

Harassment in the Workplace - No!

90,000

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), the Americans with Disabilities Act of 1990, (ADA), and the Genetic Information Nondiscrimination Act of 2008 (GINA).

Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

Harassment becomes unlawful where

1. enduring the offensive conduct becomes a condition of continued employment, or
2. the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Sexual Harassment Gender Harassment Intersectional Harassment

25% - 85%

Quid Pro Quo

Hostile Work Environment

Verbal	Physical	Visual	Written

Employer Liability

In 1998, the Supreme Court made decisions that made clear employers are vicariously liable* for unlawful harassment by supervisors. (* Automatically liable, even if employer wasn't aware it was happening. No notice required.)

It is based on two principles:

1. An employer is responsible for the acts of its supervisors.
2. Employers should be encouraged to prevent harassment and employers should be encouraged to avoid or limit the harm from harassment.

Employers face the prospect of vicarious liability when the following elements are present.

1. "actionable harassment"
2. involving a "tangible employment action"
3. "at the hands of" a supervisor

Actionable Harassment: sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.

Tangible Employment Action: significant change in employment status, i.e., hiring, firing, promotion and failure to promote, demotion, undesirable reassignment or work assignment

At the Hands of a Supervisor:

The Supreme Court, in 2013, held that an employee is a “supervisor” if the employer has empowered that employee “to take tangible employment actions against the victim, i.e., to effect a ‘significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.’”

Might this include “dotted line” supervisors or “group leaders”, or co-workers with actual and/or apparent authority?

Affirmative Defense

The employer exercised reasonable care to prevent and correct promptly any harassing behavior
AND

The plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or failed to otherwise avoid the harm.

87%-94% _____ Why? _____

Send a Strong Management Message

The message must be:

- Sent _____ in each employee’s career.
- Delivered on a _____, _____ basis in many different ways throughout each employee’s career.

Strong Inclusive Policies
Model the Behavior
Feedback on Performance

Timely Problem Solving
Ongoing Communication
Multi-Level, Mandatory, In-Person Training

Effective Complaint Procedure

Have a specific procedure in place that is designed to help prevent and eliminate harassment in the workplace. An outline of the process must be provided to and reviewed with each employee.

No Retaliation

- Adopt and disseminate a strong anti-retaliation policy.
- Inform employees about the process for reporting alleged retaliation.
- Investigate allegations of retaliation and take prompt corrective action when it occurs.