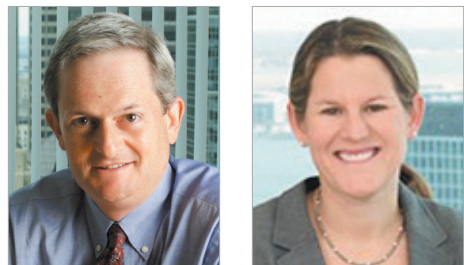


## OPINION

# Lessons from Beacon Hill in preventing harassment

By Paul Holtzman  
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One year after the emergence of the #MeToo movement, employers in every sector have been reviewing their policies and practices to ensure that their efforts to prevent and address sexual harassment are both effective and up to date.

Companies and nonprofits undertaking such a review can benefit from the best practices adopted by the state House of Representatives following an extensive audit and survey of the most promising policies from across the country.

The resulting report, adopted by the House earlier this year, contained what was described in an editorial as “a comprehensive package that provides an excellent model for how private employers that are seeking to be proactive can address this issue.”

The report offers practitioners a detailed guide to the kind of structural and policy reforms that would benefit any organization seeking to ensure that it is on the cutting edge of harassment prevention.

This article summarizes some of the key recommendations in the report, along with takeaways for employers and their counsel.

### ‘Bystander intervention’

Employers across the commonwealth are grappling with how best to ensure a workplace free of unlawful harassment.

One step would be to borrow a page from the House report, which includes a new anti-harassment policy specifically mandating (on pain of disciplinary action) that any supervisor who has “direct or indirect knowledge” of harassment report that information to a designated official.

In too many cases it turns out that harassing or discriminatory conduct was known to supervisors who failed to act because the victim opted not to pursue a formal complaint. By requiring that supervisors act on information they receive, any organization can interrupt harassing conduct and protect its employees from mistreatment.

In fact, the new House policy specifically provides for training of supervisors in “situational awareness” and “best practices for monitoring the workplace for issues and identifying risk factors.”

This is a step that all employers would be wise to adopt. Because though it is helpful to have a policy on the books, the most effective

prevention regimes provide supervisors with the tools required to meet their obligation to identify and report potential instances of harassment.

The need for such training was highlighted in a recent lawsuit by a female executive working with celebrity chef Mike Isabella. The woman claimed that he and his company routinely subjected women to sexual harassment. The complaint specifically criticized the company for failing to train managers to recognize and stop harassing conduct.

Consider going one step further and training all employees on “techniques for bystander intervention,” as does the House policy. In investigating complaints in the private and nonprofit sectors, we often learn of moments at which witnesses to the misconduct could have stepped in and prevented the continuation of a pattern of harassment.

A carefully designed program of training is critical to raise awareness of what conduct constitutes prohibited harassment, and how to respond as a witness and as a victim.

The materials and presentation should include simple and understandable language to guide employees’ conduct. There is nothing worse than employees walking out of a training with the sense that they have been subjected to a law school seminar with no practical guidance regarding “do’s and don’ts.”

### Bringing policies, training materials up to date

The new House policy also includes an important provision extending its reach to conduct by third parties who are not employees.

The new House policy specifically provides for training of supervisors in “situational awareness” and “best practices for monitoring the workplace for issues and identifying risk factors.” This is a step that all employers would be wise to adopt.

Every policy should include a procedure for reporting misconduct by third parties. They could be customers at a restaurant, business partners, or an IT technician whose work brings him or her in contact with employees.

Educating employees about their right to be free from harassment no matter the source should be an element of every state-of-the-art policy and training.

Equally important is to bring both policies and training materials up to date to account for technological developments.

The new House policy, for example, specifically addresses how content shared via text or on social media can lead to a violation. In the age of Instagram, Facebook, Twitter and Snapchat, no organization should have a policy that omits rules for the use of these communication tools.

As we see in case after case, millennials and others in the rising generation of workers are all but glued to their screens



and communicate in an unguarded, informal manner that often can lead to offending a co-worker or worse.

For example, it is a good bet that, like ourselves, more than a few lawyers in this field have recently become quite conversant with texting etiquette and the meaning of particular emojis and memes.

Another important reform adopted by the House is the creation of the new and independent role of Equal Employment Opportunity officer. This senior official will provide leadership and oversight to ensure compliance with the enhanced

potential for favoritism.

Any organization would benefit from addressing the risk of an ill-intentioned supervisor abusing his or her authority to favor or punish employees based on unlawful considerations. The House reforms include development of uniform human resources policies and procedures designed to address this risk.

As with the policies of most employers, the House policies are designed to be more restrictive than the relevant statutory thresholds for harassment. This includes measures designed to “nip in the bud” troubling conduct before it rises to the level of harassment, as well as detailed procedures for conducting investigations and imposing appropriate discipline and remedial measures.

The reforms are consistent with the recommendation from the Equal Employment Opportunity Commission that policies include “assurances that the employer will ... respond appropriately to behavior which may not be legally-actionable ‘harassment,’ but which, left unchecked, may lead to same.”

In sum, the report commissioned by the House of Representatives offers an abundance of examples from around the country of best practices designed to prevent harassment. Most importantly, by placing the full weight of the institution behind the commitment to ensuring equal opportunity in the workplace, the report provides a roadmap for any employer seeking to ensure that it is out front on these issues. Every employer in the state should consider committing to the same goal.

Reviewing current practices and adopting necessary reforms is particularly timely in the current environment when the Massachusetts Commission Against Discrimination reports a “wave” of new harassment complaints.

Though each workplace presents unique issues, with a commitment from the top, every company and nonprofit can design policies and practices that will promote compliance with their legal obligation to ensure a working environment free of harassment and discrimination.

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