



# Ask Yourself These 7 Questions To Find Out If You Are Ready For A Harassment Complaint

Insights

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Hardly a day passes anymore without some famous (or infamous) person being accused of or admitting to engaging in inappropriate sexual conduct. In many of these situations, the conduct is so egregious that one could reasonably conclude that the offenders (alleged or admitted) had to have known that their conduct was not only inappropriate but, in many situations, unlawful.

Perhaps a more accurate conclusion is that those who engaged in this conduct simply believed that they were “above the law.” In other words, they believed that, because of their fame, money, and power, the unwritten societal rules of acceptable conduct and the written rules (laws) related to workplace conduct did not apply to them. And, even if the rules did apply, they picked vulnerable victims who likely would be afraid to complain—until now.

## Dealership Community Not Immune From Sweeping Harassment Movement

Naturally, the rich and famous do not have a monopoly on the arrogance or ignorance that often leads to harassment problems. In fact, these problems have been prevalent in a number of industries for years, and the retail automotive industry is no exception. Recent notable cases include a \$2 million settlement by a New Mexico dealership following allegations that its lot manager subjected coworkers to shocking comments and unwanted touching; a Texas jury’s award of more than \$625,000 to an aftermarket sales manager based on evidence that her finance director repeatedly asked her on dates, hugged her, and made suggestive comments; and \$540,000 awarded by a Massachusetts jury to a finance manager based on evidence she was subjected to inappropriate behavior—including sexually suggestive jokes made during sexual harassment training—and the dealership’s failure to properly investigate or take appropriate action.

Not unlike the recent news stories, the named offender in each of these cases was someone in a position of authority over the victims. And, like the situations involving celebrities, the histories of the dealership managers showed a pattern of inappropriate conduct that had gone either unreported or unchecked.

But just as not everyone in the entertainment business or politics is a harasser, neither is every dealership owner, manager, or employee. Quite the contrary, very few in dealership management would ever think about or consider engaging in harassing conduct, nor would anyone have reason to expect them of such behavior.

Even so, the fact that it hasn't happened at your dealership does not mean that it won't happen, even if your dealership feels like everyone is part of one big family. For this reason, you should take steps to prevent harassment and be prepared to address issues immediately and effectively if a problem does arise.

### **Ask Yourself These 7 Questions**

With the topic of harassment so prevalent in the news, there is no better time to determine what steps you need to take to prevent harassment at your dealership and how prepared you are should someone make a harassment complaint. The following questions are designed to help you evaluate yourself and test your preparedness.

#### *1. Does your dealership's culture tolerate harassing behavior?*

One of the most effective ways of avoiding harassment claims is to foster a workplace culture of zero tolerance for harassment or anything resembling harassment. That culture is set by the words and, more importantly, the actions of those at the very top of the chain. Common excuses like "boys will be boys," "he was only kidding," "they were just blowing off steam," or "this is car business" are not acceptable, no matter who's involved. A culture in which employees feel safe to voice their concerns is likely to have fewer harassment issues and makes your dealership an attractive place to work.

#### *2. Do you have a comprehensive no-harassment policy written for your dealership?*

Even if you have the right culture, you still need a policy that prohibits all forms of unlawful harassment, not just sexual harassment. The policy should also include examples of the types of conduct that may constitute harassment. Anyone who still believes that providing employees with information of this nature serves only to educate them on "how to sue you," probably also believes that women working in dealerships do so at their own risk. If management is concerned about employees learning what constitutes improper conduct, perhaps they could shift their focus to ensuring that improper conduct does not occur.

The no-harassment policy should have a clear reporting procedure that includes options for alternative ways of reporting concerns. The goal is to make it as easy as possible for an employee to report concerns so that ownership, top level management, or human resources can respond appropriately. Many policies instruct employees to report concerns to a direct supervisor to preserve some sacred chain of command. If that is your policy, you may want to ask yourself if you really want your frontline managers to be the ones fielding harassment complaints without guidance or training. How do you know that they will do it correctly? What training have they had? What if the manager is the problem? To reduce these risks, a better option may be to have a policy that directs employees to report to a higher level of management and includes further reporting options if the employee believes that the dealership's initial response was inadequate.

Your policy also should set forth what the dealership will and will not do when responding to a complaint of harassment. Employees should know that the dealership will conduct a thorough and proper investigation and then take appropriate disciplinary action based on the findings. Remember, your employees are watching and will evaluate your commitment to a harassment-free workplace by your actions, not the words in the policy.

3. *Do you have a no-retaliation policy?*

The same laws that make discrimination and harassment unlawful also make it unlawful to retaliate against employees who oppose conduct they reasonably believe to be unlawful or participate in an investigation or proceeding related to a complaint. Retaliation claims are popular; in each of the last several years there were more retaliation claims filed with the EEOC than any other type. A retaliation claim can survive even when the basis of the underlying complaint does not. Dealership policy and actions should state clearly that employees who make complaints of this nature will be protected from retaliation and that those who retaliate are subject to discipline, up to and including discharge.

4. *Are your employees aware of your no-harassment policy?*

It goes without saying that your policy, no matter how well-written, will not be effective or provide optimal benefits for either the employees or the dealership unless your employees know about it, what it says, and understand what it means. The employee handbook is the most common means of providing the no-harassment policy to employees. Some employers also provide a stand-alone version of the policy to employees during orientation.

Taking time to go over the policy in detail at the time of hire can and should provide benefits later. Policy awareness and understanding is especially important for management personnel who act on behalf of the dealership and whose actions (or inactions) could, in some situations, create liability for the dealership. In many cases, the same managers charged with abiding and enforcing these policies have never bothered to read them. To determine how much your managers know, surprise them with a pop quiz on the no-harassment policy during the next manager meeting. Hopefully, you will be pleasantly surprised.

5. *Have your managers received no-harassment training recently (or at all)?*

Providing no-harassment training to managers educates them on the policy, the types of conduct that is prohibited, their obligations, and what to do if they become aware of harassment, but it also sends a message that ownership is serious about its commitment to zero tolerance. Of course, the training cannot simply be a check-the-box exercise—all dealership management must walk the walk after talking the talk. Again, actions speak louder than words, especially in this context. The cost of bringing in an individual qualified to present the training is relatively insignificant when compared to the costs, disruption, and reputation damage that could result from a harassment lawsuit.

6. *Do you have someone trained to investigate a harassment complaint?*

Many dealerships do not. Instead, the task of investigating a harassment complaint often is left to an ill-equipped manager with no specific training on the proper way of conducting and documenting a harassment investigation. Other times the task is assigned to the human resources manager, if there is one, and sometimes even they have had no formal training on investigation.

Conducting a proper investigation is critical for protecting the individuals involved and the dealership. The failure to do so can create additional problems. In fact, the way a dealership responds to a complaint of harassment may have greater legal significance than the harassment itself. The law understands that an employer cannot control everything its employees do at all times but that it has complete control over how it responds to harassment issues. The importance of conducting a thorough and effective investigation cannot be overstated. You should not hesitate to seek guidance from your legal representative during this process.

*7. Are you willing to appropriately discipline the harasser?*

If the investigation establishes that an employee violated the harassment policy, are you willing to take the appropriate disciplinary action, up to and including termination? Is your answer the same regardless of who is involved? It should be.

While top performers may rightfully enjoy some benefits resulting from their successes, one of those benefits cannot be favorable treatment for harassment policy violations. Allowing any employee who violates the no-harassment policy to escape the appropriate consequences of their actions sends a loud and clear message about your real commitment to your policy and protecting your employees.

### **Are You Ready For 2018?**

If, after conducting your self-audit, you believe that you are not as prepared as you should be to prevent harassment or respond to a harassment complaint, the start of the new year is a great time to get your house in order. Hopefully you'll never have a harassment issue, but if you do, you'll be glad you took these steps.

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