



The #MeToo Movement Aftermath

How companies can identify and prevent harassment in the workplace

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In the early 1970s, Lin Farley, a professor at Cornell University, coined the term “sexual harassment” during “consciousness raising circles.” In the late 1970s, Catherine MacKinnon pioneered the underlying legal theories linking sexual harassment to discrimination in her written publications. In the early 1990s, Anita Hill’s allegations against Supreme Court nominee Clarence Thomas broadcast the term into America’s living rooms through television.

It is only appropriate, therefore that the current zeitgeist began with a tweet. In late 2017, actress Alyssa Milano popularized Tarana Burke’s hashtag, #MeToo, in response to news reports about sexual harassment by powerful Hollywood producer, Harvey Weinstein. So, while the delivery method is qualitatively different and more instantaneous, the issues raised by the #MeToo movement are hardly new.

In its latest iteration, however, women are taking advantage of the power of the never-ending news cycle, the immediacy of smartphones, and community aspects of social media to more forcefully demand workplace change than ever before. While the issues are really the same as they have always been, proving yourself to be a responsive, progressive, and inclusive employer is far more challenging. And the reasons to take such steps are growing: the EEOC is reporting that while overall complaints are down, sexual harassment complaints rose over 13 percent last year. Retaliation claims are on also on the rise.

This raises the question - how should an employer identify and prevent harassment in the modern workplace?

Best Practices

Let’s start with the obvious:

- Promulgate a sexual harassment policy.
- Train your workforce (not just managers).
- Create numerous reporting mechanisms for harassment, including, if possible, an anonymous option.
- Thoroughly and promptly investigate all reports.

This list has been recognized as “best practices” since at least the early 1980s, when the EEOC first publicized regulations related to sexual harassment and the Civil Rights Act. In the current environment, most employers are awaking to the fact that they should do more. Outlined below are some practices companies can incorporate into their day-to-day operations to exemplify a harassment-free workplace, thereby limiting potentially irreversible damage both monetarily and to their reputation.

#ItStartsAtTheTop

Some workplaces are hiring Diversity and Inclusion officers, and these efforts are laudable. However, that new position shouldn't be the only person addressing workplace culture issues. Top leadership, and specifically white male leadership, must demonstrate a commitment to a harassment-free workplace. This commitment can be demonstrated through regular, repeated, and sincere communications from the top of your organization about the importance of workplace respect and civility. Some companies have the President or CEO send an annual company-wide email describing the company's views and encouraging both best behavior and reporting. Others make sure that the President or CEO use the quarterly Town Halls to reinforce this theme regularly. For other companies, the Board takes sexual harassment training to demonstrate that commitment. Whatever way makes sense in your company for the top leadership to visibly demonstrate a commitment to harassment-free workplace, do that. And do it regularly, repeatedly, and through many voices.

#SoberIsTheNewParty

So many workplace harassment allegations stem from events where workers “feel” like they are off-duty, but, in fact, they are still at work (as far as the law sees it). From the holiday party to the after-work happy hour to the out-of-town business trips, a workplace could be doing everything right from 9-5 just to have one incident set an entirely new tone. The likelihood of alleged claims of sexual harassment during these quasi-work events is unequivocally amplified by alcohol as the lines get blurred as people loosen up when intoxicated. So how can you build a workplace culture that deemphasizes alcohol, aside from the obvious alcohol ban? Try the following:

- Use drink tickets at the holiday party rather than an open bar to forecast what the company believes is an appropriate maximum.
- Change your policies to make it clear that you do not reimburse traveling employees for alcohol at meals or through the per diem.
- Rather than having a beer keg tap at work, try a rotating kombucha tap.
- Host an office mixology party centered around “mocktails” and “spirit-free” concoctions rather than a happy hour at a local bar.

Depending on your workforce, there are many ways to deemphasize alcohol at work, and at the work events in which a high percentage of your company's sexual harassment allegations will stem. And nothing sends your workforce off to the annual party in the right mind frame than requiring completion of an annual sexual harassment training on the days just prior to the party.

#BewareOfBacklash

Since #MeToo, some workers are fomenting a #MeToo backlash in the workplace. They are penning openly hostile letters, such as the recent letter at Google by a male engineer alleging women were

biologically inferior as engineers. Male managers are refusing to go to lunch with women coworkers claiming they fear they will be accused of sexual harassment. These incidents should be taken seriously for what they are: efforts to undermine your efforts at creating a workplace that is free from harassment.

Make sure you are responding to these efforts appropriately. Workplace communications that violate your code of conduct are (usually) not protected by free speech. A manager who cannot ensure equal access to his mentoring of the women on his team should not be a manager in your workplace. Do not let the force (or volume) of a backlash distract you from your goal of ensuring a harassment-free workplace.

#TrueAccountability

Companies often say they will hold workers accountable. But in practice, this can be harder to do, and even harder to show. Here are some examples of how you improve your company's accountability:

- Ensure your head of HR or Chief of People has a direct reporting line to the CEO so that internal workplace culture issues can be discussed directly with the Executive Committee.
- When you promulgate your sexual harassment policy, or conduct your sexual harassment training, talk through what you would do if your top performer was credibly accused.
- Take a hard look at how you may have structured remote offices where workers may feel more at the mercy of a manager and therefore accountability structures are harder to meaningfully create.
- Promptly and thoroughly investigate "rumors."

Accountability means the top leadership is willing to grapple with internal culture issues on par with other top priorities, such as sales. In the same vein, you need to be willing to make tough decisions about top performers without delay. To achieve the "without delay" part, you need to have thought through scenarios that include top people as alleged perpetrators. Accountable companies are ones that recognize and avoid structural inequities. For example, ensure that the remote office, where perhaps an entirely non-exempt or contingent workforce is managed by one exempt manager, has meaningful interactions with other leaders so they believe they have an open door to raise issues.

When a Director visits, for example, is that person's time only spent with the manager? If so, you may be messaging more power than you intend to that manager and cutting off reporting opportunities for his subordinates. If you hear a rumor about an incident, don't look the other way. Ask workers to clarify what they know. And if after a prompt, thorough and fair investigation, you determine someone has violated workplace policies around sexual harassment, take swift and decisive action. Nothing sends a stronger message to a workforce about acceptable behavior at the company summer party than noticing the protagonist from the new egregious water-cooler story never comes back to the office.

Conclusion

While the above "tweets" are not likely to become as ubiquitous as #MeToo, it is clear that the standard prevention tactics are no longer sufficient to protect your company from defending potentially costly litigation related to sexual harassment, as well as damage to your brand identity. If companies respond to the current environment by creating their own buzz for positive workplace behaviors and reporting, they can at least minimize the negative impact of any one incident in their workplace.

Author Bio



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