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## Addressing Workplace Sexual Harassment in the Wake of #MeToo

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Revelations of the Harvey Weinstein scandal, and those that have followed, have ignited sexual harassment complaints against employers across all industries. Recent news more than confirms that the issue of sexual harassment is not limited to Hollywood. As U.S. Equal Employment Opportunity Commission ("[EEOC](#)") Acting Chair Victoria Lipnic recently said in an interview with *Law360*, "We see this everywhere. This happens to women in workplaces all over the place."

With the outpouring of support for victims of sexual harassment, the creation of the #MeToo movement in the last quarter of 2017, and [Time magazine's "Silence Breaker" person of the year](#), it is clear that this is an issue that employers will need to proactively address in 2018.

A [study](#) by theBoardlist and Qualtrics, based on a survey conducted this summer, reported that 77 percent of corporate boards "had not discussed accusations of sexually inappropriate behavior and/or sexism in the workplace." Less than 20 percent of the 400+ people surveyed had reevaluated their company's risks regarding sexual harassment or sexist behavior, even in light of the recent revelations in the media. Plainly, those numbers are expected to, and no doubt will, increase in the coming year.

Failure to take affirmative steps to prevent harassing behavior and adequately respond to allegations of sexual harassment can have serious consequences. While sexual harassment claims may originate as internal complaints, which must be promptly addressed, they may also result in a discrimination charge filed with the EEOC or the corresponding state or local agency. Since fiscal year 2010, roughly 30 percent of the approximately 90,000 charges of discrimination received by the EEOC each year have alleged [sex-based discrimination](#), and the number of charges alleging [sex-based harassment](#) has gradually increased from just below 13 percent to just above 14 percent. Next year, this number is expected to increase because employees are becoming more comfortable reporting and publicizing incidences of sexual harassment in light of recent news, and due to the EEOC's digital upgrade that allows employees to file EEOC complaints [online](#).

Sexual harassment claims may also lead to litigation, which can be expensive and time-consuming and can create negative publicity. For instance, Mr. Weinstein's former company, The Weinstein Co. ("TWC"), has been named in a \$5 million civil suit alleging that executives of the company did nothing to protect women who did business with Mr. Weinstein, despite being aware of his inappropriate behavior. On December 6, 2017, TWC was one of the named defendants in a proposed class-action racketeering lawsuit alleging that TWC helped facilitate Mr. Weinstein's organized pattern of predatory behavior. Additionally, the New York attorney general's office is investigating TWC for potential civil rights violations in its handling of claims of sexual harassment.

There may also be unseen consequences of sexual harassment on the makeup of a workforce. [Various studies](#) have reported that harassment may lead to the departure of women from the workforce or the transition into lower-paying jobs. Further, women in jobs with a higher risk of sexual harassment often earn a premium over employees in positions with a lower risk of sexual harassment. Sexual harassment, therefore, may have real impact on compensation and implicate the [pay gap and pay equity](#).



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Article By [Yael Spiewak](#)  
[Nathaniel M. Glasser](#)  
[Epstein Becker & Green, P.C.](#)  
[Employment Law This Week](#)  
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[All Federal](#)

For these reasons, many employers are looking to implement and also supplement sexual harassment training seminars provided for their employees in order to combat sexual harassment in the workplace.

Employers should also consider whether their current practices include the following:

- *A robust complaint procedure.* Sexual harassment at work often goes unreported. According to the [EEOC](#), as many as [three-quarters](#) of harassment victims do not file workplace complaints against their alleged harassers. Make sure that you have reporting mechanisms in place to receive complaints and consider allowing employees to complain directly to human resources, to a supervisor, or to an anonymous hotline.
- *A prompt investigation of complaints.* Upon receiving a complaint, promptly and thoroughly investigate the allegations, and make sure that your employees do not retaliate against the alleged victim or any person who cooperates in the investigation.
- *Independent investigations.* Ensure impartiality in the process. In certain cases, that may mean hiring an outside consultant or outside legal counsel to conduct the investigation.
- *Thorough communication practices.* A common objection asserted by complainants is that they are not informed about the status of an investigation. While complainants need not (and should not) be notified about the details or even given regular status reports, inform the complainant that an investigation will occur and be sure to provide closure—regardless of the outcome of the investigation.
- *A proactive approach.* Consider conducting employee engagement or climate surveys (with or without a consultant) to better understand the work atmosphere, rather than simply reacting to workplace complaints. Before doing so, consult with counsel to determine whether and how such a survey may be conducted (potentially under the self-critical analysis privilege, depending on the jurisdiction) to avoid it unwittingly becoming evidence in a proceeding.
- *An atmosphere of inclusiveness.* Foster an atmosphere of inclusiveness to help prevent sexual harassment. Make sure that your top-level management is involved in setting the tone, modeling appropriate behavior, and effecting positive change. Some organizations should consider creating a task force to root out and address inappropriate conduct—again with the oversight of legal counsel.
- *Effective training.* While most employers conduct some form of anti-harassment training (and those that don't offer training, should), make certain that your training is designed to effectively combat sexual harassment. Tailor the training to your specific workplace and audience. Use real-world examples of what is, and is not, harassment, and make sure that managers know how to spot potential issues and respond to any and all complaints.

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