

CEP

MAGAZINE

A PUBLICATION OF THE SOCIETY OF
CORPORATE COMPLIANCE AND ETHICS

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STAYING ON TOP OF GLOBAL PRIVACY REGULATION (P10)

Hang up the telephone
hotlines — go digital! (P14)

Integrating probability sampling
into compliance programs (P20)

'Stop harassing me!' Proactively
eliminating workplace sexual
harassment (P26)

Leveraging branding
concepts to drive an effective
compliance program (P32)



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‘STOP HARASSING ME!’ PROACTIVELY ELIMINATING WORKPLACE SEXUAL HARASSMENT

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Stop harassing me! These three words are more common than we think, but unfortunately, oftentimes little is done to prevent them. Sexual harassment is usually hidden or ignored, so it is underestimated and underreported.

One morning, there was a knock at my office door, and standing in front of me was the assistant to one of my organization’s client directors. Her face reflected so much pain that I asked her to come in and tell me how I could help her. She began telling me every detail of what she had experienced with that director. According to her story, he started flirting and complimenting her to gain her trust and then started harassing her by sending inappropriate messages. He asked her to meet outside the office and send him intimate photos of herself, and when she refused, he threatened to fire her. She said, “Stop harassing me!” many times, but he wouldn’t. The

arrogance of the director was clear; he thought he was untouchable and that he could do whatever he wanted.

An investigation was launched to corroborate what was happening. The claims were found to be true. The case was handled very delicately because there was much gossip, and the accused director was friends with other directors. As the investigating team, we even had to have meetings outside the office to protect the complainant. And at some point, there became a sense of “compliance versus the company.” Lawyers were involved, the atmosphere became intense, and a lot of people were left wondering what was going on.

The investigation made the director stop harassing his assistant... but he started harassing me. And over the following few months, other cases arose from women who dared to report his behavior.

Everyone — not just women — can be victims of sexual harassment. It’s a

very common crime worldwide but is often not reported. So how best to handle such reports and prevent sexual harassment from happening in your organization?

What is sexual harassment?

Sexual harassment legislation depends on the jurisdiction but can involve inappropriate comments, sending or showing photos or videos of sexually explicit content, inappropriate touches, etc. Therefore, the definition varies. For practical and simple purposes, we can say that sexual harassment is the insistent intimidation of a person for sexual purposes or any unwanted sexual pressure or intimidation, whether in physical or verbal form.

In general terms, the sexual harassment crime meets three conditions:

1. Can be done physically and/or verbally (written or oral).
2. Unreciprocated physical or verbal actions.
3. Coercion, or the intention to cause harm or benefit depending on the rejection or acceptance of the person being harassed.

There is a fine line between what is and what is not sexual harassment. It can appear relatively innocent (e.g., flirting, hugging) or indisputably illegal (e.g., physical sexual assault). We can talk about examples, but there is no catalog of behaviors of what can or should be considered sexual harassment, because it all depends on the culture and laws of the country. What may constitute harassment in the United States may not be harassment elsewhere.

So, how to distinguish it? Consent. Everyone has the right to accept or reject (e.g., simply

saying “no”) another’s behavior that is being aimed at them.

Key controls to stopping sexual harassment

What controls should a company have so that sexual harassment does not happen?

Guideline

Set a formal guideline regarding sexual harassment. It can be included in the code of ethics, you can develop a policy in this regard, or both. The definition must be clear, simple, and direct so everybody understands it, and it should be in accordance with the laws of the country in which the company is based and does business. It is important that the company includes the regulation of the countries in which there are branches, subsidiaries, or any kind of representative, because every legislation is different. The definition should indicate examples of what sexual harassment is, for example: inappropriate language, jokes that offend in any way, teasing, etc.

Clearly write that the company does not tolerate this kind of behavior (i.e., a zero-tolerance policy) and that there are consequences.

Complaint protocol

Establish a complaint protocol that clearly communicates to the complainant how to file a complaint and the following steps. The protocol should be thorough and transparent in its messaging so that the complainant feels guided and supported. Examples of elements to include are:

- ◆ An estimated length of time that it may take to respond to the complaint,

- ◆ If the complainant will be interviewed,
- ◆ If the complainant must give a copy of any evidence, and
- ◆ Whether the complainant can discuss the matter.

It is important to note that both the complainant and witnesses must be always protected, the alleged harasser will have the benefit of the doubt until the investigation is completed, and that everything is going to be handled with discretion and as confidentially as possible. It is essential that this protocol is accessible to all employees and, ideally, to third parties such as customers, suppliers, etc.

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Investigation protocol

Establish an investigation protocol that addresses the following questions: How will this complaint be resolved, and how will the complaint be handled? The answers to these questions should include the time in which the actions will be carried out, the parties involved, and how the evidence is going to be handled. Regarding evidence, note what will be considered (e.g., photos,

recordings, witnesses, emails, messages). The people involved should be subject matter experts in these types of cases or at least have experience handling similar cases.¹

The company should aim to take all complaints seriously without minimizing or dismissing them prior to investigations. This means that each case should be treated impartially and in accordance with the law and company policy — and without retaliation for the victim. Include this point in the investigation document protocol.

The victim should never be asked to confront the alleged harasser or be exposed to the same situation, especially if the harassment has been recurrent or aggressive.

The company must also consider two potential scenarios: what to do if there is someone within the investigation team who is the accused, as well as what to do when the sexual harassment is only verbal and without witnesses.

The investigation protocol should also mention the process of the resolution of the case (what sanctions will be carried out) and how these results will be communicated to those involved. After the investigation is completed, a report of the investigation must be submitted and should include:

- ◆ The method of the investigation,
- ◆ A summary of the facts,
- ◆ The participants,
- ◆ Where the evidence is and who has had access to it, and
- ◆ The conclusions and the sanctions established, if any.

The most important point is that the company carries out the investigation as soon as possible so that evidence is not lost, destroyed, or modified, and to prevent the harasser from leaving.

Sanctions

In any organization, sexual harassment should be considered a serious crime, and as such, it must be sanctioned. An administrative sanction that leaves things as they are because the harasser promises they will not commit the offense again is completely unfair, ineffective, and insufficient. Eradicating this type of conduct is achieved only with severe and transcendent sanctions with no exemptions so the harasser understands the seriousness of the matter. No matter the position held by the harasser in the company, no one should be above the law or the company's policies. We are talking about a serious ethical matter for the company.

The sanctions will matter depending on the circumstances of each case, but the organization's goal should be to show with actions that it has zero tolerance for sexual harassment and that it is being eradicated. By doing this, the objective of punishing sexual harassment is achieved, and employees are given a clear message of "this is unacceptable," helping to prevent this crime from happening again.

Remember that any company that acts with indifference or malice can be eligible for financial or criminal sanctions by law enforcement.

Training

Make anti-sexual harassment training effective by including real-life examples so employees are aware of the repercussions of a sexual harassment case or use role-play to encourage greater empathy about the issue. It's important that the content is clear and uses concise language. Remember to also adapt the

training content according to regulations local to where the company has presence.

Training should be on a recurring basis and to all employees — without exception. For example, the Japanese government² made its senior officials take sexual harassment prevention courses. To make the lessons really stick, make employees take an exam at the end of the course, and even have the results considered during performance evaluations. You can be sure they will pay attention.

Lastly, set reminders between each training. Repeat key aspects of the training, such as:

- ◆ Examples of what is inappropriate,
- ◆ The ethical issues at play,
- ◆ Where employees can find the protocols, and
- ◆ The message that victims are not alone, and the company has zero tolerance for this type of behavior.

What we can learn from a case

Regardless of whether the case was determined to be sexual harassment or not, here is what needs to be done to learn how to effectively mitigate similar cases in the future:

- ◆ **Analyze the case:** What elements can be improved to prevent sexual harassment from happening again? What weaknesses exist that allowed this crime to happen? What went wrong? Have there been other cases, and do they have similarities?

After getting results, the policy or guidelines, protocols, code of ethics, training, and any other related control should be checked

and updated to minimize the occurrence of another case under the same conditions.

- ◆ **Retrain all employees:** Focus your training on the weaknesses within the controls — which should have stopped the sexual harassment — and what needs to change going forward. For example: greater agility in processing reports, having more accessibility as a company, emphasizing values more, reiterating what constitutes harassment, etc.
- ◆ **Evaluate the work environment:** How can you know what employees are feeling or thinking? The best way is through surveys. If it can be answered anonymously, more employees will likely complete it. Their answers can point out issues the company is not aware of and that can be resolved before another case arises. Try to do it at least twice a year so the

work environment is properly monitored or when there are crucial situations in the company such as a merger; a new director being onboarded; bad press; when there has been a violation of ethics, guidelines, or laws; etc.

Lastly, keep in mind that the lack of reports does not mean that everything is fine. People are often too afraid to speak up. In cases of sexual harassment, many companies unfortunately do not help the victim, because they are more focused on avoiding a scandal. The complainant is brave for reporting, but they will also be questioned, criticized, and potentially threatened, which is precisely why organizations must protect this person. Otherwise, no

one speaks up, impunity wins, and we all lose.

The voice of those demanding justice

Workplace sexual harassment is a crime that continues happening all around the world, and — you may have noticed — when a case comes to light, two things usually happen: (1) more victims dare to report and (2) more people dare to declare they've witnessed the crime.

And for both issues the common factor is silence. Why? Because fear spreads and shuts people up, but if we are to stop sexual harassment, we need to talk openly about it and have controls in place that demonstrate our organizations are treating it like the serious crime it is. 

Endnotes

1. Mónica Ramírez Chimal, "Bring them on: Working effectively during investigations," *CEP Magazine*, May 2019, 28–31, <http://bit.ly/2lFlnLS>.
2. "Japan plans anti-sexual harassment training for all senior government employees," *Firstpost*, June 7, 2018, <https://bit.ly/31Cv4Mq>.

Takeaways

- ◆ Sexual harassment is more common than we think but is less reported and underestimated because it is usually hidden or ignored.
- ◆ The definition of sexual harassment varies per jurisdiction, but it typically includes physical or verbal attacks, unreciprocated and unwanted action, and coercion.
- ◆ Key controls to preventing sexual harassment include setting a guideline, establishing complaint and investigation protocols, and carrying out recurrent training.
- ◆ A zero-tolerance sexual harassment policy demonstrates to employees that the company takes this type of crime seriously and helps to deter the crime.
- ◆ Monitor the work environment to get to know what employees are thinking and feeling. More information can be obtained by using anonymous surveys.