

## Harassment Policies

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I own a service company, which, like many businesses in Fairfield County, is small – under 25 employees. One of my business associates recently had a problem with an employee who accused his company of some kind of mistreatment. He said that things got pretty sticky with that employee, and part of the problem was that his company had no policies on file. While I have never had problems with my employees, I am wondering if I need any kind of harassment or probation policy. Our policy manual is kind of thin, and it may be time to look at what we're doing.

Let's begin with the preface that in the case of harassment policies, our readers should get good legal advice. I can tell you some things to think about, but when it comes to harassment and related consequences, the lawyers know the law, and the law is what counts. That said, there are some things you can do to protect your company. Even though the small size of your company means you are not required to have written policies, voluntarily putting policies in place, can help avoid problems in the future.

We'll take a look at why a company might want to put harassment policies in place, what belongs in a policy, and what steps need to be taken to train your employees on the company's policies.

Defining the company's code of conduct, and then educating employees about that code, can help to avoid problems in the future. Your responsibility, as the owner of the company, is to define what behavior is, and is not, acceptable. You should do this with the advice and oversight of your attorney. Once you define what is, and is not, acceptable, you then want to share those standards with your employees. This helps to insure that everyone knows what are the rules, and boundaries, around acceptable behavior in your company. Most employees are likely to comply, if they know the rules. You need to start off by being clear about what you expect.

Never make the assumption that employees know what is correct, and incorrect behavior. We are all brought up in different households, with different standards and practices. What is frowned on in one household may be well accepted in another. To insure that employees understand what you consider acceptable in your company, you need to put your standards in writing. Additionally, there are legal restrictions on what is and is not acceptable. You need to get an education about what is legally correct and incorrect behavior, and then share that education with your employees, through a written policy.

What are some of the most obvious offenses you want to

prevent? There are lots of examples. Making offensive sexual, racial, age-based or religious comments, telling someone to violate their principles, threatening a person with bodily harm, can all be considered harassment. Gestures and unwanted physical contact are taboo. So is telling someone that in order to get a promotion or keep their job, they will have to put up with unacceptable behaviors.

Practically anyone can contribute to a harassing work environment. This includes customers, supervisors, vendors, co-workers and independent contractors. Your responsibility, as owner of the company, includes making it clear that you will not tolerate such behaviors, and will act to put an end to them. You also must provide assurance that employees who come forward with complaints will be protected from any kind of punishment or revenge.

Besides writing up what is considered unacceptable behavior, and assuring employees they will not be subject to retaliation if they file a complaint, you also want to include the following in your policy. Describe the steps an employee should go through to make a complaint, including to whom to address the complaint, and any escalation process, if the employee does not receive satisfaction. You want to make it

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clear that any complaints are to be held in strict confidence. Make it clear that an investigation will happen quickly and be confidential, impartial and thorough, followed by corrective action appropriate to the findings of the investigation.

Of course, once you put these policies in place, be prepared to back them up by doing the things your policy states. If a problem comes up, you have to deal with it. Even if it means that your best sales person, or top financial employee, or best friend in operations is causing harassment problems, your company will have to address the problem with that employee.

Defining acceptable practices is the first step in insuring that everyone knows what you expect. Enforcement is the second step.

Define how you want your company to handle corrective actions. Some companies use the three strike rule, with or without probation. Others have a zero tolerance policy. What ever you decide on, understand that the policy will have to be applied uniformly.

The three strike rule gives your company time to deal with educating, or rehabilitating offending employees. Each offense is noted in the employee's file, with the date, type of offense, results of investigation, and corrective

action. The third time an offense is reported, investigated and documented as having taken place, the employee is fired on the spot. Keep in mind that if you select three strikes as a policy, there may be instances when three strikes is more than you want to put up with, depending on the nature of the offense. And, so long as the offending employee is on your payroll, your company remains potentially liable for any claims filed by the offended employees.

If you elect probation as a form of corrective action, you are taking the opportunity to evaluate an offending employee's performance. You may also be limiting your company's rights to "at will" employment, since successful completion of the probation means that the employee will only be terminated for cause, unless you and the employee re-agree to "at will" employment. Further, by offering probation, you are giving the offending employee further opportunity to harass while under your employment, further exposing your company to liability from other employees who find this behavior offensive.

If you elect zero tolerance, on the other hand, you are agreeing to immediately terminate an employee once an investigation turns up evidence of actual harassment. If you elect this route, even your best employee is subject to immediate termination.

An employee who did not recognize that their behavior was offensive is also out the door, once the investigation turns up evidence. You cannot apply zero tolerance to some employees and not to others, and expect to stay out of trouble.

Think through what you want your company policy to be. Remember, this is where you set your standards regarding what you will, and will not tolerate. Give yourself and your employees enough room to deal with something stupid, such as an employee having an unusually bad day and doing or saying something they would never normally do or say. At the same time, make sure you can quickly get rid of an employee or customer who considers it acceptable behavior to prey on co-workers. Ask your company attorney for advice. Ask your payroll company for examples of policies they may have on file. Then decide on what you want your company to be known for, and play that out in your policies.

Once you have your policies in writing, including next steps on investigations, and penalties and remedies, it's time to educate everyone. It is not enough to just write out your policies. You have to be able to prove that employees received the policies. And, in the case of harassment, it is recommended that you provide training sessions. The problem with harassment is that people

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may look at situations differently. One person may interpret a situation or action as acceptable, while another may not. That's where training comes in. It gives employees an opportunity to discuss and role play behaviors and situations. Through training, it is hoped that employees will learn to recognize what is and is not acceptable in your company, and will be aware of the consequences for acting in an unacceptable fashion.

Set up periodic training sessions, perhaps once per year, or, if you're doing a lot of hiring, once per quarter. Require attendance by every employee, and check on attendance by having a sign-in sheet for each session. Review the company's written policy, including a discussion of how to handle unacceptable behavior. Emphasize that the company expects employees to deal with each other with respect, and that the company will take any claim seriously, investigate thoroughly, and take corrective action based on the results of the investigation. Make it clear that you, as the owner, expect everyone in the company to be on their best behavior, and avoid doing or saying things that are likely to make anyone around them uncomfortable. Encourage employees to realize that different people look at the world through different eyes, and no one can assume that because they are comfortable with some behavior

or action, that everyone else will be as well.

Looking for a good book? Try *The Manager's Guide to Preventing a Hostile Work Environment: How to Avoid Legal Threats by Protecting Your Workplace from Harassment Based on Sex, Race, Disability, Religion or Age*, by Wanda Dobrich, Steven Dranoff, and Gerald Maatman, Jr.

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