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## **Viewpoint: 5 Ways to Strengthen Your Anti-Harassment Complaint Procedure**

By Jonathan A. Segal

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**A**s employers revisit their anti-harassment policies ([www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/upgrade-anti-harassment-policy.aspx](http://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/upgrade-anti-harassment-policy.aspx)), they also should finetune their complaint procedures. Without a robust complaint procedure that employees trust, an anti-harassment policy is not worth the paper on which it is written.

### 1. Make Clear Who Can Bring Complaints

Complaint procedures should not be limited to employees who have experienced harassment. Employees who witness inappropriate conduct should be able to file reports as well.

Make clear that employees can report sexually or other harassing conduct even if it is not unlawful. One stray comment that degrades another's gender may not constitute unlawful harassment, but it is harassing conduct that should not be tolerated. As with the anti-harassment policy, the complaint procedure should focus on what is unacceptable, and therefore prohibited, even if it is not unlawful.

One sexist joke—rather than a barrage of sexist remarks—is not unlawful. But employees should know that such jokes are entirely unacceptable.

The anti-harassment policy and complaint procedure must apply to racial, ethnic, religious and other forms of harassing conduct, not just sexual. Make clear how they apply to discrimination, retaliation and failure to accommodate too.

*[SHRM members-only HR Q&A: What are the different types of sexual harassment?*

([www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/typesofsexualharassment.aspx](http://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/typesofsexualharassment.aspx))

### 2. Have Multiple Points of Contact

For the complaint procedure to be effective, employees cannot be required to report their concerns only to their supervisor. After all, a supervisor may be the person engaging in harassing conduct.

At a minimum, employees should be given the opportunity to consult with supervisors or HR. But employers may wish to broaden the pool of potential points of contact.

Consider offering anonymous reporting from an independent third party, similar to hotlines that public companies provide for whistle-blowers.



([www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Resources.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Resources.aspx))

#### **Workplace Harassment Resources**

([www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Resources.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Resources.aspx))

- Case Studies ([www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Case-Studies.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Case-Studies.aspx))
- Compliance Resources  
([www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Compliance.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Compliance.aspx))
- Training Resources  
([www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Training.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Training.aspx))

If an employer uses an external reporting vehicle, consider to whom the external reports will be communicated internally. If the report goes to only one company employee, he or she could bury it. Employers are well-advised to ensure that complaints made externally are reported to multiple people internally.

### 3. Detail What Constitutes Prohibited Conduct

The complaint procedure needs to flesh out what employers mean by unacceptable harassment in the workplace.

There are three key points:

- The conduct giving rise to the complaint can occur not only in the workplace but also at company-sponsored business and social events. Indeed, the policy and complaint procedure should make clear that it applies to events entirely unrelated to the workplace, such as an employee pursuing a romantic relationship with a co-worker by calling her at home.
- The conduct giving rise to the complaint need not be by an employee. Employees can raise concerns about harassing behavior from customers, vendors and suppliers.
- Harassment via social media, e-mail and text messages are all within the scope of prohibited conduct. Yes, even a post on an employee's private Facebook page can be cause for corrective action if it is about co-workers, business partners or customers, or if those parties see it.

### 4. Provide Robust Protection Against Retaliation

The main reason employees refrain from reporting harassment is fear of retaliation. The complaint procedure should set the foundation for a culture that does not brook retaliation of any kind.

Consider these three points:

- Do not limit the protection to complainants. It also applies to witnesses, others who are involved in the investigation and those associated with the complainant, such as a spouse.
- The business should do more than prohibit retaliatory adverse employment actions, such as a discharge. Employers also should bar retaliation in the form of material changes to the terms and conditions of employment, such as assignments, harassment or ostracism, and retaliation independent of the workplace, such as badmouthing an employee in the professional community.
- The employer should spell out, in training and in investigations, that a complaint that does not have legal merit is not an excuse to engage in unlawful retaliation. The courts are flooded with cases where employees' harassment complaints have been dismissed on summary judgment but the judge has ruled that the ensuing retaliation claims have sufficient merit to proceed to trial.

### 5. Take Strong Corrective Action

- Tools & Forms ([www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Tools-and-Forms.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Tools-and-Forms.aspx))
- Investigation Resources ([www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Investigation.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Investigation.aspx))
- SHRM's Perspective ([www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/SHRM-and-Member-Perspectives-on-Sexual-Harassment.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/SHRM-and-Member-Perspectives-on-Sexual-Harassment.aspx))

**Quiz:** Is It Sexual Harassment? ([www.shrm.org/hr-today/news/hr-news/pages/is-it-sexual-harassment.aspx](http://www.shrm.org/hr-today/news/hr-news/pages/is-it-sexual-harassment.aspx))

The policy should make clear that prompt and proportionate corrective action will be taken if the company concludes that an employee or nonemployee has engaged in harassing conduct, even if the conduct is not unlawful. For this statement to have teeth, make clear that the corrective action may include discipline up to and including termination of the employment or other relationship. The reference to "other relationship" is important because the wrongdoer may not be the company's employee.

Some employers go further and clarify that the complainant will be told the nature of corrective action, where such action is taken. There are times when an employer should disclose this information, but it may not want to lock itself into doing so in its policy.

Be prepared: If you have a strong anti-harassment policy and complaint procedure, you will get more complaints. That's a good thing. You don't want employees suffering in silence. While employees have the right to file external complaints, most employers also would prefer to have the opportunity to investigate and resolve issues internally.

So don't celebrate a complaint-free year. That could mean that your anti-harassment policy and complaint procedure are not trusted.

*Jonathan A. Segal is a partner at Duane Morris in Philadelphia and New York City. Follow him on Twitter @Jonathan\_HR\_Law.*

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