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Creating an Anti-Harassment Policy for Workplace Sexual Discrimination

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Abstract

Harassment in the workplace can bring lawsuits, lower morale, decrease productivity, and increase employee turnover. Therefore, it is imperative that modern organizations offer inclusionary work environments where all employees are treated equitably and professionally in every workplace interaction, regardless of their gender. Each employee has the right to perform his/her expertise and passion in a professional organizational culture that promotes equal employment opportunities while prohibiting all forms of harassment and illegal discrimination. The methodology used in this paper is based on the personal experiences of two active human resource professionals along with an assessment of best practices in anti-harassment policies. While there are many papers dealing with anti-harassment literature and recommendations, there are very few published practical policies for integration in the workplace. As such, in this paper, we explore the importance of an anti-harassment policy regarding sexual discrimination through an example. Consequently, the importance of understanding harassment, reporting it, and effectively handling such allegations are presented. We recommend various necessary components of an anti-harassment policy along with an example of how such a policy can be legally written and documented.

Keywords

Anti-Harassment Policy, Sexual Discrimination, Inclusionary Workplace, Transgender

1. Introduction

Workplace harassment can take many forms which can be observed or experienced directly by an employee or indirectly through the reporting of others.

Either way, dealing with a harassment case or allegation is very serious and managers must proceed cautiously, methodically, and immediately to protect everyone in the department (Noe, Hollenbeck, Gerhart, & Wright, 2021). Imagine that you are a unit manager and Karen, one of your employees, writes you a note saying that Shana, another professional in your unit, is being given a negative performance evaluation by her supervisor (Garner, 2022). The supervisor reports to you. Karen says that the negative evaluation is part of a series of negative actions the supervisor has taken against Shana and that the supervisor treats all female employees this way except for one or two individuals that “play the game.” You reviewed and approved the performance evaluation, and you believe it is based on weaknesses in Shana’s job performance, not anything to do with her being a woman. How should a manager respond in such a situation?

Of course, this situation with Karen and Shana is a very real and practical dilemma that managers may face in the workplace. Being a supervisor, manager or head of a unit means people will look up to you, bring you problems that they perceive to exist, and expect you to help solve, resolve, or absolve any such issues that can cause conflict or create a stressful work environment. First, it is important that any communication is consistent with your company practices. Create a safe space for Karen to share her complaint by explaining that there will be no retaliation and you will maintain confidentiality to the extent reasonably possible. Take the complaint seriously, be sincere, and document everything that Karen says. All notes should be objective to eliminate potential bias and help keep you organized throughout your investigation. By the end of your conversation with Karen, she should understand what the company policy is and the plan to bring the complaint to a close. The final and most important step of the process will be to follow through with a conclusion and communicate the results or decision back to Karen. Based on the facts and company policy, the manager must proceed cautiously, methodically, and immediately. Of course, if necessary or if there is a formal complaint, the manager would need to get HR involved so they can formally initiate an investigation. One responsibility of a manager would be to make sure everyone knows the rules and policies (Mujtaba, 2022a) for proper performance evaluations, and that everyone is treated fairly.

If any of the allegations are true that women are being evaluated harshly or differently than men, then there could be some sort of bias or error on the part of the evaluators (managers), which is impacting women more negatively. Even if there is no bias or intentional discrimination, the negative or disparate impact could still exist. As such, any such issues should be investigated by looking at the facts; otherwise, any disparate treatment of employees based on their gender could be very problematic for the organization. If these allegations are in fact true, then there could be a hostile work environment which needs to be corrected before it leads to more interpersonal problems and employee turnover or before it becomes an actual lawsuit. The responsibility of a manager is to take every complaint seriously and keep a pulse on trending complaints. As emphasized by Dobrich, Dranoff and Maatman (2002: p. x), “a hostile work environment can

create untold problems and liabilities for any company and its management personnel.” A manager or head of the unit would not want the department to be the next victim of a costly lawsuit. As such, it is best to immediately and thoroughly investigate any harassment allegations and provide relevant training as needed to make sure everyone is treated fairly, regardless of his/her gender. The goal for any manager must be that all performance evaluations are conducted in a fair, objective, and systematic manner. Of course, being fair requires performance evaluation competency and experience, along with a good understanding of harassment and the company’s policy on it. Assuming that those professionals who are conducting performance evaluations have the necessary knowledge, skill, and abilities, we can stay focused on educating them about sexual harassment prevention.

2. Understanding Harassment

Harassment can be any form of offensive unwelcome or uninvited behavior that is repeated several times for no purpose other than to insult, intimidate, torment, abuse, or annoy someone, thereby creating discomfort for an individual or to generate an uncomfortable workplace (Secunda, Hirsch, & Seiner, 2018). It is important to note that harassment is based on the perception of the victim, not the intent of the harasser. There is illegal harassment that targets a specific group of individuals, often based on race, religion, age, sexual orientation, gender, etc. which are protected categories under the Civil Rights act. Then there is harassment that is not necessarily targeting any specific group, but it could be aiming at an individual or many workers due to conflicts, different personalities, or even political motivations. The latter may not always be illegal, but it could create a hostile work environment, which could lead to costly lawsuits as well as other untold problems and liabilities for the company and management. In all cases and allegations, managers must act professionally, objectively, and methodically the same way with all employees to have a productive workplace where people would want to work. Otherwise, employee voluntary turnover will be high and costly for the organization, thereby leading to the existence of a “revolving door syndrome” culture, where prospective candidates accept the job but leave shortly after, through the same doors they came into the company as soon as they witness or observe any harassing unprofessional behaviors.

It is well known that “The risk of hostile work environment harassment increases dramatically when the public and private voices of both the harasser and victim are in misalignment” (Dobrich, Dranoff, & Maatman, 2002: p. 23). Based on anecdotal evidence and statements heard from employees, some unprofessional managers’ and employees’ verbal actions often appear to be completely misaligned with the public or private voices of their accusers. When managers are consistently and systematically abusive, a tort claim could be made. Of course, “a tort is the legal term for what is known as a private wrong caused by behavior that is inconsistent with that of a reasonable person” (Dobrich, Dranoff, & Maatman, 2002: p. 23). With the existence of such scenarios, an em-

ployee could file a tort of *defamation* because of the manager's sporadic verbal slandering of his/her employees from time to time to do what he/she deems as a form of inspiration, motivation, and competitive performance. To avoid these risks, managers and employees must all behave professionally according to the expectations of the company, so that their private and public voices are fully aligned with the organization's mission, vision, and values.

The Covid-19 pandemic has forced many to re-evaluate their priorities and redefine their boundaries (Mujtaba, 2022b). This has led many to realize that they are no longer willing to sacrifice their mental health for a job where they must deal with an unprofessional or hostile workplace. In places where abusive or hostile managers work, something must be done immediately to help these leaders be effective and developmental coaches. In some cases, there must be a formal one-on-one discussion with managers who behave unprofessionally in terms of explaining the policy and expectations of the company, while mandating that they always behave professionally and according to the organization's values. Some of these managers should be required to attend relevant management development/leadership training workshops that focus on management communication, performance evaluations, and/or how to coach performance through effective coaching. In all cases, managers must act professionally, objectively, and methodically the same way with all employees to have a productive workplace where people would want to work. It is the responsibility of the employer to provide a workplace that is free from unlawful harassment and discrimination. The goal of any manager and human resource expert should be to have a workplace that is professional, ethical, and legal in all respects to fulfill the basic need of safety for each employee. We also know that what is said by managers and workers, and what is tolerated tends to create the organization's culture.

Many practitioners advocate preventive and progressive employee discipline practices that are developmental (Noe, Hollenbeck, Gerhart, & Wright, 2021). Of course, some unintentional violations require immediate and serious attention to help employees behave professionally by knowing the law, following the law, and going beyond the law to become a good moral leader. Therefore, it is important to orally and in writing emphasize to employees who violate the company policy about the importance of having a professional workplace for all, so that the organization can prevent all forms of real or perceived harassment. These employees must understand that "harassment" can be any unwelcome, uninvited, aggressive behavior or even the exertion of pressure on employees that is intimidating to them or others observing these incidents. Employees need to know that jokes, slurs, name calling, and other such conducts all fall in the category of harassment when they are used and repeated to torment and intimidate individuals. It would be illegal harassment if any manager's conduct targets specific individuals based on a protected category such as ethnic background or race, gender, disability, sexual orientation, religion, age, etc.

We know that bad management and workplace harassment can have eco-

conomic, moral, ethical, and legal consequences. As such, new managers should go through relevant management and leadership development courses to become competent on the values and expectations of the company. It is important for new managers to attend appropriate management and leadership workshops where attendees learn how to effectively discipline or reprimand workers, set productivity goals with employees, motivate employees, and implement best practices for getting high performance from each worker. Another option is to ask new managers to complete college courses at the local university regarding business law, management, communication, leadership, motivation, and other relevant topics. Of course, all the fees for these workshops and college courses would be paid for by the company as an investment in their manager's development and growth. All these workshops and leadership development courses can help new managers become effective professionals and leaders in the company as well as industry. Overall, the company must take immediate steps to prevent all forms of harassment, while also regularly communicating their specific policy to new employees, as well as managers so they can create a positive and functional organizational culture for everyone. Since there are many academic articles dealing with anti-harassment issues and literature (Secunda, Hirsch, & Seiner, 2018; Cavico, Mujtaba, Petrescu, & Muffler, 2015; Gilani, Cavico, & Mujtaba, 2014; Dobrich, Dranoff, & Maatman, 2002), our goal in this paper has been to provide a practical framework for the creation of an easy-to-understand policy. As such, the next section of the paper goes directly into the essential components of an anti-harassment policy which can easily be adapted into any organization's employee code of conduct manual.

3. Anti-Harassment Policy Components

An anti-harassment policy should have certain components to ensure employees understand why having relevant guidelines are necessary. As such, an important component would be to make sure everyone has a common definition or understanding of the term harassment. Secondly, the concept of sexual harassment along with the company reporting expectations must be clearly discussed and presented. Finally, an anti-harassment policy should provide guidelines for purposely handling any such allegations, who to contact about a claim, the investigation process, and the consequences of it. The following sections provide an example of an anti-harassment policy for ILEAD Academy, LLC. We have provided this ILEAD Academy sample as an example of a real-world policy that can be adapted by public and private sector organizations and human resource managers into their own employee manual. The sample shows the three main components of understanding, reporting, and effectively handling harassment allegations which should be part of any anti-harassment policy.

3.1. Understanding Harassment

For ILEAD Academy employees, harassment can be any form of offensive, un-

welcome or uninvited behavior that is repeated for the purpose of insulting, intimidating, tormenting, abusing, or just annoying someone, thereby creating discomfort or an uncomfortable workplace for an employee or customer. In general, harassing conduct examples can include labels or nicknames, slurs, stereotyping, threatening, intimidating, hostile acts, derogatory jokes, and hostility through written or graphic content in the workplace. There is illegal harassment that targets a specific group of individuals, often based on race, religion, age, sexual orientation, gender, etc. which are protected categories under the Civil Rights act (Gilani, Cavico, & Mujtaba, 2014). Then there is harassment that is not necessarily targeting any specific group, but it could be aimed at an individual or many workers due to conflicts, different personalities, or even political motivations. The latter could create a hostile work environment, which may lead to unnecessary stress on the part of our colleagues and costly lawsuits. ILEAD Academy condemns and denounces all forms of intentional harassment.

In all cases, ILEAD Academy partners, managers and team members are expected to act professionally, objectively, and methodically the same way with all allegations of harassment to have a productive workplace where people would want to work. Everyone at ILEAD Academy is expected to follow the company's anti-harassment policy and model it so there is consistency in what is said and done among all team members. The goal of ILEAD Academy is to provide an inclusive work environment for all that is free of hostility and sexual harassment.

3.2. Reporting Sexual Harassment

ILEAD Academy requires reporting of any observed or suspected case of sexual harassment/sexual favoritism to the management or human resources department within 24 - 48 hours of its occurrence or knowledge. To be clear, sexual harassment is illegal in the United States of America. Sexual harassment is any unwelcome sexual proposals, advances, requests, gestures, jokes, and other such verbal or physical conducts. Any of our team members and colleagues can be a victim of sexual harassment. ILEAD Academy recognizes that sexual harassment can occur between team members of the same sex or opposite genders. For an act to constitute sexual harassment or sexual favoritism, the conduct must be unwanted and unwelcome by the person or victim (Gilani, Cavico, & Mujtaba, 2014; Green, 2019).

Sexual favoritism in a workplace romantic relationship can be when an employee who is in a subordinate position receives special treatment, unearned salary increases, or even promotions due to a sexual affiliation with another colleague who is in a position of power or higher rank (Mujtaba & Cavico, 2022: pp. 6-7; Yuldashev & Yusupov, 2016). Even though sexual favoritism does not directly violate any laws related to Title VII or Civil Rights acts, it can indirectly create a hostile work environment and lead to favoritism. Since favoritism can lead to *quid pro quo*, it can create a perception that managers would only promote employees who engage in sexual relationships with them (Mujtaba & Ca-

vico, 2020).

ILEAD Academy has had the option of “*forced arbitration*” clause for team members who experienced discrimination, pay inequity, or sexual harassment, but the U.S. Senate passed legislation on February 10, 2022, which ended forced arbitration in cases of sexual assault and harassment. This means that ILEAD Academy will not require employees to settle their sexual assault or harassment cases in private or secretly. As such, employees that did sign the “forced arbitration” clause can take their case into public courts to sue their employer, rather than going into private arbitration. Although ILEAD Academy has never had a case of this kind, the “forced arbitration” clauses could have deprived employees of being able to go to court when a company or manager violates the law, because it required the victims to settle the case secretly, which often favors the company. At ILEAD Academy, we value transparency and require that human resource professionals take an active role in communicating the proper rules regarding romantic workplace relationships and harassment conducts.

Title VII prohibits discrimination and harassment based on sex in all the terms and conditions of employment. Illegal sexual harassment can consist of two types of conduct: first, *quid pro quo*, which is decision-making in the workplace based on the submission to or rejection of unwelcome sexual conduct; and second, unwelcome and repeated sexual conduct that unreasonably interferes with a person’s job performance or which creates an abusive, intimidating, offensive, and/or hostile work environment. Sexual harassment is premised on a workplace environment that is hostile, offensive, or abusive sexually (Mujtaba & Cavico, 2022).

When it comes to sexual or gender discrimination, all managers must know that transgender employees are fully protected under Title VII. In the *Macy v. Holder* case, on April 20, 2012 (Macy v. Holder, 2012), the Equal Employment Opportunity Commission (EEOC) issued a groundbreaking decision holding that discrimination against transgender employees is covered by the federal sex discrimination law, Title VII. Mia Macy, who was a veteran and a former police detective, was denied a job as a ballistics technician after coming out as transgender, even though she was exceptionally qualified for the position. Upon the disclosure of her gender transition during the hiring process, Mia was told that funding for that position had been cut, but someone else was hired for the job. Mia’s case showed that Title VII’s prohibition against sex discrimination includes discrimination against transgender employees.

3.3. Handling Harassment Incidents

ILEAD Academy requires team members who are exposed to unwelcome sexual conduct to promptly notify the offender that his or her behavior is unwelcome and must stop immediately. ILEAD Academy encourages reporting of all real and perceived incidents of repeated discrimination and sexual harassment to management or the human resources department as quickly as possible. To remain methodical and transparent, human resource professionals handling ha-

rassment or discriminatory incident can use the following procedures as a guide:

- 1) Document all elements of the complaint, completely and comprehensively.
- 2) Treat each incident of sexual harassment seriously and respectfully.
- 3) Inform all relevant parties of the investigation process and procedures to be followed.
- 4) Keep the investigation confidential and private, limiting its scope to the necessary individuals.
- 5) Start the investigation. Listen to all the details, verify the information with others who can confirm what happened, and keep all notes and factual documents.
- 6) Make a judgement based on facts and in alignment with the company policy.
- 7) Communicate the results to the relevant parties.
- 8) Implement the consequences respectfully and methodically.
- 9) Follow up as needed to make sure everyone is behaving professionally.

Harassment is not measured by the intentions of the harasser or by the bias of the employer, but by the perception of and facts provided by the victim. As such, all allegations will be thoroughly investigated to maintain the goal of zero-tolerance for sexual harassment.

4. Summary

Any anti-harassment policy regarding sexual discrimination should include an understanding of the issue, reporting it, and the handling procedures. It is often reported that about 20% - 40% of employees are concerned that managers and human resource professionals may not handle sexual harassment incidents properly and respectfully, as such they do not always report it. Therefore, each reported incident of sexual and discrimination harassment must be properly investigated and handled. Creating an anti-harassment policy is a starting point, followed by effectively communicating it and consistently enforcing it throughout the organization. The anti-harassment policies can communicate the rules of engagement in the workplace; however, it is very important to complement and augment the company policy with relevant skills and communication techniques so employees can deal with uncomfortable conflict, discussions, and threats while being respectful. Through proper and consistent training, employees and managers can understand what harassment is, how to recognize it in the workplace, and have strategies on how to handle unwelcome interactions.

As an example, presented in this paper, ILEAD Academy's policy of zero-tolerance helps ensure that all team members can function in a work environment that is free from sexual harassment and illegal discrimination. Human resource professionals and managers must make every reasonable effort to ensure that employees are familiar with the organization's policy and aware that any complaint in violation of the policy will be thoroughly, fairly, respectfully, and transparently investigated and resolved appropriately (Smith, 2022).

In summary, when creating an anti-harassment policy, one must make sure that the language is clear and understandable. Also, the policy should communicate a clear message that the organization is completely committed to zero tolerance for sexual and discriminatory harassment acts. Finally, the policy must encourage everyone to go beyond the legal requirements by always acting ethically and in a socially responsible manner.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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