




HOW TO MAINTAIN A HARASSMENT FREE WORKPLACE

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What Is Harassment and Discrimination?

- Harassment is unwelcome conduct or communication against a person or group of persons.
- Discrimination is the prejudicial treatment of a person based upon a legally protected characteristic.



Discrimination

Protected Classifications

Title VII of the Civil Rights Act of 1964, prohibits an employer from discriminating on the basis of race, national origin, gender, or religion.

The New York Human Rights Law prohibits discrimination in employment based upon age, race, creed, color, national origin, sexual orientation, military status, sex, disability, pregnancy-related condition, domestic violence victim status, genetic predisposition or carrier status, familial status, or marital status.



Discrimination

Federal and NYS law prohibits an employer from discriminating on the basis of a protected classification. For example, it is illegal for an employer to take any of the following actions against an employee based upon a protected classification:

- ☐ Refuse to hire;
- ☐ Discipline;
- ☐ Fire;
- ☐ Deny training;
- ☐ Fail to promote;
- ☐ Pay less or demote; or
- ☐ Harass.



Discrimination

In addition, it is illegal for an employer to adopt a policy that has a "disparate impact" on a protected class, such as by adopting hiring criteria that tend to screen out women or minority group members, or by instituting a required test for promotion on which a particular class tends to score badly. A policy or test, like a specific policy that only men or women can have certain jobs, is legal only if it can be deemed a "bona fide occupational qualification." An example is a strength test that tends to screen out women, but is a necessary test for fire fighters who must be able to carry victims down tall ladders.

Title VII does not just bar discrimination against women and minority group members, but also bars discrimination against male or white employees. Such discrimination is popularly known as "reverse discrimination," and may be caused, for example, by an over-ambitious affirmative action program.



Discrimination

Equal Pay Discrimination

The Equal Pay Act requires any employer that is already subject to the Fair Labor Standards Act (the federal wage and hour law) to provide equal pay to men and women who perform "equal work," unless the difference in pay is caused by differences in seniority, merit or some other factor that is not based upon sex.

Age Discrimination

The Age Discrimination in Employment Act (ADEA) bars discrimination against employees or applicants who are over the age of forty (40). An employee may often state a claim under the ADEA if he or she is fired or forced to retire, and is then replaced by a younger employee.



Discrimination

Disability Discrimination

The Americans With Disabilities Act (ADA) and the Rehabilitation Act bar discrimination against those who are disabled. In order to be protected by the ADA or the Rehabilitation Act, an employee must show that he or she is, in fact, disabled, has a history of being disabled, or was regarded by the employer as being disabled. Once the employee makes this showing, however, he or she is not only protected from discrimination, but is also entitled to "reasonable accommodation" for the disability; if necessary. Reasonable accommodation may include a modified work schedule or work duties, unpaid time off, or special devices that will help in the performance of job duties.

National Origin Discrimination

The Immigration Reform and Control Act bars any employer with more than three employees from discriminating against a U.S. citizen, or an "intended citizen" (such as one who may work legally but is not yet a citizen) on the basis of his or her national origin.



HARASSMENT

Harassment includes actions and/or comments which are abusive, offensive, demeaning or threatening. Harassment may be intended or unintended.

Examples of harassment include, but are not limited to:

- ☐ unwelcome comments or jokes;
- ☐ spreading rumors or gossip;
- ☐ displaying or sending sexist, racist or other offensive pictures or emails;
- ☐ actual or threatened physical assault;
- ☐ threatening or bullying; and
- ☐ insulting gestures.



HARASSMENT

Sexual Harassment

Sexual Harassment is a form of harassment that involves unwanted and unwelcomed behavior of a sexual nature. It may include, but is not limited to, touching a person or other unwelcome physical contact, sexual innuendos, commenting on one's body, asking questions about a person's sexual relationships, telling sexual jokes in person or in emails, or displaying posters or other offensive materials of a sexual nature.

Sexual harassment can be between any two or more persons (male & male, male & female, female & female) and may include conduct by third parties (customers, vendors, etc.).



HARASSMENT

Types of Harassment:

Quid pro quo (“This for That”): occurs when a manager or supervisor causes another employee to believe that he or she must submit to unwelcome sexual conduct in order to be promoted, obtain additional benefits or to participate in any workplace activity. It can also occur when a manager causes an employee to believe that the manager will make an employment related decision based on whether or not the employee submits to unwelcome sexual conduct.

Hostile environment: occurs when unwelcome sexually harassing conduct is so severe, persistent, or pervasive that it affects an employee's ability to participate in or benefit from their employment, or creates an intimidating, threatening or abusive workplace environment.

Creating a Harassment & Discrimination Free Workplace

Employees:

Every employee has the right to be treated with respect and has a responsibility to treat others with respect. As an employee, you can prevent harassment and discrimination by:

- ❑ refraining from actions that may offend or embarrass others;
- ❑ remembering to treat people as they wish to be treated and not as you would like to be treated;
- ❑ considering that what one person may consider humorous or appropriate may in fact be considered offensive behavior to another;
- ❑ letting others know that you do not approve of disrespectful behaviors, such as offensive emails, inappropriate comments, derogatory cartoons and jokes.



Creating a Harassment & Discrimination Free Workplace

If you experience harassment or discrimination:

- ☐ if possible, speak with the person about his/her behavior (sometimes, people do not realize the impact of their actions on others);
- ☐ if this is not successful in stopping the behavior, or if you are not comfortable speaking with the person, talk with your manager/immediate supervisor or another person in authority;

If you become aware of or witness an incident of harassment or discrimination:

- ☐ tell the employee(s) immediately that his/her actions are inappropriate;
- ☐ inform a manager or direct supervisor;



Creating a Harassment & Discrimination Free Workplace

If you are accused of harassment or discrimination:

- ❑ listen to the person and do not act defensively or minimize the person's concerns. What may seem funny to you may be offensive or hurtful to someone else;
- ❑ seek a resolution by discussing the matter with the complainant and management;
- ❑ be open to meeting with your manager to resolve the issue;



Creating a Harassment & Discrimination Free Workplace

Managers:

Managers are encouraged to deal with incidents of harassment and discrimination quickly and deliberately. While conflict is inevitable and a normal part of working life, some conflicts can escalate to harassment or discrimination. You should aim to resolve conflicts as soon as they arise.

As a manager, you set the tone for a respectful work environment. The manager should lead by example by modeling respectful behaviors and not tolerating disrespectful and inappropriate behavior.

Managers must monitor the atmosphere in their workplace. Pay attention to the tone of interactions and comments made between co-workers and the use of derogatory language or jokes, and check for increased absenteeism or staff turnover.



Creating a Harassment & Discrimination Free Workplace

If an employee tells you that he/she has been harassed or discriminated against:

- ☐ meet with the employee promptly;
- ☐ listen to his/her concerns and do not pass judgment (take notes);
- ☐ conduct a thorough investigation (interview all potential witnesses, review video, etc.);
- ☐ keep the employee informed on the status of the investigation and explain that appropriate action will be taken.



Creating a Harassment & Discrimination Free Workplace

Formal Investigation: No matter the size or extent of the complaint it is vital to conduct a formal investigation.

All parties involved in the conduct and anyone who may have been present during the alleged incident should be interviewed to see if the allegations have any merit. Should the employer find that the complaint has merit then appropriate disciplinary action must be taken.

Disciplinary action can include:

- ☐ Verbal warning;
- ☐ Written warning;
- ☐ Department transfer (of the harasser);
- ☐ Relocation of work station (of the harasser);
- ☐ Reassignment of duties (of the harasser);
- ☐ Suspension; and/or
- ☐ Termination



Creating a Harassment & Discrimination Free Workplace

The level of discipline must be appropriate to the level of the prohibited conduct.

Avoid situations where you elect to issue a lesser penalty because the harasser is a top performer. This is likely to result in additional acts of harassment by employees who see the employer as being weak on discipline. It can also make the harassed employee feel that the hostile work environment continues.



Retaliation

Retaliation occurs when the employer takes adverse action taken against the employee who files a harassment or discrimination complaint.

Unlawful retaliation can be any action that would have the effect of dissuading a reasonable worker from making or supporting a charge of harassment.

- Reassignment;
- Alteration of job responsibilities; etc.

Unlawful retaliation can also result from the unwarranted suspension or termination of an employee who filed a complaint.



Employment Policy

Harassment/Discrimination Policies

Dealers should have a formal written anti-discrimination and anti-harassment policy and distribute the policy to every new hire and to every employee annually. The policy should include a definition of harassment and discrimination and the process for filing a complaint. The policy must encourage employees to come forward to voice their complaints, protects confidentiality and prohibit any form of retaliation. The policy should at least contain the name and contact information of the owner and at least one manager. Ideally, the contact persons will include at least one man and one woman.



Q & A

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