



AN EXPLAINER ON SEXUAL HARASSMENT LAWS IN THE U.S.

HR leaders must create supportive and open environments where employees feel safe to report any inappropriate conduct and where everyone understands the rules and norms around acceptable behavior. Training is also the domain of HR; harassment prevention courses are recommended everywhere and required by some state laws.

The consequences of failing to prevent harassment can be severe for individuals and companies alike. The victims of harassment may suffer negative mental and physical health impacts, along with reduced career opportunities. The companies may end up paying in more ways than one, with limited productivity and morale combined with a substantial price tag. The Equal Opportunity Employment Commission (EEOC) collected \$56.6 million from harassment cases in the 2018 fiscal year, and the Institute for Women's Policy research noted the EEOC

only intervenes in a small number of cases, and the true cost of harassment complaints is much higher.

Moreover, HR leaders must consult the regulations to determine the amount and type of employee education to require of their teams, then select courses to fit those requirements and ideally go beyond them. While meeting government-mandated minimum requirements is the baseline for sexual harassment prevention, ***true success means delivering training content that changes attitudes and dynamics, creating a positive workplace culture where employees feel comfortable.***

The first step in creating such training strategy involves learning the relevant laws, the federal requirements, which form the basis of harassment prevention, and the specific, state versions, such as New York, California, Maine, Delaware and Connecticut.

NATIONWIDE OVERVIEW: GETTING TO KNOW TITLE VII

Harassment, or other forms of discrimination based on any personal characteristic, is banned by Title VII of the Civil Rights Act of 1964, as overseen by the Equal Employment Opportunity Commission. This law applies to all companies and regional governments with 15 or more employees. When an incident of sexual harassment takes place at a company, that business may be held responsible; the EEOC undertakes an investigation into these allegations.



The EEOC explains how prevention is the best policy when it comes to harassment. Rather than having to respond to incidents as they occur, businesses should focus on informing all employees of their responsibilities and requirements, as well as implementing clear mechanisms for incident resolution and creating training programs to keep the relevant information fresh in workers' minds. Anti-harassment protections also prevent retaliation against individuals who speak out and file complaints to ensure no one is too intimidated to report a problem.

Speaking with HR Dive, employment lawyer Robin Shea **recommended annual harassment training for all companies' employees.** These annual sessions remind attendees of their responsibility to treat their co-workers equitably and help them remember which behaviors are not permitted under Title VII. Employees and managers each have

specialized practices to learn, with the former group needing to know how to file a complaint and the latter required to understand complaint processing.

One thing to note is EEOC recommendations do not require specific amounts, types or durations of training. Employers use their own judgment about how to get all employees in line with Title VII and thus avoid fines and other consequences for their companies. Certain states go beyond this nonspecific enforcement of the Civil Rights Act and have specific demands about how businesses should craft their employee education programs.

Taking a closer look at the recently implemented and clearly delineated New York and California laws shows the complexities that go into getting into compliance and going beyond it. HR managers in Maine, Delaware, Connecticut and other regulated areas can learn from these examples.

STATE SPOTLIGHT: NEW YORK



New York's sexual harassment prevention training rules are relatively new, having come into effect Oct. 9, 2018. The New York state government requires every employee based in New York to receive training annually and offers a model training package to demonstrate how its standards should be applied. The following are a few of the specific details associated with the state's yearly anti-harassment requirements:

- Training sessions must include information on the federal and state rules that define sexual harassment, as well as the steps victims can take to get their complaints heard and addressed. The materials also need to contain examples of prohibited behavior so individuals taking the training have a clear idea of what is legally impermissible.
- Supervisors have responsibilities separate from the employees they oversee, and training in New York must address these additional details. This means everyone must learn how managers facilitate the resolution of harassment problems and what kinds of conduct are inappropriate by supervisors.
- Programs in New York have to include interactive features. This means that instead of simply listening to a presentation or reading a document, trainees have to make some input, which helps them demonstrate that they've retained information from the sessions, such as completing a learning assessment in an e-learning course.



STATE SPOTLIGHT: CALIFORNIA

California is another state with specific rules governing harassment prevention training. The regulations affect companies with five or more employees and call for training of all employees in California. Requirements are divided up by supervisors and non-supervisors. Someone is considered a supervisor if he or she can hire or fire workers, discipline or reward individuals, assign people or make transfers. Even if a leader can only recommend those actions

instead of performing them unilaterally, that person is considered to be a supervisor.

The law in California is currently in its early stages, and companies need to provide two hours of training to supervisors and one hour to non-supervisors by Jan. 1, 2020. After an employee assumes a role with a business, the organization has six months to get the individual trained. Going forward, employers must renew the training every two years.

The following are a few details of California's requirements:

- Materials must cover the Fair Employment and Housing Act and Title VII definitions of sexual harassment, along with the relevant statutes and case law that exist around the topic. Trainees have to receive a clear definition of conduct that constitutes harassment, along with practical examples to help them identify improper behaviors when they occur in the workplace. Workers must also understand who to report issues to, and how, and they must be briefed on complaint confidentiality.
- Training sessions need to mention a supervisor's duty to report harassment when they encounter it, as well as the processes to follow if those supervisors are the ones accused of harassment. The courses should also encompass anti-harassment policy creation and employer responsibilities.
- California courses must include information on the government's Abusive Conduct definition, as well as harassment that is based on personal characteristics, such as sexual orientation, gender identity and gender expression. Descriptions of these identity-based harassment types have to be accompanied by examples.
- As with New York, California training needs interactive elements, with questions assessing how much employees have learned during the training. Through hypothetical scenarios and skill-building sessions, personnel will clarify the lessons from the courses.

BEYOND REQUIREMENTS: TRAINING THAT EXCELS

While it's important for HR departments to bring their training in line with officially mandated standards, true improvement in company culture comes from exceeding the regulatory minimums and committing to long-term betterment. Sexual harassment is just one component of unacceptable professional behavior, and HR leaders should pair related training to take on more general issues of diversity and treating others with respect.

When organizations take a dedicated approach to improving company culture and preventing harassment of all kinds, they send the message that they take these concepts seriously and aren't offering training as a simple matter of box-checking compliance. Whether a state has highly specific training requirements or applies Title VII more generally, it pays to go above and beyond a rote commitment to anti-harassment materials. This commitment can act as a source of confidence for employees and create a positive impression to boost hiring and retention.

GETTING INTO SPECIFICS: COURSE EXAMPLES

Despite the relative newness of the state-mandated training standards, there are already training products on the market that can help companies meet and exceed their requirements. The following are a few courses that can prepare HR departments for the detailed responsibilities facing them:



➤ **Sexual Harassment, California Edition:**

This is a course for managers of companies in California that teaches leaders how to design overall training programs that meet California's laws. These leaders can turn to further video-based content such as the **Sexual Harassment Prevention For Managers In California 2-Hour Course** to meet those requirements.

➤ **Sexual Harassment Prevention In New York:**

The course breaks harassment situations into two categories: quid pro quo and hostile environment. Employees also learn various response strategies when they experience or witness unacceptable behavior, including reporting and intervention.

➤ **Sexual Harassment Prevention in New York for Managers:**

This is a companion to the nonmanager course on the same subject. It is designed to cover the same thematic ground as the version for general employees while adding leadership-specific information on creating a productive and misconduct-free work environment.

GET THE PROGRAMS YOUR STATE DEMANDS

Companies suffering from cultures of harassment, hostility and discrimination aren't just legally liable for the problems within their walls. These organizations may have trouble attracting or retaining employees, and productivity may suffer internally. No matter where an organization is based, its leaders and HR personnel are

responsible for eliminating misconduct and creating systems for reporting incidents to make employees feel safe and confident.

Establishing legally mandated training programs is an essential part of creating a positive culture, but it is only one step.

Companies should go further, offering a selection of materials that leave no ambiguity around the definition of harassment and what employees at all levels should do to prevent unacceptable behaviors.

Up-to-date, video-based harassment courses reflecting legal necessities and industry best practices form a solid basis for these employee development measures. These materials give HR teams the information they need to stay in compliance and make a positive material impact on their office cultures.

SOURCES FOR ADDED INFO

<https://iwpr.org/publications/sexual-harassment-work-cost/>

https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm

<https://www.theemployerreport.com/2019/01/quick-guide-to-harassment-prevention-training-requirements-across-the-us/>

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