

THE VOICE



Must-Reads for Every Practice

Workplace Harassment: What Should Employers Do Now?

Sexual harassment and misconduct allegations. The stories that lead the evening news and headline our newspapers seem at times almost too much to comprehend. Harvey Weinstein, Matt Lauer, Roger Ailes, Bill O'Reilly, Mario Batali...the list goes on and on. But that behavior doesn't happen in real life, right? Wrong.

Sexual harassment and misconduct is happening everywhere. It touches every industry and every size company across the country. If you have not been faced with claims of sexual harassment and misconduct at your organization, that does not mean it is not happening. The problem is so pervasive that several studies indicate that over 50% of women have experienced sexual harassment at work. In fact, an EEOC report in 2016 estimated that the number could reach as high as 85%. Those numbers are overwhelming.

It is hard to even think about how HR professionals can start a conversation with our leadership teams to tackle this issue in our organizations. Fortunately, we at HR|Experts have experienced and knowledgeable professionals who have started tackling this challenging workplace issue for you.

Let's start the conversation to:

- Reflect on the role of HR in your organization
 - Do employees trust you and come to you with their concerns?
 - Do your actions demonstrate support for solving problems and issues?
 - Do you speak up?
- Assess the culture in your organization
 - Is there an expectation that all individuals will be treated with respect?
 - Do HR staff and managers follow-through on discussions with employees?
 - Do your leadership and management teams serve as role models for ensuring a culture of respect and intolerance of inappropriate behaviors?
 - Do you hold people accountable?
- Shift the conversation with your leadership team beyond compliance

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Welcome to The Voice Newsletter for Spring 2018

The Voice provides a quarterly update on external regulations at the state and federal level that affect your practice along with timely advice on ways to respond. It is provided as a benefit to Medical Mutual members.

The Voice is composed by Dee Brown, HR Advisor.
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- Does your current approach demonstrate an intolerance for discrimination, harassment, misconduct, unprofessional and offensive behavior in your workplace?
- What changes are necessary in your policies and training to encourage victims and bystanders to speak up?

“A New Culture-Focused Approach” to foster a work culture that makes intolerable behavior 100% unacceptable. Senior leaders must be the “models of respect” and lead training sessions dedicated to establishing the right culture, and most importantly, set the tone that respect for all employees in non-negotiable. Here are a few points to consider:

1. Is your HR team trained to properly handle and investigate harassment claims?

Given the importance of the issues, it may be time to revisit how well your HR team is prepared to handle claims. For most HR professionals, conducting these investigations is a dormant, non-exercised skill. Whenever a complaint or concern arises, HR must properly address the matter. It may be an appropriate time to revisit the basics and/or consider the use of a third-party investigation. The last thing you want is to have them learning “on the fly.”

2. Are your core values more than words on the wall?

They should be ingrained into your culture in every way possible... from the onboarding process to performance appraisals to promotion or demotion decisions, etc. In order to establish trust, employees need to see that misconduct comes with real consequences.

3. Are we willing to terminate a top performer or a senior leader for not living a core value?

If the answer is no, it is not a core value. You only need to remember how long broadcasting companies kept their golden geese (Matt Lauer, Bill O’Reilly) before they finally “caved” in. A zero-tolerance policy applies to all employees. You cannot allow some employees to get a pass based upon their role and/or the value to the organization.

Ask HR | Experts

A small practice with less than 10 employees hired a Medical Assistant in October. The Medical Assistant notified the Practice Manager in January of her pregnancy. The Medical Assistant’s performance has declined significantly over the last few months, and she has violated several policies & procedures. She has been counseled and received a written warning with no improvement exhibited. Most recently she was insubordinate and refused to help a patient.

Can the Practice Manager move forward with termination?

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| <p>A. No, she is pregnant, and you cannot terminate her.</p> <p>B. Yes, but first they have to place her on a final written warning and provide a performance improvement plan.</p> | <p>C. No, but they must determine if she requires any accommodations to perform the essential functions of her job and make those accommodations.</p> <p>D. Yes, since they have provided her with multiple warnings and there has been no improvement the employee can be terminated.</p> |
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Answer: D

You must hold every employee to the same performance standards regardless of their personal situation. It is always advisable to have verbal discussions with an employee to determine if there are training needs and to ensure they understand their job responsibilities. You should also notify an employee their performance needs improvement or that violation of policies or procedures is not acceptable and cannot continue. This provides the employee an opportunity to show improvement when possible. If no improvement is exhibited or other violations continue to occur, then termination could be the end result.

ADA & the ADAAA

What is the ADA?

The Americans with Disabilities Act (ADA) was passed by Congress in 1990 and has applications in many areas of society. This HR Toolbox will discuss applications of Title I of the ADA with regard to employment. According to the Equal Employment Opportunity Commission (EEOC), the ADA “makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments.” The law also makes it “illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit”. The law also requires that “employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer’s business.” Further, it is against the law to discriminate against an employee or applicant based on their relationship with a person who is disabled (such as a child or spouse). In 2017, 26,838 ADA discrimination charges were filed with the EEOC, making up more than 31.9% of all discrimination charges.

What is the ADA AA?

The ADA Amendments Act (ADAAA) became effective in January 2009. The ADAAA made it easier for individuals to establish that they have a disability and in turn qualify for protection under the ADA. According to the EEOC, “[t]he ADAAA states that the definition of disability should be interpreted in favor of broad coverage of individuals.”

Does my organization have to comply with the ADA?

Organizations with 15 or more employees must comply with the ADA.

What is a disability?

According to the EEOC, a qualified disability is one of the following if the applicant or employee is otherwise qualified to perform the essential duties of the job:

- A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing or learning).
- A person may be disabled if he or she has a history of a disability (such as cancer that is in remission).
- A person may be disabled if he or she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

Which disabilities are protected by the ADA?

There is no list of disabilities for employers to reference to determine what is or isn’t covered. There are however, examples and guidelines provided in the regulations to be utilized when making a decision on whether or not an employee is considered disabled. What is a reasonable accommodation? A reasonable accommodation is one that enables the employee to complete the essential functions of the job and does not cause an undue hardship to the business. A reasonable accommodation request may be made in the application for employment process, interview process or on the job.

• What resources are available?

- EEOC web page on ADA: <https://www.eeoc.gov/laws/types/disability.cfm>
- ADAAA Fact Sheet: http://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm
- Federal Register: <https://www.federalregister.gov/articles/2011/03/25/2011-6056/regulations-to-implement-the-equal-employment-provisions-of-the-americans-with-disabilities-act-as>