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What employers need to know now about sexual harassment

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With new sexual harassment cases unrolling daily — from NBC's Matt Lauer to U.S. Sen. Al Franken — it may be hard for employers to understand their responsibilities regarding sex in the workplace. But there is more urgency than ever. Here is a start:

1. Because welcomeness is often an issue in sexual harassment cases, employers cannot afford to foster or tolerate an unprofessional workplace culture in which sexual behavior is common. Such an atmosphere may contribute to miscommunications among coworkers about the welcomeness of sex.
2. Just because an employee may choose to endure a coworker's sexual conduct does not make the conduct welcome. Employees may endure many indignities over a long time, and may mask their true feelings, simply to keep the job.
3. Employers may have a defense to liability for some acts of sexual harassment by low- and mid- level employees, if the company has instituted a comprehensive written anti-harassment policy with an effective internal complaint procedure, and the complaining employee fails to follow the complaint procedure.
4. An effective harassment complaint procedure should give employees at least two choices for directing complaints, and should not require the employees to direct complaints to the harasser. Complaining employees should not be promised absolute confidentiality. The complaint will have to be presented, at a minimum, to the alleged harasser, any witnesses and company decision-makers, and it may also be the subject of legal proceedings.
5. Even if an employee never formally complains, the employer is still legally responsible for sexual harassment that results in an adverse employment action (such as a termination or demotion because the employee resisted a sexual advance). Also, the employer is almost always liable for sexual harassment by high level managers and owners, regardless of whether there is a formal complaint lodged.
6. Employers may be held responsible for sexual harassment by vendors, customers and others with whom their employees come into contact, if management knew or should have known about the misconduct, and failed either to prevent it, or take corrective action.
7. Employers are barred by law from retaliating against employees who complain about sexual harassment, as well as those who assist others in pursuing complaints. Retaliation is a separate legal



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problem for employers. An employer still may be liable for retaliation, even if it is ultimately found to be not liable for the underlying claim of sexual harassment.

8. Employers need to seek legal help quickly to ensure that they don't make missteps after a sexual harassment complaint is lodged, and to help ensure good documentation and clear communications to all of the affected employees.