

**ZERO
TOLERANCE
POLICY**



AVOIDING HARASSMENT CLAIMS: STEPS TO TAKE NOW

Law talk from Epstein Becker Green, P.C.

By **ADRIANA S. KOSOVYCH**

The recent outbreak of allegations and admissions of sexual harassment and assault across the country has brought workplace harassment into the spotlight as the new “hot topic” for employers and owners/operators nationwide. While this heightened awareness of sexual harassment issues affects a wide range of industries, *The Washington Post* reported in an article earlier this year that the Equal Employment Opportunity Commission’s data reflects more complaints of sexual harassment arising in the hotel and food industry than in any other industry category. In order to mitigate the risk of sexual harassment or assault complaints on their own property, hospitality owners and operators can take a number of proactive steps.

Adopt a zero tolerance policy: Every employer should adopt a robust policy expressly prohibiting any sexually harassing or inappropriate behavior toward employees, guests, or patrons. At a minimum the policy should define sexual harassment and make clear that it includes inappropriate relations, communication (i.e., emails, phone calls, text messages, or messages through social media), and state in no uncertain terms that sexual harassment will not be tolerated. The policy should also state that any employee found to have engaged in sexually harassing behavior will be subject to discipline, up to and including termination from employment.

Implement a complaint procedure: A key part of an anti-harassment policy aimed at preventing workplace harassment is to enable and encourage the reporting of it. Owners/operators should require all employees—victims and bystanders—to report any instances of inappropriate behavior, sexual or otherwise, they experience or observe. Because an employee may not be comfortable, in certain circumstances, approaching his or her immediate manager (including, at times, because the manager may be the offending individual), owners/operators should make multiple channels available to report or lodge a complaint of sexual harassment. Available avenues may

include the general manager, a designated manager who does not directly oversee the regular, non-managerial staff, a human resources representative, or a compliance officer.

No retaliation: In order to help reinforce the complaint procedure and to create an environment where employees feel safe and comfortable to speak up, the policy should make clear that the employer will not tolerate retaliation against any individual who makes a report of harassment, provides information concerning such actions, or opposes any action that violates the zero tolerance policy against harassment.

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Provide training: Owners/operators should train employees on workplace harassment, and should explain what sexual harassment is, state that employees have a right to a workplace free of sexual harassment, and review the zero tolerance policy and complaint procedure. Such training should be mandatory and provided to all employees annually, at a minimum. For managers, training should be more frequent and conducted separately from employee sessions. The manager training should educate managers and supervisors about sexual harassment and explain how to handle complaints or reports of harassment. All employees should be required to certify their participation in the training. Owners/operators may also wish to consider implementing a short quiz or questionnaire following the training to reinforce the material and to help clarify the information presented.

Reinforce professionalism: Employees interacting with each other, members,

guests, and patrons in a social setting may sometimes result in temptation for employees to act in a less formal manner. Owners/operators should maintain a policy requiring strict professionalism at all times and should regularly reiterate that inappropriate jokes, comments, obscene gestures or insults, and inappropriate touching are prohibited.

Act promptly and swiftly: Owners/operators should take all complaints or reports of harassment seriously and act promptly to review and thoroughly investigate them. If the investigation shows the complaint to be valid, the employer’s response should be swift and effective.

These are just some of the critical actions owners/operators may take to prevent, or at least reduce, the risk of sexual harassment complaints. Owners/operators should be vigilant of situations that may open up the possibility of a potential harassment complaint, and should be in continuous communication with employees, and even patrons, on their harassment and other policies. 



ABOUT THE AUTHOR

Adriana S. Kosovych is an associate in the Employment, Labor & Workforce Management practice in the New York office of Epstein Becker Green. Her experience includes representing clients in employment-related litigation on a broad array of matters, including claims of discrimination, harassment, retaliation, failure to accommodate disabilities, breach of employment contracts and restrictive covenants, and wage and hour disputes, in state and federal courts and before various administrative agencies.

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