

5 Steps Toward a Workplace Without Sexual Misconduct

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Sexual misconduct in the workplace has featured prominently in the news this year. TIME Magazine named the “silence breakers” as its Person of the Year. And US lawmakers have introduced a bipartisan bill to bolster employees’ rights to sue employers by limiting arbitration of sexual harassment and gender bias claims.

Now more than ever, boards of directors should ensure appropriate processes are in place to uncover and prevent sexual misconduct at all levels of the company by following these five steps:

1. Adopt a Comprehensive and Robust Anti-Harassment Policy

Adopt an anti-harassment policy that:

- Prohibits harassment based on sex, race, age, national origin, disability, religion, and all other characteristics protected by law, with examples of misconduct that violates the policy
- Emphasizes that the policy prohibits sexual harassment of both women and men, on- and off-site, by employees at any level of the organization, as well as by clients, vendors or other individuals with whom employees may work
- Establishes an internal reporting procedure under which employees who have experienced or witnessed workplace harassment must immediately report the matter to one of a few designated individuals
- Ensures that the company will promptly and impartially investigate any reports of misconduct
- Prohibits retaliation against employees who complain or participate in an investigation
- Warns that anyone found to have violated the policy will be subject to disciplinary action, which may include immediate termination of employment
- Includes any specific terms that applicable state law may require

2. Train Employees and Supervisors

An effective anti-harassment policy requires meaningful training of personnel. Upon hire and periodically afterwards, all employees should receive a copy of the policy and be trained to understand their right to a workplace free from harassment and their responsibility to conduct themselves professionally in accordance with the policy. Supervisors should be provided with additional training on how to recognize potential violations of the policy and when to elevate matters to designated officers with ultimate reporting obligations to the board.

3. Listen Carefully, Investigate Thoroughly, and Act Promptly

Listen carefully to any reports of offensive, unwanted, or unfair treatment. Even though employees may not expressly refer to the policy or use terms like “harassment” or “sexual misconduct,” their concerns nevertheless should be taken seriously and thoroughly assessed. Assemble an impartial team, with

outside advisors if warranted, to conduct a prompt investigation, the scope of which will depend upon the circumstances. Ensure confidentiality to the extent practicable but acknowledge that some disclosure may, and likely will, be necessary to carry out a meaningful investigation. Determine if a violation of the policy has occurred, take swift remedial action as appropriate, and notify the complaining parties of the conclusions of the investigation.

4. Prevent Any Type of Retaliation

Remind all persons involved that the company strictly prohibits retaliation against any reporting employees and others who participate in an investigation. Continue to monitor the situation to ensure that no retaliatory conduct takes place.

5. Consult Counsel

When in doubt, consult with counsel to ensure that your company is taking appropriate steps to maintain a safe and inviting workplace free from sexual harassment and other misconduct.

Now is the time to be sure the right policies and procedures are in place.



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