BREAKING THE SILENCE
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At the Equal Employment Opportunity Commission (EEOC), we’re charged with ensuring that workplaces are safe for everyone, and we know that sexual harassment is a pervasive problem. It cuts across all industries, all socioeconomic classes, and all levels within organizational hierarchies. Studies show that 60% to 70% of women have been on the receiving end of sexual harassment on the job at some point during their careers.

Regrettably, too few of these women speak up. Approximately 85% of employees who experience harassment don’t bring charges to our agency, and up to 70% never complain internally to their employers.

In a matter of months, the culture has changed, and more women are coming forward. Since Hollywood mogul Harvey Weinstein was accused of sexual harassment, we’ve seen a groundswell of women (and men) come forward with stories they’ve kept secret for years. On social media, parents, daughters, friends, and colleagues are sharing their personal experiences. Visits to our agency’s website from people seeking information on harassment have tripled.

Clearly, we’ve reached a tipping point. How we’re talking about sexual harassment is changing. While it’s a triumph to have arrived at this moment, the next moment — in which we take action — is even more important. To get to the next tipping point — in which there is no fear of retaliation or shame in speaking up, in which it would be unusual and uncomfortable not to speak up — will take a concentrated effort and a commitment from leadership to protect all employees’ right to a workplace free of unlawful harassment.

Luckily, we have a road map. As cochairs of a yearlong Select Task Force on the Study of Harassment in the Workplace, we offer five steps employers can take to end harassment. These recommendations stem from the work of the Select Task Force, including lessons learned from witnesses who have testified before the task force, conversations among its members, and an extensive review of the sociological, psychological, and economic literature. The culmination of all those activities was a 2016 report, which is available free online. It includes checklists employers can use to implement the five steps, which we’ll now describe in more detail.

STEP 1: DEMONSTRATE COMMITTED AND ENGAGED LEADERSHIP

Too often we’ve heard about leaders who consider harassment settlements to be simply a cost of doing business and, indeed, even set aside money in their budgets for those possible
expenses. These executives make sure that the human resources office conducts just enough training to meet legal requirements, and that’s about it. That situation needs to change. An organization’s leaders must not only play a highly visible role in articulating which workplace behaviors won’t be tolerated but also convey a sense of urgency about preventing harassment.

Make no mistake, words matter. But words alone are not enough. Workers must believe that leaders mean them. The values and sentiments leaders communicate must be reflected in their actions. This entails participating in harassment training, rather than just delivering opening remarks; establishing clear policies and procedures and testing them to make sure they work; conducting prompt and impartial investigations; and taking swift and proportionate corrective measures to address any misconduct.

Leaders also need to pay attention to the risk factors that increase the chances that employees will be harassed. In our work on the task force, we've identified 12:

- a homogenous workforce
- a minority of employees who don’t conform to societal stereotypes or to the norms of the workplace
- cultural and language differences
- many young employees
- a subset of “high value” employees
- significant disparities in power among employees
- a priority on customer service or client satisfaction
- monotonous work or low-intensity tasks
- physical isolation
- decentralized management
- tolerance or encouragement of alcohol consumption
- occurrence of coarse social discourse outside the workplace

If you look at recent news stories about harassment, you can see these factors coming into play. For instance, many incidents took place in Hollywood, the media, and Congress — where huge disparities in power exist. In the retail and restaurant industries, corporate offices are far removed physically and, often, organizationally from frontline employees and first-line supervisors, which may explain why these industries, too, have a lot of problems with harassment.

The presence of one or more risk factors doesn’t necessarily mean that harassment is occurring in an organization. But evaluating and addressing them is a good place for leaders in any given workplace to start.

One good practice is conducting anonymous climate surveys to determine whether and how much harassment is going on in a workplace. The U.S. military already runs such surveys on a regular basis, and military personnel have told us that they find the surveys useful, particularly if they’re done to get a baseline when a new commander takes over and then again a year later to see if anything has changed.
The federal government may soon be following in the military’s footsteps. Legislation introduced on Capitol Hill in the wake of our public discussion of sexual harassment, including harassment within the halls of Congress, would require Congress to conduct an anonymous and confidential survey of its members and staff every two years to assess the prevalence of and attitudes toward sexual harassment in congressional offices.

“When C-level employees take a critical look at and aggressively deal with supervisors that are involved in or not reporting harassment, we have seen this translate into higher morale and higher productivity among the rest of the workforce. Everyone notices what the C-suite notices.”

- Heidi Olguin, CEO and founder, Progressive Management Resources, a compliance consulting and research firm

**STEP 2: REQUIRE CONSISTENT AND DEMONSTRATED ACCOUNTABILITY**

During our research many workers told us about businesses that do little when they learn about actual transgressions. This also must change. When companies don’t take action, it suggests that harassment will be tolerated. What’s needed is accountability: Employees have to see that bad behavior will not stand and that everyone complicit in that behavior will be held responsible. Individuals who engage in harassment must be disciplined, and so should managers who respond inadequately to reports or observations of misconduct.

Workers notice when someone is allowed to get away with mistreating colleagues. This is particularly true when it comes to what we call “the superstar harasser” — a person perceived to be irreplaceable at the organization, be it a rainmaker partner in a law firm, an acclaimed surgeon in a hospital, or a famous movie director. For too long, leaders have chosen to fire or pay off the victims rather than discipline or fire the perpetrators. But research shows that in the long run, the costs — both financial and reputational — of keeping a superstar harasser in place and unchecked far exceed the benefits.

Most employers realize they’ll incur legal costs if they have to fight, and often settle, a complaint. But most don’t comprehend the full extent of financial harm to their organizations. The indirect costs can be much higher than the direct costs of litigation and settlements. They include increased absenteeism, reduced productivity, and adverse physical and mental health effects among the targets of harassment and the people who witness it. The largest cost is job turnover, and not just among the targets. Other employees who are uncomfortable that mistreatment is tolerated in a workplace may also jump ship.

When an incident of harassment occurs, the discipline that follows must be proportionate. Too often we have heard that — even in severe cases — only weak sanctions are imposed, sending a message that the employer doesn’t really care about stopping bad behavior. Conversely, if all forms of unwelcome conduct are met with termination, people
may be more reluctant to report it because they don’t want to get a coworker fired; they just want the misconduct to stop.

In fact, one sees a backlash now from people who assume that every complaint will result in the termination of an alleged perpetrator. That’s why our report cautions against use of the phrase “zero-tolerance policy.” There should be zero tolerance for harassment, but that doesn’t mean that all harassers should be disciplined the same way — that is, by being fired.

It’s important for employees to know that accountability extends to midlevel managers and frontline supervisors too. Managers must be assessed on more than whether their group has achieved its core goals. Reviews of their performance should also focus on whether they’ve established a respectful team culture and responded appropriately to reports or observations of harassment. Did they conduct investigations and take corrective action? Did they ensure that there was no retaliation against people who reported harassment or came forward as witnesses?

If an organization has a human resources office, accountability also extends to it. We’ve sometimes heard workers say, “HR is not your friend. They only care about protecting the employer.” Leaders need to make clear to HR personnel that protecting the organization means responding to complaints promptly and appropriately, not sweeping them under the rug or blaming the people who lodge them. In turn, HR needs the strong support of company leadership when it investigates allegations of harassment.

Giving accolades to people who do the right thing helps reinforce accountability. Rewarding midlevel managers and frontline supervisors for creating a respectful culture and dealing with complaints responsively sends a message about what an organization’s leadership cares about. Rewarding the HR staff for quick and professional responses goes a long way also.

Finally, communication is key. It’s a good practice to tell the person who lodged a complaint what the investigation has concluded and what corrective action (if necessary) was taken. Nothing in federal civil rights law prohibits an employer from doing that. We’ve heard that some organizations are concerned about being sued for defamation, but if an investigation has found that harassment occurred, that should not be grounds for a defamation suit. In some cases, employers have negotiated confidentiality agreements with harassers who were terminated. One negative consequence of such an agreement — which employers should weigh carefully — is that it eliminates the opportunity to send a clear message to the entire workforce that the organization is serious about preventing harassment.

“One organization I worked with several years ago asked me if I had new courseware for use with some previously trained managers. When I asked them what they wanted to accomplish, they indicated that several individuals were continuing to tell off-color jokes and make inappropriate comments. While I welcomed the opportunity to be of service, it seemed to me
"That the issue was not what training to do next but rather why these decision makers hadn’t taken steps to deal with these individuals’ behavior and failure to perform to clear standards."
- Stephen M. Paskoff, author, *8 Fundamentals of a Civil Treatment Workplace*

**STEP 3: ISSUE STRONG AND COMPREHENSIVE POLICIES**

The power of policies should not be underestimated. Employees in workplaces without preventive policies and procedures report the highest levels of harassment, research shows.

On the basis of our own research, we recommend that an anti-harassment policy include:

- a clear and simple explanation of prohibited conduct, with examples
- a strong assurance that employees who make complaints or provide information related to complaints, as well as witnesses and other employees who take part in an investigation, will be protected against any retaliation
- a clearly described process that provides multiple accessible avenues for making complaints
- an assurance that the employer will protect the confidentiality of harassment complaints to the extent possible
- a process for prompt, thorough, and impartial investigations of complaints
- an assurance that the employer will take immediate and proportionate corrective action when it determines that harassment has occurred, and that it will respond to behavior that may not be legally actionable harassment but that may lead to it if left unchecked

Those are six basic requirements. Every employer today should take a look at its anti-harassment policy and ask whether it meets them. If your organization hasn’t yet issued such a policy, now is a very good time to do so.

Keep in mind that it’s critical for a policy to be written in clear, simple words, in all the languages used in the workplace. At the EEOC we have a four-page internal policy against harassment, which is distributed to all employees. We also have detailed reporting, investigation, and corrective action procedures, which are shared with all management and available to all employees on our internal website.

The EEOC’s procedures reflect the structure of our federal agency. Other organizations’ procedures may be tailored to their particular structures, but the basic principles remain the same.

“If employers commit to creating and implementing harassment prevention plans, workplace harassment will decline, and fast. There will always be a bad actor here or there, but there will be systems in place to redress such situations. Employers must consider these…necessary ingredients of an effective harassment prevention plan: (1) the crafting of a comprehensive
policy, including a clear complaint procedure and a strong and strongly enforced statement against retaliation, (2) the rolling out and communicating of said policy, and (3) regular, interactive, and dynamic training on what the policy means in the day-to-day life of an organization and its workers.”

- Sindy Warren, principal, Warren & Associates LLC, an employment consulting firm

STEP 4: OFFER TRUSTED AND ACCESSIBLE COMPLAINT PROCEDURES

To effectively implement anti-harassment policies, organizations need sound procedures for reporting and investigating misconduct. As just noted, we recommend offering workers multiple channels for making a complaint. Employees should be able to go to HR, surely, but it should be clear that other individuals within the organization are legitimate and recognized avenues to turn to.

The importance of providing supervisors and managers with the skills needed to respond to complaints cannot be overstated. Managers and supervisors are the heart of any employer’s prevention program. As one expert, Fran Sepler, said to the task force, “If I had limited assets to improve the climate of any organization, I would invest 95% of them in middle managers. These are the people who make all the difference in the day-to-day lives of organizations and people. When we train middle managers, we don’t train them just in how to spot and address problem behavior; we teach them empirically sound things to do and say when an employee seeks them out to discuss a problem. We teach them to avoid suggesting the employee is at fault. We teach them emotionally intelligent responses, and we stress the importance of a feedback-rich environment, so that people get used to speaking up and listening when they are being told there is a problem. Most of all, we show them the metrics that come along with proper monitoring and complaint handling.”

Regardless of whether a person hearing a complaint works in HR or in another part of the company, they must take it seriously. After all, there’s no way to know whether the complaint is true without an investigation. When someone makes a report, it should not be dismissed or trivialized. Those who receive complaints should say, “Thank you for coming forward, thank you for sharing your story, and thank you for giving me the opportunity to investigate what has happened and to make things better.”

The privacy of both the person making the complaint and the alleged harasser must be protected as much as possible. A thorough investigation will naturally require that some people be told about the complaint, but otherwise the employer should maintain confidentiality about both parties involved. Those parties may wish to talk with other people about the incidents that happened, and that’s their prerogative. But the employer should not be the one breaching confidentiality.

Systems for addressing harassment must provide timely responses and fair investigations. It’s essential to set aside adequate resources for reporting and investigation and to create
the understanding that everyone is expected to participate fully in investigations. Investigators must be well-trained and neutral, especially if they’re company employees. If an employer has the resources, it may contract with an outside investigator; that strategy may be particularly important if an allegation has been made against a superstar. In addition, in a good investigation, all steps taken will be documented, a report using guidelines to weigh credibility will be written, and the final determination will be communicated to all relevant parties.

The process must also ensure that employees who report harassment (whether it’s behavior they’ve experienced or behavior they’ve observed) aren’t punished for it. Fear of retaliation is the biggest obstacle that prevents workers from coming forward. Ensuring that retaliation doesn’t occur is a tall order if a workplace culture currently tolerates harassment. But people who speak up must be protected. Promptly disciplining those who engage in retaliation is the best mechanism for making it less likely to occur.

**STEP 5: PROVIDE REGULAR, INTERACTIVE TRAINING TAILORED TO THE ORGANIZATION**

We’ve heard many complaints about anti-harassment training. Employers and HR departments often view it as a “check the box” exercise done to comply with state laws or to shield employers from potential liability. Employees often view it as a distraction from their “real work” and resent the suggestion that they might behave improperly. In our experience, while some training programs are simply poorly designed, almost all spend more time discussing legal standards than what employees can do to create a harassment-free workplace.

We outline these criticisms (and more) in our 2016 report. Unfortunately, as a result, the report has sometimes been misconstrued as a proposition that training does not work.

That’s far from the case. It’s true that much of the training that has been done to date has not been particularly effective, but training can work if it is well designed and if the organization already has in place the necessary leadership, accountability, policy, and reporting and investigation system.

We believe three types of training can be effective in stopping harassment. The first is what we call “compliance training.”

This training should explain clearly what conduct is unacceptable, using realistic examples tailored to the workplace. (For example, training for automotive mechanics or truck drivers shouldn’t feature examples of office or retail workers. Nor should training examples be so unrealistic or extreme that they’re cartoonish.) Whenever feasible, training should be live and interactive, rather than web-based, in order to fully engage employees’ attention.

Despite its use as a mechanism against legal claims, compliance training should not be overly legalistic. It should simply explain in clear and accessible terms what behaviors the
organization does not tolerate, regardless of whether such behavior ultimately rises to the level of illegal harassment. Also, employers shouldn’t presume that training will necessarily change what workers believe. Rather, the goal should be to change how workers act — to check conduct that the employer believes is objectionable.

“[Compliance training] is not training to change your mind. It’s training to keep your job.”

- Jonathan A. Segal, partner, Duane Morris LLP and Select Task Force member

Workers should leave compliance training with a clear understanding of what to do if they experience unwelcome behavior; the various individuals to whom they can make a complaint; what other steps, if any, the employer will take to help them; what procedures the organization will follow once a complaint has been made; and how to report any retaliation that they or witnesses to the harassment experience.

The second type of training focuses on “workplace civility.” It’s designed to help foster a climate in which rude, inappropriate, or abusive behavior is nipped in the bud. Such training teaches employees how to be respectful to colleagues and provides them with the skills to create a healthy culture. Employees learn how to provide feedback about behavior they find unwelcome and how to respond if they themselves receive such feedback. Managers are taught how to handle complaints and how to coach problematic employees.

The third type of training focuses on “bystander intervention.” We know that many people are uncomfortable when harassment occurs around them, even though they’re not its direct victims. But some employees don’t see it as their problem. Others don’t know what an appropriate response might be, and almost all are afraid that if they get involved, they might suffer retaliation.

The purpose of bystander training is to motivate workers to step in and take action if they witness harassment and to provide them with the skills and confidence to do so. But if the organizational culture doesn’t encourage and support such intervention, it won’t happen. So leaders must promote a sense of collective responsibility for maintaining a harassment-free workplace and ensure that there’s no retaliation toward anyone who carries that responsibility out.

The EEOC recently announced that it is offering its own respectful workplaces training to employers. One module is designed for managers and supervisors; the other is for line employees. The live and interactive training teaches employees evidence-based skills that they can use in the workplace.

In response to a significant number of harassment allegations, the Los Angeles Department of Water and Power (LADWP) established a proactive strategy to safeguard the personal dignity of its employees and empower them to help free their workplace of misconduct and discrimination.
• The LADWP began with an eight-hour mandatory training for all employees that focused on mutual respect in the workplace. This included a discussion of individual differences related to race, gender, and culture; how to resolve interpersonal conflicts; the roles and expectations of employees and leaders; and an overview of equal employment opportunity laws, policies, and procedures.

• Next came mandatory training for all executives and supervisors, which focused on the practical implications of employment laws and provided tools and techniques for addressing inappropriate behavior.

• The LADWP also created a “boot-camp team” that would quickly respond to misconduct and provide one-on-one coaching and further group training.

The LADWP continues to provide department-wide harassment and discrimination training to its employees on a regular basis. In the first three years after the initiative began, the number of internal complaints rose — perhaps because employees had a greater understanding of their rights and where to go to file complaints. Since that time, complaints have dropped by 70%, and the severity of the behavior reported has decreased as well. According to Renette Anderson, director of the LADWP’s Equal Employment Opportunity Services, “Much of this is due to our tenacious and steadfast commitment to our training efforts.”

RESPONSIBILITY LIES WITH ALL OF US

We all have a role to play in ending harassment in our workplaces. Everyone in an organization, from the CEO to new hires, needs to actively support colleagues who are its targets and take every step possible to stop it. To that end, our offices plan to partner with other organizations to launch an outreach and education campaign.

It is never easy to change an organizational culture. Patterns of behavior get established over time, and people who question or oppose those patterns may be isolated or hectored. But it is possible to change culture with a strategic and persistent effort. The #MeToo phenomenon and the Time’s Up campaign are remarkable catalysts for reform. But we need even more. And here we are offering a road map for realistic action that will bring sustainable change.

This is the moment for everyone to come together to do something different and dramatic. We’re optimistic that if all concerned — employers, employees, the government, advocacy groups, community entities, philanthropists, the media, and ordinary people on the street — work together, we can make things better, so that no one ever has to say “me too” again.

THE BIG IDEA

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