

SEXUAL HARASSMENT TODAY

What Employers Need to Know

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IN THE NEWS...

Charlie Rose Fired by CBS and PBS After Harassment Allegations

#MeToo Movement Is Person Of The Year,
'Time' Says



The 'Today' show was a 'total boys' club' during Lauer's tenure

How Tough Is It to Change a Culture of Harassment? Ask Women at Ford

WHAT HAS CHANGED?

The law is the same, but...

- More attention = More claims
- Empowerment, less fear/stigma
- More likely to involve media attention
- People (juries) will have more information and stronger opinions

SEXUAL HARASSMENT – A SHORT REVIEW

Quid Pro Quo

- “This for that”
- Submission to conduct is explicitly or implicitly a term or condition of an employee’s employment OR
- When submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting that employee

Hostile Work Environment

- Unwelcome conduct that has the purpose or effect of unreasonably interfering with an employee’s work performance or creating an intimidating, hostile, or offensive work environment

SEXUAL HARASSMENT – A SHORT REVIEW

- Can happen regardless of gender
- Can occur between same-sex individuals
- Does not require that the harassing conduct be motivated by sexual desire

THE FARAGHER/ELLERTH DEFENSE

Employer can avoid liability in hostile work environment claims by showing:

- It took reasonable steps to “prevent and correct promptly any sexually harassing behavior,” and
- The employee “unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise”

TOP FIVE TIPS FOR
PREVENTING ISSUES WITH
WORKPLACE HARASSMENT
IN 2018

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#1 – REVISIT YOUR POLICIES

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REVISIT YOUR POLICIES

- Be concise and clear
- Avoid legal jargon that is difficult for your workforce to read and understand
- Provide specific, relatable examples
- Address technology
- Include consequences
- Ensure reporting procedures are up-to-date
- Re-distribute to employees and re-post in populated areas

#2 – ENSURE REPORTING STRUCTURE IS EFFECTIVE

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ENSURE REPORTING STRUCTURE IS EFFECTIVE

- Talk to mid-level managers and supervisors
- Walk the floor and know your own workforce
- Consider multiple avenues for reporting, including anonymous options

#3 – TRAIN, TRAIN, TRAIN... AND TRAIN AGAIN

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TRAIN, TRAIN, TRAIN... AND TRAIN AGAIN

- Require some form of training for everyone
- Pay special attention to managers and supervisors
- Utilize engaging and interactive materials – avoid just checking the box
- Use real-world examples that fit your work environment
- Facilitate discussion and encourage participation
- Ensure consistency and follow up
- Don't train just to avoid legal liability

#4 – ENLIST YOUR C-SUITE

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ENLIST YOUR C-SUITE

- It all begins with leadership
- Require that the “big wigs” attend training
- Remind them that this is good for business and that they could face individual liability
- Do not ignore the “superstar harasser” or long-time employee
- Ensure that leadership holds managers and supervisors accountable

#5 – TAKE ACTION

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TAKE ACTION

- Actions speak louder than words
- Take all complaints seriously
- Develop (or revise) an investigation process for complaints
- Take the appropriate remedial action, if necessary – send the message that employees will be held accountable
- Follow up with the accuser after the investigation
- Don't just focus on legal liability and technicalities – find teachable moments and opportunities to change the culture or work environment

SPECIFIC CIRCUMSTANCES

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WHEN YOUR ORGANIZATION'S BIG WIG IS THE ALLEGED HARASSER

- Take the allegations seriously and don't make excuses
- Investigate – use someone from outside the organization
- Take retaliation seriously
- Make it difficult to be the Harvey Weinstein of your organization

#METOO

- Is a social media post a harassment complaint?
 - Ex: “My boss is a complete jerk. #metoo.”
- Think through all of the potential workplace issues
 - Legal
 - Practical
 - Public Relations
- Consider scheduling a meeting to discuss
 - Keep it simple
 - Remind her of your policies and that these are issues you take seriously
 - Ask if she has any concerns or behaviors to report

WHAT'S NEXT?

- Challenges to confidentiality agreements in settlements for harassment claims
- Updated Guidance from the EEOC on harassment
- More claims and complaints filed internally and externally

QUESTIONS?



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THANK YOU

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.

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