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Preventing and correcting workplace harassment: Guidelines for employers

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Abstract In recent years, the number of harassment claims filed with the EEOC has declined overall, but this fact masks a frightening reality: though claims involving some types of harassment have declined, claims for other types of harassment—especially nontraditional forms of harassment—have actually increased. Therefore it remains necessary for employers to maintain a current anti-harassment program, which should consist of the following elements: (1) a clear anti-harassment policy; (2) an explicit statement of prohibited behaviors that can be considered harassment; (3) a complaint procedure that encourages employees to come forward with harassment complaints; (4) protections for complainants and witnesses against retaliation; (5) an investigative strategy that protects privacy interests of both the alleged victim and the accused offender and ensures confidentiality to the extent possible; (6) periodic management training and employee awareness programs that continue to communicate the organization's position on this issue; and (7) measures and processes to ensure prompt corrective action to stop ongoing harassment, and appropriate remedial and disciplinary actions for offenders. In this article, we provide best practice recommendations concerning each of these elements.

1. Harassment in the workplace

Four female bank tellers complain to management that their female service manager and another female bank teller are sexually harassing them. The tellers allege that they regularly endure lewd and/or graphic sexual comments, gestures, pictures, and inappropriate touching and grabbing. They also allege that their manager makes invasive comments about their bodies and sex lives and has suggested they wear sexually provocative clothing in order to attract or retain customers and to advance in the workplace. One of the tellers complains: "I hate my job. The clothing they wear. . .the never-ending comments, gestures, images. . .you cannot escape it. Going to work is demeaning and humiliating."

Despite complaints being made to management about the work environment, the reports are not

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investigated and no action is taken. As a result, at least one of the tellers decides to quit her job rather than endure continued harassment. Ultimately, the four employees determine that their best option is to file a sexual harassment complaint with the U.S. Equal Employment Opportunity Commission (EEOC).

But does their complaint have any merit? All of the employees involved are women. None of the behavior seems overtly sexual in nature. There were no explicit demands for sexual activity or favors in exchange for promotions or raises. The behavior probably doesn't reach the level of harassment. Surely these thoughts went through the collective heads of management when these complaints were explained to them—and perhaps this is why they took no action.

The scenario described above is based on an actual same-sex harassment case brought by the EEOC against Wells Fargo Bank (*U.S. Equal Employment Opportunity Commission v. Wells Fargo Bank*). The result? In the final EEOC analysis, management was deemed wrong. Wells Fargo agreed to pay $290,000 to settle the complaint and entered into a 2 year consent decree under which they would take mandated preventative steps such as conducting annual anti-discrimination training, issuing procedures for reporting and investigating harassment complaints, reporting complaints to the EEOC, and taking disciplinary measures against the managers who failed to take action. Sadly, all of this could have been averted. Wells Fargo could have easily stopped this behavior before the issue rose to the level of an EEOC complaint. Organizations everywhere must endeavor to prevent and correct workplace harassment of all types.

The fact that this case involved somewhat atypical complaints is important. While traditional harassment claims have been on the decline for decades, other types of harassment claims have increased. For example, while sexual harassment claims have been trending downward considerably since 1997, national origin harassment claims have been on an upward trend over the same period. Also, the basis for harassment claims continues to expand to include more unconventional claims such as same-race harassment, same-sex harassment, sexualized hazing, sexual orientation harassment, and social media harassment. While the EEOC does not compile statistics on these types of harassment claims, trends and anecdotal evidence suggest that they are on the rise. For example, the percentage of men alleging harassment has steadily risen over the past 2 decades and this increase may be due in part to increases in same-sex harassment claims (Smith, 2009; Swanton, 2010). Furthermore, successful claims of same-race harassment resulting in relatively large judgments such as *Johnson v. Strive East Harlem Employment Group et al.* and *Weatherly vs. Alabama State University* suggest employers must take such claims very seriously. Likewise, recent cases concerning claims of harassment via social media or other electronic communications have resulted in settlements or penalties ranging from $1.6—2.3 million (Farrell, 2012). Finally, the EEOC recently filed two historic sexual harassment cases based on sexual orientation (Smith, 2016). Therefore, organizations must remain vigilant in their efforts to prevent harassment of all types. Maintaining a comprehensive anti-harassment program is an essential part of that vigilance. This article aims to provide organizations with clear and practical guidance on how to do so.

2. Harassment defined

Harassment is a form of discrimination that violates a variety of employment laws such as Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990. According to the EEOC, harassment is unlawful when "enduring the offensive conduct becomes a condition of continued employment, or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive" ("Harassment," n.d.). Retaliatory harassment is also prohibited under these laws, whether it be in response to individuals for filing a discrimination charge; for testifying or participating in any way in an investigation, proceeding, or lawsuit; or for opposing employment practices that they reasonably believe discriminate against individuals.

3. Best practice recommendations for anti-harassment programs

A fundamental step in preventing and remediating harassment is the presence of a comprehensive anti-harassment program. The EEOC (1990) *Policy Guidance on Current Issues of Sexual Harassment* advises that employers should:

> Take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

Based on a review of the EEOC guidelines, professional standards of practice in human resource management (e.g., Bryant, 2012; ''Harassment,'' 2014; Slobodien & Peters, 2012), and human resource management research (e.g., Bernardin & Russell, 2013; Cascio, 2013), our recommendation for a complete anti-harassment program includes:

1. A clear anti-harassment policy;
2. An explicit statement of prohibited behaviors that can be considered harassment;
3. A complaint procedure that encourages employees to come forward with harassment complaints;
4. Protections for complainants and witnesses against retaliation;
5. An investigative strategy that protects privacy interests of both the alleged victim and the accused offender and ensures confidentiality to the extent possible;
6. Periodic management training and employee awareness programs that continue to communicate the organization's position on this issue; and
7. Measures and processes to ensure prompt corrective action to stop ongoing harassment, and appropriate remedial and disciplinary actions for offenders.

3.1. Anti-harassment policy

Paramount to an organization's ability to prevent and correct harassment is an official written policy that documents prohibited behaviors and communicates how the organization will respond if prohibited behaviors are witnessed or reported to management. To exercise reasonable care, an employer should establish, disseminate, and enforce an anti-harassment policy and complaint procedure (EEOC, 1999). While organizations are not required by law to have an anti-harassment policy, the EEOC's enforcement guidance notice on employers' liability for unwanted harassment states that ''it is generally necessary for employers to establish, publicize, and enforce anti-harassment policies and complaint procedures.'' *Enforcement Guidance* (EEOC, 1999) further clarifies that the absence of such policies and procedures will ''make it difficult for an employer to prove that it exercised reasonable care to prevent and correct harassment.'' Legal advisors suggest that employers can greatly reduce or avoid liability for harassment by implementing a comprehensive policy against harassment (Plump, 2010). Research supports this assertion, showing that organizations with no formal harassment policy tended to suffer more negative legal outcomes regarding harassment claims cases (Kulik, Perry, & Pepper, 2003; Terpstra & Baker, 1992).

Merely having an anti-harassment policy, however, is not sufficient; the effectiveness of policies may be limited by missing elements (Reese & Lindenberg, 2002, 2004) or the absence of top management support. Both the absence of anti-harassment policies and the absence of key policy elements can degrade harassment prevention, resulting in negative consequences for individuals and the organization if harassment does occur (Fusilier & Penrod, 2015). The EEOC (1999) suggests that top-management support is crucial for promoting a zero-tolerance anti-harassment culture. Specifically, experts recommend that the policy include a statement from the CEO stating firmly that harassment will not be tolerated (Cascio & Aguinis, 2005).

3.1.1. Dissemination of anti-harassment policy

Anti-harassment guidelines clearly specify that employers must effectively communicate the contents of the policy to employees. For example, the EEOC (1999) states that employers should provide every employee with a copy of the policy and complaint procedure and redistribute it periodically. Third parties such as independent contractors, vendors, customers, and clients should also be notified of the policy. The EEOC (1990) also recommends that employers should communicate their anti-harassment policies ''clearly and regularly.'' There is no shortage of recommendations concerning dissemination methods of anti-harassment policy. Perhaps the most common method involves posting policies on bulletin boards or in central/conspicuous locations throughout the workplace and incorporating them into employee handbooks (e.g., Bryant, 2012; EEOC, 1999; Shaw, 2001). Other suggested methods of disseminating and communicating anti-harassment policy involve including it in new employee orientation materials, reinforcing it through harassment sensitivity and prevention training; publishing it on the employer's intranet, publishing it on memos or paycheck stuffers; making it part of performance reviews, including it in conflict-of-interest agreements, discussing it in management meetings and written guidelines for managers, and discussing it in work group or all-hands meetings (e.g., Bryant, 2012; Shaw, 2001). Additionally, the Society for Human Resource Management guidance suggests that employers keep record of these periodic

notifications by asking employees to acknowledge that they have received, read, and understood the policy, its prohibitions, the complaint procedure, the consequences of violating the policy, and the employer's response to prevent and correct unlawful behavior (Bryant, 2012).

3.1.2. Clarity and understanding

It is critical that anti-harassment policies and procedures are written so as to be understood by everyone in the employer's workforce. Court rulings (e.g., *U.S. Equal Employment Opportunity Commission v. V & J Foods Inc.*, 2007) highlight that anti-harassment policies are ineffective if they are not written in a way that can be easily understood by all workers (Bryant, 2012; Slobodien & Peters, 2012). One key concern, then, is the reading level of the workforce. Policies should be written at a reading level appropriate to an employer's entire workforce. For example, the policy's language should not assume a high school graduate reading level if the average education level of the workforce is tenth grade.

Another key concern is the English fluency of the workforce. Employers should take care to ensure that non-English speaking employees understand the anti-harassment policy and how to report claims of unlawful harassment. For best results, "employee handbooks and policies should be available in the predominant languages understood by the workforce" (Bryant, 2012). Translation poses its own problems, however, so Bryant (2012) recommends that translations from English into other languages "should be the product of a team consisting of a professional translator, bilingual U.S. employment lawyer and bilingual HR generalist." Additionally, anti-harassment policies should avoid using business buzzwords or slang when the workforce includes a considerable number of employees for whom English is not the native language since these terms may be unfamiliar to them (Tyler, 2005).

3.2. Explanation of prohibited conduct

Another important component of an effective anti-harassment program is a clear explanation of prohibited behavior. Such an explanation should communicate a zero-tolerance stance on harassment based on any protected class and protected activity, whether by supervisors, co-workers, or even non-employees (EEOC, 1999). Furthermore, organizations should be careful to address the many different ways in which harassment can occur, including same-sex and same-race harassment, female-to-male harassment, sexual orientation harassment, sexualized hazing, cyber-bullying, social-media harassment, and workplace romances. Others have suggested that in order to provide a clear explanation of prohibited behavior, examples of the kinds of conduct that constitute harassment should be included ("Harassment," 2014; Shaw, 2001; Slobodien & Peters, 2012). The Society for Human Resource Management's guidelines recommend broadly defining harassment to include—in addition to sex—harassment based on race, religion, national origin, age, disability, and sexual orientation.

3.3. Complaint process

The complaint process should be designed to encourage victims and witnesses to report harassment and ensure that there are no unreasonable obstacles to overcome in order to file a complaint. First, the policy should explain how to report harassment. Many options are available, including 'open-door' policies, grievance procedures with a centralized place for bringing complaints, and special toll-free telephone lines (Bryant, 2012). Employers should choose a method that fits the organizational culture and removes obstacles that discourage legitimate reports of harassment. One potential obstacle is the common practice of designating immediate supervisors as the persons to whom employees should report harassment. However, in the event that the supervisor is also the alleged harasser, the complaint procedure must allow the complainant to bypass the allegedly harassing supervisor (Shaw, 2001). Therefore, the policy should identify alternative avenues available for reporting complaints. Someone with an unbiased relationship with the employees such as an HR professional is well-suited as one of the possible persons to receive the complaints. The HR department should assure that managers correctly interpret and consistently follow the policies, serve as the alternative complaint resource for employees who prefer not to make complaints through their supervisors, and facilitate the investigation and resolution of complaints (Bryant, 2012). Furthermore, the policy should include statements encouraging employees to report prohibited behavior before it becomes severe or pervasive.

Second, the policy should explain what will (and will not) be done with the reported information. Perhaps the most important provision regarding such reports is that of confidentiality. For victims and witnesses to feel comfortable reporting alleged harassment, an anti-harassment policy must provide assurance that the employer will protect the confidentiality of harassment complaints to the extent possible, which employers should in turn clearly communicate and reiterate to their employees.

Confidentiality "to the extent possible" means confidentiality from all those persons who do not have a 'need to know' of the complaint or the investigation. Information about the allegation should be shared only with those who need to know about it and complaint records should be kept confidential on the same basis. Closely associated with the assurance of confidentiality is the assurance of non-retaliation. Employees must believe that reporting harassment will not result in retaliation against them or they will be unlikely to make a report (see Section 3.4. for additional details). It is also important to explain that the complaint will be investigated thoroughly, promptly, and confidentially (Shaw, 2001). Additionally, employers should instruct all supervisors to report complaints of harassment to appropriate officials. The EEOC recommends including time frames for filing charges of unlawful harassment with the EEOC or state fair-employment practice agencies (EEOC, 1999). Policies should encourage employees to report harassment before it becomes severe or pervasive, and all supervisors should be instructed to report complaints to appropriate officials (Bryant, 2012).

Finally, the policy should not contain a 'false claims' provision where disciplinary action is threatened against persons filing false claims of harassment. Such statements are not recommended because it is difficult to prove that claims are false, and they serve to discourage employees from filing complaints for fear of punishment/retaliation (Shaw, 2001). Furthermore, employers should always proceed with care when taking any kind of action that will negatively affect an employee who has engaged in a protected activity (Prenkert, 2012).

3.4. Protection against retaliation

Effective anti-harassment policies should provide assurance that there will be no retaliation against anyone who reports harassment, so that employees feel confident that they will not suffer for engaging in the complaint process. Employers should not only promise no retaliation, but also guarantee protection against non-employer retaliation and confidentiality of harassment complaints to the extent possible (Bryant, 2012; EEOC, 1999). Because retaliation can occur for many other reasons, employers should develop a stand-alone anti-retaliation policy that extends beyond anti-harassment complaints (Prenkert, 2012). Nevertheless, anti-harassment and non-retaliation policies are complementary tools used to provide managers and supervisors with guidance in dealing with harassment complaints (Prenkert, 2012). Without assurance that adverse treatment of employees who report harassment is prohibited, an anti-harassment policy and complaint procedure will be ineffective.

Any employer conduct that would reasonably deter an employee from reporting discrimination or harassment or from pursuing a complaint is considered retaliation (Tamayo, 2013). The most obvious examples of retaliation are tangible employment actions such as termination, failure to promote, or negative performance reviews, while less obvious are undesirable shift changes, reassignments, denial of overtime, or even requiring employees to submit their complaints in writing (Shaw, 2001). Management must immediately correct a situation where employees are reluctant to complain for fear of retaliation and should undertake all necessary measures to ensure that retaliation does not occur. Such actions include reminding all parties to an investigation that retaliation is not permitted and that management will scrutinize employment decisions affecting complainants and witnesses during and after the investigation in order to eliminate retaliation.

Perceived threat of retaliation should not be taken lightly. For example, while recent surveys reveal that 25% of women report experiencing sexual harassment at work (Langer, 2011), 70% of women who reported suffering harassment also responded that they never reported it due to fear of retaliation (Berman & Swanson, 2013). Yet despite such low reporting percentages, retaliation claims have been on the increase for several years with the percentage of retaliation claims filed with the EEOC reaching the highest level ever recorded in 2014 at 42.8% (Wilkie, 2015). With this in mind, employers should go to great lengths to prevent retaliation and reduce the perceived threat of retaliation.

3.5. Promise of investigation

Fundamental to an effective investigation is the observation of due process principles. According to Trotter and Zacur (2012), basic due process rights include:

- Informing the alleged harasser of the concerns raised and allowing an opportunity to respond before any disciplinary action is taken;
- Fair and equal treatment, so that if one party is allowed to bring an attorney, the other is allowed to do the same;
- Prompt investigation beginning within a few days with quick completion;

- Confidentiality assured to the extent possible; and
- Assigning an investigator who is free of any conflict of interest in the matter.

In recent years, the courts, practitioners, and scholars have recognized the critical nature of workplace investigations in both protecting employee rights and as a means of protecting employers from litigation due to poorly conducted investigations (Morgan, Owen, & Gomes, 2002). The EEOC (1999) indicates that employers should create a mechanism for prompt, impartial, and thorough investigation of alleged harassment.

3.5.1. Prompt

If a fact-finding investigation is required, it should be launched immediately. While some suggest that employers should not immediately engage in a full-blown investigation (first determining whether such an investigation is really warranted), others suggest that the complaint process should promise a prompt, confidential investigation of every claim of harassment, no matter how trivial (Cascio & Aguinis, 2005), pursuant to a pre-defined schedule of events/actions (e.g., order and timeline to interview alleged victims, potential witnesses, alleged harasser, and script of questions to ask each interviewee).

Whoever conducts the investigation should be completely objective and well-trained in the skills that are required for interviewing witnesses and evaluating credibility (EEOC, 1999). Thoroughness, accuracy, and documentation of the findings and corrective actions taken, based on balanced conclusions consistent with information disclosed during the investigation, are hallmarks of effective investigations (Bryant, 2012). Complete written records of all information, interviews, and determinations should be kept (Trotter & Zacur, 2012). Preservation of all investigative information is critical and it is recommended that records of all such complaints be kept in a central, secure location (Cascio & Aguinis, 2005). Such records and documentation serve as a barometer for the thoroughness and accuracy of a company's investigations, as well as protection of the company's interests in the event litigation should arise.

3.5.2. Impartial

The initial intake manager (the one who initiates next steps in an investigation and may be different from the investigator) should meet with the complainant in a private area, gather facts, remain impartial, not form any opinion or express sympathy, explain that the company's harassment policy will be followed, and review the policy and procedure with the complainant. The intake manager should also assure the complainant that confidentiality will be kept to the extent possible, that no retaliation will be permitted, and that the complainant will be kept informed of the progress of the investigation. Detailed records of these meetings should be kept and reviewed with the complainant to ensure accuracy (Plump, 2010). It is advisable to have the complainant sign the intake manager's notes to verify their accuracy. It is also recommended that intake managers keeping separate notes about appearance, demeanor, accuracy of memory, and overall credibility of the complainant (Orlov & Roumell, 1999) and that all notes should be kept in an 'investigation file' separate from employee files (Bland & Stalcup, 2001). These notes should be provided to the investigator who will continue the investigation (Trotter & Zacur, 2012).

Furthermore, the EEOC guidance makes it clear that intermediate measures such as making schedule changes, transferring the alleged harasser, or placing the alleged harasser on non-disciplinary leave with pay pending conclusion of the investigation may be necessary, but should not be executed in a knee-jerk fashion. The complainant should not be involuntarily transferred or otherwise burdened as a result of the complaint, however; such actions could be construed as retaliation for reporting the alleged harassment. Intermediate measures taken against the alleged harasser should take into consideration the nature and severity of the alleged harassment.

3.5.3. Thorough

A thorough investigation should include an interview of the complainant, the alleged harasser, and corroborating witnesses, as well as any individuals who saw the complainant upset or spoke to him or her about the incident (Trotter & Zacur, 2012). The initial interaction between the complainant and the person to which the complaint is first revealed is critical. The intake manager should be trained on the policy and how to help the employee contact the designated person. In some situations, managers and supervisors must act as the initial intake person due to the emotions of the complainant or unavailability of the proper contact person. As a result, managers and supervisors should be trained on how to act as the initial intake person (see Section 3.6.). The behavior of the initial intake person sets the tone for how the employee perceives the employer's following actions (Orlov & Roumell, 1999). The questions to be asked in an investigation of harassment complaints should be a critical determination prior the start of investigation. The EEOC (1999)

provides a list of specific questions that should be asked.

3.6. Provide anti-harassment training

While the content of anti-harassment policies is important, the EEOC (1999) emphasizes that written policies and procedures alone are not sufficient to safeguard against harassment claims. According to Slobodien and Peters (2012, p. 76):

> Recent lower court cases suggest that it is not enough for an employer to simply establish written anti-harassment policies. Rather, an employer can meet its burden to show that it took reasonable steps to prevent harassment only if it also conducts training and otherwise acts to actively engage employees with the policies.

There are a number of ways to provide evidence of employee engagement. The first necessary step in creating employee engagement is to make anti-harassment training mandatory, but employers can further promote meaningful levels of engagement by using interactive and experiential methods (Perry, Kulik, & Field, 2009) supplemented by a posttest of learning after training has been conducted. Employees should be required to pass the posttest in order for their training to be deemed complete (Twomey, 2010). Finally, refresher training should be provided periodically. While the EEOC provides little guidance concerning how often refresher training should be provided, it is wise for employers to conduct refresher courses on an annual basis (England, 2009). Organizations must realize anti-harassment training is not a one-time event (Perry et al., 2009); courts' interpretations of laws constantly change and employees need to be kept up-to-date and refreshed on this topic (Twomey, 2010). Appropriate anti-harassment training programs take into consideration three key questions: (1) Who should be trained? (2) Who should conduct the training? and (3) What information should be conveyed via training?

3.6.1. Trainees

Training should be provided for all employees, not just supervisors. Although both supervisory and non-supervisory employees must be trained, their training can be conducted separately because some of the content of the training will be different for each group (see Section 3.6.3.). The standard training for all employees should occur shortly after hiring in order to ensure that all employees are aware of their rights and responsibilities under the anti-harassment policy (Bryant, 2012; EEOC, 1999; Shaw, 2001; Twomey, 2010). Although some employers are hesitant to train non-supervisory employees on anti-harassment and related policies because they fear it will encourage claims, statistics and cases show that such training results in numerous positive outcomes such as increased accountability for employee actions, more effective participation in the process before a lawsuit occurs, reduced concern about fair treatment, and more efficient and effective resolution of issues (Plump, 2010).

It is also necessary to train supervisors so that they can effectively implement the anti-harassment policy. Even the best policy and complaint procedure will not satisfy the burden of proving reasonable care if an employer fails to educate its supervisors in effective implementation of the process (Prenkert, 2012). Periodic training is one means of ensuring that supervisors understand their responsibilities regarding the anti-harassment policy and complaint procedure. But care must be taken to ensure that training is of substantial length and effective. For example, in *Wagner v. Dillard Department Stores*, the employer's efforts to educate managers about discrimination were deemed insufficient because they consisted of posting the policy on bulletin boards and showing employees a 10-minute video with handouts (Twomey, 2010).

3.6.2. Trainers

Trainers must be experts in harassment and discrimination law so as to ensure that the training provided will be legally accurate (Twomey, 2010). Being an effective speaker is simply not enough. Courts have made it clear that effective anti-harassment trainers must completely understand the complex body of harassment and discrimination laws and keep up-to-date with new cases that change the interpretations of these laws. Further, it is recommended that organizations include legal counsel in training sessions physically and/or in the training content planning.

3.6.3. Training content

For all employees, employers should provide periodic training that explains the type of conduct in violation of the policy, the importance of the policy, and the seriousness of policy violations (EEOC, 1999). The training should cover all parts of the employer's anti-harassment policy and include all types of illegal harassment—not just sexual harassment ("Harassment," 2014). Moreover, training should include examples of prohibited conduct (to aid recognition of harassment prohibited by company policy) and should emphasize the pervasiveness of harassment; simply emphasizing prohibitions

against harassment is not sufficient. Employees should also be trained in how to report and investigate possible violations of anti-harassment policy. Specifically, training should include: an explanation of when employees have a duty to report; descriptions of appropriate responses to any complaints; a list of individuals indicated in the policy as possible avenues of complaint, allowing for several alternative persons with whom an employee can register a complaint; clarification that a complaint can be made either verbally or in writing; and emphasis on the company's assurance that every complaint will be investigated and taken seriously. Additionally, it is advisable to discuss costs to the employer as a result of harassment consequent to lost productivity, litigation, and settlements/awards. Due to the liability standards of supervisors, employers should be sure to include extra training for management on how to avoid allegations of harassment themselves in view of the delicate nature of supervisor-subordinate relations. Furthermore, training that covers retaliation should include a definition of retaliation, an expression of the employer's commitment to ensuring that no retaliation occurs for reporting harassment or cooperating with an investigation, and an explanation of possible employer responses to retaliation.

Supervisors should receive additional, special training on how to carry out their responsibilities under the policy when they become aware of alleged harassment (EEOC, 1999). More specifically, this training should inform them of their duty to know, personally follow, and enforce the policy. Supervisors should be instructed on how to notify another employee if the other's actions are offensive and to keep information related to any investigation confidential. They should also be informed of the non-retaliation policy toward anyone involved in an investigation (Shaw, 2001).

3.7. Assurance that corrective and remedial actions will be taken when warranted

Once an investigation is complete, management should make a determination as to whether harassment occurred. Closure must be provided to the parties involved in a complaint through the reporting of appropriate information (Bryant, 2012) and all parties should be informed of the determination (EEOC, 1999; Shaw, 2001). The alleged harasser should be notified whether or not investigators have found that a violation has occurred and given an opportunity to respond. A reaffirmation of the anti-harassment policy should be made and acknowledgement of the same obtained from the alleged harasser. The employer's policy against retaliation should be reiterated. Discipline taken in response to conduct should be in written form (Shaw, 2001). The complainant should be notified of the findings (whether no violation, insufficient evidence, or basis for discipline). If discipline is warranted, the employer should inform the complainant once appropriate action has been taken and that it expects that no problems will recur. Specifics of the discipline can be revealed, but must balance the complainant's need to know with the harasser's privacy rights. The employer should reiterate interest in being notified of further problems/retaliation. This notice should be documented in letter or memo (Shaw, 2001). Finally, there should also be follow-up to determine if harassment has stopped (Cascio & Aguinis, 2005). If no determination can be made due to inconclusive evidence, further preventative measures such as training and monitoring should be undertaken by the employer (EEOC, 1999).

Effective anti-harassment policies should make assurances that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred (Bryant, 2012; EEOC, 1999). Remedial measures must be designed to stop the harassment, correct its effects on the employee, and ensure the harassment does not recur. The policy should include a statement that offenders will be subject to corrective action with a clear statement of sanctions for violators, including discipline up to and including termination (Cascio & Aguinis, 2005; Shaw, 2001). Such a statement communicates and reinforces an employer's commitment to a workplace free of harassment. In regards to disciplinary measures, management must balance the competing concerns of being held liable if the harassment does not stop and using overly punitive disciplinary measures that may subject the employer to claims of wrongful discharge. Accordingly, disciplinary measures must be proportional to the seriousness of the offense and reasonable given the totality of the circumstances.

The EEOC (1999) makes it clear that employers should ''undertake immediate and appropriate corrective action, including discipline, whenever it determines that harassment has occurred in violation of the employer's policy.'' Moreover, the EEOC states that ''remedial measures should be designed to stop the harassment, correct its effects on the employee, and ensure that the harassment does not recur.'' An employer increases the risk of liability if it does not utilize interim measures (i.e., temporary transfer, non-disciplinary leave of absence with pay) to prevent continued serious misconduct prior to concluding its investigation. It should be noted

that remedial measures should not adversely affect the complainant (i.e., the harasser should be transferred, not the complainant) otherwise this could constitute unlawful retaliation and would not be effective in correcting the harassment. The EEOC states that disciplinary measures should be proportional to the seriousness of the offense. For example, minor harassment (e.g., a few off-color remarks from an individual with no prior history of similar misconduct) might warrant a verbal

Table 1. Summary of best practice recommendations for anti-harassment programs

Program element	Principles	Actions
Anti-harassment policy	Policy should be: • formalized • comprised of well-defined key elements • effectively disseminated • written in understandable language	• Write and communicate clearly and regularly • Distribute to every employee AND third parties (vendors, contractors, customers) • Document the communication/distribution (record acknowledgement by recipients) • Use language appropriate to the workforce's reading level • Provide accurate translations for those who lack English fluency
Explanation of prohibited conduct	Definition should: • include harassment based on any protected class or activity (the 'letter of the law' so to speak) • address all types of harassment (more than sexual harassment)	• Provide explanations and examples for each type of harassment
Explanation of complaint process	Complaint process should be free of obstacles for victims or witnesses to report harassment	• Explain how to report harassment • Explain what will be done with the reported information • Do not include a 'false claims' provision
Protection against retaliation	Victims should be assured that reporting harassment will not result in retaliation	• Create separate anti-retaliation policy • Remind parties to complaint that subsequent decisions affecting those involved in the complaint will be scrutinized to avoid retaliation
Promise of investigation	Investigations should be: • prompt • thorough • impartial	• Adhere to due-process principles • Use trained personnel to conduct investigations • Ask standard questions • Create and preserve written records of information collected • Collect information from complainant, alleged harasser, and witnesses • Take immediate measures to ensure safety if necessary
Anti-harassment training	Training should be provided to all employees	• Use interactive, engaging techniques • Conduct periodic re-training • Provide general training on the policy for non-supervisory employees • Provide special training for supervisors, who must implement/enforce the policy • Involve legal counsel
Corrective and remedial actions	Corrective and remedial action should: • be taken when warranted • be appropriate for claims	• Inform all parties to the investigation of the determination • Inform complainant and harasser of discipline • Follow up to ensure harassment has stopped

warning and counseling. If the harassment was severe or persistent, suspension or discharge may be appropriate.

The EEOC provides numerous examples of measures to stop harassment and ensure that it does not recur, including:

- Verbal or written warning or reprimand;
- Transfer or reassignment;
- Demotion;
- Reduction of wages;
- Suspension;
- Discharge;
- Training or counseling of harasser to ensure that he/she understand company policy and why his/her behavior violates it; and
- Monitoring of harasser to ensure harassment stops.

The EEOC goes on to provide examples of measures to correct effects of harassment including:

- Restoration of leave taken because of harassment;
- Expungement of negative evaluations in employee's personnel file that arose from the harassment;
- Reinstatement;
- Apology by the harasser;
- Monitoring treatment of employee to ensure he/she is not subjected to retaliation by the harasser and others in the workplace because of the complaint; and
- Correction of any other harm caused by the harassment (e.g., compensation for losses).

Shaw (2001) recommends several important steps to take concerning disciplinary action. If the investigation concluded that a violation of policy occurred and discipline is required, employers are encouraged to put the discipline in writing and document the acknowledgement of the accused. It is important to reiterate the employer's policy against retaliation when explaining discipline in order to protect claimants. Finally, documentation concerning discipline and remedial action should be stored in a central location.

4. Concluding remarks

Workplace harassment is a persistent organizational problem that has serious consequences for individuals and organizations. From emotional problems to physical health issues, harassment takes a toll on victims while organizations suffer the effects of low job satisfaction, low organizational commitment, attendance issues, and turnover. Accordingly, any steps organizations can take that improve the prevention of and responses to workplace harassment are important. This article summarizes best practices based on EEOC guidelines, research, and court decisions and provides managers with an overview of the elements needed to have an effective anti-harassment program (see Table 1 for a concise summary).

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