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Sexual Harassment? #MeToo Broadcasting Industry ... Your '#Times Up'

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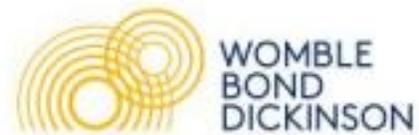
Workplace sexual harassment has catapulted into our collective consciousness since the recent revelations involving media mogul Harvey Weinstein. In recent months we have seen allegations of sexual misconduct against some of the most respected entertainment and media personalities, including television and radio veterans including journalist Charlie Rose, "Today Show" co-host Matt Lauer, and radio personality Garrison Keillor. However, this is not the first time the broadcast industry has experienced allegation of this nature.

A decade ago, broad reports of shocking harassment behavior was the subject of stories about the Sam Zell takeover of Tribune Broadcasting. Zell brought in his colleague Randy Michaels, an executive of Jacor Communications and Clear Channel Communications, to run Tribune, including its broadcast operations. According to both the New York Times and Gawker, soon after Michaels took control, two people at a Chicago bar reported that he said, "Watch this," and offered the waitress \$100 to show him her breasts See: [Gawker](#). The [New York Times](#)

The Times further reported that based on interviews with more than 20 employees and former Tribune employees, "Mr. Michaels and his executives' use of sexual innuendo, poisonous workplace banter, and profane invective shocked and offended people throughout the company." Tribune Tower, "the architectural symbol of the staid company, came to resemble a frat house, complete with . . . pervasive sex talk" and the employee handbook was rewritten to require employees to accept sexually explicit talk. Describing potential off-color jokes and talk, the manual excused that behavior and explicitly disclaimed that it was harassment, stating it was necessary because ". . . a loose, fun, nonlinear atmosphere is important to the creative process," and "This should be understood, should not be surprising and not considered harassment."

Presumably, under cover of that employee handbook, the witnesses told the *Times* of a loud conversation on an open balcony above an employee work area about the sexual suitability of various employees. It was also reported that a female executive offered to bring in her assistant to perform a sexual act on someone in the meeting who seemed to be in a bad mood. In 2008, the Tribune board was made aware that not everyone appreciated the new cultural dynamics and the board accepted Michaels' resignation, based in part on this behavior.

Another case in the early 2000's revolved around sexually explicit talk on radio programs. In a lawsuit emanating from another station owned and run by Jacor, a female personality performed on the air and discussed a variety of topics, including those of a "sexual or adult nature and sang parody songs that required her to use vulgar terms and/or profanity in comedy bits." Despite her participation in these routines, she filed a lawsuit claiming that her cohost referred to her appearance in a demeaning and sexually degrading manner. When she allegedly asked him to stop his "harassment" of her, he refused to do so. She left the show, went to her supervisor who offered her no assistance in stopping the ongoing "harassment."



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While allegations of harassment in the broadcast industry are not new, the #MeToo movement and the cultural backlash we are experiencing today is ample evidence that this type of behavior will not be tolerated moving forward. Broadcasters who allow anything even close to it in the workplace could face serious legal action as well as increasingly bad publicity. Avoiding these issues is easier said than done as employers must face the challenges of consensual office romances that go sour and differing perceptions as to what is acceptable behavior in the workplace.

Office Romance: Employers must also recognize that office romance is inevitable. A December 2007 *Wall Street Journal* article, "[Is Romance Still Allowed?](#)", by contributing editor Kathy Young concluded, "Any notion of simply banishing romantic or sexual interactions at work will fail. Too many of us find lovers, partners, and spouses in the setting where we spend most of our waking hours." She reported studies that show that even in the age of online dating, Americans continue to find love and sex at work. Similarly, a year ago the data company Report Linker surveyed 500 single, divorced and widowed adults, finding that 28% mentioned work as the way to meet partners, while only 20% used a dating app or website. In fact, millennials were actually more likely than other singles (30%) to view the workplace as a dating pool. Others report similar results. There even is a high profile example. New York City Mayor-elect Bill de Blasio, met his wife, Chirlane McCray while working at city hall. Reportedly, she "had zero interest." Undaunted, Mayor de Blasio flirted with her mercilessly ... calling nonstop and trying to steal an unwelcome kiss." A later *Slate* magazine piece questioned whether this courtship sounded too much like sexual harassment. However, Ms. McCray was quoted saying he was "sweetly persistent, but . . . always respectful."

The de Blasio story points out how much the distinction between romance and harassment lies in the eye of the beholder. According to Ms. Young, "Flirtation is mutual, innuendo is one-way." The appearance of "mutual" could really be the result of a less powerful person "playing along" to placate the abuser. So, it is hard to tell and difficult to judge, and it can change. What starts as fully consensual can later be reinterpreted as abusive for a variety of reasons, including a soured romance, made more highly aware because of consciousness-raising coming from the #MeToo movement. Indeed, federal courts have ruled a woman who willingly participates in and even initiates raunchy behavior at work can still successfully sue for sexual harassment once similar conduct becomes unwelcome.

Outsiders' Conduct: Harassment can come from any place and anyone connected with the workplace, including supervisors, co-workers and even non-employees. That last category is one for which broadcasters need to be keenly aware. Harassment can come from vendors and advertising clients as well as from other employees or supervisors. While an employer is charged with knowledge of what goes on in the workplace, it's harder to tell what happens outside of it. Harassment incidents have been reported coming from time buyers and advertisers toward salespeople. Employees who work outside the workplace should be made aware that outside harassment will not be tolerated, and to promptly report it and take action.

Judgement & Balance: This all takes a fair amount of discretion on behalf of the employer. Liana Kerzner, a Canadian television host, writer and producer believes that "We need to be able to use judgment and separate men who are just awkward from men who use their power to intimidate." Making the workplace too uptight will backfire. She writes that workplace stress can lead to inappropriate humor as a coping mechanism. "If you can't joke around at work, you're workplace doesn't have the trust necessary for people to give the company their best." Instead of formal rules, Ms. Kerzner argues, it is much more important to have strong workplace communication and responsive management so that employees can complain without fearing retaliation **or** overreaction.

That is difficult to achieve when workplace policies encourage rigid and punitive approaches removing supervisor discretion and requiring human resources where protocols and policies will have to be implemented. This is particularly difficult for broadcasters who wind up having to report such instances on their license renewal form. An FCC agreement with the Equal Employment Opportunity Commission requires that, while harassment complaints are managed by the EEO Commission, they are reported back to the FCC, and the licensee has to report any such adjudication in its renewal application.

Policies & Training: So to discourage and minimize harassment in the workplace, broadcast employers should establish strong policies against harassment of any type whether it be based on sex, race, religion, national origin, disability or any other protected category. The policy should include a statement that unwelcome and personally offensive verbal or physical sexual behavior is injurious to morale, interferes with work performance and creates a hostile or intimidating work environment and such conduct will not be tolerated. Policies should provide a reporting mechanism, a pledge to investigate, take appropriate corrective action and refrain from retaliation. The employer policy should also make clear that all complaints will be treated with confidentiality. It may be difficult or impossible to lay down precise rules of behavior. The interpretations are the hard part. The goal is to make the workplace *harassment-free*; make the message clear that unwelcome advances, requests for sexual acts or favors or other related verbal or physical contact is not appropriate for the workplace.

Harassment training is also important. The employer should have sensitivity and educational session explaining what constitutes harassment in the workplace and how it is not tolerated by that employer. Employees should be trained to know that an employee believing that they have been the subject of sexual harassment should bring it to the attention of the station's human resources department if it has one, or the designated EEO officer. Here is a place where state broadcaster associations can also be a substantial benefit by conducting such harassment training workshops. Training can also be done through a variety of videotape or online training sessions. Look to your state broadcaster association for good references.

In another recent *Wall Street Journal* article "Harassment Training Gets a Revamp," columnist Sue Shellenberger reports that sexual misconduct is often an open secret among co-workers. Her lesson is that if you know that a co-worker is guilty of sexual harassment, you need to speak up, no matter how powerful the perpetrator. Given the allegations of past several months, it is becoming clear that ignoring problems can ruin the lives of women and men affected by it. Careers and even companies' reputations are at stake. Emphasis must be on fostering a respectful workplace.

Where Do We Go From Here?

A good discussion of the #MeToo /TimesUp movement and the quandary of how to deal with harassment and punishment occurred in the January 14th edition of CBS Sunday Morning. Oprah Winfrey conducted a discussion with major Hollywood figures. If you missed it, here's the link: [Sunday Morning](#). The overwhelming consensus was that the time is up for silence and deference to power in the workplace. But, there was also a discussion of at what point an apology should be accepted. Every instance does not necessarily warrant the loss of a job or career by the perpetrator. Judgment and punishment should be appropriate and sometimes it is okay to say, "I accept your apology" and move on. The important point is you must have a well thought out policy and implement it consistently.

Now is the time to seriously review your existing employee manuals or create one. Review your discrimination policies and assess the office behavior in your own work environment. Behavior previously considered unwelcome, but not over the line, can no longer be considered within the norm. Make sure your employee manuals and policies incorporate the principles described in this article. Have them drafted and reviewed by professionals who have studied the issues and articulate your policies consistent with legal principles that will be applied in any situation of alleged harassment.

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