

No place for it here: Preventing sexual harassment at the dealership

“IT TAKES 20 YEARS TO
BUILD A REPUTATION AND
FIVE MINUTES TO RUIN IT.”
– WARREN BUFFETT

The odds of your company being hit with a large punitive damage for a sexual harassment suit might be low, but tolerating any hint of sexual harassment is a reputational mistake that could cost you customers, employees and future hires, including women and minorities.



The #MeToo movement has spurred many companies to more closely monitor employee behavior and evaluate sexual harassment policies and training. Forward-thinking companies know that stepping up their efforts in this area will do more than avoid a financially damaging lawsuit. Developing strict policies and robust training programs can also help reduce potential public backlash and reputational ruin caused by the filing of a sexual harassment claim. A recent study showed that when people learned that a sexual harassment claim had been made against an organization, they perceived it as less equitable overall and one with a defect in the culture, not just one individual.¹ Even before the #MeToo movement started shedding light on egregious behavior by high-profile individuals and organizations, the automotive industry was fighting its perception of being less than female-friendly. By coincidence, just as the #MeToo movement gained steam in late 2017, Automotive News conducted a study of 900 women in the automotive industry.²

(Note: This was not a dealer-only survey). The survey was conducted in partnership with Elephant in the Valley, a group of Silicon Valley executives and researchers from Stanford University who looked at sexism in the tech world in 2016. Dubbed Project XX, this report revealed women in the automotive industry experienced a high degree of perceived sexism:

- 84% of women had heard demeaning comments from a male colleague.
- 65% of women said they received an “unwanted advance” by a male coworker, which is more than any other industry surveyed.
- 63% of women claimed to be excluded from male-oriented company events, such as happy hours, football games and meetings at cigar lounges.
- Nearly 70% of women were told they were “too aggressive” and 50% were told they were “too quiet.”
- More than 50% received comments on their appearance and were told to dress more feminine and display their breasts.



- As one survey respondent commented, “The issues facing women working in automotive are far more severe and the sexism far deeper than in other industries.” In 2018, a follow-up survey showed that women felt sexism issues were becoming more widely talked about in the automotive industry (73%), but a majority still felt that gender issues in the auto industry haven’t changed from 2017.³

Understanding the EEOC and its procedures

The U.S. Equal Employment Opportunity Commission (EEOC) is the enforcer of Title VII of the Civil Rights Act of 1964, the law on which sexual harassment is considered discriminatory. The EEOC states that “unwelcome sexual advances, request for sexual favors, and other verbal or physical harassment of a sexual nature constitutes sexual harassment when this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment. Such harassment may include unwelcome verbal, visual, nonverbal, or physical conduct that is of a sexual nature or based on someone’s sex.”⁴ Since the #MeToo movement began, the EEOC has strengthened its commitment to educate and enforce Title VII. The agency has implemented new procedures, aiming to prevent workplace sexual harassment before it becomes legally actionable.

Because of these efforts, sexual harassment charges filed with the EEOC increased 12% between fiscal year 2017 and 2018.⁵ Anne Lawton, a professor of law at Michigan State University who has written extensively on employment discrimination and sexual harassment law, explains the EEOC has strict guidelines that must be met for a case to be brought against an employer:

- The employee is required to bring the harassment claim to their employer first (preferably HR and not their supervisor) before contacting the EEOC.
- The employee must file their discrimination complaint with the EEOC within 180 days from the time the harassment took place.
- The EEOC will notify the employer of the charge and start the investigation.
- If the matter is not settled, resolved or dismissed, then the EEOC will give the employee a “right to sue” letter, allowing the lawsuit to move ahead.
- “What can be more typical is that a harassment suit may be dismissed by the EEOC or the court, but the employee then experiences retaliation by the employer, such as being fired or demoted, and wins a case based on that action,” Lawton says. “The fear of retaliation keeps many employees from going to HR with a harassment claim.”

The true costs of harassment: your company’s reputation

A mere allegation of harassment can severely damage your dealership’s reputation on the outside and employee morale on the inside.

Employee turnover may be the largest cost of sexual harassment. You could lose your ability to attract and retain top talent.

Harassment can lead to job dissatisfaction and low productivity by those who observe or experience it.

Your company could suffer from increased absences, as people who feel they are being harassed tend to take more sick days.

Poor morale could spread and affect team members, as victims of harassment tend to suffer more from anxiety, depression and other psychological issues.

Negative word-of-mouth can spread to customers and damage your company’s standing in the community.

Creating a harassment-free organization starts by establishing a culture of respect where every person is held accountable and every employee undergoes training, including leadership, managers and “star” salespeople.

Best practices in policies, training and reporting

Your best defense against a sexual harassment claim is implementing the appropriate policies and procedures. These written documents should include:

- A definition of harassment
- Examples of harassment
- How an employee reports harassment, either experienced or witnessed
- A statement that promises protection from retaliation for employees reporting harassment
- A plan that outlines how investigations will be handled
- The expected resolutions to complaints, including potential employment termination for a person who violates the anti-harassment policy

An increasing number of states require sexual harassment training (see sidebar) for organizations with more than 15 employees. Even if your state hasn't legally required training, it makes good business and legal sense to provide training for all employees, including part-time workers, seasonal/temporary workers and even contractors. Keep records of who received the training, the training dates and the content discussed. Provide managers with specific examples of harassment situations to monitor. One of the critical aspects of your sexual harassment policies is giving employees at least two reporting avenues that they feel are trustworthy, preferably HR, upper management or an anonymous email or hotline. Employees should be assured that all complaints will be thoroughly investigated and appropriate action will be taken. Lastly, sexual harassment training is not a one-time event. In-person training and discussion should happen once a year to show senior leaders' commitment to zero tolerance for any type of harassment.

Did you know?

Sexual harassment training is mandatory in the five states listed below, plus Washington, D.C.⁸ Each state has specific requirements regarding training content, frequency and who is expected to attend the training.

- California
- Connecticut
- Delaware
- Maine
- New York
- Washington, D.C.

[Zurich University's online training portal offers sexual harassment and discrimination training modules as well as record-keeping functionality. Talk to your Zurich representative about this important resource.](#)

Roughly three out of four individuals who have experienced sexual harassment in the workplace did not report it to their employer.⁶

Even though a harassment claim may not make it to trial, your company could incur substantial legal costs paid to the attorneys you need to hire during the EEOC investigation and potential pre-trial preparation. A harassment claim should be covered under an Employment Practices Liability insurance policy or a Directors and Officers (D&O) liability policy, and it's important to understand what exclusions, if any, would prevent coverage for a harassment claim alleging emotional distress. One of the best ways for your company to avoid a sexual harassment suit is to establish an anti-harassment policy that includes complaint procedures and ongoing training. "The U.S. Supreme Court in two separate cases has given employers a protective position against harassment suits if they can demonstrate their policies and procedures are in place and communicated to employees through training," Lawton explains.

Recent judgements against auto dealers:⁷

- \$2 million against a New Mexico dealer for allowing inappropriate comments and unwanted touching
- \$325,000 award to a female sales manager in Texas who was repeatedly asked out on dates by another manager and received unwanted hugs and suggestive comments
- \$500,000 to a finance manager in Massachusetts who experienced inappropriate behavior, including crude jokes made during sexual harassment training

1. Does, Serena, Seval Gundemir and Margaret Shih. "Research: How Sexual Harassment Affects a Company's Public Image." Harvard Business Review. 11 June 2018.

2. "Project XX." Automotive News. Accessed 9 August 2019.

3. Carty, Sharon Silke. "Project XX One Year Later." Automotive News. 17 December 2018.

4. U.S. Equal Employment Opportunity Commission. "Facts About Sexual Harassment." Accessed 9 August 2019. <https://www.eeoc.gov/eeoc/publications/fs-sex.cfm>

5. U.S. Equal Employment Opportunity Commission. "Select Task Force on the Study of Harassment in the Workplace." June 2016. https://www.eeoc.gov/eeoc/task_force/harassment/report_summary.cfm

6. U.S. Equal Employment Opportunity Commission. "EEOC Releases Preliminary FY 2018 Sexual Harassment Data." 4 October 2018.

7. "Preventing Harassment in the Workplace." Bass Sox Mercer. 16 January 2018.

8. " 'Am I Required to Provide Harassment Training' and Other FAQs." ADP. 14 January 2019. <https://sbshrs.adpinfo.com/blog/am-i-required-to-provide-harassment-training-and-other-faqs>

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