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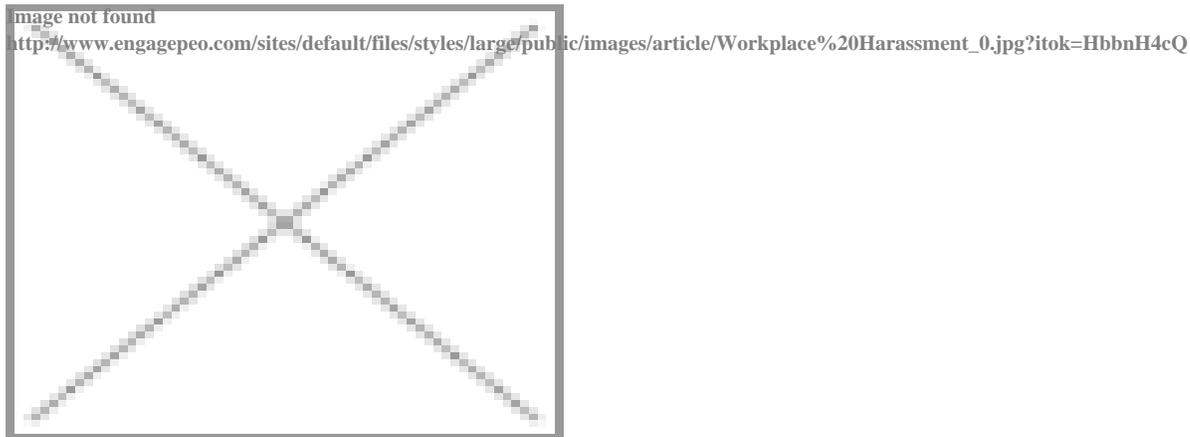
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Expertise

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## [Harassment Claims on the Rise in the Workplace](#)



Workplace harassment remains a harsh and unavoidable reality in America. Complaints of harassment cut across all industries and represent about 30 percent of all the charges received by the Equal Employment Opportunity Commission every year.

Reported in [the \*Business Journals\*](#)

As companies grow, the number of employees will grow, as will the number of managers. With this growth comes the inevitable loss of control over the conduct of some managers. And let's face it, it's impossible to be sure that a manager won't lose his or her mind (and morals) and harass another employee.

Workplace harassment remains a harsh and unavoidable reality in America. Complaints of harassment cut across all industries and represent about 30 percent of all the charges received by the Equal Employment Opportunity Commission every year.

In fact, the commission recently announced the formation of a special task force to study the issue and come up with new ways for employers to address and help prevent harassment in all its forms.

Meanwhile, every day, employers face the possibility that some manager's poor judgement could take down an otherwise booming company. It happens all too frequently.

### **Finding protection**

There is a haven of protection available to employers and it comes in two forms: A defense established by the U.S. Supreme Court often referred to as the "Faragher/ Ellerth affirmative defense," and a form of insurance called employment practices liability insurance (EPLI).

Faragher/ Ellerth provides employers a defense against claims, even in cases where a manager has indeed harassed an employee. In order to avail itself of the defense, an employer must show that it took reasonable

steps to prevent and promptly correct harassment in the workplace and that the harassed employee failed to take advantage of the corrective measures.

In practice, the defense is generally available when a sexual harassment or hostile workplace policy is in place, employees are trained on the policy, the policy establishes specific processes harassed employees must follow and the employee fails to follow those processes. The defense is not available in cases where harassment culminates in a tangible employment action (such as a demotion or undesirable reassignment).

### **Policies and training**

Studies show that comprehensive harassment policies, practices and regular training on the policies reduce the frequency of incidents of harassment in the workplace and associated claims ? so it makes good business sense to have these in place. They are fundamental foundations of a strong HR practice, even if they did not establish a defense for employers.

It should be noted that some states and cities (for example, California and New York City) do not allow a Faragher defense to claims under state or city law. Moreover, if an employee does follow the appropriate processes, devastating claims can still be brought, even if the manager is immediately removed and the employer had a zero tolerance policy in place.

Many prudent employers therefore purchase EPLI insurance, which covers companies, directors, officers and employees against lawsuits or claims filed by employees, former employees and candidates. Most EPLI policies cover claims of discrimination, harassment, wrongful termination and other workplace torts, but not all policies are the same, so it is crucial to understand just what is covered and what is excluded from coverage.

Harassment policies, training and EPLI are among the long list of employment administration-essentials companies should learn about from trained human resources professionals and consultants. The relative costs of a strong EPLI policy, especially when coupled with sound workplace policies, can give business owners some peace of mind, minimizing both the frequency of harassment claims and potentially catastrophic consequences to the business.

Topics:

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