

Legal Action

Protecting Against Workplace Sexual Harassment

BY NOW, ALL employers should realize and understand that sexual harassment is illegal. Employers are directly responsible for employee behavior, which gives harassed workers recourse in bringing legal actions against those that employ them.

According to the Equal Employment Opportunity Commission, there were 11,497 sexual harassment complaints in 2020 in the U.S..

Any employer that's ever been involved in a sexual harassment suit can attest that the cost to settle or defend such a lawsuit can be jaw dropping. Defense and settlement can easily run to several hundred thousand to several million dollars, or more.

What constitutes sexual harassment?

State and federal law prohibits superiors from demanding sexual acts in exchange for preferential treatment or under threat of punitive measures. The following are examples of such behavior:

- Altering expectations of job performance when a subordinate repeatedly refuses advances for a date or sexual encounter.
- A superior demanding sexual acts in order for a subordinate to receive a raise or promotion.
- Disciplinary action, including termination, of a subordinate who refuses sexual advances or ends an existing romantic relationship.

However, sexual harassment doesn't always involve a subordinate/authority figure relationship. An offender can be anyone from a co-worker to a customer or business vendor.

The offender can be male or female, as can the victim. Furthermore, the victim doesn't even need to be the employee actually harassed.

Anyone that's affected by the harassing or offensive behavior can be termed a victim.

Verbal, visual, physical or written ... any behavior that causes another employee to view the work environment as hostile, or is unwanted or focuses on the sexuality or gender of another person, may constitute sexual harassment.

Specific examples of such would be teasing, suggestive objects or pictures being displayed, and repetitively requesting sexual acts or dates.

Employment practices liability insurance

Businesses can financially protect themselves with employment practices liability insurance.

While policies vary, EPLI generally covers settlement, judgment and incurred legal costs arising from an array of incidents:

- Wrongful termination,
- Employment contract breaches,
- Employment and promotion failures,
- Wrongful disciplinary actions,
- Wrongful emotional distress infliction,
- Negligent employee evaluations, and
- Discrimination.

Some policies automatically include sexual harassment as well, but others may not. Or you may be required to get a special endorsement for sexual harassment.

Coverage is specific. Before purchasing a policy, decide who should be covered. For example, should full- and part-time employees, contracted persons, supervisors, department heads, subsidiaries, company divisions, and so forth be covered or not?

One other note about EPLI is that it's mandatory for employers to report incidents

within a reasonable amount of time.

Keep in mind that EPLI cost is based on the business type, employee numbers and past lawsuits associated with the organization.

Preventing sexual harassment

Prevention is the cornerstone of reducing the risk of a sexual harassment lawsuit.

Finally, if your firm has EPLI, any incident should be reported to your insurer immediately.



Put Policies in Place

- Create, communicate and enforce a zero-tolerance policy for workplace sexual harassment.
- Have an effective harassment complaint process in place and take immediate, consistent and appropriate action when a complaint is made.
- Thoroughly document all complaints and the following investigation and actions.

