

**Labor and Employment Law: Compliance and Litigation § 4:193 (3d ed.)**

Labor and Employment Law: Compliance and Litigation | May 2018 Update  
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Chapter 4. Employment Discrimination

III. PROBLEMS AND PREVENTION

C. Discrimination on the Job: Compensation, Promotion, Working Conditions

§ 4:193. Sexual harassment—Written sexual harassment policy

References

**West's Key Number Digest**

- West's Key Number Digest, Civil Rights ¶1185

In addition to federal law, many states also have laws which prohibit sexual harassment. A few states even require employers to have written policies against sexual harassment, to post written notices, and to provide a copy of the policy to each of their employees.<sup>1</sup>

It is extremely important for every employer with 15 or more employees to have a policy on sexual harassment. In Massachusetts, by January 1, 1997, employers with six or more employees must have a written policy in place.<sup>2</sup> However, it is even more important that the policy be properly implemented. The best policy will not insulate an employer from liability.<sup>3</sup> If the policy is properly implemented, harassment complaints are taken seriously and are resolved fairly and promptly. This will substantially minimize the risks and foster a professional work environment.

The Massachusetts Model Sexual Harassment Policy is set forth:

COMMONWEALTH OF MASSACHUSETTES  
COMMISSION AGAINST DISCRIMINATION

## MODEL SEXUAL HARASSMENT POLICY

Under the provisions of Mass. Gen. Laws ch. 151B, §§ 2 and 3 the Commission is authorized to adopt policies and issue such rules necessary to effectuate the purposes of Mass. Gen. Laws ch. 151B. It is the goal of the Commission that such policies and rules assist members of the public in understanding the role, function, and process of the MCAD.

As a result of the enactment of St. 1996, c. “An Act Relative To Sexual Harassment and Training in the Workplace,” the Commission is required to adopt a model sexual harassment policy. This Policy Guideline is promulgated to effectuate the purposes of that chapter and provides a model for employers to use. The model policy contains minimum standards which may be exceeded by the employer's policy.

### SEXUAL HARASSMENT POLICY OF

*[name of employer]*

#### I. Introduction

It is the goal of *[name of employer]* to promote a workplace which is professional and which treats all of those who work here with dignity and respect. Sexual harassment is unlawful and will not be tolerated by this organization. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will also not be tolerated.

Because *[name of employer]* takes allegations of sexual harassment seriously, we will respond promptly to complaints of sexual harassment, and where it is demonstrated to our satisfaction that such harassment occurred, we will act promptly to eliminate the harassment and impose such corrective action as is necessary, including disciplinary action where appropriate.

#### II. Definition of Sexual Harassment

In Massachusetts, the legal definition for sexual harassment is this:

“sexual harassment” means sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

“(a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or

“(b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment.”

The legal definition of sexual harassment is broad, and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, intimidating, or humiliating to male or female workers may also constitute harassment.

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which, if unwelcome, may constitute sexual harassment, depending on the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's life; comments on an individual's body, comments about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, or cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive, or insulting comments;
- Inquiries into one's sexual experiences; and
- Discussion of one's sexual activities.

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint, is unlawful and will not be tolerated by this organization.

### III. Complaints of Sexual Harassment

If any of our employees believes that he or she has been subjected to sexual harassment, the employee has a right to file a complaint with our organization. This may be done in writing or orally.

If you would like to file a complaint, you may do so by contacting [name, address, and telephone number of the appropriate individual to whom complaints should be addressed. Such individuals may include: a human resources director, manager, legal counsel to the organization, or other appropriate supervisor person]. *[This person]/[These persons] [is/are]* also available to discuss any concerns you may have and to provide to you with information about our policy on sexual harassment and our complaint process.

### IV. Sexual Harassment Investigation

When we receive the complaint, we will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. Our investigation will include a private interview with the person filing the complaint and with witnesses. We will also interview the person alleged to have committed the sexual harassment. When we have completed our investigation, we will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

If it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the offending conduct, and where it is appropriate, we will also impose disciplinary action.

### V. Disciplinary Action

If it is determined that inappropriate conduct has been committed by one of our employees, we will take such action as is appropriate under the circumstances. Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action as we deem appropriate under the circumstances.

### VI. State and Federal Remedies

In addition to the above, if you believe you have been subjected to sexual harassment, you may file a formal complaint with either or both of the following government agencies set forth below. Using our complaint time period for filing a claim (EEOC-180 days; MCAD-6 months).

The United States Equal Employment Opportunity Commission (EEOC)

1 Congress Street, 10th floor

Boston, MA 02114

(617) 565-3200

The Massachusetts Commission Against Discrimination (MCAD)

Boston Office:

One Ashburton Place, Room 601

Boston, MA 02108

(617) 727-3990

Springfield Office:

424 Dwight Street, Room 220

Springfield, MA 01103

(413) 739-2145

While Massachusetts does not require written policies on any other category of discrimination, a written policy should include all protected categories, such as race, color, sex, national origin, age, disability status, sexual orientation, and the like.

The sample policy set out below should comply with the Massachusetts law and any other state laws and will provide a more comprehensive policy than the one required under Massachusetts law.