

Stop harassment (and cut liability) with comprehensive training

The U.S. Supreme Court and federal agencies look askance at employers that don't train employees and supervisors how to prevent, detect and report harassment. As a practical matter, such training is essentially required.

The mandate for anti-harassment training dates from 1998, when the Supreme Court handed down two landmark rulings, *Faragher v. City of Boca Raton* and *Ellerth v. Burlington Industries*. The two cases carved out an affirmative defense for employers: They won't be liable for supervisory sexual harassment if they train everyone not to harass and how to report harassment that does occur.

The defense allows employers to defend against supervisory harassment by showing that:

- The employer exercised reasonable care to prevent and promptly correct any harassing behavior, and
- The employee unreasonably failed to take advantage of preventive or corrective opportunities.

The EEOC subsequently extended this affirmative defense to all forms of harassment.

Other courts have ruled that failing to conduct harassment training for supervisors and employees can be used to demonstrate that an employer did not take affirmative steps to prevent harassment from taking place.

Note: A pending Supreme Court case—*Vance v. Ball State*—may soon affect supervisory liability. Learn more at ["Supremes hear arguments: For Title VII, who's a supervisor?"](#)

State training mandates

Most state anti-harassment laws allow for much bigger jury awards than the caps set by Title VII of the federal Civil Rights Act. Several states mandate anti-harassment training. For example, California requires employers with more than 50 workers to provide supervisors with two hours of sexual harassment training. Ask your attorney for guidance in states where you operate.

How to structure training

A good anti-harassment training program consists of a series of presentations and workshops. Training should be ongoing so your employees—and especially new hires—will be aware of your anti-harassment policies and your procedures for reporting and investigating harassment.

Several off-the-shelf training options may work well for your organization. Google “sexual harassment training providers” to find a variety of resources. Among the choices: workbooks and booklets with quizzes, videos and computer-based programs that employees can use at their desks. Written materials should supplement other course materials. The best programs administer tests to monitor employees’ mastery of the subject. Be sure to retain those records.

You may want to hire an outside facilitator to conduct the training. Harassment can be a sensitive subject; having someone from outside the organization run the training may make some participants more comfortable.

Make participation mandatory for employees, supervisors and executives alike. Encourage attendance by senior executives to demonstrate the organization's commitment to a harassment-free workplace.

You will want to tailor additional, separate training for senior managers, middle managers and supervisors. It should focus on how to identify and respond to harassment complaints.

Online resource: EEOC guidance on supervisor harassment

The EEOC's website offers an in-depth explanation of employer liability when supervisors harass employees. Find it in their [Enforcement Guidance document](#).