

RISK CONTROL

SEXUAL MISCONDUCT IN THE WORKPLACE

The effects of sexual misconduct devastate victims and their families, but it doesn't stop there. Just one incident of sexual misconduct can destroy an organization's trust, credibility, and reputation for years. Organizations must also consider potential legal costs.

Note: It is strongly suggested that you consult legal counsel on sexual misconduct procedures, risks, policies, training, etc. This resource is for general information purposes only and should be acted or relied on as legal advice.

What is sexual misconduct?

Sexual misconduct encompasses a variety of behaviors used to obtain sexual gratification at the expense of another. These behaviors include sexual harassment, sexual assault, and any conduct that could be deemed threatening or intimidating to the person it is directed against. Sexual misconduct can be verbal, non-verbal, or physical.

7-step program to prevent sexual misconduct

There are many proactive measures and programs your organization can implement to help prevent sexual misconduct from occurring and minimize the risks associated with an incident. Your organization can customize this program to fit its unique needs. Consult with legal counsel and your human resources department before instituting new sexual misconduct prevention programs or procedures.

1. Provide training

Training is an essential element in providing a standard of care and reducing the risk of sexual misconduct. Everyone in your organization should participate in and complete awareness training every year.

Your training program should include elements that develop skills in identifying predatory behaviors, such as the grooming of victims and gatekeepers. Ensure your training program includes your state's procedures on reporting sexual misconduct claims.

[HAI Group Online Training](#) offers a comprehensive sexual harassment training catalog for housing professionals (subscriber and bulk discounts are available). The U.S. Department of Housing and Urban Development (HUD) offers [free sexual harassment prevention and awareness training](#).

2. Establish practical policies and procedures

Practical policies and procedures serve as a deterrent and make your organization a less attractive target for bad actors. Having these policies and procedures in place also shows there are levels of accountability and enforcement within your organization.

Showing new hire candidates or potential volunteers your organization's policies and procedures reinforces your recognition and awareness of the risk, as well as the level of accountability and consequences. Typical policies can include:

Definitions

Sexual Harassment: Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Sexual harassment can also include offensive remarks about a person's sex.

Sexual Assault: Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim cannot consent.

- sexual misconduct protection plans outlining procedures for employee/volunteer interactions with children and adults;
- a zero-tolerance policy with regards to all forms of sexual misconduct;
- how to report sexual misconduct; and
- the organization's follow-up procedures.

3. Perform criminal background checks

Criminal background checks are an essential part of screening prospective employees and volunteers. It is important to customize your background checks to specific positions, especially those working with children in a less structured or less easily supervised environment.

You should run initial background checks on all employees and volunteers to identify potential risks and rerun them periodically. Work with HR and legal counsel to develop a written policy outlining how your organization will respond if concerns are identified through the background check process and ensure the policy is applied fairly for all employees.



4. Screen workers and volunteers

Criminal background checks are not a standalone solution for screening prospective employees and volunteers. In addition to background checks:

- consider using a written application form;
- conduct one or more interviews; and
- check references from past employers and/or volunteer experiences.

Consider a probationary period before allowing volunteers to conduct activities unsupervised.

5. Understand mandatory reporting obligations

Be aware of your state's sexual misconduct laws and mandatory reporting requirements. Always empower employees and volunteers to report sexual misconduct.

6. Establish a response process

Take allegations of sexual misconduct seriously and respond to them appropriately. The response should prioritize and protect the victim. Investigations of allegations are recommended. For some allegations, it may be appropriate to hire a third party to investigate.

7. Provide monitoring and oversight

Your organization should review its sexual misconduct policies and procedures annually, at a minimum. Monitor training to ensure that it is conducted on an ongoing basis. Revise and update your program so that it is always up-to-date and meets organizational needs.

Legal considerations

Your organization's efforts in preventing and remedying sexual misconduct claims are critical when dealing with potential legal action. Having a policy, training program, investigation process, complaint procedure, and documentation process may help defend claims related to sexual misconduct. However, failure to comply with your policies may lead to additional risks to the organization.

Claims Related to Sexual Misconduct Often Arise If:

- 1. An employment benefit is made contingent on sexual favors; or
- 2. there is frequent or pervasive unwanted sexual conduct within the workplace, including, but not limited to, verbal or physical conduct that is sexual in nature, sexual jokes, display of inappropriate materials, or any persistent unwanted interactions.

The U.S. Equal Opportunity Commission (EEOC) [states that organizations may be held liable](#) if harassment results in an adverse employment action such as termination. In legal action related to a hostile work environment, your organization can minimize liability by showing that it reasonably tried to prevent or remedy the harassment and the employee failed to take advantage of preventative/corrective opportunities provided.

Employees should report any harassment to their supervisor and/or their human resources department. All complaints and concerns should be taken seriously and investigated promptly.

Seniority and severity are among the factors that may be considered in determining if investigations should be done internally or by a third party. Documentation of the investigation is important, as is ensuring confidentiality.

Sexual harassment in housing

Within housing organizations, [sexual harassment](#) is a common form of sexual misconduct. The [Fair Housing Act and Equal Access Rule](#) prohibit harassment, retaliation, and other types of discrimination in housing. Organizations are legally responsible for ensuring that their housing is free from harassment of any kind.

A property owner, employee, or volunteer cannot make “unwelcome demands for sex, sexual favors, or any other type of sexual conduct a condition of obtaining, maintaining, using, or enjoying housing (or housing-related services),” according to the [U.S. Department of Housing and Urban Development \(HUD\)](#). Sexual harassment also occurs when a resident or applicant is subjected to “unwelcome sexual conduct that is sufficiently severe or pervasive that it interferes with that person’s right to obtain, maintain, use, or enjoy housing (or housing-related services).”

As noted above, an organization can be held liable for sexual harassment committed by any employee or contractor. An organization can also be held liable if it fails to take reasonable steps to stop harassment of a resident or applicant that it knew or should have known about.

EXAMPLES OF SEXUAL HARASSMENT IN HOUSING (Courtesy of HUD)

- Demanding nude photos in return for approving a rental application.
- Requesting sexual favors in return for making needed repairs.
- Evicting a person because that person refuses to have sex.
- Persistently making unwelcome and lewd comments about a resident’s body
- Touching an applicant’s intimate body parts without his or her consent.
- Repeatedly sending unwelcome sexually explicit text messages and photos to a tenant.
- Sharing sexually explicit jokes via email or text and posting them in the workplace
- Telling employees or residents inappropriate jokes or stories.

Contact our Risk Control Services Team for additional resources or to get answers to your housing organization’s risk-related questions.

CONTACT NOW

Interested in Working With HAI Group? Our Account Services team is ready to assist you.

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