

EEOC Guidance on Workplace Harassment Risk Factors

Podcast Transcript

Prevention and Protection a United Educators Risk Management Podcast

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HEATHER: Hello and welcome to *Prevention and Protection*, the United Educators' risk management podcast. I'm Heather Salko, senior risk management counsel. Today, we'll be discussing risk factors for workplace harassment. Joining me to discuss this important topic is Hillary Pettegrew, senior risk management counsel. Welcome, Hillary, and thanks for agreeing to talk about this with me.

HILLARY: Thanks, Heather. I'm happy to be here, and I definitely agree, this is a very important topic.

HEATHER: Before we get started, I want to let listeners know that, in addition to this podcast, you will find additional podcasts and risk management publications on our website, EduRiskSolutions.org.

The EEOC task force on workplace harassment concluded its work and issued a **report** summarizing its findings and making recommendations on how to reduce harassment of all types in the workplace. UE wrote a **blog** summarizing the entire report, which can be found on EduRiskSolutions.org. But you and I decided that the 12 workplace risk factors the EEOC identified were worth a deeper discussion.

HILLARY: That's right. The report summarized the 18 months of work that the task force undertook. As part of the larger report, the EEOC task force did identify 12 risk factors that could result in conduct that either is harassment or could lead to harassment. Of course, even if the risk factors exist in a workplace, that doesn't mean that harassment is occurring. But employers would be wise to review their workplaces to see if any of the risk factors exist and, if so, to consider ways to reduce or eliminate them.

Heather, before you address the first two risk factors, I just want to note that the EEOC did take a broad view of harassment. So it's not only addressing situations that might result in legal liability for an employer. Harassing or uncivil behavior of any kind should be avoided because once that kind of behavior takes root in a workplace, it can become the norm and escalate over time to illegal harassment.

HEATHER: Thank you, Hillary. You raised some good points that our listeners should keep in mind as we move through these risk factors. I should also say that even if your workplace doesn't have any of these risk factors, harassment could still occur, so you should be on the lookout for it.

The first risk factor the EEOC identified is the homogeneous workforce, or a workplace where there is a complete lack of diversity. That probably won't exist for many of the larger institutions listening today, but it is important to consider. For example, if there's a smaller workplace, such as an academic department that is primarily male, the imbalance may create an atmosphere that would be hostile for a lone female employee there.

I can actually think of a claim UE had where there was only one female public safety officer in the very small department. Her claim centered around complaints that when she signed on to the department computer at the beginning of each shift, she found pornography there. It took a long time for her male supervisor to take her complaint seriously. She did bring a sexual harassment claim that was eventually settled but cost the university where she worked quite a bit of money.

Moving on, conversely, the EEOC identified a second risk factor as workplaces with lots of diversity, where there are significant cultural or language differences between groups of employees. These differences can lead to tension and harassing behavior. We know that educational institutions often have employees who come from all over the world. When groups of employees from different cultural backgrounds come together, there can be some friction and these employees may come from cultures that don't have laws similar to those in the United States. They may need to be trained more closely on employment and harassment laws so as not to violate them. Also, these employees should be trained on their rights so they know where and how to report harassing behavior they may be subject to.

Hillary, what was the next risk factor the EEOC identified?

HILLARY: That would be workplaces where some employees do not conform to societal stereotypes. For example, if there is a very heavy male department such as you mentioned earlier, but one of the men does not appear to be masculine enough to his fellow male employees, that can lead to harassing behavior such as teasing and other inappropriate comments. Employers, again, want to be sensitive to those types of situations, and they should really consider emphasizing appropriate workplace behavior in their harassment training.



Heather, along those same lines, I want to discuss the next two risk factors together. Those would be workplaces that have high-value employees, and those with significant power imbalances between employees. We've all seen the situation of the high-value employee. It might be the brilliant professor who brings in significant grants and then engages in really bad behavior. Without naming names, I think that's certainly the situation at a few institutions that we've seen in the news over the past few years. Now, when such individuals engage in harassing behavior and believe that the rules don't apply to them, victims of their harassment may be particularly reluctant to report it for fear that either no one will believe them, or they'll suffer retaliation for coming forward. Management also may be reluctant to deal with the problem for fear of losing the money or prestige the harasser brings to the institution. But of course, we've seen that strategy backfire.

Similarly, when there are significant power imbalances, there can be harassment. For example, lower status workers may feel they can't complain about more powerful administrators or faculty. They also may not understand the mechanisms available to make complaints. In an educational institution, these situations might be found with support staff reporting to administrators, and situations where there are professional supervisors and more blue collar workers, such as in food service settings.

HEATHER: Hillary, I can certainly see those situations arising at our member educational institutions. I want to point out that the EEOC task force also drew attention to the risk associated with having isolated workspaces where one or two workers are isolated from others. This, of course, can occur in situations such as labs on campus, or in departments like maintenance or public safety where workers might go off in pairs or small groups to do work all around campus, away from the eyes and ears of their supervisors and other witnesses. Similarly, harassment can also be a risk for decentralized workspaces where perhaps some workspaces are physically removed from the supervisor's space. I'm not just talking about pairs of people going off to do something else on campus. I'm saying perhaps research facilities that may be away from the main campus where only a few people work or even the really small satellite campuses where there isn't a heavy administrator or supervisor presence. This can also occur in athletics departments. Employees are working in different athletics facilities around campus, or they're traveling off campus, and they might not be directly supervised on a day-to-day basis.

HILLARY: Those are some great examples. I'd like to turn to two other somewhat related factors identified by the EEOC that may be affecting institutions. The first is, what I think we've all become familiar with, general coarse and social discourse that may occur outside of the workplace. This includes not only cultural shifts in what's considered acceptable behavior, but also current events. These situations have a way of creeping into the workplace, and what may be acceptable to do or discuss out there in the real world is often not acceptable behavior or topics for discussion in the workplace. For example, politics or protests happening in the general population can lead to bitter divides. But it's problematic when those discussions move in to the workplace where everyone may not share the same sense of what is right or wrong. This can also include use of slang language and even what people perceive as appropriate clothing.

On a related note, the EEOC says that workplaces with a significant presence of younger workers can also raise the risk of harassment. Not that we're picking on young workers, but by definition, they're often inexperienced and unaccustomed to how to behave in a workplace. Many of them may not have a good understanding of the law and what the limits are, especially regarding the use of social media. This can lead to them engaging in harassing behavior, but on the flip side, it can also lead to them being more vulnerable and thus more likely to become victims of harassing behavior.

Now, these employees might think that insensitive jokes or sexual comments are normal, and then they don't report inappropriate behavior. It's really important that new hires be well trained in not only the law, but also how to report harassment and just generally what's considered professional behavior. Heather, can you talk a little bit about workplaces that rely on customer service or client satisfaction?

HEATHER: Yes, Hillary, I'd be happy to. This is another area, two other factors the EEOC pointed out. They may not have much applicability to educational institutions, but they are worth noting. The EEOC found that when workers are evaluated on customer service or client satisfaction, they may be subject to harassing behavior that goes unreported, or often management may be unwilling to intervene on their behalf because of a desire not to upset the customer.

Hillary, can you think of any situations like this that could arise on campus?

HILLARY: Actually, I can. There might be harassment of someone in the admissions department, for example, by an applicant or an applicant's parent that goes unreported or unaddressed for fear of upsetting that applicant or his or her parent. It's probably rare, as you mentioned, but it certainly could happen.

HEATHER: That is a good example and clearly one that I hadn't thought of. The next risk factor the EEOC task force identified is a work situation consisting of monotonous or low-intensity tasks. People may become bored on the job or find that they have extra time on their hands. Then they could end up engaging in banter or behavior that gets out of hand or casual conversation that kind of goes and crosses a line. However, with everyone at educational institutions so busy, this probably doesn't happen very often, or there isn't much opportunity for it, but it could during campus breaks or other occasions where people have down time between busy periods.

Institutions would be wise to just be on the lookout for these situations and, obviously, try and engage their workers as much as they can. Hillary, moving on, would you take the last risk factor for us?

HILLARY: Absolutely. The last risk factor identified by the EEOC is also probably not that common at our institutions, but it does need to be considered. That would be a workplace that tolerates alcohol use during and around work hours. We all know that consuming alcohol reduces social inhibitions and it can definitely impair an individual's judgment, no matter where you work. You want to be mindful, for example, of the holiday party or alumni receptions and other events where alcohol is consumed by or around employees on your campus. Of course, the employees themselves don't need to be drinking. They might be harassed and unwilling to report others who are drinking and harassing them. So again, I just want to remind our listeners that simply because these risk factors may be present, it doesn't mean that your workplace necessarily has harassment occurring. It just means that institutions should be aware of the risk factors and think about how and if they should be addressed. The goal is really to create a workplace free from harassment. We can't always achieve that goal, but it's definitely something to aim for.

HEATHER: Hillary I agree that is something we should all strive for. We've covered a lot of information today. The 12 risk factors were quite a few to get through, and so we're out of time. We hope that you, the listener, have found this topic interesting and helpful to your work, that of managing risk on your campus. Before we end, I just want to remind our listeners that additional resources can be found on our website, EduRiskSolutions.org, and more podcasts will be coming soon. Finally, I'd like to thank you, Hillary, for joining me today, and sharing your insights on this.

HILLARY: Thanks, Heather. It was great to be here.



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