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## Taking Workplace Training to the Next Level: EEOC Task Force Recommends Live, Interactive Harassment Prevention Training

BY KEVIN O'NEILL, CHRISTOPHER COBEY, AND MARISSA DRAGOO

On June 20, 2016, the U.S. Equal Employment Opportunity Commission released a 130-page [report](#) (“the Report”)<sup>1</sup> on harassment in the workplace. The Report contains 45 specific recommendations and identifies 12 “risk factors” concerning workplace harassment and its prevention. Notably, the Report devoted the bulk of its recommendations to the need for effective compliance training and related efforts.

### Workplace Harassment Remains a Persistent Problem

The Report calls for “a reboot of workplace harassment prevention efforts.” The impetus for this initiative is that nearly a third of the approximately 90,000 charges of discrimination filed with the EEOC last year included allegations of workplace harassment. In addition, the Report found that “[r]oughly three out of four individuals who experienced harassment never even talked to a supervisor, manager, or union representative about the harassing conduct.”

The primary reason cited for this failure is central to what many compliance training programs often strive to correct and prevent: employees who experience harassment fail to respond to it out of fear of the reactions they may get to a report — disbelief, inaction, receipt of blame, and social and professional retaliation.

Citing a strong business case for harassment prevention efforts (psychological, physical, occupational, and economic harm, among others), the EEOC Report sets forth a three-pronged strategy to decrease workplace harassment: start at the top with “leadership and commitment to a diverse, inclusive, and respectful workplace in which harassment is simply not acceptable”; make “policies, reporting procedures,

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<sup>1</sup> U.S. Equal Employment Opportunity Commission, [Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum and Victoria A. Lipnic](#) (Jun. 20, 2016).

investigations, and corrective actions ... essential components” of a holistic effort to prevent harassment; and, conduct effective compliance and prevention training.

## **Prevention Should Include “Situational Awareness” of Risk Factors for Harassment**

As a lead-in to its assessment of effective harassment-prevention training efforts, the EEOC Report declared that it “wanted to find ways to help employers and employees prevent such conduct before it rose to the level of illegal harassment.” To do so, it crafted an approach it termed “situational awareness” to help employers identify and describe where “fertile ground” may exist for harassment to occur, and to serve as a “roadmap” for employers with activity in these areas or situations to help those employers take proactive steps to prevent harassment in their workplaces. This “situational awareness” effort included the identification of the following trends that have resulted in risk areas that merit employer assessment:

- *Homogeneous workforce.* “Harassment is more likely to occur where there is a lack of diversity in the workplace.”
- *Workplaces where some employees do not conform to workplace norms.*
- *Cultural and language differences in the workplace.* “Workplaces that are extremely diverse also pose a risk factor for harassment.”
- *Coarsened social discourse outside the workplace.* “Events outside a workplace may pose a risk factor that employers need to consider and proactively address.”
- *Young workforces.* “Workers in their first or second jobs may be less aware of laws and workplace norms.”
- *Workplaces with “high value” employees.* “Senior management may be reluctant to challenge the behavior of their high-value employees.”
- *Workplaces with significant power disparities.*
- *Isolated workplaces.*
- *Workplaces that tolerate or encourage alcohol consumption.*
- *Decentralized workplaces.* Workplaces where corporate offices are far removed from front-line employees or first-line supervisors.

The purpose of outlining these areas is to increase employers’ awareness of situations that may make their workplace more susceptible to harassment — and thus to allow them to take corresponding, proactive measures to prevent and/or remedy it. Assessment of many of these areas also lends itself to the kind of interactive training discussions the EEOC recommends.

## **Your Harassment Prevention Training Effort Should Be Viewed as an Essential Component of Your Anti-Harassment Effort**

### ***Effective Anti-Harassment Compliance Is Best Presented Live and Interactively***

A considerable part of the EEOC Report centers on the role effective compliance training could play in preventing workplace harassment. In a strong endorsement, the EEOC Report singled out live, interactive delivery as the preferred method of providing harassment prevention training. The Report contains a consensus as to what elements comprise successful harassment prevention training — all of which are enhanced by live, interactive delivery:

- Training that not only helps employers comply with the legal requirements of employment non-discrimination laws, but also describes conduct that, if left unchecked, might rise to the level of illegal harassment.
- Training that is not canned, “one-size-fits-all” training, but rather tailored to the specific realities of different workplaces.
- Training in multiple languages, or that provides for different learning styles and levels of education.
- Training that clarifies what conduct is not harassment and is therefore acceptable in the workplace, reflecting the reality of human experience and common courtesy.
- Training that educates employees about their rights and responsibilities if they experience — or witness — conduct the employer has stated is not acceptable in the workplace — the “(hopefully) multiple avenues offered by the employer to report unwelcome conduct.”
- Training that describes, in simple terms, how the formal complaint process will proceed.

The Report then identifies the heightened need for training middle-management and first-line supervisors, as the heart of an organization’s prevention efforts, to address conduct before it rises to the level of illegal harassment.

The challenges that abound in the above factors lead the Report’s authors to detail the method most likely to deliver useful training effectively: live and interactive training, presented by trainers “who are dynamic, engaging, and have full command of the subject matter.” Such a person is “most suited” to work through the complex questions participants may have and should be chosen carefully.

### ***New and Different Approaches to Harassment Prevention Training Cited: Bystander Intervention Training and Workplace Civility Training***

Recognizing that many factors drive harassment prevention, the Report takes an expansive approach to training methods based less on compliance and more on organizational culture as a key element to reduce exposure to workplace harassment. Two established methods were offered for consideration: Workplace Civility Training and Bystander Intervention Training.

### **Workplace Civility Training**

Instead of focusing on eliminating unwelcome behavior based on legally protected characteristics, this training approach promotes respect and civility as a means of reducing bullying or workplace conflict.

While the U.S. Supreme Court itself is on record as wanting to avoid creating a “civility code” through harassment prevention efforts, the Report notes that incivility is often an antecedent to workplace harassment, and can create a climate of “general derision and disrespect” in which harassing behaviors are tolerated.

Workplace civility trainings focus on establishing expectations of civility and respect in the workplace, and on providing management and employees the tools they need to meet such expectations. As the Report states, “the beauty of workplace civility training is that it is focused on the positive — what employees and managers should do, rather than on what they should not do.” Included in this training can be explorations of workplace norms, discussions of what constitutes appropriate and inappropriate behaviors in a given workplace, and importantly, a heavily skills-based component that addresses such things as interpersonal skills training, conflict resolution training, and effective supervisory techniques.

## Bystander Intervention Training

Traditionally used as a violence prevention strategy or to prevent sexual assault, bystander intervention training also received support by the Report's authors as an effective approach to harassment prevention. The standard components of bystander intervention training consist of at least four strategies identified in the Report, all of which have direct application to harassment prevention methods:

- Create awareness — Enable bystanders to recognize potentially problematic behaviors.
- Create a sense of collective responsibility — Motivate bystanders to step in and take action when they observe problematic behaviors.
- Create a sense of empowerment — Conduct skills-building exercises to provide bystanders with the skills and confidence to intervene as appropriate.
- Provide resources — Provide bystanders with resources they can call upon and that support their intervention.

Recognizing the potential effectiveness of this kind of training, the Report makes a compelling case for its application to workplace harassment prevention:

"Such training could help employees identify unwelcome and offensive behavior that is based on a co-workers' protected characteristic under employment non-discrimination laws; could create a sense of responsibility on the part of employees to "do something" and not simply stand by; could give employees the skills and confidence to intervene in some manner to stop harassment; and finally, could demonstrate the employer's commitment to empowering employees to act in this manner. Bystander training also affords employers an opportunity to underscore their commitment to non-retaliation by making clear that any employee who "steps up" to combat harassment will be protected from negative repercussions."

As the Report states, training cannot stand alone but rather must be part of a holistic effort undertaken by the employer to prevent harassment that includes elements of leadership and accountability. However, the Report is striking in its substantial emphasis on the unique qualities—and significant impact—represented by effective harassment prevention training methods.

## Employer Considerations

Along with several of the recommendations made in the Report, the following list outlines some key considerations that can be given to an organization's decision as to the nature, scope, and conduct of live workplace training from which they could benefit the most:

- Examine your delivery methods to ensure your prevention training addresses your workplace's unique characteristics and organizational culture.
- Assess what methods are used to make the training interactive and dynamic.
- Address "situational awareness" by examining which, if any, of the identified risk factors might exist at your workplace. Assess which ones may apply, then consider the Report's specific strategies to reduce harassment based on the factor(s).
- Evaluate your trainers: are they sufficiently dynamic and engaging? Do they have full command of the subject matter? If not, the message of prevention may not fully take hold.
- Develop training messages and delivery models that go "beyond compliance" and include emphasis on workplace civility, respect, and "bystander intervention" as a means to drive home an effective message as part of a company's overall workplace harassment prevention program.

- Consider starting at the top with an internal focus group tasked with assessing the factors outlined in this Report, and implementing them into your customized training.
- Consider executive coaching for those who need further instruction in this area, or group executive coaching for key leaders who can assist in creating a harassment-free environment.
- Offer compliance trainings to employees on a regular basis. These trainings should include the content and follow the structural principles described in the EEOC Report.
- Dedicate sufficient resources to train middle-management and first-line supervisors on how to respond effectively to harassment that they observe, that is reported to them, or of which they have knowledge or information.
- Communicate your anti-harassment policy, and in particular details about how to complain of harassment and how to report observed harassment, frequently to employees in a variety of forms and methods.
- Consider a post-training evaluation of the efficacy of existing training, perhaps by a third party (not the employer or trainer).