Ensuring compliance with the law not only minimizes your liability, but can also help improve morale, productivity, and overall effectiveness. From asking the right questions when interviewing, to workplace harassment, bullying, and beyond, we make sense of local, state, and federal laws that can apply to the daily needs of your HR Professionals, Leaders, Managers, Supervisors, and your entire workforce. The bottom line? We’re not just another cloud-based technology company that also does HR, #WeAreHR. Get the Scoop on how we can help you simplify HR.
HOW TO USE THIS GUIDE

Every employee has the right to a workplace free of harassment where they are treated with dignity and respect and are responsible for treating others the same way. Aside from being the right thing to do, providing a harassment-free work environment is mandated by current and pending legislation.

This guide includes anti-harassment mandates, including state requirements, training deadlines, and information about how HR Knowledge can help you get and stay compliant.
This guide is for informational and educational purposes only and is not a replacement for, nor should it be taken as, legal or professional advice. These guidelines are not intended as a replacement for Federal, State, or Local guidance, but rather to summarize the requirements set forth in the relevant Federal statutes and regulations; states may require a different set of guidelines. Since laws change frequently, we recommend that employers follow the most updated set of guidelines and obtain legal advice for their specific situations.
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DEFINING SEXUAL HARASSMENT

Sexual harassment is a form of discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies, labor organizations, and the federal government. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, offensive remarks about a person’s sex, and other verbal or physical conduct of a sexual nature.

Two Types of Harassment — Generally, there are two types of unlawful sexual harassment:

» Quid Pro Quo – This term literally means “this for that” in Latin. Quid pro quo sexual harassment occurs when employment, pay, benefits, title, position, or other opportunities for advancement are conditioned on the submission to unwelcome sexual advances. Whether the harassment is explicit or implicit, it is illegal.

» Hostile Work Environment – A hostile work environment is a type of sexual harassment in which unwanted conduct makes it difficult for an employee to perform his or her job. In a hostile work environment, the harassing behavior unreasonably interferes with an individual’s work performance or creates an intimidating, hostile, or offensive work environment.

While quid pro quo harassment is relatively straightforward, hostile work environment claims can be more difficult to detect. What types of behaviors qualify as harassment? How much is enough to qualify as harassment? We provide some guidance below.

Examples of Unwanted Conduct — While overt forms of sexual harassment certainly still occur in the workplace, more subtle forms of harassment are on the rise. Harassment can include a broad variety of behaviors and comments, and anyone can be a harasser, regardless of gender or position in the company. For example, any of the following actions can be sexual harassment if they happen often enough or are severe enough to make an employee uncomfortable, intimidated, or distracted enough to interfere with their work. Examples of sexual harassment could include:

» Repeated comments about an employee’s appearance or sexual jokes that make a person uncomfortable
» Derogatory or inappropriate gestures
» Unwanted physical contact, such as repeated hugs or other unwanted touching (such as a hand on an employee’s back)
» Sending emails or text messages of a sexual nature
» Comments or jokes specific to gender, such as “this is a man’s job” or “women belong in the kitchen”
**HARASSMENT PREVENTION**

Prevention is the best tool for eliminating sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do this by providing sexual harassment prevention training to their employees, establishing an effective complaint or grievance process, and taking immediate and appropriate action when an employee complains. Employers should have a policy in place outlining the company’s intolerance for sexual harassment. Some states require employers to establish a sexual harassment prevention policy.

**Policy Considerations** — Sexual harassment policies should contain the following elements:

» Make clear what behaviors, both verbal and physical, constitute sexual harassment and stress that the company has a strict no-tolerance policy.

» Encourage employees to report claims of harassment so that the company can investigate, take appropriate action, and follow necessary steps to prevent future harassment.

» Include guidelines for how to report sexual harassment and procedures for how management and/or HR will respond to the complaint.

» Provide employees with at least two separate contacts, ideally one male and one female resource, for reporting sexual harassment complaints, preferably individuals with experience and training to deal with discrimination and harassment.

» Make clear in your policy that employees found guilty of sexual harassment or any type of discrimination will be subject to disciplinary action, including termination.

» Emphasize that retaliation is strictly prohibited and that victims will receive no backlash or repercussions if they report sexual harassment.

**Investigate Complaints** — Employers have a duty to investigate sexual harassment complaints and to take actions to prevent the recurrence of such offensive conduct in their workplace.

**Retaliation Is Unlawful** — Under Title VII, it is unlawful to retaliate against an individual for filing a discrimination charge; testifying; or participating in any way in an investigation, proceeding, or litigation. It is also unlawful to retaliate against someone for opposing employment practices that discriminate based on sex.

**States Requiring Anti-Harassment Policies** — While having an anti-harassment policy is best practice for all employers, many
states require employers to provide an anti-harassment policy for all employees. In addition, these states require certain information and language to be included in the policies. For example, the State of New York requires employers to publish a formal complaint form. The following states require anti-harassment policies:

» California
» Illinois*
» Maine
» Massachusetts
» New York State
» Oregon
» Rhode Island
» Vermont
» Washington, DC*
» Washington State*
*in certain industries

Nondisclosure and Employment Agreements — In addition to requiring specific language to be used in sexual harassment prevention policies, many states have also included legislative measures, such as banning nondisclosure provisions and mandatory, pre-dispute arbitration agreements.

For example, the State of New York prohibits its employers from including any nondisclosure requirements within any settlements or other agreements to resolve a sexual harassment claim. Other states, such as California, New Jersey, Tennessee, Vermont, and Washington State have all adopted various approaches for curtailing the use of nondisclosure agreements. It is important for employers to be aware of these prohibitions and review their employment agreements to remove any prohibited language.

Prevention should be a primary goal for employers in addressing all forms of harassment. This involves changing your workplace culture and practices, and that change starts at the top. Businesses must make clear that any form of harassment is not tolerated and is taken seriously. While having strong written policies and investing in training is imperative, and often required based on where you operate, these initiatives must be part of a broader approach. There is no short-term solution to prevention, since it requires constant recognition of behaviors and attitudes.

“An ounce of prevention is worth a pound of cure” — Benjamin Franklin
ANTI-HARASSMENT TRAINING

Sexual harassment prevention training has always been important, but amplify that with today’s #MeToo headlines about inappropriate behavior in the workplace and in society at large, and sexual harassment training has become the highest priority for many organizations. Gone are the days of the “one-and-done” training mentality. There is now an overwhelming demand to replace the old “this is the law” model with a fresh approach that emphasizes arming your employees with the tools they need to make the right choices. This is how HR Knowledge has been conducting our sexual harassment prevention training, known as Creating a Respectful Workplace Training, for more than 15 years.

Harassment Prevention Training — Having a peaceful and respectful environment in the workplace contributes to productivity. When your company requires each employee to attend anti-harassment training, your employees and managers will learn how to better address workplace concerns. With the help of anti-harassment training, you can prevent consequences such as lawsuits, criminal charges, penalties, and other issues, like lower employee morale.

The Importance of Manager Training — We strongly suggest that you provide manager training even if you operate in a state where training is not required; the US Supreme Court has established that employers may be subject to vicarious liability for the actions of their managers. Your managers need the tools to prevent or respond to inappropriate workplace issues. Your management team directly contributes to a respectful workplace. Respect in the workplace not only boosts your employees’ morale and productivity, but also greatly reduces your potential liabilities.

Anti-Harassment Training Elements — To considerably reduce your risk of sexual harassment claims and significantly improve your ability to manage any potential claims, at a minimum, your training should include the following elements:

» Have a complete, comprehensive, and regulatory-compliant harassment prevention policy;
» Ensure that everyone at every level understands their individual responsibilities in creating a respectful work environment;
» Appreciate the value of diversity in the workplace; and
» Have a clear process in place for your employees to report unacceptable behavior.
STATE-SPECIFIC TRAINING

The #MeToo era has prompted an increasing number of states and localities to mandate sexual harassment prevention training in the workplace. Employers who operate in states that require training should be aware of their obligations. The following states and localities require employers to provide anti-harassment training to their workforce:

» California
» Connecticut
» Delaware
» Illinois*
» Maine
» New York City
» New York State
» Washington, DC*
» Washington State*

*in certain industries

In addition to the previously mentioned states that require employers to provide sexual harassment prevention training, many other states and localities have no requirements but “encourage” all employers to take necessary steps to prevent sexual harassment, including conducting harassment prevention training. See our interactive map outlining [State Sexual Harassment Prevention Training Requirements](#).

States with Pending Mandates — A number of states have anti-harassment mandates currently pending to address harassment in the workplace. HR Knowledge monitors these developments closely and will publish alerts for any new anti-harassment laws. The following states have anti-harassment mandates pending:

» Arizona
» Florida
» Massachusetts
» Pennsylvania
» Rhode Island
» Texas
HRK IS HERE FOR YOU

Want to simplify your anti-harassment prevention program? Contact HR Knowledge to learn more about our Turn-Key Workplace Harassment Prevention Training and Toolkits. Our trainings can be customized to meet your specific compliance requirements. The training includes sexual harassment prevention, workplace violence prevention, acceptable use of electronic devices and social media, and a clear reporting structure for employees. To learn more, contact us at info@hrknowledge.com.

HRK RESOURCES

» HRK’s Employee Training Solution
» Ask HRK: Harassment Protection Laws
» e-Alert – Connecticut Expands Sexual Harassment Training to Include All Employees
» e-Alert – Illinois Department of Human Rights Unveils Model Sexual Harassment Training
» e-Alert – Illinois’ #MeToo Movement Impacts Employers
» e-Alert – New York State Significantly Expands its Workplace Harassment Laws (Again)
» e-Alert – Sexual Harassment Training is Now Mandatory in Washington State for Certain Employers
» Guide to Title IX Requirements for K-12 Schools
» Harassment Prevention Training Requirements — California
» Harassment Prevention Training Requirements — Connecticut
» Harassment Prevention Training Requirements — Delaware
» Harassment Prevention Training Requirements — D.C.
» Harassment Prevention Training Requirements — Illinois
» Harassment Prevention Training Requirements — Maine
» Harassment Prevention Training Requirements — New York City
» Harassment Prevention Training Requirements — New York State
» Harassment Prevention Training Requirements — Washington
» Sexual Harassment Prevention Training Requirements Interactive Map
» State-by-State — Sexual Harassment Prevention Training Requirements
THE PEOPLE SIMPLIFYING HR.

FOR ALMOST TWENTY YEARS, HR KNOWLEDGE HAS MADE IT OUR MISSION TO DEMYSTIFY THE COMPLEX AND DAUNTING PROCESS OF HR MANAGEMENT. WE DO MORE THAN JUST PROVIDE THE LEVEL OF SERVICE AND TECHNOLOGY YOU’D EXPECT FROM AN INDUSTRY LEADER. WE COMBINE UNPARALLELED PASSION FOR SERVICE WITH OUR DECADES OF HR, PAYROLL, AND BENEFITS EXPERIENCE TO PROVIDE OUR CLIENTS WITH PERSONALIZED AND ACTIONABLE ADVICE THAT IS SECOND—TO—NONE. FROM MANAGED PAYROLL TO EMPLOYEE BENEFITS TO HR SUPPORT, WE CAN HELP YOUR ORGANIZATION THRIVE, GROW, AND REDUCE OPERATING COSTS—NO MATTER WHAT INDUSTRY YOU SERVE. WHETHER YOU’RE INTERESTED IN OUR FULL-SERVICE SOLUTION OR JUST NEED YOUR EMPLOYEE HANDBOOK WRITTEN, HR KNOWLEDGE CAN HELP YOU MINIMIZE RISK WHILE STAYING ON TOP OF COMPLIANCE REGULATIONS. THE BOTTOM LINE? WE’RE NOT JUST ANOTHER CLOUD-BASED TECHNOLOGY COMPANY THAT ALSO DOES HR, #WEAREHR. GET THE SCOOP ON HOW WE CAN HELP YOU SIMPLIFY HR.