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## 6 Ways To Improve Employers' Anti-Harassment Training

By **Vin Gurrieri**

Law360 (May 7, 2021, 6:41 PM EDT) -- The telework explosion that accompanied the COVID-19 pandemic has pushed workplace sexual harassment and the training seminars designed to mitigate it increasingly into the virtual world, creating new challenges for employers seeking to curb bad behavior.

Several years removed from the #MeToo movement's going viral, many employers are paying closer attention to their anti-harassment practices than ever before and some jurisdictions now mandate periodic training.

But while the increasing use of virtual anti-harassment training sessions that substitute Zoom for a conference room may make it simpler for employers to train workforces that are becoming more geographically separated, they also make it easier than ever for some workers to go through the motions to get their required training out of the way as quickly as possible.

California-based McDermott Will & Emery LLP partner Maria Rodriguez, who regularly conducts training sessions for employers in the entertainment industry, says the benefits are easy to see when seminars — even virtual ones — are done right.

"It sets the table for where the boundaries are," Rodriguez said, noting that such training often goes beyond harassment and teaches about workplace respect more generally.

"A lot of our clients' policies are much stricter than the law, so you're not just training on the boundaries of the law, you're training on the boundaries of their employer so that we have clarity [about] what the consequences are for violating those boundaries," she said.

Here, lawyers offer six tips to make harassment prevention training more effective.

### **Create "Connections" in the Digital Realm**

Although online training seminars are nothing new, their prevalence has grown as millions of workers were pushed to work from home because of the pandemic over the past year. Similarly, sexual harassment itself and other forms of harassing behavior have also migrated online, where teleworkers' interactions with colleagues predominantly take place.

"Sexual harassment has by its very nature had to move to the Zoom camera," said Helene Wasserman, a California-based shareholder at Littler Mendelson PC. "Just because we're all working in a virtual world does not mean that people have stopped behaving badly; it just gives them another way of behaving badly, and this time it's in front of a camera."

For employers and those to whom they turn to provide anti-harassment training to their workforces, that means having to adjust how they operate to account for the new realities of the workplace or risk their message getting lost.

Rodriguez noted that tech platforms make it harder for someone conducting training to actually watch the audience, gauge their reactions or call on people for feedback during a discussion.

These difficulties exist in person but are exacerbated online.

"If somebody decides to turn off their camera, you really don't know how much they're paying attention," Rodriguez said. "And I worry that when people aren't engaged and focused and paying attention, they don't hear messages or they mishear something or they're less engaged with their colleagues."

To combat that problem, Rodriguez suggested doing online seminars in small groups to boost engagement — "if you can keep it to one screen worth of people, that's ideal," she said — noting that is "definitely more effective" than having a massive number of participants.

"You just need to connect with people; if people aren't connecting with you, you're going to be less effective for sure. Trying to connect with people in a Zoom is so much more difficult," Rodriguez said.

Susan Gross Sholinsky, a member at Epstein Becker Green who sits on the firm's COVID-19 task force, similarly said that the "more relatable and interactive a training session is, the more effective it is." She said that live training, whether in person or digital, offers the benefit of being tailored to specific industries or issues a particular organization is dealing with and can be adjusted on the fly based on audience reaction.

But if a company chooses to use a prerecorded training program, Sholinsky said it "works best when it is updated from time to time," such as by adding examples of remote work harassment in light of many workers' current situations.

"That makes it more relevant for the participants," Sholinsky said.

### **Ask If It's Interactive Enough**

Besides being a best practice for getting the most out of training sessions, infusing interactivity into seminars is also a requirement in some jurisdictions.

New York, for example, responded to the #MeToo movement in part by imposing a legal requirement on employers to provide annual sexual harassment training to their workers that meets minimum criteria set by the state. That baseline includes a requirement that training be interactive and generate employee participation. California similarly requires employers to provide a certain amount of "effective interactive training," according to state regulations.

The interactivity component, lawyers say, is key to conducting a training seminar that is both meaningful and legal, depending on where a company is located.

"These sessions should be as interactive as possible, and should include scenarios that demonstrate the concepts being taught, instead of just listing the applicable legal standards," Sholinsky said, noting that use of different forms of media during presentations is helpful in achieving that goal.

To boost the interactivity component of a virtual training, LaKeisha M.A. Caton of Pryor Cashman LLP suggested techniques like starting a training session by seeking feedback about a hypothetical scenario and making use of polls, Q&As and breakout room features on platforms like Zoom to spark discussions that keep audiences engaged with presenters and each other.

"I think it's particularly difficult now more than before to keep people's attention because there are just so many distractions now when people are working from home," Caton said. "Also it's hard to tell sometimes if you're keeping people's attention because of the way the training is set up, that you can't actually see your audience so you can't tell how they're responding to what you're saying."

"My advice is to use all of those functions as much as possible. Allow your audience to ask questions and make comments throughout your presentation and address their questions and comments throughout the presentation," Caton added.

### **Cut Back on Legalese**

One element that can sink the efficacy of workplace anti-harassment training, whether held virtually

or in person, is if it lingers too long on legal requirements and gives short shrift to practical examples that are helpful to workers, according to Caton. She said training "can sometimes focus too much on preventing liability" and not enough on what harassment in the workplace really looks like.

"So for example your employees will be able to walk away knowing the definition of sexual harassment and knowing what constitutes sexual harassment, but they won't necessarily be able to recognize different forms of sexual harassment," Caton said. "Especially, more subtler forms of sexual harassment in their everyday work lives."

Caton said a better approach is mixing discussions about liability with real-world examples of improper behavior and trying to make the training as relatable as possible for participants.

Kristen Gallagher, a partner at McDonald Carano LLP, similarly said that real-world scenarios of workplace harassment are important to include since inappropriate behavior can often be less overt than people imagine it to be. Training that doesn't address the kind of conduct that falls short of illegality doesn't give employees the full picture, she said.

"Sometimes I think people don't always understand that there are nuances to conduct that's not appropriate and there is a fine line between something that may be not acceptable and something that may be illegal," Gallagher said. "So that part of the discussion, too, is important."

While employers obviously prohibit illegal conduct, she said, "a lot of their policies talk about what's improper in their workplace because they're trying to create a place where people want to be."

### **Know One Size Doesn't Fit All**

While employers who conduct anti-harassment training want to instruct their entire workforce, there can be issues that apply specifically to managers that warrant special attention. It behooves employers to consider separating the training supervisors receive from what is aimed at rank-and-file employees.

By taking that approach, the manager group can delve more deeply into issues surrounding supervisor liability for misconduct or situations that apply only to supervisors, while rank-and-file employees may feel more at ease asking questions without their managers being in the room, according to Caton.

"I would recommend that you have two separate trainings if [employers] can do that," Caton said. "That, I think, would allow lower-level employees to feel more comfortable asking certain questions or bringing up certain situations because they'll feel less [stress], I believe, if their supervisors aren't present in the training."

### **Expand the Program**

Businesses can also boost the effectiveness of their sexual harassment training regimens if they widen the boundaries of their programs.

For example, while not strictly aimed at sexual harassment, seminars that instruct employees on unconscious bias or bystander intervention training can provide employees with a better ability to respond to the types of harassment they may actually encounter in the workplace, particularly when it occurs to someone else.

Littler Mendelson's Wasserman said she believed adding bystander training to training modules is essential since it "helps give people a voice in making complaints."

"What we've seen companies do more recently ... is shift the focus of training," Wasserman said. "For example, bystander training will help people realize, 'If you see something, say something,' and how that applies to all workplace-inappropriate conduct including sexual harassment."

Unconscious bias training, like bystander training, can also be incorporated into a company's overall training curriculum, with Wasserman saying it can "give people more context and provide a bit more guidance," which will aid in properly teaching workers.

"It can be a component in an otherwise sexual harassment training program, but it also can be a separate training standing on its own because unconscious bias may be the root cause of a lot of harassment, if you will," Wasserman said.

### **Set the Right Tone From the Top**

Regardless of the format anti-harassment training uses, a key factor in whether or not it moves the needle in stemming harassment within any particular organization is the level of importance management places on it, attorneys say.

If officials who sit atop an organization emphasize a zero-tolerance policy toward workplace harassment and make clear to workers why anti-harassment training is important, that helps workers understand that they must take seminars seriously and take the lessons taught to heart in their everyday workplace interactions. Conversely, if managers and top officials themselves approach anti-harassment training with a cavalier attitude, that can trickle down to rank-and-file workers and sap the training of its worth.

McDonald Carano's Gallagher said the goal is for participants in anti-harassment seminars to take what they learn with them. That begins before a training session ever starts, when employers put in place anti-harassment and anti-retaliation policies and show that those policies will be enforced.

"If this is sort of an out-of-the-blue training and no one ever talks about the policy, or maybe there isn't a policy in writing, that becomes a stand-alone situation where somebody isn't understanding the importance [of it] to the company," Gallagher said.

"I think a supervisor or a manager's best role in all of this is just the encouragement of participation in the training," Gallagher added. "Not making it seem like it's a hassle to have to find somebody to either cover a shift or cover a part of a shift, and just having it come from the top down that this is important ... and everyone needs to know that these policies are not just in writing but they are in practice."

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