

Sexual harassment prevention training that actually works

Is it just me or does it seem like every few weeks a new sexual harassment scandal explodes across the headlines?

In most cases, salacious allegations involve powerful politicians or well-known executives who often end up resigning in shame. In a futile attempt to defend themselves, these men (yes, they are most often men) often attempt to excuse their behavior by explaining that they did not “intend” to sexually harass anyone, that they were only “joking,” or that their uninvited kissing, hugging, and touching of others was simply part of their heritage and upbringing. In one recent case, an alleged sexual harasser claimed, “Harassment is not making someone feel uncomfortable — that is not harassment. If I just made you feel uncomfortable, that is not harassment. That’s you feeling uncomfortable.”

To the contrary, making a co-worker feel uncomfortable — whether from sexually charged banter, inappropriate jokes, unwelcome physical contact, or other sex-related behavior — is a textbook case of sexual harassment. Under New York state law, sexual harassment occurs when any individual is subjected to inferior terms, conditions or privileges of employment based on their sex or gender, where such conduct simply rises above “petty slights or trivial inconveniences.” In response to the #MeToo movement, in 2018, New York state passed new laws requiring all New York employers to adopt comprehensive policies against sexual harassment and to provide interactive sexual harassment prevention training to all employees on an annual basis. However, since the implementation of this training requirement, sexual harassment claims continue to be filed against employers and their individual leaders across the state.

How is it that, despite these new training requirements, so many employees, including those who are charged with leading an organization and implementing policies against sexual harassment, can remain so misguided about the actual definition of sexual harassment and what constitutes a hostile work environment?

While many factors are likely at play, I suspect that a small part of it may be because most sexual harassment prevention training programs simply do not work. I have an uneasy feeling that employers who just comply with the minimum training requirements will never see any significant change in their workplace culture and will remain at risk for future sexual harassment claims. Often, managers and employees make a joke out of the training and never actually improve their behavior. In fact, bad training sessions themselves can sometimes leave employees feeling more uncomfortable than before.



EMPLOYER HANDBOOK
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Look, if you must provide sexual harassment prevention training, you might as well make it work. Effective training can truly improve your culture and reduce your liability. I am not going to provide specific advertisements or plugs for recommended programs, but I do want to give you some ideas for training programs that are effective and can actually improve employee behavior.

The key is to...and here comes the silly acronym...**B-E S-A-F-E!**

- **Buy-in from management** — Employees can tell if management really cares about an issue or is just giving it lip service. If they sense that their managers are only providing the training out of obligation, employees will not believe that the topic is important. Employees know if the CEO skips the training, and they will act accordingly. Regardless of the type of training you do, members of management should be front and center, explaining why the training is important and showing their commitment to complying with the law.

- **Explain complaint/investigation process in detail** — Many employees never report harassment or discrimination claims because they do not understand the complaint process or are concerned that their employer will not investigate properly. Your training should clearly explain how complaints are investigated and resolved and assure employees that no one will be retaliated against for making a good-faith complaint.

- **Separate supervisor training sessions** — Supervisors’ responsibilities are different than those of rank-and-file employees. Thus, their training should be different. Supervisors need to understand that, in addition to refraining from harassing others, they have an obligation to report any incidents of harassment they learn about, even if they are not directly involved. In my experience, many harassment lawsuits arise where supervisors fail to act because they “don’t want to get involved.” Your supervisors need to know that they will be held to a higher standard and that under New York law, they can be held personally liable for discrimination and harassment. Given the topics involved, these supervisor

sessions should be separate from the training sessions for rank-and-file employees.

- **Avoid online/off-the-shelf programs if possible** — Unfortunately, many people spend the time while watching online training programs to shop on Amazon or daydream about weekend plans. When it finally comes to answering the “interactive” questions to pass the training, they make educated guesses and cross their fingers. If possible, I recommend in-person training sessions that are tailored to your workforce. A key purpose of sexual harassment prevention training is to foster respect and teamwork among your employees. This is more difficult to accomplish in front of a computer. Many online programs are very well done and are quite convenient (especially during a global pandemic) but think carefully about whether they are sufficient for your employees’ needs.

- **Facilitate discussion** — Your employees will remember their co-workers’ comments more than the trainer’s materials. Thus, the more you can get your employees talking and interacting during training, the better. However, make it clear that the purpose of discussion is not to accuse others, confess past transgressions, or to make jokes. Focus the discussion on how to create a respectful workplace and resolve workplace issues before they escalate.

- **Examples, examples, examples** — Employees will most likely not remember any of the legal mumbo jumbo in the training. They will, however, remember specific examples of what is and what is not appropriate. In addition to examples of clearly inappropriate behavior, provide examples that are in the gray area and discuss them with your employees. When your employees understand the types of behavior that come close to crossing the line, they will be less likely to approach that line. Finally, be careful with roleplaying. While it can be effective in some training, you know your employees and whether they will treat such an exercise with appropriate professionalism. The worst thing that can happen is for someone to feel harassed or uncomfortable as a result of your anti-harassment training session.

In summary, although New York’s training requirements can feel like a burden, they provide a real opportunity to make a positive change in your workplace. If you take my advice to **B-E S-A-F-E**, there is a real chance to implement a training program that will not just check the legal box, but also make a real impact on your employees. And, unlike others, your employees may actually remember some lessons from the training in the future.

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