

A Sobering Reality for Craft Breweries: 5-Step Action Plan to Address Workplace Harassment





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Insights

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The brewing industry has been overwhelmed over the past few weeks with numerous accounts of employees claiming harassment, gender discrimination, and toxic work environments. What started as one woman's account of harassment on her Instagram page quickly turned into an industry-wide assault – and it will now force an awakening among brewery employers. Because just as troubling as the accounts of unprofessional behavior are the widespread reports of company cultures that have permitted systemic and pervasive harassment to continue in the workplace with little to no consequence. Breweries that have been called out publicly may now be forced to answer for years of perceived indifference both in the courtroom and in the court of public opinion.

Breweries are now faced with the sobering task of examining workplace conditions through a microscope to ensure you are providing a workplace free of harassment. This recent tumult should also force breweries to eradicate a perceived industry culture of unprofessional "good old boy" behavior that women have had to tolerate if they wanted to be in the industry.

But many breweries don't know where to start. We are here to help with concrete steps that every brewery can take. This five-step guide helps identify areas where your organization can improve your handling of employee complaints and offers practical solutions that can be implemented immediately.

Although breweries may find it uncomfortable to address the reality of these situations and confront this sort of behavior in the workplace, it is imperative that business owners, managerial personnel, and legal counsel take the lead and encourage your organization to adjust to this development. Whether true or not, perception is reality – and the current perception is that the industry has a lot of work to do.

Step One: Implement Effective Policies That Lay the Groundwork for Company Expectations

- ♦ Do you have a No-Harassment Policy?
- ♦ Does your Harassment Policy contain information regarding:
 - ♦ Zero-tolerance for harassment?
 - ♦ Specific examples of what constitutes harassment?
 - ♦ How employees can report harassment in the workplace?



- ♦ Assurances that employees who come forward will not be retaliated against?
- ♦ Do you have an Employee Handbook that describes company policies and expectations in greater detail?

If your brewery does not have an updated harassment policy in place that thoroughly addresses all of the above topics, you are behind the curve. Recent court decisions have placed greater responsibility on employers to establish policies that address sexual harassment in a more realistic and thoughtful manner.

At a minimum, your harassment policy should clearly indicate that you have “zero tolerance” for sexual harassment in any form. Your policy should clearly define the term and provide examples of conduct that would run afoul of your standards (for example, off-color jokes, unsolicited hugs, sharing inappropriate images, etc.) so there is no confusion.

The harassment policy must also include details about the company’s reporting procedures and provide several avenues for employees to report their concerns – whether through their immediate manager, a human resources representative, a higher-level manager, or even a hotline number or intranet reporting mechanism. The policy should encourage employees to report their concerns immediately. It is vital that employees feel comfortable communicating their concerns about harassment. Breweries can’t possibly know everything that goes on in the workplace, and without being informed of potential harassment issues, there is no opportunity to address or correct such conduct.

Finally, the policy should clearly guarantee your workforce that they will not face retaliation as a result of their report. Providing this level of safety and security is important if you truly want to foster an open and respectful atmosphere.

Step Two: Communicate Your Policies Effectively and Make Sure Employees are Aware of Company Policies and Resources

- ♦ When an employee is hired, does someone specifically explain the company’s harassment policy?
- ♦ For current employees, does the company reiterate its policy against harassment at company meetings or in the workplace throughout the year?
- ♦ Does the company demonstrate to employees that it takes the harassment policy seriously?

If you responded “no” to any of the above, you should consider thoughtful ways to emphasize the importance of the company’s harassment policy with employees. A policy is worthless if it receives lip-service only. You need to ensure that your workforce is aware of your zero-tolerance position on sexual harassment if you want the policy to be effective. Most employers distribute the policy as part of the onboarding process and require new employees to sign an acknowledgment of receipt. That’s

a good start – but not enough. Breweries must take additional steps in order for the policy to truly become part of the workplace culture.

At the time of hire, management should review the harassment policy with new hires and start a conversation about your organization’s zero-tolerance philosophy. If you have an intranet, host the policy there permanently so that it can be easily accessed by employees at any time. You should periodically provide copies of the policy as a standalone document to all of your employees to remind them of their rights and responsibilities. A good way to accomplish this is by having one of your highest-level managers – if not the highest level executive – distribute the policy from their email account, via a signed memo to employees, or at company meetings. By setting the tone from the very top, your brewery will send a signal to everyone that you take the subject matter seriously.

Step Three: Train Your Managers to Address Issues And Avoid Common Mistakes

- Do your managers know how to identify potentially harassing behavior, even if perceived to be “welcomed” by employees?
- Do your managers know what is considered an employee complaint?
- Do managers excuse certain behaviors as just being part of someone’s personality or sense of humor?
- Do your managers receive sexual harassment training at least once a year?

Training your managers on your sexual harassment policy is one of the most critical steps in fostering a harassment-free work environment. Your organization could be held legally liable for any proven harassment if it was carried out by a managerial employee. All of your hard work in developing and disseminating your policy could be deemed irrelevant if your managers act inappropriately. Therefore, you need to drill your policies into their minds on at least an annual basis through formal training sessions.

There are a few common mistakes to warn your managers about at these training sessions. First, many companies get in trouble when managers ignore inappropriate behavior that they believe is “welcomed” by an employee, or if it appears to be part of a mutual and voluntary interaction. Your managers need to know that victims of harassment will often pretend to “go along” with the behavior for fear of losing their job, or simply because they want to appear to be part of the team. However, most employees will more than welcome managerial intervention that puts a stop to the conduct. Moreover, the conduct that your managers see out in the open, or hear about through the grapevine, is often just the tip of the iceberg, and it could signal that much worse behavior is taking place outside of your knowledge. For these reasons, your managers should be trained to address any behavior they witness or hear about, regardless of whether it appears to be in good fun and not causing any harm.

Second, it is common for some managers to allow extra leeway for certain employees because their behavior is simply accepted as a “harmless” personality trait. For instance, reports about

misconduct or inappropriate behavior are met with a chuckle and a statement such as, “Oh, that’s just Harvey being Harvey!” and it becomes known around the workplace that you need to operate differently around that employee because they’ve been acting like that forever. “He likes to give hugs but he’s harmless,” or “Just don’t get caught in the back office one-on-one and you’ll be fine” are common sentiments in these workplaces. This is exactly the kind of attitude that leads to festering situations and that should be eradicated from your brewery. All employees should be held to the same standard, no matter how long their actions have been tolerated in the past.

Step Four: Promptly Investigate Any Issues Raised

- ◆ Does management know what actions to take once a complaint is made or they learn about inappropriate conduct?
- ◆ Do you have procedures in place to protect employees from retaliation after a complaint is made?
- ◆ Does the company have a designated person to investigate complaints?
- ◆ Do you have a procedure for conducting investigations into employee complaints and gathering information about the alleged inappropriate conduct?
- ◆ Do you document details of the complaint and information obtained during the investigation?
- ◆ After an investigation is conducted, do you know what to do or how to respond to the information discovered?
- ◆ Do you follow up with the employee who made a complaint or continue monitoring an alleged harasser’s conduct?
- ◆ Do you review past problems or older complaints involving the same employees being investigated?

Workplace investigations can be difficult to navigate, especially if there is contradictory evidence or different accounts of what may or may not have occurred. However, there are several best practices that can help guide you through the investigation process.

Once you receive a report of sexual harassment, it’s time to take immediate action. If you delay your investigation until work slows down or until an important project is completed, you will send a signal to your workforce that this isn’t a priority. Moreover, the failure to adequately investigate and address employee complaints is the primary catalyst for later lawsuits. Once a lawsuit is filed, you may be subject to hostile questioning under oath about what exactly was done to address the complaint and the details on how you responded – or didn’t. It will be hard to justify that any project was so important that it took priority over the well-being of your workers. Therefore, you should clear the decks and do everything reasonably possible to make the investigation your highest priority.

You should have a human resources employee or designated high-level manager take the lead on the investigation, and they should be trained to carry out an effective and legally compliant inquiry.

Alternatively, you can hire an outside HR consultant or legal counsel to conduct the investigation or assist you in investigating. There is no cookie-cutter approach to investigations because they are all unique depending on the circumstances, but there are some common threads that accompany a reasonable examination:

- ♦ Try to obtain a written report from the complaining employee so you have a clear and specific understanding of the issues at play, but don't delay your investigation if for some reason a written report can't be generated right away.
- ♦ All relevant witnesses should be interviewed, including those who might be able to provide a glimpse into the working relationship between the employees in question.
- ♦ To the extent you need to obtain evidence to support the claims or defenses – emails, texts, documents, photos, etc. – make sure you have reviewed them all before concluding your investigation.

Make a clear record of your investigation by taking notes during your interviews and review of the evidence. This will help you sort out all of the claims as you conduct your review, but will also serve as evidence that you are taking the matter seriously if you are later called into question for your role in the matter. Keep the notes focused on objective information and free of conclusions and opinions; you should be prepared as though your notes will be an exhibit in a lawsuit one day.

During the pendency of your investigation, you should take reasonable steps, if possible, to ensure that the victim is not forced to work side-by-side with the accused. This might mean reassigning the accused worker to a different assignment, but it might also mean suspending the accused (with or without pay) for that period of time while the investigation is pending.

Finally, don't ignore other employee concerns or older complaints. You never know what you might find when you start exploring a situation involving an alleged harasser. For example, you might ask a witness if they've ever seen that employee do or say something inappropriate, and that witness might reluctantly tell you about some obscene behavior from the holiday party three years ago. Just because its older news does not make it irrelevant, and you may discover additional information that could constitute a new complaint and trigger a new investigation. Again, each situation is unique, and the specific facts and circumstances of the situation will dictate your response and how you factor that unearthed information into your decision.

Step Five: Consistently Enforce Your Standards

- ♦ Do you discipline employees similarly for similar conduct?
- ♦ Are "passes" given to certain employees and not others?
- ♦ Are you able to articulate why an employee is being disciplined versus terminated based on the outcome of an investigation?

The final, and perhaps most important step is taking action against the accused employee if the allegations against them are substantiated through your investigation. If your workforce figures out that your policy is toothless, they will lose respect for your organization and will feel dissuaded from reporting other misconduct. This could lead to legal trouble, but may also deflate employee morale and lead to high turnover among your key contributors.

When determining what level of punishment is appropriate to take against the harasser, remember that the goal is to take action sufficient to ensure that the behavior is not reasonably likely to occur again. In situations involving mild misconduct, it might be sufficient to give a documented verbal warning to the employee along with an acknowledged reminder of your sexual harassment policy. In more severe or reoccurring situations, the only reasonable response may be termination. In between the two are a whole host of possible options, including written warnings, mandatory professionalism classes or harassment training, behavioral improvement plans, suspensions, demotions, and the like.

Some employers run into trouble when they inconsistently apply standards to high-performing or high-ranking individuals accused of harassment. When push comes to shove, companies may value the contributions these employees make to the company's overall business performance more than they value the ideals contained in the sexual harassment policy. There is no better way to hurt morale at your organization and render your harassment policies ineffective than to give a pass to a key executive accused of misconduct while coming down hard on a mid-level manager or hourly worker accused of similar behavior. On the other hand, your policy's effectiveness will be given a boost if your workforce sees it applied in an evenhanded manner, no matter who is accused of a violation.

You've Completed the 5 Steps: What's Next?

Now that you've identified the ways to improve your policies and practices regarding harassment issues in the workplace, you can start the process of implementing effective changes to foster a harassment-free workplace. These are challenging times for breweries, and it is not always easy to take an honest look at your organization's culture. However, going through this exercise will make your organization even stronger.

We realize that each brewery's situation is unique, and you may have specific questions about the topics covered in this five-step guide. Fisher Phillips is developing a brewery-specific toolkit and training series that will provide a more detailed breakdown of the above steps and include sample harassment policies and investigation best practice guides you can reference when dealing with harassment issues in your workplace. We will be announcing more details about this program soon. If you would like to receive more information about this upcoming program, have questions about any of the above information, or need assistance dealing with an employee complaint, you can contact Nicole Stenoish (nstenoish@fisherphillips.com; (858) 597-9632) or Amy Lessa (alessa@fisherphillips.com; (858) 597-9612).

Fisher Phillips stands ready to help breweries navigate these issues, and we have an abundance of resources that can help your brewery promote a harassment-free workplace. You can also subscribe to Fisher Phillips' legal Insights [here](#) to receive updates and information on the latest developments in business-side employment law issues.

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Amy Lessa is a partner with Fisher Phillips, a nation-wide law firm that specializes in representing employers on all aspects of labor and employment matters. Amy has significant experience representing craft breweries and regularly presents on management-side employment and HR issues at craft brewery conferences across California. Her practice focuses heavily on the prevention-side of employment claims and positioning problem employment situations for the best possible defense.

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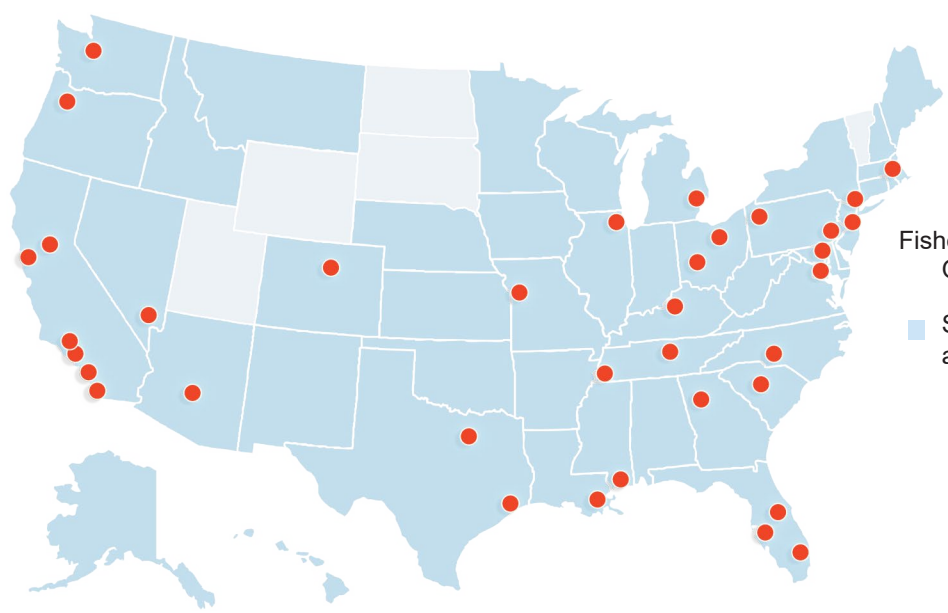
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