices

A clear, accessible, well-written sexual harassment policy, a simple complaint process, and effective investigation procedures are critical in every workplace. These policies should be utilized along with a comprehensive policy against discrimination and harassment based on all classes protected under the law and a workplace culture that discourages harassment, incivility, and unprofessional behavior.

In addition, there are numerous best practices that we encourage employers to consider, and to implement when possible. These best practices have been implemented by various employers, and by other entities seeking to curb the impact of sexual harassment and sexual violence. Below, you will see many of the same themes repeated throughout the sections: accountability, allocating resources, good communication, having a culture that values people and does not tolerate harassment, and collective responsibility.

### Understanding Sexual Harassment

#### Power Dynamics and the Two Types of Sexual Harassment

Sexual harassment is about power. The motivation for the harasser is the need for dominance and control over the victim, and these motivations are at work with the two types of sexual harassment, quid pro quo and hostile work environment.

When there is quid pro quo sexual harassment, the person who has power can grant what the victim needs (a job, a promotion, money, and other benefits) and exchanges these for a sexual acts. If the victim acquiesces to the sexual demands, the perpetrator will bestow the workplace benefit. If the victim refuses, the perpetrator will punish the victim with termination, a demotion, or poor working conditions.

With a hostile work environment, the perpetrator is deliberately making the workplace a hostile, frightening, or uncomfortable environment for a coworker. The perpetrator is letting the victim know that they can engage in this type of behavior because they control the environment and working conditions.

When there are power disparities in the workplace, sexual harassment increases. Power tends to make people feel uninhibited, and also affects a person's ability to empathize with another. Having power can be a trigger for someone who already has a tendency for sexually harassing behavior.

#### Know Your Risk Factors

The risk factors that may make your workplace more susceptible to workplace harassment should be identified and evaluated. The risk factors do not mean that harassment will occur, but they do increase the likelihood. Some risk factors and possible responses include:

- Workplaces with significant power disparities → apply workplace rules consistently, empowering all employees will reduce harassment incidents.
- A homogeneous workforce → increase diversity, stay attuned to relationships.

- A workplace with many young workers → Conduct anti-harassment training soon after hiring, pay attention to behavior.
- Isolated or decentralized workplaces → Have a presence at the worksites, have a clear complaint procedure with multiple contacts, have the means for communication, have ways for employees in different areas to connect.
- Workplaces that rely on customer service → have a policy that includes employee protections from customer behavior, listen and react to employee concerns about customer behavior, have clear guidelines to remove employees from situations that expose them to harassing customers.
- Social strife or coarsened social discourse outside the workplace → Identify outside factors that could impact the workplace, pay attention to conduct and relationships.

For more information and a complete list of risk factors, see EEOC's Chart of Risk Factors and Responsive Strategies at [https://www.eeoc.gov/eeoc/task\\_force/harassment/risk-factors.cfm](https://www.eeoc.gov/eeoc/task_force/harassment/risk-factors.cfm).

### Implicit Bias and Its Impact on the Workplace Culture

Implicit bias refers to the attitudes and stereotypes that affect our understanding, actions and decisions in an unconscious manner. These biases, which can be favorable or unfavorable, are involuntary and unintentional. However, these biases cause people to have feelings and attitudes about other people based on characteristics, such as gender.

Implicit bias can cause problematic issues at work. For example, men and women prefer men in business roles and women in stay-at-home roles, and feel more comfortable with male authority figures.

Such bias, when expressed and unchecked, can cause sexual harassment, or behaviors that can lead to sexual harassment: language that objectifies women; attitudes that permit men to evaluate and express opinions about how women look; blaming the victims of harassment and assault; calling assertive women shrill, pushy or worse; gender stereotyping and joking and expecting women to go along with the jokes; when someone objects to the behaviors, they are called "snowflakes" or ridiculed as too politically correct.

### Understanding Why People Choose Not to Report

There are several factors that prevent people from reporting sexual harassment: A belief that they will not be believed; an employer's inaction on previous complaints; a fear that they will be blamed for causing or encouraging the harassment (victim blaming/victim shaming); an assumption that the complaint will be trivialized; fear of social retaliation, such as being humiliated or ostracized; fear of retaliation by the employer for reporting and subsequent job loss or harm to their career; a feeling of shame at having been the victim of harassment.<sup>22</sup> Indeed, as stated previously, 75% of employees who complain of discrimination face some type of retaliation.

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<sup>22</sup> *Written Testimony of Lilia Cortina, Workplace Harassment: Examining the Scope of the Problem and Potential Solutions, Meeting of the EEOC Select Task Force on the Study of Harassment in the Workplace (2015)*

Organizational leaders need to be aware of these barriers to reporting, and implement change to the culture that creates these barriers. Take complaints of harassment seriously and never blame the victim, clearly communicate an anti-harassment attitude, take prompt and effective action when you receive a complaint, and prohibit retaliation of any kind. Support, believe, and thank victims when they come forward. Reward managers and supervisors who follow through on their duties to report complaints, and take corrective action against those who do not. These types of actions from the top down will begin to permeate the culture of the workplace.

### Social Media

Harassment through social media and texting is becoming more prevalent, as an easy way to offend somebody, make sexual suggestions or requests, or to convey threats. Perpetrators feel secure doing this because they can do it in private, while away from work and supervision, and not even have to face the victim. The positive side is that much of the harassment on social media or texts can be captured as evidence as long as it has been preserved. In most situations, employers should treat harassment via texting and social media in the same manner as more conventional forms of harassment.

However, there could be limits on the steps taken by employers against social media communication if the action could be considered concerted action by employees, particularly if multiple employees are communicating about a supervisor or manager. Understand the rules instituted by the National Labor Relations Board and consult your attorney about this issue.

### **Leadership**

Harassment is pervasive, and despite laws that forbid it, it has permeated our workplaces since women began entering the workforce in large numbers.

Studies have shown that the organizational climate is the greatest predictor of the occurrence of sexual harassment<sup>23</sup> and that if a workplace environment is perceived to be more tolerant or permissive of sexual harassment, women are more likely to be victims of harassment.<sup>24</sup> A conscious shift in the workplace environment is needed to change this; research shows that if the work environment does not support harassing behaviors and has strong, clear consequences for those behaviors, then the likelihood that sexual harassment will occur is greatly reduced.<sup>25</sup> Cultural change begins with the leadership of an organization. The behavior and norms of the organization begin at the top; what is said, what actions are carried out, and what behavior is modeled. Leaders need to believe that harassment is wrong, say that it is wrong, address and halt harassment swiftly and effectively, and act appropriately themselves. If authority figures do not

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<sup>23</sup> National Academies of Sciences Engineering, and Medicine, *Sexual Harassment of Women: Climate, culture, and consequences in academic sciences, engineering, and medicine*, 15 (2018)

<sup>24</sup> Fitzgerald, L. F., Drasgow, F., Hulin, C. L., Gelfand, M. J., and Magley, V. J. Antecedents and consequences of sexual harassment in organizations: A test of an integrated model. *Journal of Applied Psychology*, 82(4), 578–589 (1997)

<sup>25</sup> National Academies of Sciences Engineering, and Medicine, *Sexual Harassment of Women: Climate, culture, and consequences in academic sciences, engineering, and medicine*, 15 (2018)

accept sexual harassment, then sexual harassment is less likely to occur.<sup>26</sup> Simple compliance with the law is not enough - the organization must value diversity and inclusion, and commit to a workplace that is free from harassment, disrespect, incivility, and divisiveness.

If someone has personal beliefs or biases that conflict with these principles, organizational leaders should make it clear that these beliefs are not to be exhibited in the workplace. Even individual factors, such as sexist attitudes or beliefs that justify harassing behavior, that might compel someone to engage in harassing behavior, can be inhibited when employees are exposed to role models who behave in a professional way.<sup>27</sup>

### Clear Statement

Leadership should state, often and forcefully, that harassment will not be tolerated in the workplace. Follow up your words with actions. For example, a clear signal is given when organizational leadership attends the harassment training, and provides an introduction to the speaker. The harassment policy and procedure could have an introductory statement written and signed by the organizational leader. Retreats and staff meetings can include a short, simple statement by an organizational leader that reminds people that harassment is not tolerated.

### Allocate Resources

An organization's leadership must show that harassment prevention is important by allocating sufficient monetary resources, staff, and time to prevention. This includes giving appropriate authority to those people responsible for creating, implementing and following through on the prevention policies and procedures.

### Collective Responsibility

Empower your employees to take action when they experience, see or hear something that violates the workplace anti-harassment policy. Encourage them to "say something when they see something" and support them when they do. This provides employees and employers with a sense of collective responsibility for preventing harassing behavior in the workplace.

### Visibility

If an employer has multiple and/or remote worksites, the company leaders (CEO, President, Director, and other upper management) should regularly visit the worksites in order to promote accessibility and to demonstrate to the employees that company leadership cares about all employees. If persons work from home full-time, company leaders should make it a point to check in with them regularly via phone and email, and people who work from home should be encouraged to attend at least some staff meetings in person. Company leaders should set aside time for meeting with employees in order to learn of issues in the workplace. As stated above, leadership should attend anti-harassment training to show support of the training (although they

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<sup>26</sup> Pryor, J. B., LaVite, C. M., and Stoller, L. M. A social psychological analysis of sexual harassment: The person/situation interaction. *Journal of Vocational Behavior*, 42, 68–83 (1993)

<sup>27</sup> National Academies of Sciences Engineering, and Medicine, *Sexual Harassment of Women: Climate, culture, and consequences in academic sciences, engineering, and medicine*, 46 (2018)

should leave toward the end of the program to give employees the opportunity to ask questions openly).

### Climate Surveys

If an employer wants to know how its leadership is doing in conveying its stance on sexual harassment, include questions that evaluate the performance of senior leadership, managers, and supervisors in a climate survey, and questions about what messages employees are receiving from leaders.

### Managers Who Fail in Their Duty to Report

Managers and supervisors who witness harassment, receive a harassment complaint, or otherwise learn of language or conduct that may constitute harassment, and who fail to take appropriate action to report that complaint to the correct personnel should be disciplined for their failure. This failure should also be addressed in the supervisor's or manager's personnel evaluation. These consequences of failing to report should be communicated to all managers and supervisors.

A manager's or supervisor's performance should never be rated highly nor should they be promoted simply based on the fact that no or few harassment complaints are coming from that division. This fact could mean that employees do not feel comfortable coming forward to that person or that complaints are being suppressed. Use tools such as climate surveys and exit interviews to find out more.

## **Policy**

### Anti-harassment Policy and Reporting Procedure

The anti-harassment policy and reporting procedure should be clear and simple. It should be distributed widely, at every work location, and posted in places where employees gather, such as break areas or locker rooms. It should be available on-line, and accessible by mobile devices. It needs to be written in all languages spoken by your employees, and, in a training, explained orally so that employees who may not read in any language understand the policy. Employers must make the policy available in a format that is accessible to employees with disabilities.

### Consistency and Accountability

Of course, the anti-harassment policy should be applied consistently and fairly to everyone. Employers should avoid the belief that keeping a harasser who happens to be a highly valued employee or who brings in a lot of money for the organization is a better financial decision than disciplining or terminating that employee. In reality, the cost of failing to take prompt action against the harasser will be higher than the cost of losing that employee (see the section above on the costs of harassment). Likewise, employers should not tolerate harassment from clients, customers, or vendors who they perceive as valuable.

Harassment claims made by a person who is an undocumented worker should be received and investigated just like a complaint from any other employee. A harassment claim against an

undocumented worker should be handled like a claim against any other person covered by the policy, and that person should be subject to discipline that is proportionate to the office, consistent with discipline given to others in similar situations.

All complaints should be investigated, no matter who the complaining party is. If they are known as a trouble maker, someone who likes drama, or a person who has brought tenuous claims before, the complaint should be taken seriously and the claim investigated thoroughly. Studies have consistently found that less than 8% of sexual harassment and assault complaints are false.<sup>28</sup>

### Fraternization Policies

Employers should consider no-dating policies with respect to relationships between supervisors/managers and subordinates. In such situations, the employer should consider moving the subordinate out of the supervisory chain. The employer's response in such situations needs to be consistent. An employer must not take the gender of the person into consideration when moving that person.

### Anti-discrimination Policies

Sexual harassment policies should be used in conjunction with anti-discrimination policies that protect all persons from discrimination and harassment based on race, creed, color, national origin, sex, pregnancy, sexual orientation, gender identity, disability, use of a trained dog guide or service animal, military or honorably discharged veteran status, age, and any other category protected by federal, state, or local laws.

## **Procedure and Investigations**

### Independence

When possible, employers should utilize an independent, outside investigator to investigate claims of sexual harassment. This is more likely to result in a fair and impartial investigation. This approach is particularly important when there is a conflict of interest, when the accused perpetrator is in a high level management position or brings in a lot of money for the employer, or when the situation is complex or involves multiple complainants; having an outside investigator will help ensure that those factors will not impede a fair investigation.

If a third party investigator is not an option, and a human resources department will conduct the investigation, make sure that human resources is as independent as possible from the rest of the organization, and that the human resources department has its own chain of command, separate from the rest of the organization's leadership structure. Human resources must maintain impartiality during the investigation and corrective action.

If an organization is too small to have a human resources department, then it becomes even more important for the organization to consider spending some resources up front to hire an independent investigator. In a small organization, it might be even more difficult to avoid a

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<sup>28</sup> *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases, 2010*

conflict of interest between the investigator, alleged victim, and accused. A third party investigation is important to avoid bias and the appearance of bias. One solution may be for small employers in the same locality or the same industry to have an agreement to trade investigative services with each other when there is a complaint.

### Investigators

Investigators should be professional, well-trained in investigative techniques, and have knowledge of the law and the employer's anti-harassment policy. It goes without saying that investigators should be as independent and neutral as possible and be without any bias. They should be provided with the resources that they need to fully investigate and resolve harassment complaints in a timely manner.

### Timing

Employers should strive to begin the investigation into the complaint, ideally within a few days of receipt. The employer should conduct a thorough investigation as promptly as possible, but should not sacrifice fairness and thoroughness for the sake of speed. Each investigation will be different, and there may be delays with witness interviews, so avoid promising a completion date that may not be met. The complaining party should be kept updated as to the progress of the investigation. The investigation should conclude as quickly as reasonable for a fair and thorough investigation, preferably within a few weeks of the complaint.

### Separating the Parties

At no time after a complaint is received or during an investigation, should the parties ever be placed together, to either be interviewed together, or to "work it out". Sexual harassment is about power; it is not a personality conflict.

When a complaint is made or when the employer becomes aware of potential harassment, the situation should be evaluated to make sure the victim is safe. If the alleged harassment was a physical or sexual assault, the complaining party and the alleged harasser should be separated, and the employer should consider putting the alleged harasser on administrative leave. In other circumstances, the employer should discuss the situation with the victim; if the victim feels unsafe or that they are unable to do their work with the harasser present, the complaining party and the alleged harasser should be separated. They should be put on different shifts, in different locations, or on a paid administrative leave for the duration of the investigation. However, the complaining party should never be the one moved or put on leave, to avoid any appearance of retaliation (unless the complaining party specifically asks to be the one removed from the situation.)

### When a Non-Employee is the Harasser

When the harasser is a customer, client, vendor, delivery person or other non-employee, the employer still has an obligation to protect an employee from harassment. This can be achieved in a number of ways.

If the harasser is a customer or client, for a minor offense, the service of that customer can be taken over by another person, after consultation with the harassed party and if the harassed party agrees that is the best course of action. It is optimal when a supervisor or manager (someone in a different power dynamic) can take over the customer or client. If it is a situation in which the original employee would have received a tip or commission, they should still receive that tip or commission; it was not their fault that they had to be removed from that situation, and they should not be punished for it by a loss of income.

If the harassment by the client or customer was a physical or sexual assault, if they continue the harassment after the original employee is removed from the situation, or if they are a repeat offender, they should be required to leave and should be denied further service. If the client or customer is legally entitled to the services (such as public benefits from a government entity) then a manager should take over handling that particular client or customer.

If the harasser is a vendor, delivery person, or someone else who works for another entity, then the employer should contact the harasser's employer to make a complaint, and request that the harasser not return. If the harasser's employer refuses to take any action, then an employer must consider cutting ties with that employer's business. Your employees are your greatest resource and to take such an action will not only send a clear message to your employees about how you support them, but will also send a message that a business will lose customers if it refuses to take action against harassment.

If you are unable to facilitate a situation in which the harasser is no longer a threat, but cannot ban them from your property (such as a delivery driver) you should allow the harassed employee to leave the situation when the harasser is present. Make sure someone else is available to conduct business with the harasser and, when necessary, a supervisor or manager should take over the transaction. This is appropriate even when it is a normal part of the harassed employee's job to deal with such transactions.

If there is a situation in which there is a physical or sexual assault, or when there is stalking or repeated harassing offenses, the employee should be informed of their right to report the incident to law enforcement, or to obtain a protection order. If there is a court ordered protection order in place, then all involved employers would have to abide by it.

The person who was harassed should be given honest information about the limitations of the employer's ability to take direct action against the perpetrator, and if there is no way to prohibit the harasser from coming to the workplace. The employee should be assured, however, that they will not be expected to interact with the harasser or be present when the harasser is there.

### Interpreters

If the complaining party, the accused or a witness does not speak English or is more comfortable speaking in a different language, the investigator should be fluent in that language, or should use an interpreter who is fluent in the language. The interpreter should be neutral, and have no connection to either party or be in the chain of command of either the alleged victim or the

alleged harasser. Preferably, the interpreter should be a professional interpreter and come from outside of the organization.

### First Interview

The complaining party should be able to have support when they are interviewed about their complaint; union representative, friend, attorney, or family member. The investigator should be willing to listen, ask open ended questions, and be empathetic, and should create an atmosphere in which employees feel comfortable reporting complaints. The investigator should never automatically doubt the alleged victim, and must take all complaints seriously. The alleged victim should be provided with additional resources, such as counseling services, workplace affinity/identity groups, victim advocacy services, or the employee assistance program. If the complaint involves criminal behavior, the employer should offer to contact the police for the alleged victim (but unless a crime has occurred against the employer itself, the employer should not make the decision to report to the police without the alleged victim's participation and consent). The complaining party should be assured during that first interview that retaliation will not be tolerated. The complaining party should always be thanked for coming forward with the information, and provided with a general timeline for next steps.

### Documentation

All steps of the investigative process should be documented in writing. This should include the initial complaint, all interviews, credibility assessments made of those involved, summaries of any documentation gathered, and conclusions. A written report including the above information as well as the resolution of the complaint should be a product of the investigation.

### Privacy

To the extent possible, the employer and investigator should protect the privacy of those who file the complaint, who are interviewed as witnesses, and who are accused of harassment. However, participants in the process should be informed that, depending on the nature and severity of the issue, the outcome, or if any outside entities become involved, maintaining confidentiality may not always be possible.

### Effectiveness

Policies and procedures are useless if they do not work. Therefore, it is a good idea to assess the effectiveness of the policies and procedures. The best way to create an effective process is to utilize prompt corrective action when the policy is violated. If the same person continues to violate the policy, then the employer knows that the process has not been effective, at least with that particular individual, and should consider alternative corrective action.

When possible, an employer should conduct an exit interview with departing employees. This may be an opportunity for an employer to find out if there are any issues or problems in the workplace that the employee was reluctant to bring up while still employed. The employer can also determine the reasons for the employee's departure to find out if there is anything in the workplace climate that should be improved.

Climate surveys or employee engagement surveys can also provide information on the workplace. These anonymous surveys should be done periodically and can assess if employees believe that harassment is tolerated in the workplace or not, and if there are incidents of harassment. Be sure to include specific questions on incidents of sexual harassment, whether the employee feels that harassment is clearly prohibited or tolerated, and if the employee is aware of and understands the policy and procedure. If no harassment issues are disclosed from the survey, employers should not immediately conclude that there are no problems; employees may be reluctant to report harassment, even in an anonymous survey. The climate survey should be utilized with other methods of preventing harassment and of assessing the effectiveness of the prevention methods.

You should also test the effectiveness of any anonymous complaint system by periodically making a complaint through the system. Make sure the phone number or email address actually works, that there is appropriate follow-through, and that the right person receives the information.

Document the number of complaints your organization receives, who and in what department was the alleged perpetrator, and the resolution of the complaint. When you implement an effective anti-harassment policy and procedure, do not be surprised if the number of complaints increases during the short term. This means that employees feel supported, and empowered to make reports. Continue what you are doing; if you have an effective policy and procedures, and implement them consistently, fairly, and with appropriate consequences, you should eventually see a decrease in the number of complaints.

### **Communication**

Frequent, strongly worded statements that sexual harassment will not be tolerated, and that perpetrators will be subject to corrective action are important. The statement should be followed up by utilizing the practices that follow.

### Accountability

Empower your employees to take an active role in creating a harassment free workplace by encouraging them that when they see something, they should say something. And then follow up your words with actions, by quick investigation and corrective action, and praise for those who come forward. This provides employees and employers with a sense of collective responsibility for preventing harassing behavior in the workplace. Having collective responsibility for an issue has been shown to change the culture around the issue, grow engagement, increase support for the victim, and decrease tolerance of the harasser.

### When Someone Comes Forward

If possible, there should be a person at each worksite location who is responsible for receiving complaints. If multiple languages are spoken in the workplace, someone who speaks that language should receive the complaint. If no one is available, the person receiving the complaint should have access to a neutral interpreter or contact an interpretation service.

Always thank the alleged victim or witnesses for coming forward with their situation. Ask the alleged victim what can be done right away in the workplace to make them feel safe, and then let them know which of those things can be done. In situations in which the victim alleges sexual or physical assault, the victim and alleged harasser should be separated, and the employer should consider putting the alleged harasser on administrative leave. If the victim indicates that they feel unsafe or that they are unable to do their work with the harasser present, the complaining party and the alleged harasser should be separated, and the employer should consider issuing a workplace no-contact order. They should be put on different shifts, in different locations, or on a paid administrative leave for the duration of the investigation. However, the complaining party should never be the one moved or put on leave, to avoid any appearance of retaliation (unless the complaining party specifically asks to be the one removed from the situation).

Assure the complaining party that retaliation will not be tolerated and encourage them to return if there are further problems or incidents. Inform the complainant of expected timelines, the process, and what to expect.

Let the person know that you take their complaint seriously, and that if harassing behavior is occurring, it should not be. Never ask the person why they waited to report, what their part in the incident was, what they were wearing at the time, or if they did anything to encourage the behavior. Never indicate that you do not believe them.

Inform the complainant of outside resources, such as counseling, employee assistance programs, and victim advocacy organizations. Tell them about administrative options such as the Equal Employment Opportunity Commission and Washington State Human Rights Commission.

Thank and support those individuals who do report, and reward those managers (with positive evaluations) who properly follow through on their responsibilities to receive complaints and report them.

Remember that if a sexual harassment victim is also having performance or attendance problems, those issues could be the result of having to endure the harassment. The employee may not be able to concentrate on work, may be emotionally unable to face the harasser at work, or be so physically affected by the harassment that they are sick. Consider speaking to the victim about these issues, and finding out what can be done to help the employee, instead of simply imposing discipline.

#### After the Investigation is Complete

When the investigation is finished and any appropriate action has been taken, the complaining party should be updated with the following information: that the investigation is complete, what findings were made and why, and that corrective action was taken (if it was). The complaining party should again be thanked for coming forward, should be encouraged to report any retaliation or future problems, and should be assured that retaliation will not be tolerated. Periodic check-ins with the complaining party should be done at future intervals to make sure there is no retaliation or continued harassment.

#### Communication Devices

Consider allowing employees to carry their personal cell phones with them. While you can restrict the use of the phones, and prohibit personal use during work hours, having a phone will allow the employee to use the phone in case of an emergency, such as an assault. The phone will also provide a means for the employee to call headquarters or human resources to make a harassment complaint. Consider providing phones, two way communication devices, or personal safety alarms to employees for use in emergencies or to make complaints. This is particularly important for employees who work in remote locations, who work nights, or who work by themselves, such as employees in hotel, security, transportation, or agricultural industries.

#### Distribution of Policy and Procedures

The harassment policy and complaint procedure should be distributed as widely as possible, including in writing to all employees, as a poster in a location used by employees (such as a lunchroom, locker room, or breakroom), and on the organizations website or internet. On line, the format should be compatible with mobile devices. The policy/procedure should be provided to all employees, at all levels, and at all locations. All formats should include the names and contact information of those to whom a complaint can be made.

The policy and complaint procedure should be translated by a competent translator into all languages spoken at the workplace, and distributed in those languages. In addition, the policy and complaint procedure should be provided orally to persons who do not read.

#### Anonymous Reporting Lines and 800 numbers

Many employers have implemented anonymous complaint phone lines, drop boxes, or email addresses. Employees who believe that they are victims of harassment or have witnessed harassment can utilize these methods to make a complaint without fear of retaliation. Anonymous complaints should be allowed and investigated (to the extent possible given the likely lack of concrete information), but employees should be made aware that any investigations of anonymous complaints will be very limited because there is no way to interview the complaining party and gather important information. A way to let employees know of the limits to anonymous complaints is to have a prominent statement displayed on any on-line reporting system, stating that the organization will evaluate all complaints, but the organization's ability to investigate and respond to allegations and to provide feedback may be limited depending on the information provided in the complaint. Despite this limitation, having a method of anonymous reporting provides employers with additional opportunities to gather information about potential problems in the workplace, to investigate or address these issues before they become a larger problem, or can alert employers to a problem when someone is too frightened to come forward. When an anonymous complaint is received, an employer should do any investigation that they can; for example, if an alleged perpetrator is named, that person's manager and co-workers should be interviewed. If a particular department is pointed out as a problem area, then the people working in the department should be questioned generally to find out if there is an issue.

#### Open Door Policy

Organizational leaders should ensure staff that they are willing to hear about harassment complaints and working conditions. Leaders should consider setting aside certain hours for communication directly with employees.

### Praise Employees Who Create a Culture Against Harassment

Publicly acknowledge and show gratitude to supervisors and managers who do a good job in reporting complaints and preventing harassment. Reflect this information positively on the employee's evaluation. Likewise (while respecting privacy if privacy is desired by the complainant or compelled in a collective bargaining agreement) those who come forward or become engaged in creating a harassment free workplace should be held up as positive examples in the workforce.

### Accountability of Perpetrators and Managers

The goal of the employer should be to stop harassing behavior, and keep any future harassment from occurring. Corrective action against perpetrators should be timely and proportionate to the behavior and should be consistent with previous actions against other perpetrators who engaged in similar behavior. The type of corrective action taken depends upon the severity of the harassment, the length of time the harassing behavior has been going on, the number of victims involved, and the harasser's history of past similar behavior. The corrective action can range from a verbal coaching and retraining for a first-time use of offensive sexual language, to a written warning for multiple derogatory comments, to termination for a physical assault.

Supervisors and managers who fail to properly or timely report harassment that they see or otherwise become aware of, or fail to act upon harassment complaints, should also be subject to corrective action, including coaching and retraining to demotion or termination, depending on the severity of the failure to act.

### Business Resource Groups/Affinity Groups

Employees in many companies and public agencies form Business Resource Groups, also called Affinity Groups or Diversity Advisory Groups. These groups bring together groups of employees and their supporters who have a common interest or characteristic. While these groups do not normally act as a forum to resolve individual complaints, these groups can provide a system of support for persons in the workplace. The standard practice is for the groups to meet on work time, during work hours.

Common affinity groups include groups for veterans, members of the LGBTQ community, Latino employees, persons with disabilities, women, and parents. Employee volunteers will work in leadership roles, advise the group, and facilitate meetings. Often the group will have a charter and outline goals, and have regular meetings. The meetings can be for networking, making connections with other employees, hosting events and having outside speakers on relevant topics. More generally, the purpose of the groups is to promote inclusion, equity, and respect by bringing forth ideas to increase diversity, to mentor new employees, to model the values of inclusion and diversity, to help ensure workplaces are safe, to provide resources to members, and to promote recruitment and retention of a diverse workforce.

Employees who can join an affinity group at work will have a network of support, will have a safe forum for sharing experiences, and may feel more empowered to come forward with a problem like harassment.

### Climate Surveys

Climate surveys are a good tool to facilitate change in an organization. A survey can inform the organization of any problem areas, what is working and what is not, and provides positive and negative feedback on the health of the organization. It can tell an employer whether current policies and procedures are having the intended impact. To encourage participation, climate surveys should be anonymous.

Prior to sending out a survey, determine the purpose of the survey, the rated questions that will be asked, the rating scale to be used (a 5 point scale is often used), what opened ended questions will be asked, and how the survey will be administered (paper, on-line). Results of the survey should be shared with employees.

Specific to sexual assault and harassment, the survey should ask employees: have they ever experienced or witnessed an incident; what they did in response; do they know how and to whom to make a complaint; what their expectations are if they were to report harassment or assault; what their experiences were if they did make a complaint; do they feel safe in the workplace; do they fear retaliation if they were to make a complaint; do they feel supported by their supervisor; does the organization clearly communicate its position on harassment; and how do they feel about the diversity and inclusiveness of the organization.

If climate surveys are given, taken seriously by the employer, and the results are utilized to promote positive change, employee morale can increase and the organization can improve its response to sexual harassment.

For additional information on climate surveys, see <https://www.hr-survey.com/EmployeeClimate.htm>

### Senate Bill 5996

Senate Bill 5996 was passed by the Washington State Legislature and became effective on June 7, 2018. This bill was designed to support “the disclosure and discussion of sexual harassment and sexual assault in the workplace”. Employers are advised to consult legal counsel to obtain thorough understanding of the employer’s responsibility under this bill, and to ensure that the investigation process and privacy policies put in place by the employer comply with SB 5996.

### **Contacting Law Enforcement**

If the harassing conduct involves a crime, the victim of such conduct has the right to call 911 or the local police department. The employer should tell the victim of this option. However, unless criminal behavior also occurred against the employer itself, the employer should not contact law enforcement on the victim’s behalf without the victim’s permission. The decision to do so or not should be left to the victim, but the employer should support the victim’s decision to involve law enforcement.

## **Training**

### The Right Training

Employers need to utilize training that is effective. This may mean not sitting employees down in front of a computer training every couple of years, in order to check that box off of a “to do” list. Regular, relevant, interactive, classroom training of everyone in the workplace is optimal.

Whenever possible, trainings should be done by a qualified, live trainer who understands the power dynamics involved in a harassment situation. The training should provide information on what behavior is illegal in the workplace, and should also provide information on what behavior is expected and what behavior is prohibited by the employer, as well as outlining the consequences for violating employer policy. The training should provide examples of prohibited behavior, and behavior that, if it continues, will constitute a violation of the employer’s policies. The training should outline the employer’s particular harassment policy, and give clear information on the complaint and investigative process, including naming multiple points of contact for making a complaint. The best training will be conducted by a peer of the group being trained, or at least by someone familiar with the industry and the culture of the workplace and the employees. The best trainers will be good communicators, will use real-life examples of the impact that harassment has on individuals and the workplace, and leave time for questions. The audience should be assured that retaliation against employees making harassment complaints will not be tolerated.

If a live training format is not possible, then the employer should utilize a format where there is still interaction and the opportunity for questions, such as remote conferencing.

The training can be combined with other diversity and non-discrimination training, in order to emphasize an employer’s commitment to a workplace based on equality, diversity, civility, and professionalism. In the end, effective training does not try to change people’s minds or opinions. Rather it makes clear what behavior is expected in the workplace, so that people know what type of behavior will cost them their job. It also makes people feel safe, because they gain confidence that there is a policy and procedure in place.

### Multiple Formats and Languages

The training should be given orally, and should also provide written materials, and could also include a PowerPoint presentation, in order to encompass multiple learning styles.

The training must be provided in the native language of the employee, if the employer employs people who do not speak English or speak limited English.

Employers in industries that employ a number of workers who are not required to have specialized skills or education must consider that some of their workers may not read in any language, and therefore need to present the policy, complaint procedure and anti-harassment training orally.

Employers, as required by law, must ensure that the training is accessible for persons with disabilities. American Sign Language interpreters should be used for those who speak it.

### Opt-out Option

If the training occurs due to a specific sexual harassment complaint, the person who made that complaint should be given the option of receiving the training in a different format. This is so that the harassment victim is not forced to sit in a training with the harasser, or with colleagues who might blame them for having to go through the training.

### Training for Managers and Supervisors

Managers and supervisors should receive additional training on how to receive and respond to complaints of harassment, how to identify harassment, and what steps to take when they witness or otherwise become aware of harassment. Their training should include clear instructions on how and to whom to forward the complaint of harassment up the chain of command, and how to be aware of situations within their department that could lead to harassment. They should be clearly told of the consequences of failing to fulfill these responsibilities.

### Timing

Providing anti-harassment training at the start of an employee's job is ideal, but it should occur at least within the first six months of employment. When someone is promoted to a manager/supervisor position, they should receive training that includes the responsibilities of managers and supervisors in responding to complaints.

Anti-harassment training should occur at least once every two years.

### Assessment

Employers should consider having trainees fill out an evaluation at the end of the training. In addition, a quiz or comprehension assessment can be done at the end of the training, to ensure trainees have gained an understanding of expected behavior, policy, procedure, and consequences.

### Respectful Workplace Training

Also known as Workplace Civility training, this type of training focuses on the type of behavior expected at the workplace. It emphasizes a workplace built on respect and civility, and outlines what behavior is, and is not, acceptable in your workplace. This type of training is used as an alternative to a training that focuses on protected class harassment and legal liability. While it does cover the topics of illegal harassment, the employer's anti-harassment policy, and how to make a complaint of harassment, the training does not seek to change people's personal feelings or to divide people into categories. Rather, the training seeks to engage the entire workforce in being respectful to all others, and creating an atmosphere of value and collaboration. The Equal Employment Opportunity Commission provides such a training to workplaces.

### Implicit Bias Training

Implicit bias was described above, and a number of good trainings on this issue exist in-person and on-line. These trainings focus on explaining implicit bias, recognizing it, and helping to diminish it.

## Bystander Intervention Training

This training has been successfully used by college campuses across the country to shift the focus from blaming the victim of assault, harassment and bullying, to changing social norms and conduct. The training encourages an active and participatory response from persons who witness inappropriate conduct occurring. The response is known as the “3 Ds”. The first D is for “direct”, as in direct confrontation with the harasser, if it is safe to do so. The second is for “distract”, which is taking indirect action to interrupt what is happening, in order to provide the victim with the opportunity to get out of the situation. The third is for “delegate”, which refers to seeking help from a third party who can assist in responding to or respond to the harasser. Though Bystander Intervention Training is most well-known in academic environments, its use is easily convertible to the workplace. Along with an anti-harassment policy, and a complaint and investigation procedure, it can be utilized to create a culture that does not tolerate harassing conduct, and is empowering to employees.

## **It’s on Us – Sexual Violence Prevention Campaign**

It’s On Us campaign, which has been utilized at schools around the country, aims to fundamentally shift the way that society used to think about sexual assault, by inspiring everyone to see it as their responsibility to do something to prevent sexual assault. With this mindset, everyone does their part to contribute to prevention and elimination of sexual assault.

Adhering to an It’s On Us campaign includes sending a clear message to students, faculty, administrators, coaches, and campus safety personnel that sexual misconduct will not be tolerated and survivors must be supported.

Elements of the campaign are:

- bystander intervention and education,
- holding perpetrators accountable for their actions,
- assisting victims and providing resources,
- recognition of those who make positive contributions to the process,
- climate surveys,
- partnerships between organizations,
- striving to change the culture from one of blame to one of responsibility,
- encouraging everyone to take responsibility and act or speak up when they see something, and getting men more involved as part of the solution,
- having procedures that ensure a fair process for all after a complaint is made,
- encouraging students to sign a pledge against sexual assault,
- holding events to raise awareness,
- creating a team focused on prevention of and response to sexual assault,
- providing training that includes information regarding LGBTQ and disability communities.

Like Bystander Intervention training, a campaign that uses the principles and tools of It’s On Us can be tailored to a workplace, and be effective in changing the culture of an organization.