

Small Business Checklist

10 Steps to Prevent Sexual Harassment & Meet Legal Requirements

**Maine
CanDo**

**Leading Change
in the #MeToo Era**

An effective sexual harassment policy and quick remedial action on internal complaints can prevent sexual harassment, minimize its disruptive effects on the organization, and reduce or avoid legal risk and liability.

Here is a checklist of required and recommended steps for management:

REQUIRED BY LAW

- 1. Post the sexual harassment prevention notice from the Maine Human Rights Commission.**
Maine law requires all employers to [display the poster](#) in a prominent and accessible place in the workplace.¹

- 2. Provide all employees with annual notice of their rights under sexual harassment law.**
Annually send either the company's sexual harassment policy (see (5)) or a separate notice of rights to each employee, typically with the first payroll of the year. Maine law requires this of all employers.²

The notice or policy must include at least the following:

- a. A statement that sexual harassment is illegal under state and federal law.
- b. The definition of sexual harassment under Maine law.
- c. A description of different types of sexual harassment.
- d. The company's internal complaint process.
- e. What legal recourse is available through the Maine Human Rights Commission.
- f. A statement of protection against retaliation.

REQUIRED BY LAW IF YOU HAVE 15+ EMPLOYEEES

- 3. Provide anti-harassment education and training.**
This is both best practice and an element of minimizing legal risk in every workplace. In workplaces with 15 or more employees, Maine law requires training for all new employees.

1. 26 M.R.S.A. § 807(1)

2. 26 M.R.S.A. § 807(2); 5 M.R.S.A. § 4553(10)

The training must include the points listed above in paragraph 2. Employers must conduct additional training for supervisory employees (i.e., new employees hired as supervisors or current employees newly promoted to supervisory positions) that emphasizes their responsibilities in ensuring immediate and appropriate corrective action when addressing sexual harassment complaints. [You can find information about training here.](#)

4. Keep a record of training.

In workplaces with 15 or more employees, employers are required to keep a record of the training and the employees who attended or received it for three years, subject to inspection by the Department of Labor.³

RECOMMENDED

5. Establish a written sexual harassment policy.

Include the policy in the employee handbook or provide it separately with the annual written notice concerning sexual harassment (see (2)). Be sure that the policy:

- a. States the employer's prohibition on sexual harassment.
- b. Defines sexual harassment.
- c. Outlines a procedure for employees to take complaints about sexual harassment to someone with authority to resolve them; provides for an alternative to reporting to a direct supervisor who is not the CEO or the head of HR; and identifies at least one male and one female to whom complaints may can be taken. Also consider an external reporting avenue.
- d. Assures that all complaints will be handled promptly and confidentially.
- e. States that any employee who engages in sexual harassment is subject to discipline up to and including discharge.
- f. Prohibits retaliation against employees for making complaints or participating in investigations.

Note: Maine law does not expressly require a sexual harassment policy, like it does the annual notice. However, having a policy is strongly advised and Courts often will look unfavorably upon an employer who doesn't have a policy or who has a policy that is inconsistently applied or enforced. Additionally, one of the affirmative defenses to any sexual harassment claim strongly favors having a policy: it is an affirmative defense to a sexual harassment claim if (1) the employer exercised reasonable care to prevent and correct the behavior; and (2) the complainant unreasonably fails to take advantage of the preventive or corrective opportunities provided. This can be accomplished through a well-drafted and consistently followed sexual harassment policy. A policy may go a long way in mitigation and defense.

6. Take all concerns and reports of illegal harassment seriously.

Don't make a biased or initial judgment about the reporter's credibility, potential disruption to the workplace, lack of seriousness of the conduct reported, etc.

- 7. Promptly investigate all claims of sexual harassment.**
 - a. Identify how an investigation will be handled in advance of any report or complaint.
 - b. Get training for the person(s) who will do the investigations. Such investigations are often sensitive and difficult and have legal consequences. An investment in investigation training is important.
 - c. Consider the circumstances under which an outside or independent investigator may be desirable or even necessary (for example, complaint against the CEO or a Board member; complaint by employee whose job status is already in jeopardy; complaint about conduct toward a group of employees).

More information about investigations [can be found here](#).

- 8. Promptly resolve all claims of sexual harassment.**
 - a. Take immediate corrective action in verified instances of sexual harassment.
 - b. Take whatever action is necessary to stop the harassment.
 - c. Restore any lost job benefits that the victim suffered as a result of the harassment.
 - d. Discipline the employee who was responsible for the harassment. Depending on the severity of the conduct, this could include oral or written warnings, reprimand, demotion, suspension, probation or termination. Less severe discipline should include a warning that any similar behavior in the future will result in immediate discharge.
 - e. If the investigation cannot determine whether sexual harassment was perpetrated, management should re-emphasize to all parties involved in the complaint the company's prohibition of sexual harassment and the fact that disciplinary action will be taken in verified instances.
 - f. Document that a complaint was received; that an investigation took place; and what action was taken, or that after investigation it could not be determined if sexual harassment was perpetrated.
 - g. Consider refresher harassment prevention training for all employees or focused on the workgroup affected by the report, regardless of whether perpetration could be determined.

- 9. Be pro-active; exceed compliance.**

For example, review the harassment policy frequently with employees (at staff meetings, e.g.). Charge supervisors with being alert to power or gender dynamics that could turn into harassment so that action can be taken before a complaint is made. Post contact information for your local sexual assault and harassment support center. [Click here to](#) find your local center.

- 10. Demonstrate top management's commitment.**

For example, have the CEO present at training sessions to show that harassment prevention is a priority, not just a compliance issue. Top managers and the Board members should articulate and implement an open and positive workplace culture that empowers employees to refuse to tolerate harassment.

ADDITIONAL BEST PRACTICES

Recent events are highlighting how intertwined organizational policy, organizational culture, and national culture are when it comes to issues of harassment. In order to create gold star workplaces it is important for senior management (and the legal and HR specialists they rely on) to push beyond compliance and toward prevention.

Here are some questions that can help to guide those conversations.

- Have we ensured our organization has robust policies and funded mechanisms to provide the necessary medical and psychosocial support to victims, allies, and bystanders? How do we know?
- Are there are multiple avenues or point people available to report a complaint? Do employees clearly understand how to use these?
- Have we set clear expectations about what happens when informally discussing a complaint of harassment with designated point people, company leaders, and/or board members?
- Is there a clear understanding by our employees about how complaints will be investigated? How timely the reporting will be? What the investigation process is? What kind of resolution and responsive actions they can expect?
- Do we have an appeals process that is clear? What is the expectation about how false and malicious actions will be handled?
- Are consolidated incident reports (including appropriate and relevant but confidential data) made available to CEO and Board on a regular/annual basis?
- When hiring, do we include questions to identify any history of harassment in reference checks for new hires?
- Do we have a policy for giving references for any former employees who participated in harassment while in our employ?
- Are we clear and explicit about how work situations will be handled when consensual relationships arise between employees?
- Should we mandate bystanders intervene to stop harassment?

The information contained in this document is not intended to be legal advice and is for informational purposes only. If you need legal advice, please contact an attorney. For additional information and resources, please visit mainecando.org.