



# THE HIGHER CALLING OF ANTI-HARASSMENT TRAINING

# EXECUTIVE SUMMARY

Whether you're in Human Resources (HR), a learning professional, or a compliance officer, chances are you will at some point work on providing anti-harassment training for your company's employees. While this may seem relatively straightforward, these days, it is not.

The #MeToo and #TimesUp movements shone a spotlight on sexual harassment in the workplace, which led to the topic becoming a top priority for organizations to address. As a result, we've seen locales worldwide developing their workplace requirements to help prevent employee harassment based on personal characteristics legally protected in that region.

In most countries, the law requires employers to take measures to prevent harassment. Most choose to fulfill requirements with an actual policy and related harassment training to illustrate how the policies apply to real-life workplace interactions. Companies that operate in various regions or even different states in the United States, have the daunting task of keeping up with the laws in their various locations.

In the United States, the federal Equal Employment Opportunity Commission (EEOC) encourages, but does not require, employers to conduct sexual harassment prevention training. Some states also encourage, but don't require, employers to conduct sexual harassment prevention training. Other states require training and may be very specific in their requirements. And the list of requirements is changing rapidly.

But what makes anti-harassment training an even more timely topic is the change occurring across the workforce: one where employees' expectations of their employers are beginning to shift.

With social issues frequently in the news, harassment and other topics, such as discrimination and bullying, are top of mind for today's socially aware workforce. Exactly how employers choose to address these concerns has escalated in their importance in the minds of this workforce, so much so that employees increasingly want to work for organizations where the cultural values align with their own. In 2020, Gartner's research showed that 74% of employees expect their employer to become more actively involved in the cultural debates of the day. This changes the game for employers — who once addressed topics such as harassment by checking the box on a policy and training class — to a new paradigm where employers can look at social issues, including harassment, holistically to provide a respectful, safe, and inclusive workplace for all.

# HARASSMENT, DEFINED

According to the EEOC, harassment is unwelcome conduct based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), and the Americans with Disabilities Act of 1990, (ADA). For almost six decades, starting with Title VII of the Civil Rights Act and as part of our pursuit of a perfect union, our country has enacted laws to ensure all have equal opportunity. Most recently, the United States Supreme Court in *Bostock v. Clayton County* held that Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating based on sexual orientation and gender identity. In June 2020, the *Bostock* decision made it clear that Title VII's prohibition of discrimination "because of ... sex" included discrimination based on sexual orientation or gender identity.

The EEOC considers prevention the best tool to eliminate harassment in the workplace. Employers are encouraged to take appropriate steps to prevent and correct unlawful harassment. They should have a policy in place and clearly communicate to employees that unwelcome harassing conduct will not be tolerated. They can do this by establishing an effective complaint or grievance process, providing anti-harassment training to their managers and employees, and taking immediate and appropriate action when an employee complains. Employers should strive to create an environment where employees feel free to raise concerns and are confident that those concerns will be addressed. Employers should never attempt to retaliate against an employee for filing a complaint or participating in an investigation of alleged workplace misconduct.

For many companies, harassment training has evolved from one that may have focused on preventing a particular type of harassment, such as sexual harassment, to one that should prevent all types of harassment.

# A BLURRING OF THE LINES

It is important to note that the lines between harassment, discrimination, and bullying are blurred in many ways. There is a direct correlation between harassment and bullying. From a broader perspective, the actions can be the same. Both are forms of hurtful or harmful behavior. Bullying is usually seen as acts or verbal comments that could psychologically or mentally hurt or isolate a person in the workplace. Sometimes, bullying can involve negative physical contact as well. Bullying usually involves repeated incidents or a pattern of behavior intended to intimidate, offend, degrade, or humiliate a particular person or group of people. It has also been described as the assertion of power through aggression.

The difference between bullying and harassment is what motivates the hurtful or harmful behavior. Abusive behavior is considered unlawful harassment when perpetrated against individuals based on color, national origin, race, religion, sex, age, disability, and genetic information. Unless it meets these criteria, bullying alone is not illegal, but that doesn't make it any less important. With 30% of employees reporting<sup>1</sup> that they have been bullied at work, this is a pervasive issue that needs to be addressed to provide a welcoming and civil workplace.

The blurring of the lines goes beyond harassment and bullying. Discrimination is a social issue that can get conflated with harassment as well. In the fiscal year 2020, the EEOC received 67,488 new complaints of employment discrimination. Of those, 24,221 complaints also alleged harassment.<sup>2</sup> Discrimination can be intended and involve disparate treatment of a group or be unintended, yet create disparate impact for a group. There are laws and court decisions that protect employees against discrimination based on certain specified characteristics: race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age (40 or older), disability, or genetic information.

What once seemed like different missions are now more like a Venn diagram, the widely-used schematic style that shows the logical relation between sets using overlapping circles. Employers should look at these areas — harassment, bullying, and discrimination — holistically with a shared goal of creating a safe and inclusive work environment for all.

<sup>1</sup> 2021 WBI U.S. Workplace Bullying Survey, Zogby Analytics, workplacebullying.org, March 2021.

<sup>2</sup> All Charges Alleging Harassment, U.S. Equal Employment Opportunity Commission, eeoc.gov, FY2020

# SOCIAL ISSUES AND THE WORKPLACE CULTURE

Today, companies' response to workplace harassment is changing. One factor in this is the blurring of the lines between harassment, bullying, and discrimination. But there is another underlying current that affects how companies respond, and it may be just as influential. As younger generations (millennials and iGens) come into the workforce, their focus on issues such as harassment, bullying and discrimination — accelerated by some of the recent and very public displays of these issues that we've experienced in the past few years — means that more employees are demanding more of their employers. Organizational culture and social issues are much more important to this generation than they were to previous generations. Millennials are looking for a cultural fit with their employers versus just a paycheck. With iGen, diversity and inclusion are the norm. And, it is up to companies to address this amid pressures of the younger incoming work generations.

Gartner, a leading research company offering business insights, conducted a survey of 3,000 employees regarding social issues in the workplace. The results showed that “three-quarters of employees expect their employer to take a stance on current societal or cultural issues, even if those issues have nothing to do with their employer.” Gartner reported, “Demands have only become more urgent during recent protests demanding social equity and justice.” They found that “68% of employees would consider quitting their current job and working with an organization with a stronger viewpoint on the social issues that matter most to them.” It turns out that “employees whose employer has taken a strong stance on current societal and cultural issues are twice as likely to report high job satisfaction.”<sup>3</sup>

But it doesn't stop there. While the signals are clear from both the workplace and the workforce that diversity and inclusion are top of mind, consumers are beginning to take their business to companies with a proven commitment to diversity and inclusion. And a growing number of laws and requirements are being enacted to support greater diversity in the workplace.

With public outcry over social issues shining a light on a company's role as a corporate citizen, and professionals looking for employer's values to align with their own, it's clear that leaders need to strengthen their role as influencers of their organizational culture. Organizations must evolve or risk a shrinking candidate pool, reduced market share, and ultimately, lost profitability.

<sup>3</sup> Survey Shows People Want to Discuss Social, Political Issues at Work and Call for Companies to Support Their Views, Jack Kelly, Forbes, March 2021.

As the biggest influencer on employee behavior, a well-defined corporate culture can align an organization and its employees. It behooves employers to think more broadly about training on these social issues and embracing a new paradigm where harassment, discrimination, and bullying are addressed as part of company culture.

As such, employers should consider how to include social issues within their corporate standards of conduct. Standards (or Code) of Conduct are how we choose to treat each other in the workplace, including harassment, bullying, and discrimination. Presenting standards in this manner is different and more effective than merely offering training to mitigate risk. Most experts also say that by itself, harassment training can be meaningless, especially when it is only about rules. “The ‘dos and don’ts’ still objectify people,” says Andrés Tapia, one of Korn Ferry’s global diversity and inclusion leaders, “as opposed to trying to be inclusive and showing the whole value of people for who they are.”<sup>4</sup> Social science suggests employees are more likely to respond to a moral framework. This sort of civility training puts the focus on promoting respect rather than policing behavior. Thus, a company’s official Code of Conduct is an important driver for its culture and performance. It affects employee behavior by reinforcing the good and discouraging the bad, helping an organization perform its best.

## CODE OF CONDUCT

A company’s Code of Conduct can include careful communication, anti-bribery, privacy and info security, preventing harassment, social media and electronic communications, protection of company info, business ethics, reports of misconduct, avoiding discrimination and promoting diversity, safety and security at work, combatting human trafficking, accommodating disabilities, unconscious bias, and religion.

The Code of Conduct guides employees with a set of rules to follow, to values-based behavior consistent with the culture and principled organizational performance. Companies should address the Code of Conduct in a manner that reflects their higher aspirations for corporate culture.

<sup>4</sup> Can Sexual Harassment Training Come of Age?, Meghan Walsh, Korn Ferry Institute

# SUMMARY

Anti-harassment, bullying prevention, and inclusivity now go hand-in-hand. We need to ensure that everyone, regardless of race, religion, ethnicity, gender, sexual orientation, and ability, is given the right opportunities, tools, and environment to develop their talents.

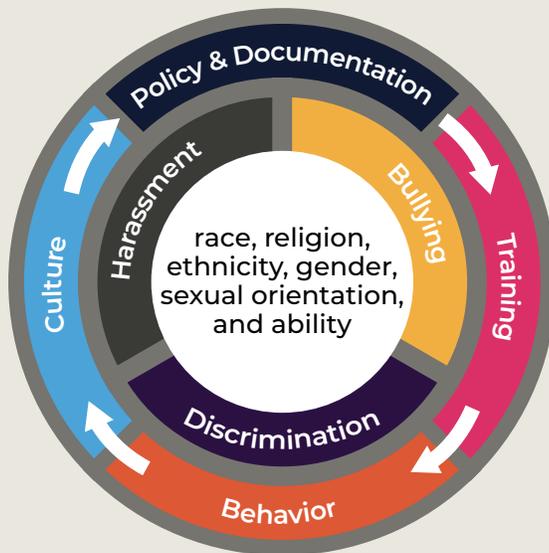
“And, yes, we are far from polished, far from pristine, but that doesn't mean we are striving to form a union that is perfect, we are striving to forge a union with purpose, to compose a country committed to all cultures, colors, characters, and conditions of man.”

— AMANDA GORMAN  
*THE HILL WE CLIMB*

## BUILDING A CULTURE OF POSITIVITY, DIVERSITY, AND INCLUSION

And some benefits come from doing this. A recent Glassdoor survey indicated “more than three in four employees and job seekers (76%) report a diverse workforce is an important factor when evaluating companies and job offers.” And the Gartner research mentioned above also found the result will be a more engaged workforce. Employees who were considered highly engaged increased from 40% to 60% when their organization acted on today's social issues.

**The bottom line:** Inclusive, safe organizations are not nice to have, but a must-have for businesses today. Creating an inclusive, safe work environment helps keep organizations competitive and gives them access to the best employees possible. With Gartner predicting more companies will adopt a stance on societal and political issues, it makes sense for companies to consider addressing this now to remain competitive.



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