

Re: CLIENT ADVISORY 2018-01  
**Harassment and Retaliation Prevention, 2017 Amendment**

As recent high-profile firings demonstrate, it is essential that employers have a robust sexual harassment policy reinforcing your company's commitment to protecting employees from predatory sexual behavior.

### **Annual Notice of Harassment Prevention Policy**

Since the sexual harassment training law went into effect in 1991, all Maine employers are required to *annually* provide written notice to all employees. 26 M.R.S. §807. Many employers find the start of the New Year a suitable time for distributing this notice.

Attached is our prototype Harassment & Retaliation Prevention Policy, slightly tweaked to keep it current.

The policy is comprehensive and designed to maximize its secondary function – serve as the first line of defense against a claim.

Note that on Page 3, you need to put in the names or positions of the individuals to whom complaints are to be reported. Consider expanding this section to include:

- A list of three or four individuals to receive reports;
- Telephone and email contact information; and
- At least one representative from each shift you operate.

### **Maine DOL 2017 Checklist**

Effective November 1, 2017, Maine employers must follow the Maine Department of Labor sexual harassment education and training "checklist" which hardly reads as one.

The training recommendations below and prototype policy match the compliance checklist, which can be found on the Maine DOL website [here](#).

### **Training**

Employers of 15 or more employees (part-time employees count) must provide an education and training program to all employees and an expanded program for supervisors and managers, both within one year of hire.

Providing annual programs at the same time each year is sufficient.

Many employers use video modules to comply. You may want to consider the following:

- [Harassment: Sex, Religion, and Beyond - Employee](#)
- [Harassment: Sex, Religion, and Beyond - Manager](#)
- [Let's Talk...Harassment, Bullying, & Respect](#)

Be sure to keep a record of training, including contents and completion dates. The 2017 amendment requires that these records be maintained for at least three years and available for review by the Maine DOL upon request. Penalties for noncompliance have also been added to the law.

### **Thank You**

These advisories are a token of our appreciation for your loyalty as a client, without which our progress would not be possible.

Thank you and best wishes for a happy, healthy, and prosperous New Year.

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## Harassment & Retaliation Prevention Policy

**ZERO TOLERANCE: NO HARASSMENT OR RETALIATION TOLERATED.** Company will not tolerate bullying, workplace violence or harassment based on sex (with or without sexual conduct), gender identity, sexual orientation, transgender status, genetic information, marital status, amnesty or status as a covered veteran, race, color, religion, national origin, age or disability, for speaking out against discrimination, or for participating in the complaint investigation process.

Company also will not tolerate retaliation for speaking out against discrimination, participating in the complaint investigation process, or for good faith reporting to Company or a public body a violation of law, rule, condition, or practice that would put at risk the health or safety of any employee or other individual.

This Policy applies to supervisors, co-workers, vendors, and other non-employees.

Company fully supports this Policy and senior management is committed to the prevention of any form of harassment or retaliation.

**PROMPT REPORTING IS REQUIRED.** All employees must promptly report any harassing behavior or retaliation before it becomes severe or interferes with their work or the work of other employees. This requirement includes reporting by bystanders who witness or become aware of harassment even if they are not the target. Company will make every effort to stop any harassment or retaliation before it amounts to a violation of law. It can only do so if it is promptly reported.

**ZERO TOLERANCE: NO PUNISHMENT FOR REPORTING.** Company will not tolerate adverse treatment of an employee because he or she reported harassment or provided information relating to such a complaint or in good faith reported to Company or a public body a violation of a law, rule, condition, or practice that would put at risk the health or safety of any employee or other individual.

**DEFINITION OF HARASSMENT/RETALIATION.** Unwelcome comments, jokes, acts, social media postings (including maliciously false statements), and other verbal or physical conduct related to sex, sexual orientation, race, color, religion, national origin, age, disability, or protected activity (speaking out against discrimination, participating in the complaint investigation process, or good faith reporting to Company or a public body a violation of law, rule, condition, or practice that would put at risk the health or safety of any employee or other individual) is harassment or retaliation when:

- a. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;

- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
- c. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment; or
- d. The challenged action would discourage a reasonable employee from making or supporting a charge of discrimination or engaging in protected activity.

Employment decisions (tangible employment action) linked with harassment or retaliation could include:

- hiring and firing;
- promotion and failure to promote;
- demotion;
- reassignment;
- a decision causing a significant change in benefits;
- compensation decisions; and
- an unappealing work assignment.

None of these actions, linked with harassment or retaliation, will be tolerated.

**DESCRIPTION OF SEXUAL HARASSMENT.** Sexual harassment is a form of predatory sexual behavior in which a person targets fellow employees. The target, as well as the harasser, may be of any gender. Maine law requires that illustrations of sexual harassment be provided. The following are some examples of sexual harassment. Such behavior is not permitted.

A. *Physical assaults of a sexual nature such as:*

- 1. rape, sexual battery, molestation, or attempts to commit these assaults; and
- 2. intentional physical contact, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employee's body.

B. *Unwanted sexual advances, propositions, or other sexual comments, such as:*

- 1. sexually-oriented gestures, noises, remarks, jokes, or comments about a person's appearance, sexuality, sexual experience, or sexual orientation directed at or made in the presence of any employee who indicates or has indicated that such conduct in his or her presence is unwelcome;

2. preferential treatment or promise of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for gain or reward; and
  3. subjecting, or threatening to subject, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of that employee's sex, sexual experience, or sexual orientation.
- C. *Sexual or discriminatory displays or publications anywhere in Company by employees, such as:*
1. displaying pictures, posters, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning, or pornographic or bringing into the work environment or possessing any such material to read, display, or view at work; and
  2. displaying signs or other materials purporting to segregate an employee by sex in any area of the workplace (other than restrooms and similar semi-private locker/changing rooms).

**DESCRIPTION OF BULLYING:** Workplace bullying refers to repeated, unreasonable actions of individuals or a group directed toward an employee, or a group of employees, which is intended to intimidate and creates a risk to the health and safety of the employees.

**DESCRIPTION OF WORKPLACE VIOLENCE:** Workplace violence refers to any verbal or physical conduct that threatens property or personal safety or that reasonably could be interpreted as intent to cause harm.

**COMPLAINT PROCESS.** Any individual who believes he or she has been the subject of any form of harassment should **immediately** report the incident or act to one or more of the following individuals:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Reports can be verbal or written. You are not required to report to anyone harassing or retaliating against you. Company will promptly investigate any and all complaints. All supervisors have been trained and are required to immediately report complaints of harassment to one of the individual listed above.

**CONFIDENTIALITY.** Company will protect the confidentiality of harassment and retaliation allegations as much as possible. All information provided will be kept confidential and maintained in a separate confidential file. It will be discussed only with those who have a need to know in order to investigate or resolve the complaint.

**INVESTIGATION PROCESS – CORRECTIVE ACTION.** Company will promptly conduct a thorough and impartial investigation into any alleged harassment or retaliation. Steps which Company may take will be designed to stop the harassment or retaliation, correct its effects, and ensure that it does not happen again. Any remedial measures will not punish anyone who has come forward with a legitimate complaint of harassment or retaliation. Corrective action may include warning, training and monitoring of harasser, transfer or reassignment, suspension, or discharge of involved co-workers. The focus is upon prevention, not punishment. Any employee who reports harassment or retaliation will be informed of the general results of the investigation and corrective action taken.

**THE MAINE HUMAN RIGHTS COMMISSION IS ALSO AVAILABLE TO INVESTIGATE A COMPLAINT.** The Maine Human Rights Commission (“MHRC”) can be contacted at 51 State House Station, Augusta, ME 04333, (207) 624-6290. Any employee having a complaint of harassment or retaliation has a right to bring it directly to the attention of the MHRC. You may call or write. If you call, you should ask to speak with an intake worker. He or she will assist you with your complaint and will place in writing the information you provide. This will then be typed up on a charge which you will have to sign. Once the MHRC has received the signed charge form, an investigation will be conducted. You will be advised of the results of this investigation. Any complaint **must** be filed within 300 days of the act of harassment or retaliation.

**YOU MUST REPORT HARASSMENT.** The purpose of this Policy is to encourage you to report any harassment or retaliation. You should not assume that Company is aware of any harassment or retaliation which you may encounter. It is your responsibility to bring your complaints and concerns to Company's attention.

*This Notice is annually given by Company to all employees in compliance with 26 M.R.S. §807(2) and EEOC Enforcement Guidance (06/18/99).*

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### Employee’s Statement

I have read and understand the Company's Harassment & Retaliation Prevention Policy, a copy of which has been provided to me, agree to abide by it, and will promptly report any harassment.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee