

Preventing Workplace Sexual Harassment in the #MeToo Era



TotalCare EAP
Public Safety EAP
Educators' EAP
Higher Ed EAP
HealthCare EAP
Union AP

Kathleen Jahnke, LSW
Chief Clinical Officer
ESI Employee Assistance Group

With #MeToo sexual harassment issues proliferating across multiple industries, Senior Managers and Human Resources staff must prepare for sexual harassment issues to hit their organization.

All too often senior managers underestimate the potential damage brought on by a single sexual harassment claim. A simple allegation can be devastating to an employer. In many cases sexual harassment also involves other employment charges, such as retaliation. When lawsuits ensue, the toll can be staggering. According to the *2017 Hiscox Guide to Employee Lawsuits*, 24% of employment charges resulted in defense and settlement costs:

- \$160,000 is the average cost of cases involving defense and settlement.
- 318 days is the time to resolve the average claim.
- Even with Employer's Liability insurance, the average employer's deductible for these charges was \$50,000.

The dollar costs is the tip of the iceberg in terms of the workplace toll. The list of consequences is long and sobering:

- The emotional distress of the person reporting the harassment; along with everyone else involved.
- The strain on working relationships.
- Damage to the employer's reputation.
- Damage to employee morale. Turnover often spikes.
- Loss of productivity. HR and top managers are distracted throughout the investigation and resolution of the claim.

A Watershed Moment

Current reports in the media indicate a fundamental cultural shift gathering momentum by the day. Daily news reports expose more public figures disgraced for sexual harassment, abuse and misogyny. The movement is spreading through both public and private sectors, including the film industry, the news media, the political arena, academia, the technology industry, the music industry and more. It is unlikely that any industry or business sector will remain untouched.

Even for those who recognize the pervasive nature of harassment, it's shocking to see the decades-long abuse by powerful, prominent figures, many of whom we held in high esteem.

Some of the prominent figures held to account after numerous accusations are: Bill Cosby, Harvey Weinstein, Kevin Spacey, Roger Ailes, Bill O'Reilly, Matt Lauer, Charlie Rose, John Conyers, Al Franken, and Garrison Keillor, just to cite a few. Alleged abuse was often papered over with hush money. Victims were cowed by non-disclosure clauses, fear of career repercussions and retaliation, and the very real expectation that they would not be believed.

Now the tables have turned and the oppressive veil of silence is pierced. Victims are being listened to and believed. Intolerance of such wrongdoing is reaching critical mass. Social media and websites like Glassdoor enable public airings and forums for people to share complaints and gain support.

1.800.535.4841

Preventing Workplace Sexual Harassment in the #MeToo Era

Prevention Must Be a Priority

Employers should expect the likelihood that harassment complaints will increase as sexual harassment charges continue making headlines. Organizations that have been less than diligent on this matter should be ready for ugly secrets to emerge, but even diligent employers must take steps. It is vital that every employer have a sexual harassment prevention program in place.

Some employers point to insurance that mitigates the financial consequences of sexual harassment claims as a solution, but insurance provides limited financial relief. While it is helpful to have liability insurance in place, it is akin to closing the barn door after the horse has escaped. It is a remedial containment reaction as opposed to proactive prevention. The least expensive and least damaging claim is the one that never occurs.

There are steps every employer needs to lower the risk of sexual harassment in the organization.

These steps start with:

- Having zero-tolerance policies in place, making all employees aware of the policies, and reinforcing the policies consistently.
- Mandating that every employee and every supervisor take a comprehensive sexual harassment and discrimination-training course.

Here are other steps your organization should take:

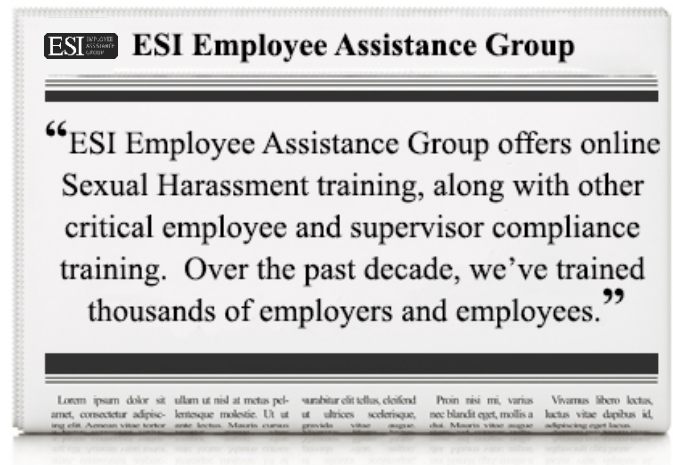
- **Review Equal Employment Opportunity Commission (EEOC) guidance.** Make sure that your HR and managerial staff are familiar with and stay updated on EEOC policies and guidance.
- **Review your organization's harassment policies.** Ideally, conduct this review with the senior management team to discuss and reaffirm the organization's policies. Have a discussion about the process for handling complaints in the workplace and the repercussions for policy violations.
- **Circulate your anti-harassment policies throughout the organization.** Clearly state your organization's serious commitment to a fair, respectful and harassment-free work environment. Remind people of consequences for violation of the policy.
- **Raise awareness about how people can report a complaint.** Provide alternative paths for reporting complaints.
- **Mandate harassment training.** Start with intensive training geared to managers, then extend training throughout all levels of the organization. Harassment is not something that occurs just with senior managers; it can be peer-to-peer.
- **Make it clear that harassment is not just sexual harassment.** It also encompasses unwelcome conduct based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

Preventing Workplace Sexual Harassment in the #MeToo Era

- **Ensure legal support resources are in place.** You may seek legal input in your policy development. In addition, employment law attorneys can help in establishing a chain of consequences for policy violations.
- **Review your insurance coverage.** Organizations spent more than \$2.2 billion dollars last year trying to mitigate losses related to wrongdoing with Employment Practices Liability Insurance. This insurance offers coverage for legal costs related to harassment, wrongful termination, discrimination and more. It can also help to mitigate expenses related to reputational damage.
- **Establish an HR crisis plan.** Assign a team and develop a plan for harassment claims or any other HR issues that might go public and put you in the headlines. The team should include a senior manager, a PR rep, and have the resources of outside legal counsel, if necessary.
- **Use your Employee Assistance Program.** A good EAP should offer a range of management and HR support services, such as:
 - ✓ Harassment and compliance training.
 - ✓ Counsel by behavioral clinicians and SPHRs on any complex human resource issues.
 - ✓ Administrative Referrals to address unacceptable employee performance through counseling and document remedial actions.
 - ✓ 24-7 employee telephonic helplines for counseling and support.
 - ✓ Background checks and hiring resources.
 - ✓ Policy templates and compliance resources.

www.theEAP.com

800.535.4841



1.800.535.4841