



Michigan Coalition to End Domestic & Sexual Violence

Countering Harassment in the DV/SA Agency

As a movement to end domestic and sexual violence, it is critically important to strive for a workplace free from harassment. Not only are incidents of harassment deeply upsetting to the affected employee(s), but they also lower productivity and morale, and give rise to agency liability. But in a movement that seeks to change the culture for the better, maintaining a harassment-free workplace can be more challenging than it seems.

What is harassment?

To begin with, harassment is more nuanced than most people think. The stereotypical harassment scenario is often portrayed like this: A boss makes advances toward a subordinate worker and assures her that accepting those advances will be good for her career. But this is a narrow and outdated view. Workplace harassment includes any hostile behavior toward a person based on gender, race, color, religion, national origin, age, disability, weight, or any other legally protected characteristic. It can occur in writing, by telephone, by email, via the Internet or any other means of communication.

Harassment can come from many sources, not just a boss. Illegal conduct can be committed by an employee against another employee, by a manager against a subordinate, by a subordinate employee against a manager, or by a manager against another manager. Harassment can also come from a non-employee, such as a volunteer or board member, fellow stakeholder (such as related non-profits, police, or prosecutors), training attendee or co-trainer, shelter resident, client, or vendor (such as delivery person, landlord, or internet service provider).¹

Here are just a few ways harassment can occur in an agency:

- A staff member displays a comic strip that is offensive and degrading to heavier people.
- A shelter resident writes racially offensive language on the bathroom wall.
- A major donor flirts repeatedly with a staff member, making suggestive comments and asking inappropriate personal questions.

¹ An employer cannot avoid liability for third-party harassment by adopting a “see no evil, hear no evil strategy.” *Freeman v. Dal-Tile Corp.*, 750 F.3d 413 (4th Cir. 2014). An employer is liable under Title VII for third parties creating a hostile work environment if the employer knew or should have known of the harassment and failed to take prompt remedial action reasonably calculated to end the harassment. *Id.* Several circuit courts have taken the same position, although this interpretation has not yet been adopted by the Sixth Circuit, which covers Michigan.

- A supervisor regularly uses terms of endearment such as “honey” or “sweetie” with coworkers that the coworkers find condescending.
- A leader in a partner nonprofit refuses to work with a hearing-impaired employee because communication is “too difficult.”
- The vendor who stocks the vending machine repeatedly makes offensive religious jokes in the break room.

How should agencies prevent and respond?

Awareness and action are two essential components of a harassment-free workplace. Ensure that your written policies are broad and effective. Discuss harassment in staff meetings and make it clear that this behavior should not be tolerated. For example, newer staff should not be left to wonder whether the organization expects them to simply put up with harassment by an important leader in the community for the good of the organization—it should be clear that dealing with harassment is not “part of the job.” Display your anti-harassment policy prominently and take time in staff meetings to discuss how to report harassment. Agencies should ensure staff know that their expectation of privacy will be respected to the extent possible, but that the agency will do what is necessary to secure a harassment-free environment.

When staff engage in inappropriate or harassing behavior, agency leadership should be sure to explain what the employee did wrong and why in a clear, non-judgmental manner. In this way, the agency can avoid creating a harsh call-out culture but simultaneously ensure accountability. One agency has shared a policy of having “oops-ouch” conversations when dealing with intra-agency misunderstandings. When inappropriate behavior is addressed, be sure to confirm the conversation in writing for your records. Wherever behavior is harassing in nature, always follow the chain of reporting outlined in the agency’s official policy.

Where harassment by a third-party is either reported or becomes known to agency leadership, the agency has a duty to protect the employee from the inappropriate behavior. This may include preventing the harasser from having contact with the employee, confronting the harasser or their supervisor, or terminating the business relationship if other measures do not effectively protect the employee from harm.

No matter who is involved in a complaint, a quick and proper response is essential. Agencies should investigate the situation immediately and thoroughly in accordance with the official policy. The investigation should be carefully documented, and notes from the investigation should be kept in a confidential manner to avoid accidental disclosure.

Two possible sample policies relating to harassment follow, along with a checklist for investigating harassment claims. Agencies may contact the Coalition for support with developing policies or conducting investigations. (517) 347-7000 ex. 10

Sample Harassment Policy²

Objective

[Agency Name] strives to create and maintain a work environment in which people are treated with dignity, decency and respect. The environment of the agency should be characterized by mutual trust and the absence of intimidation, oppression and exploitation. [Agency Name] will not tolerate unlawful discrimination or harassment of any kind. Through enforcement of this policy and by education of employees, [Agency Name] will seek to prevent, correct and discipline behavior that violates this policy.

All employees, regardless of their positions, are covered by and are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension, or termination of employment.

Managers and supervisors who knowingly allow or tolerate discrimination, harassment or retaliation, including the failure to immediately report such misconduct to the agency human resources officer (HR) [insert title of employee responsible for handling harassment complaints], are in violation of this policy and subject to discipline.

Prohibited conduct

[Agency Name] prohibits harassment of any kind, including sexual harassment, and will take appropriate and immediate action in response to complaints or knowledge of violations of this policy. For purposes of this policy, harassment is any verbal or physical conduct designed to threaten, intimidate or coerce an employee, co-worker, or any person working for or on behalf of [Agency Name].

The following examples of harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal harassment includes comments that are offensive or unwelcome regarding a person's national origin, race, color, religion, gender, sexual orientation, age, body, disability or appearance, including epithets, slurs and negative stereotyping.
- Nonverbal harassment includes distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles or shows hostility, aversion or disrespect toward an individual or group because of national origin, race, color, religion, age, gender, sexual orientation, pregnancy, appearance, disability, sexual identity, marital status or other protected status.

² This sample policy deals only with harassment and is one of several policies that agencies should adopt, such as a policy with regard to consensual romantic relationships between staff, anti-discrimination policies, and anti-violence policies. This is not legal advice and merely serves a sample.

Sexual harassment is defined as any unwanted physical, verbal or visual sexual advances, requests for sexual favors, and other sexually oriented conduct which is offensive or objectionable to the recipient, including, but not limited to: epithets, derogatory or suggestive comments, slurs or gestures and offensive posters, cartoons, pictures, or drawings.

Retaliation

No hardship, loss, benefit or penalty may be imposed on an employee in response to filing or responding to a sincere complaint of discrimination or harassment, appearing as a witness in the investigation of a complaint, serving as an investigator of a complaint, lodging a bona fide complaint will in no way be used against the employee or have an adverse impact on the individual's employment status. Any person who is found to have violated this aspect of the policy will be subject to discipline up to and including termination of employment.

Confidentiality

All complaints and investigations are treated confidentially to the extent possible, and information is disclosed strictly on a need-to-know basis. That said, [Agency Name] reserves the right to disclose known complaints as needed to safeguard all agency employees. The identity of the complainant is usually revealed to the parties involved during the investigation, and the HR officer will take adequate steps to ensure that the complainant is protected from retaliation during and after the investigation. All information pertaining to a complaint or investigation under this policy will be maintained in secure files within the HR department.

Complaint procedure

[Agency Name] has established the following procedure for lodging a complaint of harassment, discrimination or retaliation. The agency will treat all aspects of the procedure confidentially to the extent reasonably possible.

Complaints should be submitted as soon as possible after an incident has occurred, preferably in writing. The HR officer will put verbal complaints in writing as soon as possible. Upon receiving a complaint or being advised by a supervisor or manager that violation of this policy may be occurring, the HR officer will notify the agency director (or other appropriate lead in the event the agency director is involved in the complaint). If possible and appropriate, the HR officer will review the complaint with legal counsel before, during, or after any investigation.

At the earliest opportunity and no later than within 1–2 business days of receiving a complaint, the HR officer will initiate an investigation to determine whether there is a reasonable basis for believing that the alleged violation of this policy occurred. If necessary, the complainant and the respondent will be separated during the course of the investigation, either through change of assignments, change of office location, or administrative leave. Where a third-party is the alleged harasser, the HR officer will work with the agency director to ensure that future incidents are prevented as soon as possible. The HR officer will investigate in keeping with

principles of trauma-informed practice.

Upon conclusion of an investigation, the HR officer or other person conducting the investigation will submit a written report of his or her findings to the agency director or other designated lead. If it is determined that a violation of this policy has occurred, the HR officer will recommend appropriate disciplinary action. If the investigation is inconclusive or if it is determined that there has been no violation of policy but potentially problematic conduct may have occurred, the HR officer may recommend appropriate preventive action. Where the harasser is a third party, the HR officer will recommend measures that would secure the employee(s) targeted and prevent future harmful incidents.

Within 2–3 business days of the submission of the HR officer’s findings and recommendation, the agency director or other designated lead will make a final decision. The HR officer will then meet with the complainant and the respondent separately and notify them of the findings of the investigation. If disciplinary action is to be taken, the respondent will be informed of the nature of the discipline and how it will be executed. Where the harasser is a third party, the agency director will take appropriate action as soon as possible to protect the employee and prevent future incidents.

Harassment Checklist³

Getting the employee to describe the claim:

- Listen to the charge. Don't make comments like, "You're overreacting."
- Acknowledge that bringing a harassment complaint is a difficult thing to do.
- Maintain a professional attitude.
- Gather the facts; don't be judgmental.
- Ask who, what, when, where, why, and how. Find out if the employee is afraid of retaliation. How does the employee want the problem resolved?
- Assure the employee that the Agency will do what is appropriate in response to secure a harassment-free workplace, but to the extent possible their privacy will be respected. Point out that their information will only be shared on a need-to-know basis.

Conducting an investigation of the claim—general rules to follow:

- Investigate immediately. Delaying or extending an investigation can make witness testimony increasingly unreliable.
- Remember that the manner in which the investigation is handled can itself furnish grounds for a hostile environment claim, so carefully document every step.
- Treat all claims seriously—even those that seem frivolous—until you have reason to do otherwise.
- Keep the investigation confidential. Emphasize to those involved that your discussions are not to be shared with uninterested parties. Warn of possible disciplinary action in the event of inappropriate disclosure.
- Limit the number of persons who have access to the information. Communicate strictly on a "need to know" basis.
- Ask questions so that information is not unnecessarily disclosed. For example, instead of asking, "Did you see Paul touch Joan?" ask "Have you seen anyone touch Joan at work in a way that made her uncomfortable?" Remember—the purpose of the investigation is to gather facts, not disseminate allegations.
- If there is more than one allegation, treat each separately.
- To avoid defamation liability, never broadcast the facts of a given situation or the results as an example to others or as a training tool.

³ This is a sample checklist that should be adapted to the needs of a particular investigation or specific circumstances.

Interviewing the complainant (Can be done when employee first reports charge but may require several interviews in keeping with trauma-informed practices):

- Maintain a compassionate and professional attitude.
- Get any necessary details.
- Find out whether there was a pattern of previous episodes or similar behavior toward another employee.
- Get the specific context in which the conduct occurred. Where? What time? Who was present? Has anyone seen or heard about similar incidents?
- Determine the effect of the conduct on the complainant. Was it economic, non-economic and/or psychological?
- Determine the time relationship between the occurrence of the conduct, its effect on the complainant, and the time when the complainant made the report.
- Find out what the complainant wants.
- Explain to the complainant that you take this seriously, that you will conduct a thorough investigation before reaching any conclusion, and that he or she will not be retaliated against for making the complaint.
- Do not make any statements about the accused employee's character, job performance, or family life.

Interviewing the accused:

- Interview the accused if the accused is an employee, volunteer, or board member.
- If the accused harasser is a third party who has no significant relationship with the agency, such as a vendor, donor, or staff of a fellow stakeholder organization, then speak with the accused's supervisor or directly with the accused as appropriate to ensure the complaint is appropriately handled.
- Identify the relationship of the accused to the complainant.
- Was there any prior consensual relationship between the parties? How long have they known each other? Is there a history of group or individual socializing?
- If the individual was a supervisor, indicate the individual's job title, obtain a copy of the individual's job description, and determine the individual's specific duties at the time of the alleged harassment.
- Determine whether the accused directed, or had responsibility for the work of other employees or the complainant, had authority to recommend employment decisions affecting others or was responsible for the maintenance or administration of the records of others.
- You can expect the accused to deny the complaint. Observe the reaction. Note whether there is surprise, anger, or disbelief. Describe the details of the allegation and note the areas of disagreement between the testimony of both parties.

Interviewing witnesses:

- Obtain statements from any witnesses who support or deny any of the complainant's allegations. Be aware that witnesses are often reluctant to come forward out of fear of reprisal.
- Assure all witnesses that their cooperation is important, that their cooperation is confidential and they will not be retaliated against. Ensure that they are aware they must keep the investigation strictly confidential.

Resolving the complaint:

- Apologize for the incident occurring, *if that is appropriate*.
- When attempting to remedy the conduct, avoid requiring the claimant to work less desirable hours or in a less desirable location. If you offer to transfer the complainant, try to get the complainant's consent and make sure the transfer position is substantially similar to the complainant's prior position.
- Consider the severity, frequency and pervasiveness of the conduct when imposing discipline on the harasser. There are several disciplinary options available, including:
 - oral and written warning
 - reprimand
 - suspension
 - probation
 - transfer
 - demotion
 - discharge
- In third-party harassment situations, tailor your response to ensure that the employee who was harassed, as well as other employees, are sufficiently safeguarded from future harassment.
- When imposing discipline on the accused, any forms of discipline short of discharge should be accompanied by a warning that similar misconduct in the future may result in immediate discharge. If no discipline is imposed, document the reasons why.
- Carefully and fully document the investigation, the discipline imposed, and any remedial steps taken.
- Conduct follow-up interviews with the parties to inform them of the agency's actions. Ensure that the complainant feels secure going forward.
- Provide remedial counseling and training on sexual harassment, if appropriate. Also, take the opportunity to re-communicate your policy with staff without disclosing confidential information.