



Founder Fundamentals

Discrimination and Harassment in the Workplace: Take These Steps Now to Prevent Future Issues

By Matthew C. Berger

Discrimination and sexual harassment in the workplace is nothing new, and employers have steadily been getting better over the years at addressing these issues on their own. However, in this “Me Too” era, state and local governments are beginning to pass laws *requiring* employers to promulgate anti-sexual harassment policies and conduct sexual harassment prevention training for the workplace. While these laws do not also require similar anti-discrimination policies and training, anti-discrimination policies should be part and parcel of the anti-sexual harassment policies you implement, and a brief discussion of how your company handles discrimination issues should be included in your sexual harassment prevention training. Additionally, even if, depending on the jurisdiction your business is located in, there are no laws requiring anti-sexual harassment policies and training, it is recommended that you implement both anti-discrimination and anti-sexual harassment policies in the workplace.

While the specifics of anti-discrimination and anti-sexual harassment laws vary from state-to-state and county-to-county, they all generally set forth the same requirements. Anti-discrimination laws dictate employer and employee coverage and the types of characteristics that are protected from discrimination, while anti-sexual harassment laws address, among other things, employer and employee coverage, the required components of a written anti-sexual harassment policy, and the requirements of a sexual harassment prevention training curriculum.

Employer and Employee Coverage

Depending on where your business is located, state and/or local laws governing discrimination and harassment will set forth the definition of “employer” and “employee.” These definitions will help you understand whether you are a covered employer—usually based on the number of employees you employ—and which types of employees or other individuals are afforded protection under the laws—full-time employees, part-time employees, temporary employees, and/or independent contractors.

Protected Characteristics

The types of characteristics that are protected under relevant anti-discrimination laws vary depending on the jurisdiction. Some state and county laws provide for greater protections than are afforded under federal anti-discrimination

laws and your anti-discrimination policy needs to include these additional protected characteristics to communicate to your employees the types of characteristics that are protected and subject to your anti-discrimination policy.

Anti-Discrimination and Anti-Sexual Harassment Policies

The precise details of your anti-discrimination and anti-sexual harassment policies will depend on the location of your business and, if you have employees who work remotely, the location in which your employees work. However, generally speaking, your policies should outline the characteristics that are protected by the relevant laws, the type of conduct that is prohibited, examples of such conduct, and

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the procedures employees should follow if they believe they have been subject to or witnessed any discrimination and/or harassment. Your policies should also include a strong anti-retaliation statement that any retaliation for complaints raised under the policies is strictly prohibited and will not be tolerated.

Many employers, regardless of size, will also hire an outside firm to set up and monitor a 24/7 hotline for employees to lodge complaints. These hotlines are especially beneficial for small companies such as start-ups where the company's owner or CEO is also the only person employees would be able to report complaints to. The outside hotline provides employees with another avenue to report complaints if they are concerned that reporting to the CEO could endanger their job and cuts off a potential claim in a lawsuit that the employee would have

complained but for the fact that they did not feel comfortable making a complaint to the CEO.

Training

Finally, many anti-sexual harassment laws include a requirement that employers conduct sexual harassment prevention training within a specified period of time after an employee is hired. While some states and/or cities offer free on-line training which may be sufficient for nonsupervisory employees, "live" group training may be more successful for managers since they often have a greater responsibility to address discrimination and harassment complaints. If you or your employees are located in a jurisdiction requiring sexual harassment prevention training and you opt to conduct in-person training, it would be wise to also review your anti-discrimination policy as part of any such training.



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