How to Implement Employee Harassment Prevention Training: A Practical Guide for Educators
Introduction

Whether you are familiar with harassment prevention training or just learning about the subject, this guide is for you. Your educational institution may have conducted the same program for years and be ready for a change. Maybe you’re new to this type of training and need advice on how to begin. Or perhaps you just want to know if you’re doing all you should. This guide can help.

United Educators (UE) produced this guide to demystify the process of harassment prevention training and make it easier to get the ball rolling on your campus. Although UE does not conduct onsite harassment prevention training workshops for our members, we can help you design a program that suits the needs and budget of your institution. For assistance, please email us at risk@ue.org.

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Why Harassment Prevention Training Is Important

The Moral Imperative
First and foremost, harassment prevention training is the right thing to do. Employees deserve to work in an environment free of harassment. Since teaching is central to the mission of educational institutions, educating employees on proper workplace behavior is a natural role for schools and colleges.

The Legal Imperative
Once regarded as a good idea, harassment prevention training has been a legal necessity under federal law as well as some state laws for more than a decade.

In the late 1990s the U.S. Supreme Court decided a number of key cases that transformed harassment law. In interpreting those decisions, the lower federal courts have created what some scholars call a "quiet revolution" with new rules for all employers.

- Employers must take affirmative steps to prevent unlawful harassment. They must draft and regularly circulate policies on unlawful harassment. In addition, they must educate employees about those policies and the prevention of workplace harassment.

- The courts have developed a "carrot and stick" approach to reward employers that make strong efforts to prevent harassment and punish those that do not. Employers that make the effort by providing training and information are allowed special defenses in harassment lawsuits. In addition, they may be shielded from punitive damage awards, which can cost millions of dollars. In contrast, employers that do not train employees forfeit the special defenses and are unprotected against punitive damage awards.

See pages 9-12 for more detail about harassment law and a reference to a Journal of College and University Law article explaining why educational institutions need to engage in harassment prevention training.

The Financial Imperative
Workplace harassment has potentially serious financial consequences. In a recent five-year period, UE and its members paid almost $20 million to defend and resolve harassment claims. Consequently, UE asks members to report in their insurance renewal application the percentage of faculty and staff who have attended harassment training in the past three years. UE believes that institutions that conduct training should receive more favorable insurance terms, while those institutions that do not conduct training present a higher risk.

Check Your State Laws
It is important to note that UE provides coverage for punitive damages only when state law permits. Approximately half the states do not allow insurance coverage for punitive damages. Institutions in those states are unprotected from punitive damage awards.
10 Steps to Develop and Implement Harassment Prevention Training

1. **Assess training needs.** Before starting the planning process, determine what training has occurred and what needs to be done. UE recommends that all faculty and staff receive initial harassment prevention training and refresher training every three years. In addition, UE recommends that supervisors receive special training on how to recognize harassment and handle complaints.

2. **Review current policies and procedures.** Strong policies and procedures establish the foundation for harassment prevention. Every institution needs a policy that covers all types of unlawful harassment and includes clear procedures for reporting harassment. See pages 13-14 for a policy checklist and information on sample policies.

3. **Evaluate delivery options.** There are many ways to provide effective harassment prevention training, including in-person workshops, video-based workshops, and online courses. Some institutions use all three.

4. **Obtain buy-in from top administrators.** Effective training programs need the support of top administrators. If possible, a letter from the president to all employees is most helpful. If that is not possible, focus on the administrators capable of influencing faculty and staff targeted for training.

5. **Marshal your arguments.** You may need to present a strong rationale for spending funds on training and asking employees to give up their time. Page 4 provides compelling reasons for training. In addition, a detailed overview of the law that explains the value of harassment prevention training as an essential risk management measure can be found on pages 9-12.

6. **Request funding and work time.** Training doesn’t have to be expensive. UE has developed online courses and instructor-led training that can be provided at no cost. Nevertheless, many training options require a financial investment by the institution, and implementation of any successful program requires work time.

7. **Train top people first.** Training high-level administrators first sets an example for the rest of the campus. It’s difficult for employees to claim they don’t have time to attend training when their bosses have already done so. In addition, effective training of top administrators creates additional buy-in as they see the value for all employees.

8. **Obtain early feedback.** Any training program can be improved. Early feedback allows you to ensure that you are meeting the needs and concerns of attendees. Ultimately the best endorsement for a training program is employee word of mouth that the training is worthwhile.

9. **Expand training to all target groups.** Reaching everyone on campus can take years. However, if the training is high quality, the program will establish momentum that allows it to build on early successes.

10. **Remind employees of their options and obligations.** Even after training is completed, it is wise to remind employees at least annually of the institution’s harassment policies and where they can go to report harassment. Reminders can include posters, emails with links to the policy, or articles in campus newsletters that show the institution’s good-faith efforts to create a harassment-free workplace.
Harassment Prevention Training Essentials

Who Needs to Be Trained

The goal for every institution should be to train all faculty and staff on harassment prevention. Institutions should provide separate additional training to supervisors for the following reasons:

- Institutions can be held liable if a supervisor improperly handles an employee’s complaint of harassment.

  Example: Ron tells his supervisor that he does not like the ethnic jokes his co-workers tell. Ron asks the supervisor to keep an eye on the situation but keep his concerns confidential. The supervisor is on notice of potential unlawful harassment. If the supervisor honors Ron’s request for confidentiality, the institution can be held liable for failing to take action.

- Supervisors need to recognize potential harassment even if the victim does not make a formal complaint.

  Example: A supervisor notices that co-workers often tease Paula about her age. Whenever the teasing occurs, Paula looks uncomfortable and changes the subject, but she has never filed a complaint. The supervisor needs to recognize that the teasing may be unlawful harassment and discuss the situation with Paula or report it through appropriate channels.

- An institution can be held directly liable for the actions of a supervisor who engages in harassment that results in a tangible job detriment for an employee. In legal terms, the actions of the supervisor can be imputed to the institution, meaning that the actions of the supervisor are treated as if they were taken by the institution.

  Example: David is Maria’s supervisor and says that her future advancement could be affected if she does not go out on a date with him. Maria refuses, and David denies Maria a promotion. In this situation, Maria has suffered a tangible job detriment because of her refusal to date a supervisor. Consequently, the institution can be held liable for David’s actions, even if it was unaware of them.

Documenting Attendance or Participation

Institutions should document employee attendance or participation in harassment prevention training. These records are valuable evidence if the institution is sued and needs to prove that the harasser or victim, or both, attended the training. To preserve institutional memory, the documentation should be stored in a centralized location that is easily accessible.
What to Cover in Training

For All Employees:

- **The institution’s harassment policy**: Employees need to know what the policy includes and where to find a copy.
- **Harassment law applies to all protected groups**: Federal law prohibits harassment based on race, sex, religion, color, national origin, age, and disability.
- **The basic types of sexual harassment**: Sexual harassment is the most common type of unlawful harassment. Consequently, employees should learn the difference between quid pro quo sexual harassment and hostile-environment sexual harassment.
- **Groups protected by state or local law or the institution’s nondiscrimination policy**: Many states and municipalities have laws that protect groups not covered by federal laws. In addition, institutions often adopt policies that are broader than legal requirements. For example, the nondiscrimination policies of many institutions prohibit harassment based on sexual orientation or gender identity, or both, even if the institution is not required by law to do so.
- **The institution’s reporting procedures**: Employees need to know where to go to report a complaint of harassment and what options are available.
- **Appropriate response when witnessing harassment**: Employees should know their rights and obligations if they witness harassment by or of an employee of the institution.
- **The institution’s policy on nonretaliation**: All employees should be aware of the institution’s nonretaliation policy, which should prohibit retaliation against anyone who brings or supports a harassment complaint brought in good faith, regardless of the merits of the complaint.

For Supervisors:

- **Obligations when witnessing harassment**: Supervisors need to know how to respond if they witness harassment and the appropriate reporting procedures.
- **Obligations in receiving a complaint**: Supervisors need to know how to handle receipt of a harassment complaint. They should understand that they cannot promise confidentiality and know how to ensure that the complaint is brought to the attention of an appropriate individual or office with the power to conduct an investigation.
- **Obligations regarding nonemployees**: Supervisors should be aware that they are responsible for preventing harassment involving employees and third parties, such as vendors or visitors to campus.
- **Possibility of being personally sued**: Supervisors should be aware that they can be sued personally if they engage in harassment and that the institution may not indemnify them if it determines that they acted outside the scope of their employment.

Tips for Reaching Faculty

At many institutions, faculty is the most challenging audience to reach. The following tips come from institutions that have achieved high rates of faculty participation in their harassment prevention programs.

- Don’t call it “training.” Some faculty members take offense at the term training. Consider using words such as seminar, workshop, or briefing, which convey that they are receiving practical tools rather than being forced to behave in a certain way.

- Allow for discussion. Many faculty members are resistant to harassment prevention workshops that talk about do’s, don’ts, and simple rules. They usually want to understand the purpose of institutional policies and how to handle difficult situations, such as what to do when someone reports harassment to them or what to do when they are aware harassment is occurring.

- Provide tools. Faculty members generally prefer harassment prevention workshops that provide them with tools for handling difficult situations. This approach can focus on high-level skills such as strategies to deal with harassing behavior.

- Obtain buy-in from academic administrators. Most faculty members take direction from their dean or provost. Therefore, it is critical to obtain strong statements from these administrators about the importance of preventing harassment.

- Get on the agenda of scheduled meetings. Instead of establishing separate workshops, some trainers arrange with department chairs and deans to conduct training during scheduled faculty meetings.

- Emphasize the possibility of individual liability. Harassment lawsuits often name both the institution and the harasser as separate defendants. In the case of Fluet v. Harvard University and Professor John T. Koch, the Massachusetts Commission Against Discrimination ordered Koch to pay $25,000 out of his own pocket for sexually harassing a graduate teaching assistant. Similarly, a Pennsylvania jury absolved a university of liability but held a professor at West Chester University liable for sexually harassing a student and awarded $120,000 to the student.

- Consider including a provision in a collective bargaining agreement. If the faculty at your institution is unionized, you may want to consider including a provision requiring training in the next collective bargaining agreement.

- Consider withholding indemnification and insurance coverage. When all else fails, some institutions withhold indemnification of individual faculty members until they complete training. In addition, some institutions inform them that the institution will not designate them as individual insureds under the institution’s educators legal liability policy until they complete training. These measures may require modification of your institution’s indemnification policy.

- Address academic freedom and wrongful accusations. Many faculty members worry about how to protect themselves from wrongful accusations. In addition, they may be concerned that harassment laws can erode academic freedom. Addressing these issues increases the chances that they will find the workshop worthwhile.
Early Development of the Law on Workplace Harassment

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination because of an individual’s race, color, religion, sex, or national origin. Title VII does not explicitly define workplace harassment as a form of discrimination. However, federal courts as early as 1971 began to recognize that workplace harassment can be a type of unlawful discrimination. The Supreme Court did not recognize sexual harassment until the landmark 1986 case of Meritor Savings Bank, FSB v. Vinson. In that case, the court described two types of sexual harassment. Quid pro quo harassment exists when an employee must submit to a supervisor’s request for sexual favors in exchange for a job benefit or to avoid a job detriment. For example, an employee who was demoted because she would not go out on a date with her supervisor would be a victim of quid pro quo harassment. Hostile-environment sexual harassment is more common and occurs when the following conditions are met:

- Verbal or physical conduct of a sexual nature exists in the workplace.
- The conduct is unwelcome.
- The conduct is severe or pervasive.
- A reasonable person would believe that the conduct creates a hostile work environment.

In deciding whether a hostile environment exists, courts look at all the circumstances, and no single factor is definitive.

Harassment of Any Legally Protected Group Is Unlawful

Although all of the Supreme Court’s decisions on workplace harassment involve sexual harassment, the court noted in Meritor that a number of federal courts had already concluded that harassment based on race, religion, or national origin also violates Title VII. After Congress passed the Age Discrimination in Employment Act and the Americans with Disabilities Act, federal courts reached consensus that workplace harassment of any legally protected group is unlawful. As a result, employer prevention efforts should focus on all types of unlawful harassment, not just sexual harassment.

Trends in Harassment Claims

The number of sexual harassment claims shot up in the early 1990s due to the confluence of two events. The highly publicized 1991 confirmation hearings of Supreme Court Justice Clarence Thomas focused national attention on sexual harassment when Thomas was accused of sexual harassment by a former employee. A few weeks later, Congress passed the Civil Rights Act of 1991, which made sexual harassment cases more lucrative to plaintiffs. The 1991 law allows Title VII plaintiffs to select whether they want their case heard by a judge or a jury. Prior to that time, all Title VII cases were decided by judges, who were generally viewed as more predictable and less generous to plaintiffs than juries. In addition, the law allows plaintiffs to recover damages for emotional distress as well as punitive damages for bad conduct by employers.
The number of sexual harassment charges filed with the Equal Employment Opportunity Commission (EEOC) more than doubled from 1991 to 1994 but has since decreased by approximately one-third from 2000 to 2011. However, the number of other types of harassment charges received by the EEOC has risen steadily. Starting in 2007, sexual harassment charges represented less than half of the harassment charges received by the EEOC. Consequently, a policy or training program that focuses exclusively on sexual harassment is outdated because it fails to address the majority of harassment exposure.

**The Carrot and Stick Approach for Employers**

In the late 1990s, the Supreme Court developed a carrot and stick approach designed to encourage employers to prevent harassment. Employers that develop a strong harassment prevention policy, engage in harassment prevention training, and develop effective complaint mechanisms gain a valuable weapon in harassment lawsuits called an affirmative defense, which allows a judge to dismiss a harassment lawsuit before it ever goes to a jury. If a case does go to a jury, employers that make strong harassment prevention efforts are protected from punitive damages, which often significantly exceed the monetary award that a plaintiff could otherwise receive. In contrast, employers that fail to make strong harassment prevention efforts forfeit the affirmative defense and receive no protection from punitive damages.

Specifically, in *Burlington Industries, Inc. v. Ellerth*, the court held that an employer is directly liable for harassment by a supervisor if the harassment results in a tangible job detriment for the victim, such as firing, failure to promote, or a significant change in benefits. However, the court also held that an employer could avoid liability if no tangible job detriment occurred and “(a) the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and (b) the plaintiff employee unreasonably failed to take advantage of any corrective opportunities provided by the employer.” The court explained this second condition in the companion case of *Faragher v. City of Boca Raton*, stating that employers cannot be held liable by an employee who failed to report the harassment when the employer educated employees about its harassment policy and established an effective complaint mechanism. This defense to harassment lawsuits became known as the *Faragher/Ellerth* affirmative defense. The following year, the Supreme Court held in *Kolstad v. American Dental Association* that an employer could avoid punitive damages if it showed good-faith efforts to educate employees on anti-discrimination laws.

**Alternative Terminology for Sexual Harassment**

After the *Faragher* and *Ellerth* decisions, some commentators suggested that instead of thinking about sexual harassment as either quid pro quo or hostile environment, it is easier to think of harassment as either “economic” or “environmental.” Although this alternative terminology has not been widely adopted by courts or lawyers, it is used in some harassment prevention courses. Proponents of the alternative terminology maintain that it defines sexual harassment according to the consequences experienced by the victim rather than the status of the perpetrator. The term “economic harassment” includes both quid pro quo and hostile environment harassment if the victim suffers a tangible economic detriment. The term “environmental harassment” includes quid pro
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Examples of the Carrot and Stick Approach

Federal courts have rewarded employers that engaged in these best practices and punished those that did not. The following are some examples:

- **Affirmative Defense Granted**
  In *Swingle v. Henderson*, the court granted the Faragher/Ellerth affirmative defense and dismissed the plaintiff’s case because of the employer's extensive good-faith efforts to prevent sexual harassment. The employer showed that it had provided training on harassment at orientation, posted notices on where and how to complain about harassment, and reminded employees regularly about its policy.

- **Affirmative Defense Denied**
  In *Miller v. Woodharbor Molding & Millworks, Inc.* a court found that an employer had not made good-faith efforts to prevent sexual harassment. Although its employee handbook included a sexual harassment policy, the plaintiff's supervisors were not familiar with the policy, had never been trained on sexual harassment, and did not understand the employer's procedures for reporting harassment.

- **Punitive Damages Reversed**
  In *Bryant v. Aiken Regional Medical Centers, Inc.* a jury awarded $90,000 in compensatory damages and $210,000 in punitive damages to a surgical technician who alleged racial harassment. On appeal, a federal appellate court reversed the $210,000 punitive damage award because the employer had extensively publicized its harassment policy and held group exercises and training classes for its employees.

- **Punitive Damages Allowed**
  In *Anderson v. G.D.C., Inc.* the plaintiff alleged that she had been retaliated against for protesting sexual harassment. A federal appellate court held that punitive damages could be awarded because the employer had not engaged in good-faith efforts to prevent discrimination and harassment. The employer had never adopted a policy and had provided no training on the topic. Its only effort was a nondiscrimination poster in one location and the plaintiff testified she was not aware of the poster.
The Costs of Not Training

The costs of not training can be exorbitant, including high attorney fees, large jury awards, and significant nonmonetary damages. In theory, damages in Title VII cases are capped at $100,000 to $300,000, depending on the size of the institution. However, many savvy plaintiff attorneys have found ways to get around the caps by filing suit under both Title VII and state nondiscrimination laws. Federal courts have ruled that when an award in such a suit exceeds the Title VII caps, the court should allocate the award to maximize the payment to the plaintiff. As a result, one federal appellate court reinstated a $3 million punitive damages award in a sexual harassment case, while another upheld a $2.3 million award in a racial harassment case.

Some state institutions have gained a false sense of security, believing that they will be protected from harassment suits by sovereign immunity under the 11th Amendment. However, sovereign immunity only applies to harassment claims brought under the federal Americans with Disabilities Act and Age Discrimination Act. It does not apply to racial or sexual harassment claims, the two most common types of harassment charges reported to the EEOC. In addition, sovereign immunity does not apply when individuals bring harassment suits under state law or when the EEOC files a suit on behalf of an individual who would normally be precluded by sovereign immunity. For example, in harassment cases brought under California law, a jury awarded $30.6 million to six women who alleged that their employer repeatedly ignored sexual harassment by a manager. After more than a decade of litigation, the employer succeeded in reducing the award but still paid more than $6 million to the plaintiffs and more than $7 million to the plaintiffs’ attorneys.

Aside from the monetary costs, harassment cases generate significant nonmonetary costs that are difficult to quantify but are very real. Institutions often face negative publicity, decreased employee productivity, and poor employee morale. In the final analysis, the most compelling reasons for training are moral rather than financial. Ensuring a workplace free from harassment is the right thing to do. Furthermore, teaching is a key mission of all educational institutions and is consistent with the legal reasons for educating faculty and staff on harassment prevention.

Elements of a Good Harassment Prevention Policy

If you haven’t reviewed your harassment policy in the past few years, it’s probably time for another look. Many institutions use outdated sexual harassment policies that do not address other types of unlawful harassment. The following is a suggested structure with elements to include in your policy, tips on drafting the policy, and where to find some sample policies. These resources can help you customize a policy to fit your institution’s needs.

**Introduction**

- States that the institution does not tolerate harassment.
- Describes your institution’s commitment to establishing an environment where people can work and learn without being harassed.
- If possible, connects your harassment policy to your institution’s mission and ideals.

**Prohibition of Harassment**

- Gives a clear description of the people to whom it applies (in addition to students, faculty, and staff, this statement may need to include third parties such as visitors, patients, and contractors).
- Defines key terms and specifies prohibited behavior. Remember to check state and local laws, which often go beyond federal laws in their harassment prohibitions.
- Prohibits all types of unlawful harassment in your jurisdiction, not just sexual harassment.
- Prohibits harassment against groups that are not protected by law but are protected by the institution’s nondiscrimination statement. For example, an institution that prohibits discrimination based on sexual orientation, even though it is not required to do so by law, should include sexual orientation as a protected category in its harassment policy.
- Provides examples of improper behavior. Be sure to state that these are just examples and do not encompass all types of improper behavior.
Reporting Procedures

- Contains information on how to report potential violations.
- Provides an alternate reporting mechanism in case the accused harasser is the person who would normally receive complaints.
- Describes the complaint resolution process in language that is easy to understand.
- Discusses the level of confidentiality that will be provided to complainants. For example, the reporting procedures might state that the institution will keep the complaint confidential to the extent practicable but cannot promise complete confidentiality.

Consequences

- Describes potential consequences for violating the policy.
- Prohibits retaliation against the complainant, witnesses, or participants in the investigation. (See pages 15-18 for easy-to-use handouts on preventing retaliation for managers and human resources professionals.)
- Prohibits knowingly false or malicious complaints.

Dissemination of the Policy

- UE recommends that educational institutions distribute harassment policies to all employees (faculty and staff) at least once a year.
- If employees have email access, an easy way to distribute the policy is an email that contains a link to the policy on the institution's website. For those individuals without campus email, institutions should provide paper copies of the policy at least annually.

For samples of other institutions’ harassment prevention policies, please see the “Sample Harassment Prevention Policies” on page 19.

Tip: Think Broadly

Reporting procedures should be accessible to people who study or work beyond normal business hours, such as evening students or night shift security guards. Also, people at satellite campuses, on study abroad programs, or in off-campus programs need a way to report problems.
Preventing Retaliation: A Guide for Human Resources Professionals

In many cases, retaliation following a complaint of harassment is more problematic to defend than the harassment claim itself. Often, the underlying harassment claim is dismissed by the court, but the retaliation claim survives and goes to a jury. Why is retaliation so common and so difficult to defend? Because it is a natural human reaction that juries understand. This handout outlines steps that human resources professionals can take to decrease the likelihood of retaliation following a charge of discrimination.

1. **Inform and support the complaining employee.**

   Apart from any inquiry or investigation about the complaint, have someone contact the complainant. This function might be handled by human resources. Ask the employee:
   - How are things going?
   - Can I help with the situation?

   Explain the institution’s opposition to retaliation and its internal processes for addressing it. Offer to assist the complainant should any problems occur and provide him or her with a copy of the relevant policies. Document the conversation, perhaps in a short memo to the employee.

2. **Inform and support individuals charged with wrongdoing.**

   Explain to employees charged with wrongdoing that they may experience feelings of anger, betrayal, fear, or defensiveness. They may feel that the complaint is an attack on their personal integrity. These reactions are normal, but they must not translate into retaliatory actions.

   Explain the institution's opposition to retaliation and provide copies of relevant policies and procedures. Document this conversation as well, again perhaps in a short memo.

   Caution the individual who has been charged as well as other supervisors and managers to treat the complainant normally and exclude irrelevant information about the complaint from his or her personnel records. Explain that supporters, spouses, and the complainant’s other associates must also be treated normally.

   Set up a support system to provide the manager with ongoing advice over the weeks, months, or even years that the situation may last. In doing so, the institution not only decreases its potential liability but also helps the manager through a difficult situation.
3. **Consider restructuring the work environment.**

The work environment for the complainant and those charged with wrongdoing may need to be changed on an interim basis. Secure the complainant’s written agreement to any changes that are related to the complaint. You might, for example, offer the complainant:

- A new supervisor who is not involved with the complaint
- A voluntary transfer to an equivalent position in another department
- A temporary telecommuting arrangement

Consult with counsel before offering or implementing any restructuring that is intended to help the complainant but could be perceived as punishment.

4. **Train your supervisors and managers.**

Include discussion of complaint procedures and retaliation issues as a regular part of your training for supervisors and managers. Point out that even if they have never been involved in a complaint, one might arise at any time. Supervisors and managers should understand:

- The importance of avoiding retaliation
- Campus policies and complaint procedures for retaliation
- How to treat someone who has complained or assisted with a complaint
- The inappropriateness of referring to complainants in terms such as “troublemaker” or “whiner”
- The normal feelings of anger and defensiveness experienced by someone accused of wrongdoing
- The critical need for factual bases for evaluations, adverse actions, and references for people who have complained
- Campus resources for assistance with questions concerning employees who have filed complaints
Preventing Retaliation: A Guide for Managers

Retaliation against an employee who alleges harassment only makes a bad situation worse. Controlling the natural human tendency to retaliate in response to an accusation of wrongdoing is a difficult part of any manager's job. But it is not only managers who may retaliate either directly or unintentionally; in many cases coworkers or colleagues of the person who complained retaliate. The following list of do's and don'ts provides guidance to managers in this tricky area.

**DO:**

- **Handle the employee complaint well.** Document all complaints, even verbal ones, about discrimination, harassment, safety, fraud, or misuse of institutional resources. Ensure that complaints are reported to appropriate administrators who are qualified to conduct an investigation.

- **Request help from human resources or the school's attorney.** Managers should not feel alone in dealing with a difficult employee. They need to know that help is available from the HR department or an attorney. Some managers feel as if their hands are tied when an underperforming employee files a harassment complaint. If they discipline the employee for poor performance, they fuel a retaliation claim. But if they fail to discipline the employee, they create a double standard. In reality, a third party such as an HR professional or an attorney can provide managers with a valuable outside perspective and help them develop coping strategies.

- **Preserve confidentiality.** Managers need to be careful what they say to others about a complainant. Some managers may feel compelled to badmouth the individual and question his or her motives, but this behavior is unproductive and can exacerbate the situation. Similarly, managers should advise employees to avoid gossiping about the person who complained.

  Managers or coworkers who participate in this type of behavior may unwittingly play into the complainant's hands by creating grounds for a retaliation claim and also generating a potential defamation lawsuit.

- **Document poor performance.** Managers should have excellent documentation of performance deficiencies before taking disciplinary action against an individual who has filed a harassment complaint. The documentation does not need to be elaborate, but it should be detailed and contemporaneous. From an employment lawyer's perspective, there is no evidence that a work problem occurred unless the manager documents it.
DO NOT:

- **Take allegations personally.** Many employees, including managers, feel that a harassment complaint means they are being called racist or sexist. They take personal offense and start treating the complaining employee differently. Although it is difficult, managers need to rise above any hurt feelings, act professionally, and treat the complainant as if no charge had ever been filed. In addition, they should take steps to ensure the complainant’s coworkers do the same.

- **Make rash decisions.** It is not unusual for individuals to become irrational or hotheaded after they learn of a harassment complaint against them or a coworker. For many, the first instinct is to get even or blow off steam. Managers in particular need to take a step back, cool down, and assess the consequences of what they are about to say or do. They also should resist any pressure from the complainant’s coworkers to take hasty action against him or her.

- **Freeze out the complainant.** It is difficult to know how to behave around a person who has accused you of wrongdoing. Some managers and other employees react by not speaking to the individual, avoiding other interaction, and excluding the person from work meetings. However, this kind of behavior can constitute an adverse job action sufficient to support a retaliation claim.

- **Focus on the validity of the underlying complaint.** Many managers mistakenly think that they may take action against an employee if they believe his or her complaint of harassment or discrimination has no merit. In actuality, courts require only that the complainant have a good faith belief that wrongful conduct occurred. As a result, a retaliation claim may proceed to trial even after the underlying complaint has been dismissed.

- **Overdocument the performance of someone who has complained.** While documentation of an employee’s work-related problems is generally positive, managers sometimes get carried away and write down every small performance deficiency in an attempt to discipline or terminate an individual who has filed a harassment complaint. The complaining employee will later claim that the manager retaliated by “building a file” against him or her. The key question in these situations is whether the manager was consistent and treated all employees similarly.
Sample Harassment Prevention Policies

These samples contain the elements of a good harassment prevention policy and can help in developing one tailored to the needs of your campus:

- **Duke University**
  [http://studentaffairs.duke.edu/conduct/z-policies/harassment](http://studentaffairs.duke.edu/conduct/z-policies/harassment)
  This policy is notable for its scope. It consolidates sexual harassment and other types of harassment into a single policy for staff, faculty, and students at both the university and its health-care system. In addition, the policy covers visitors, patients, and others who believe they were harassed by someone employed at or enrolled in any part of the institution.

- **Iowa State University**
  This policy is thorough and well organized. It includes thoughtful language on confidentiality and ways that harassment may violate institutional policy even if it is not unlawful. It lists nine factors that determine whether speech is harassment or is protected by academic freedom. In addition, the policy addresses consensual relations.

- **Proctor Academy**
  This policy from a private high school provides a good explanation of how harassment prevention is linked to the school’s mission. In addition, it addresses why the policy should not diminish respectful thought and discussion of controversial ideas.
United Educators (UE) is education’s answer to the distinct risks and opportunities faced by schools, colleges, and universities. As a member-owned company, UE is committed to providing the coverage and tools needed to confidently operate your campus while managing education-specific risks. We’ve devoted ourselves to education alone since our founding in 1987 and continue to find new ways to meet your insurance coverage needs, manage risk, and efficiently resolve claims.

For more information, visit www.ue.org or call (301) 907-4908.

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