



QUARTERLY SPECIAL REPORT

SEXUAL HARASSMENT PREVENTION:

3 TIPS FOR EFFECTIVE TRAINING

HUMAN
RESOUR





Employers paid out \$59 million to those alleging sexual harassment violations through the Equal Employment Opportunity Commission (EEOC) in 2022.

The amount paid out in 2021 was even higher at \$61.6 million, which is significantly more than the amount collected each year prior to 2018, which was the year high-profile cases shined a spotlight on sexual harassment and the #MeToo movement took hold.

While there has been a slight downward trend in the number of sexual harassment allegations filed with the EEOC, the number has remained consistent at more than 10,000 per year for all of the past decade. In that time, most employers have implemented sexual harassment policies, and many also provide training on the issue. If those policies and training programs were effective, logically, the number of allegations would decline significantly. Instead, they make it troublingly clear — something is not working.

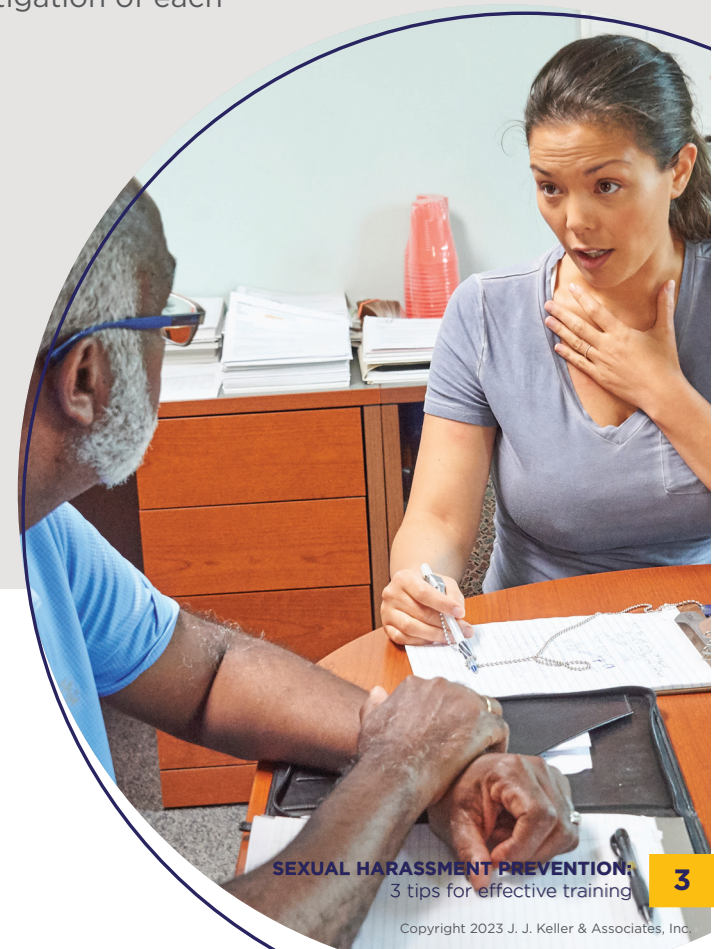
EEOC SEX-BASED ALLEGATIONS, INCLUDING SEXUAL HARASSMENT

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Receipts	12,695	12,461	12,569	12,379	12,146	12,573	12,860	12,428	13,055	12,739	11,497	10,035	11,090

Too often, we expect sexual harassment to be black and white, easy to identify, and simple to police. Unfortunately, just like the people involved, it can be complicated, messy, and difficult to understand. Traditional approaches often do more harm than good:

- ▶ **STOP LOOKING FOR A VILLAIN:** In cases of harassment, we expect there to be a clear-cut offender. The truth is, many instances of sexual harassment fall into uncomfortable gray areas, and determining the truth requires a more nuanced approach. A thorough investigation of each claim is the best first step.
- ▶ **STOP PUNISHING THE VICTIM:** Separating the harassed from the harasser may seem like a logical response, but it can cause unintended harm. Requiring the injured party to change shifts or avoid the harasser puts the onus on the victim instead of the perpetrator. Before taking any action, consider the impact. For instance, if you choose to put the victim on leave during the investigation for safety's sake, ensure that the person does not end up missing out on wages, and clearly communicate that the leave is a safety measure and not punitive.
- ▶ **STOP USING SCARE TACTICS:** Many sexual harassment training programs rightly point out that men are more likely to be harassers than women. However, repeatedly reinforcing that men are the offenders may actually drive them to avoid interacting with women altogether, causing inadvertent discrimination that could harm women's careers.

As society's understanding of issues surrounding sexual harassment evolves over time, employers must recognize that their response should also continue to evolve. The first step to that evolution is a thorough understanding of the issue. As companies continue to grapple with cultures that have failed to prevent sexual harassment, many find themselves in the position of making much-needed changes.



PREVENTING SEXUAL HARASSMENT: 3 TRAINING TIPS

Prevention is the most effective and cost-efficient method of dealing with sexual harassment. Every company needs to have a sound preventive program to let all employees know what constitutes sexual harassment, that it is illegal, and that this behavior will not be tolerated.

Some states have specific training requirements regarding sexual harassment, so consult the laws of the states where you operate. Currently, only six states actually require private employers to conduct training on sexual harassment (though additional states require it for government employers). Still, training is strongly recommended by state and federal agencies.

Courts sometimes require evidence of not only employee handbooks and written policies, but proof that employers have conducted face-to-face training on the employer's rules, in order to avoid punitive damage claims. Training should be done for all new employees and periodically for all employees.



A good training program can go a long way in proving that your company took adequate measures to prevent sexual harassment. Whether a video is used, a pamphlet is distributed, or a classroom session is held, training is important. Effective training may mean the difference between sexual harassment occurring or not, or if a case goes to court, the difference may be measured as a large amount of dollars.

As noted, however, the number of claims filed suggests that traditional training approaches may not be effective. Instead of using the same old training as always, consider the following tips to find a training technique that really works for your company.

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1. USE THE BYSTANDER APPROACH

In 2016, the EEOC released its findings following a 14-month study on harassment in the workplace indicating, in part, that harassment training isn't working — at least as it is currently being conducted by employers. The agency indicated that both civility training and bystander intervention training show “significant promise” for improving the state of harassment training in the workplace.

Bystander intervention training encourages people who witness potentially harassing situations to step in to defuse them. The training typically includes creating awareness among employees of potentially problematic behaviors, creating a sense of collective responsibility among employees, empowering employees to intervene when appropriate, and providing employees with resources they can call upon to support intervention.

*EMPLOYEES REPORT
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Another inherent flaw in traditional sexual harassment training is the assumption that all employees fall into two potential groups: either harassers or victims. Employees report disengaging from training that forces them to identify with one of those two groups, rendering the training effectively useless.

Instead, bystander training encourages individuals to take on a new role that allows them to be neither the victim nor the harasser. They are able to see themselves in a position that allows them to help identify and stop harassment. They tend to be more engaged and can more easily identify with the information being presented.

In the process of learning to be a helpful bystander, employees absorb all the essential information that traditional training programs fail to convey: what constitutes harassing behavior, how best to avoid it, and what to do if it occurs. By appealing to people's desire to be neither a victim nor a harasser, bystander training helps reinforce the key lessons of antiharassment training that traditional training cannot.

2. TEACH CIVILITY

Civility training can be a key component to any good anti-harassment program provided it is presented with the National Labor Relations Act (NLRA) in mind. This means promoting civility without interfering with employees' right to engage in protected concerted activity. While this type of training is not focused specifically on harassment prevention, it can help create a more respectful environment overall, with the intended result of less conflict and fewer incidents of harassment in the workplace. Research has shown that incivility is typically a precursor to harassment.

By practicing a few key principles, employees can help foster a culture of civility, which can lead to increased accountability and an improved working atmosphere.

- ▶ **DEMONSTRATE EMPATHY:** Understand everyone faces challenges no matter their background, religion, gender, or race. Accept them for the contributions they make in the workplace.
- ▶ **COMMUNICATE AUTHENTICALLY:** Address issues directly. Speak clearly and stick to the facts. Don't let anger or emotions cause you to say something you don't really mean.
- ▶ **EMBRACE DIFFERENCES:** Imagine how boring life would be if we were copies of each other. Differences lead to discoveries and self-growth. Embracing them can increase your knowledge, understanding, and happiness.

- ▶ **ACKNOWLEDGE PRIVILEGE:** Acknowledge any help or advantages you have had throughout your life, and understand that those around you might not have had those same experiences. Chances are good that someone you disagree with has worked through adversity to be successful, and they may have valuable insights to share.
- ▶ **ACT COURAGEOUSLY:** Be the person who steps forward with acceptance. Others can learn from your example to build a foundation of fairness in the workplace.



PUT AN END TO “NORMALIZING”

“Normalizing” occurs when a person dismisses or overlooks bad behavior for so long that it begins to feel acceptable or expected. Typically, this occurs because they believe the behavior is unavoidable or easier to ignore than to address. In particular, supervisors should never dismiss acts of harassment because “that’s what way it’s always been.” Sexual harassment is pervasive in some workplaces, but that doesn’t mean it’s acceptable or something people need to tolerate.

HOLD EACH OTHER ACCOUNTABLE

Harassment of any kind creates a toxic work environment. Whether someone is directly harassed or affected as a bystander, the experience can take a toll. Associates at every level should feel empowered to respond when they witness harassment.


Certain situations may be offensive to some while not for others — it’s all about perception. Everyone should take care to understand what impact their comments or actions will have on those around them.

Impact matters more than intentions. If someone is negatively affected by another’s comments/actions, the intention doesn’t matter. The negative effect is still real. The offending behavior needs to stop so everyone feels safe and respected.

The goal is to create a culture where employees look out for each other. When inappropriate behavior occurs, more than one employee is likely to recognize it as inappropriate. However, if no one speaks up or reports the conduct, the company may be unaware of the incident and, thus, unable to address it.

Employees may feel uncomfortable confronting their coworkers about minor inappropriate behavior such as an off-color joke or offhand comment, but such a confrontation could still be more palatable than reporting the incident to Human Resources. The first employee brave enough to say “that’s not appropriate” will show others how to intervene, and other coworkers may be more willing to support the intervention. If inappropriate behaviors continue, or if anyone who spoke up experiences retaliation, a supportive culture should allow employees to feel comfortable reporting the pattern of behavior to Human Resources.

Employees that hold each other accountable are not only protecting themselves by standing up to inappropriate conduct but supporting each other in their intervention efforts.



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3. ESTABLISH AND ENFORCE AN EFFECTIVE POLICY

Develop a written policy and distribute it to all employees. Some states require that a sexual harassment notice be posted informing employees of their rights. You may choose to request that employees sign a copy of the sexual harassment policy, stating that they have read and understood it. If all employees are aware that sexual harassment won't be tolerated, such conduct is less likely to occur.

An effective sexual harassment policy may include the following items:

- ▶ A statement that sexual harassment is not allowed,
- ▶ A definition of sexual harassment,
- ▶ A non-retaliation policy that protects complainants and witnesses from any retaliation as a result of initiating a harassment claim,
- ▶ Procedures for filing a claim of sexual harassment,
- ▶ Repercussions for sexual harassing conduct, including affirming the possibility of terminating an employee who takes part in offensive conduct,
- ▶ A procedure for filing a sexual harassment claim such as a hotline, email address, and several different persons to whom complaints may be addressed, and
- ▶ A statement asking employees to report sexual harassment that they experience or witness.

To make a real impact, employers should not simply distribute a sexual harassment policy at the time of hire and then assume the problem has been effectively addressed.



STATE SEXUAL HARASSMENT REQUIREMENTS

Six states have laws requiring sexual harassment training for private employers. Some require training for all employees, while some require it only for supervisors. Others dictate specific training requirements, while some leave it up to the employers. Below is a brief listing of all six states and their basic requirements.



CALIFORNIA

In California, all employers of 5 or more employees must provide 1 hour of training to nonmanagerial employees and 2 hours of training to managerial employees once every two years. Existing law requires the trainings to include harassment based on gender identity, gender expression, and sexual orientation and to include practical examples of such harassment and to be provided by trainers or educators with knowledge and expertise in those areas.

New supervisory employees in workplaces of 5 or more employees must be trained within six months of assuming their supervisory position, and new non-supervisory employees must be trained within six months of hire. Employees must be retrained once every two years.



CONNECTICUT

In Connecticut, all employers must train supervisors. Employers with 3 or more employees must train all employees and supervisors. Training must be 2 hours in length. The training can be done in a classroom setting or can be done via recorded video or online but must be interactive. This means participants must be able to ask questions and receive answers within a reasonable time period.

To be compliant with state requirements, training must include the following:

- ▶ The exact definition of sexual harassment as set forth in the Connecticut General Statutes.
- ▶ Instructions on how to ask questions and obtain prompt answers.
- ▶ A statement listing remedies available to victims of sexual harassment.
- ▶ A statement that individuals who commit acts of sexual harassment may be subject to both civil and criminal penalties.
- ▶ Company complaint process.
- ▶ State contact information for reporting harassment.





DELAWARE

In Delaware, an employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees within six months of their assumption of a supervisory position. Training programs must include information about the following:

- ▶ The illegality of sexual harassment;
- ▶ The definition of sexual harassment using examples;
- ▶ The legal remedies and complaint process available to the employee;
- ▶ Directions on how to contact the Department of Labor; and
- ▶ The legal prohibition against retaliation.

In addition, the interactive training for the supervisors must further include all of the following:

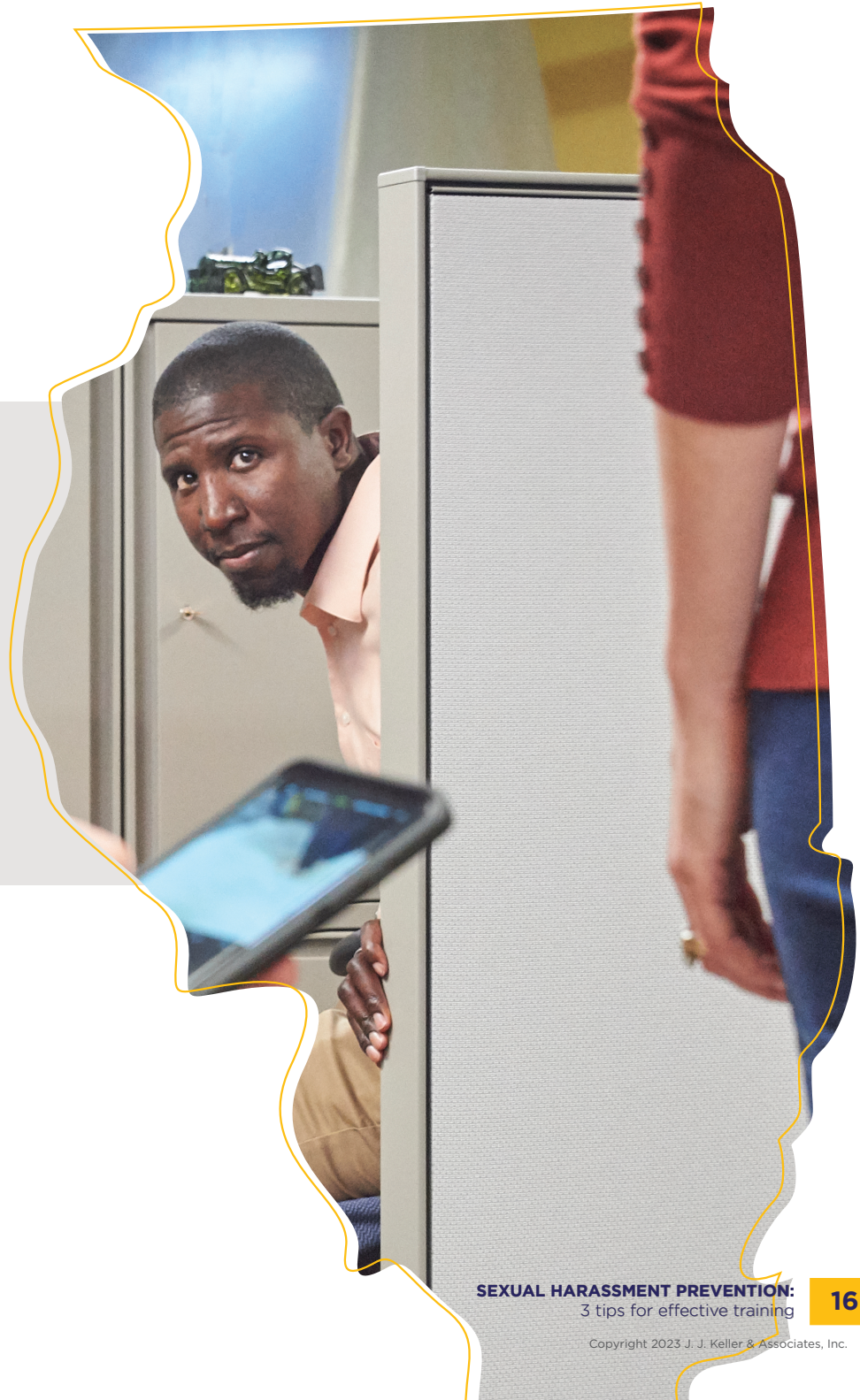
- ▶ The specific responsibilities of a supervisor regarding the prevention and correction of sexual harassment; and
- ▶ The legal prohibition against retaliation.

ILLINOIS

In Illinois, employers must provide sexual harassment training to all employees on an annual basis. In order to be compliant with state requirements, training must include the following information:

- ▶ A statement that sexual harassment is illegal under the Illinois Human Rights Act;
- ▶ A summary of responsibilities of employers in the prevention, investigation, and corrective measures of sexual harassment;
- ▶ The company complaint process and contact information for individuals to whom victims should report harassment; and
- ▶ Details of legal recourse and complaint process available through the Illinois Department of Human Rights.

Employers in the restaurant and bar industry in Illinois must also include supplemental training that includes examples of illegal conduct and discussions of sexual harassment related specifically to the restaurant/bar industry.



MAINE

In Maine, workplaces with 15 or more employees must conduct an education and training program for all new employees within one year of commencement of employment that includes, at a minimum, the following information:

- ▶ The illegality of sexual harassment;
- ▶ The definition of sexual harassment under state and federal laws and federal regulations, including the Maine Human Rights Act and the Civil Rights Act of 1964;
- ▶ A description of sexual harassment, utilizing examples;
- ▶ The internal complaint process available to the employee;
- ▶ Directions on how to contact the commission; and
- ▶ The protection against retaliation.

Employers must conduct additional training for supervisory and managerial employees within one year of commencement of employment that includes, at a minimum, the specific responsibilities of supervisory and managerial employees and methods that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.



NEW YORK

In New York, employers must provide all employees with annual, interactive training that includes:

- ▶ A clear explanation of sexual harassment;
- ▶ Examples of unlawful behavior;
- ▶ Information about state and federal laws concerning sexual harassment and remedies available to victims; and
- ▶ Details regarding employees' rights of redress and forums for complaint.



CONCLUSION

Even if it's not required in your state, training is often your first and best line of defense against sexual harassment. It may make all the difference between harassment occurring or not — it may even determine whether a court finds your company liable should an employee file a claim. Incorporating the latest training techniques into your training program helps increase employee engagement, creating a sense of collective responsibility to stop harassment before it starts. The bystander approach, coupled with civility training and a robust policy, helps cultivate a culture of respect that will benefit employees across all levels. Don't wait until a claim is made — start now by training all of your employees, managers, and even executives to identify and avoid harassing behavior.

ABOUT THE AUTHOR

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Judy Kneiszel is an Editor on the Human Resources Publishing Team at J. J. Keller & Associates, Inc. She conducts research and creates content on a variety of HR-related topics and contributes to a number of Human Resource products including the Employment Law Regulatory Alert newsletter and the Essentials of Employee Relations manual. Judy specializes in issues such as background checks, discrimination, diversity and inclusion, policies and procedures, and sexual harassment prevention. She is a member of the national chapter of the Society for Human Resource Management (SHRM).



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