



## Stopping Sexual Harassment in the Workplace

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*Foster Swift Employment Labor & Benefits News*

January 22, 2018

Sexual harassment is at the top of minds in workplaces across the country. It is up to employers to maintain a safe and secure workplace. This includes stopping sexual harassment from occurring in the first place and taking swift action to mitigate its consequences when it does. It's become such a lightning rod that the new tax bill includes a provision prohibiting businesses from writing off sexual harassment settlements. In this article, I will address: (1) why it's important for businesses to confront the issue of sexual harassment, (2) what constitutes harassment, and (3) best practices for preventing it.

### **Why Businesses Must Confront Sexual Harassment in the Workplace**

There are some obvious practical considerations to preventing sexual harassment in the workplace. Indeed, doing so is simply good business.

Preventing sexual harassment in a workplace is important to a business' culture and performance because:

1. It promotes dignity and respect of others, because sexual harassment harms everyone.
2. It helps recruit and retain a talented workforce, as no one wants to work in an environment where they feel harassed and uncomfortable.
3. Respectful behavior facilitates more productive employees.

It's also important because failing to do so puts a business, and the people who work there, at legal risk. With all of the headline-grabbing improprieties that have come to light over the last six months, it's been impossible to miss the serious legal implications of bad behavior befalling companies, corporate executives, and celebrities.

There are a number of areas of both statutory and case law that Michigan businesses must be aware of that could give rise to legal repercussions for sexual harassment in the workplace. For example, Title VII of the Civil Rights Act prohibits sex discrimination (including

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gender identity, change of sex and/or transgender status) as well as Michigan's anti-discrimination statute. Sexual harassment also implicates other Michigan civil rights laws and fair employment laws. In addition, there is Michigan case law that states that even if acts of sexual harassment happened outside of a statute of limitations period, the acts may be used as admissible evidence when relevant to determine if a hostile work environment exists.

As an employer in Michigan, it's hard to escape the legal consequences of sexual harassment in the workplace.

### **What Constitutes Sexual Harassment?**

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), and the Americans with Disabilities Act of 1990 (ADA). In addition, Michigan has its own discrimination law, the Elliot Larsen Civil Rights Act.

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.

Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Harassment can occur in a variety of circumstances, including, but not limited to, the following:

1. The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
2. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
3. Unlawful harassment may occur without economic injury to, or discharge of, the victim.

It is important to keep in mind that harassment does not have to be of a sexual nature, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general. In addition, both the victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

### **How to Stop Sexual Harassment**





All of the serious implications of sexual harassment in the workplace begs the obvious question: What's the best way to stop it?

Prevention starts with a clear, cohesive, and comprehensive sexual harassment policy that lays out the consequences and establishes a process for reporting and investigating complaints. A strong policy must be coupled with systems for training, monitoring, and investigating complaints.

These efforts are all geared toward promoting and enforcing a respectful workplace that appreciates diversity of people and their perceptions, accepting differences and equality. Be proactive and focus on education and intervention. The source of the disrespectful behavior may not even know that their behavior is offensive, so they must be confronted with the truth so they can correct their behavior. This means that those who observe disrespectful behavior have a responsibility to stop it when it occurs. Someone who notices such behavior is never an innocent bystander, but employees must be trained and encouraged to recognize sexual harassment and take appropriate steps to stop it (for example, by notifying the human resources department).

**Bottom-line:** Employers, especially in today's highly-charged environment, must take active steps to stop sexual harassment in the workplace. The risks of failing to do so are real and potentially severe. If you have any questions about how to stop sexual harassment in the workplace, or need help crafting and enforcing a sexual harassment policy, please contact Cliff Hammond.