

Rule 10: Don't Be Creepy™

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The final installment of a 10-part series featuring our video [Rules of the Road: Return to Work in the Time of COVID-19](#).

Did COVID-19 end sexual harassment?

Did a global pandemic that sent humanity indoors, forcing many of us to work remotely (if at all) and to be socially distant while avoiding handshakes and touching obviate the need for such an obvious rule? Well, not exactly. I have been advising clients on this rule and the ripe environment for harassment claims since the pandemic began, and in candor, my position has been met with varying degrees of skepticism (yes, you can still see people rolling their eyes even if they're not on camera.)

And then [it happened](#). It was inevitable. And it unfolded in the most dramatic and ironic of ways.

Jeffrey Toobin. And a Zoom call. And the rest is history.

The reality is, with more of our interactions taking place via video conference from people's homes, or through e-mail, social media, instant messaging and Slack channels, things have gotten – well – a *little* more personal. And people have gotten a little more casual in their interactions (and their use (or misuse) of technology) (side note: one cannot “mute” a video camera on Zoom, fyi...)

Sexual harassment in the workplace has not ended. It just went digital.

And while we await formal study and reporting by the EEOC, the early indications – both from our own practice anecdotally, and empirical data supports this view – globally. Take [Australia](#), for example, where Victoria has reported an 8% increase in sexual harassment complaints during the pandemic amidst some of the most aggressive lockdowns in the world, illustrating that sexual harassment complaints, in the wake of #MeToo – and even in the remote environment – can still very much be “a thing.”

[The EEOC Select Study on Workplace Harassment](#) was prescient on this point, concluding that “isolated workplaces” and “decentralized workplaces” were contributing risk factors to harassment claims, particularly as bystander intervention becomes more challenging in a virtual context and may decrease the likelihood of reporting. Additionally, bodies of historical research show that gender-based violence increases during times of [crisis](#).

Many other factors contribute to this paradigm. Chief among them: feelings of social isolation and the desire for human connection in any form; the seemingly endless workday and the blurring of work and home; the challenges the pandemic has had on domestic relationships and childcare; the digital invitation into one's home via video calls that breaks the third-wall between an employee's work and personal life that typically exists when the employee reports to a workplace outside the home; the lack of transparency around digital interactions; physical, psychological and economic vulnerability; and yes, the Zoom happy hours, and their ubiquitous side-chats (remember: those too are workplace events and workplace conversations). Be ever mindful of how your words, your actions, and your digital presence might impact other colleagues, both through the end of this pandemic and thereafter.

Recognizing this as a reality, nearly every state that maintains mandatory anti-harassment training requirements (CA, CT, DE, IL, ME, and NY) kept those requirements largely in place throughout the pandemic, including their respective deadlines – further underscoring the point. Companies would also be well-served to adapt their policies and procedures to take into account the virtual workplace, and to reiterate the importance of early reporting of harassment or misconduct.

It's fair to say that we are all looking ahead with optimism – toward the distribution of a vaccine (or two), to seeing friends, family and loved ones, and to getting back to some semblance of normalcy. All of that will engender relief and exultation – and rightly so.

And when that day comes, we should celebrate. We should hug our friends. We should kiss our parents, our grandparents and our loved ones.

But when it comes to colleagues, please curb your enthusiasm – Don't Be Creepy™.

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