

# Tips for strengthening sexual harassment policies

By AdvocateDaily.com Staff

Increased publicity around sexual harassment in the workplace has put added pressure on employers to ensure that due diligence is consistently applied when dealing with complaints and that their internal policies reflect that commitment, Toronto workplace violence and elder abuse consultant [Denise Koster](#) writes in *The Lawyer's Daily*.

The purpose of a sexual harassment policy is to set out the organization's intention in adopting the policy, says Koster, principal of Koster Consulting & Associates.

"Sexual harassment, sex, sexual orientation, gender identity and gender expression should be clearly defined and include specific examples of inappropriate behaviours under each term," she writes. "In addition, it is important that the policy recognizes that both women and men can be targets of sexual harassment and can occur not just between a man and a woman, but also between same sexes. In addition, the policy should identify the vital differences between flirting and sexual harassment."

Policies should address the unique needs of complainants, recognizing that reporting sexual harassment is often more difficult than general harassment because of the associated stigma, Koster says.

Victim blaming and employers' tendency to adopt more informal resolution mechanisms diminish the value of the complaint, the article says.

"In general, informal resolution may not be an appropriate way to deal with sexual harassment complaints particularly when the respondent is the supervisor of the complainant or in a leadership position," Koster writes.

The complaints procedure should include a variety of reporting options; having just one designated person limits the complainant's choices, she says.

"This also creates a bias, which suggests that the individual receiving complaints could never be the respondent in a harassment complaint," Koster writes. "Moreover, due to the sensitive nature of the complaint, complainants may feel more comfortable speaking to someone of their own gender and therefore should have that option."

The article says that by default unions often assume the role of complaint support, but sometimes they lack the proper training to assist complainants.

When possible, policies should include contact information for internal or external counsellors who can both negotiate the complaints process and provide emotional support to complainants, Koster writes.

“The policy should state that a complainant has the right to address the issue elsewhere such as with the Human Rights Commission, Ministry of Labour or the police. A strong whistleblower protection clause must be included in the policy,” she says.

It’s also critical that internal investigators are trained on the nature of sexual harassment, which is a continuum of acts ranging from a comment regarding a person’s physical appearance to a request for sexual favours in exchange for advancement to unwanted touching, Koster writes.

“Investigators or investigation teams should have a gender balance and be formally trained. A thorough explanation of the investigation's step-by-step process and investigator core competencies should be incorporated into the policy. In addition, the policy should have detailed procedures outlined to respond to sexual harassment by third parties such as clients, customers and the public,” she says.

Due to an inherent bias, the policy should state that no manager or anyone with a reporting or blood relationship with any of the parties should be involved in investigating the complaint, she tells AdvocateDaily.com.

“The policy should also state when an external investigator should be contracted to conduct the investigation. This should occur when necessary and at all times when the respondent is in a manager or leadership role,” she says.

Although Koster admits it’s a controversial practice, she says to preserve the integrity of the investigation, it’s critical that the respondent is placed on a paid leave of absence while it is being carried out.

“However, it should be optional if the complainant wishes to continue working during the investigation,” she says. “The policy should address this process and also the fact that all parties (complainant, respondent, primary witnesses) will be required to sign an investigation confidentiality agreement, detailing expectations and exceptions (e.g. legal counsel, union, police) in addition to sanctions for breaching confidentiality.”

Effective policies contain appropriate sanctions to underscore the fact that complaints are not viewed as trivial events, the article says.

Policies should be monitored and evaluated on an annual basis, Koster writes, adding that a comprehensive evaluation should include obtaining confidential feedback from complainants and, when possible, implementation of suggestions for improvement.

“Unfortunately, like all complaints, sexual harassment claims may be made maliciously and therefore sanctions for malicious complaints should be clearly stated and include discipline up to and including dismissal,” she says.

“Even with a thorough and unbiased sexual harassment policy, it should be recognized that enforcing moral behaviours through the creation of policies is important but an employee’s individual morals and principles in relation to right or wrong is a far more powerful force that dictates one’s behaviour.”