

Stay Diligent: 4 Steps to Avoid New Wave of Harassment and Discrimination Cases

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This past year has seen an increase in gender discrimination and sexual harassment claims. More recently, these claims have not only been brought by women, but also by individuals using **Title VII's** "sex" protected class to bring claims for harassment and discrimination based on sexual orientation, being transgender, and other [LGBTQ classifications](#). With these claims becoming more prevalent, employers should review their current policies and train their employees on these policies. Below are four steps employers can take to avoid these types of claims.

1. Be Specific

Many well-intentioned employers assume that their employees know the actions that constitute "harassing" behaviors. In an effort to capture all harassing behaviors, many policies speak to harassment in general terms while giving few specific examples.

Speaking of "harassment" in general terms may not properly educate employees regarding the behaviors the employer specifically considers discriminatory and/or harassing. Accordingly, employers should take a pragmatic approach and spell out exactly the conduct that is prohibited and/or may result in disciplinary action. While a policy does not have to be exhaustive, it should provide real life examples of discriminating and harassing conduct the company will not tolerate. Some examples include:

- Forwarding emails with derogatory/harassing jokes, memes, website links, images, etc.
- Negative jokes or comments based on sex, gender or other protected classes (including LGBTQ) at any time.
- Repeatedly asking a co-worker for dates, etc.
- Using derogatory slang terms relating to a person's sex or sexual orientation.

2. Training

While it is important to have a policy in place that prohibits discrimination and retaliation, the policy is only one part of the equation. Another important aspect to enforcement is proper training. The majority of employers review their discrimination and harassment policies with employees during orientation. However, this training alone is not enough. Employers should review these policies with all their employees with some reasonable frequency. This is particularly true when there are changes, revisions, or new interpretations of protected categories (e.g., the increased protection for LGBTQ employees) or prohibited practices.

Also, managers should be regularly trained and reminded about the conduct that constitutes discriminating and harassing conduct, how to appropriately address complaints of harassment and/or discrimination, how to properly document complaints, how to properly investigate complaints (e.g., how to interview witnesses, take notes, etc.), and how to make a proper determination at the end of an investigation and implement any corrective action. This also includes instructing managers on how to properly discipline and evaluate all employees honestly



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and consistently.

3. Encourage Reporting

An employer should be very clear that it takes all complaints of harassment and discrimination seriously and does not retaliate or tolerate retaliation against employees who make a complaint and/or participate in an investigation. This includes making it very clear to all employees that there is no such thing as a “formal” or “informal” complaint. If an employee makes a complaint to management – whether it is in writing, in passing, etc. – that complaint will be investigated thoroughly and addressed appropriately. Employees cannot avoid an investigation by making a request that the employer ignores the complaint or by stating they “don’t want to get anyone in trouble.” The employer must be clear that it has a strict stance against harassment and discrimination, fully investigates all complaints, and does not tolerate retaliation.

4. Consistency

Employers must be consistent when disciplining and evaluating their employees, applying their policies to employees, and when addressing and investigating all complaints of harassment and discrimination. Indeed, consistent application of policy helps to insulate employers from claims brought by employees alleging the employer treated employees who fall under a protected class in a discriminatory manner. Demonstrating that an employer is consistent in its treatment of employees also assists the employer when defending discrimination and harassment actions brought by employees through the EEOC, state administrative agencies, and litigation.

Harassment and discriminatory claims can cost a company not only dollars in defending but time and business disruption. An employer that creates a culture that prohibits harassment and discrimination clearly communicates such policies and practices to its employees, and provides proper training to its management, will have a workforce that feels appreciated and protected and has a better chance of avoiding litigation.

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