

Preventing & Responding to Sexual Harassment Claims in the #MeToo Era



September 27, 2018

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MORE THAN A MOVEMENT IN HOLLYWOOD



EEOC Statistics (2017 Report)

- **1 in 4** women report having experienced “sexual harassment” in the workplace
 - Up to **85%** depending on how that term was defined
- **70%** never talked with a supervisor, manager, or union representative about it
- **87% - 94%** did not file a formal complaint
- **75%** of employees who spoke out experienced retaliation
- 2015 – EEOC secured **\$39 million** for employees in harassment lawsuits; **\$125.5 million** in pre-litigation settlements

OBJECTIVES

- The Law
- What is Sexual Harassment
- Responding to Harassment
- Preventing Harassment – CULTURE Shift Time!
- Beware of the Backlash!



PROTECTED CLASSES

- Race , color, religious creed, ancestry
- Sex (including sexual harassment) or gender
- Pregnancy or childbirth (and related medical conditions)
- Sexual orientation, gender identity, or gender expression*
- Genetic information
- National origin
- Medical condition
- Age (over 40)
- Disability (physical, psychiatric, perceived as, regarded as and associated with)
- Marital status
- Inability to speak English
- Military and Veteran Status

GOVERNING LAW

Title VII – EEOC (Federal)

- **Hostile work environment**
- Pregnancy discrimination = sex discrimination



FEHA – DFEH (State)

- **Sexual Harassment:** Harassment based on sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions

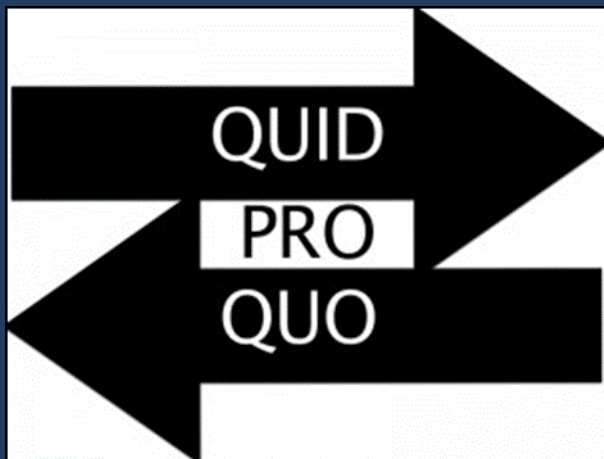


LIABILITY FOR SEXUAL HARASSMENT

- The Company
- Supervisors
- HR Representatives
- Employees



Legal Definitions: Sexual Harassment



Quid Pro Quo

"This for that"



Hostile Environment

Conduct that is offensive, unwelcome and unreasonably interferes with an employee's ability to perform his/her job

Hostile Work Environment: Elements of a Claim

1. Belongs to a protected group;
2. Subject to unwelcome harassment;
3. Based on membership in **protected group**;
4. Sufficiently **pervasive** to affect a term, condition, or privilege of employment; and
5. The **employer** knew or should have known about the harassment but failed to take prompt, corrective action.

What Does Sexual Harassment **Look** Like?

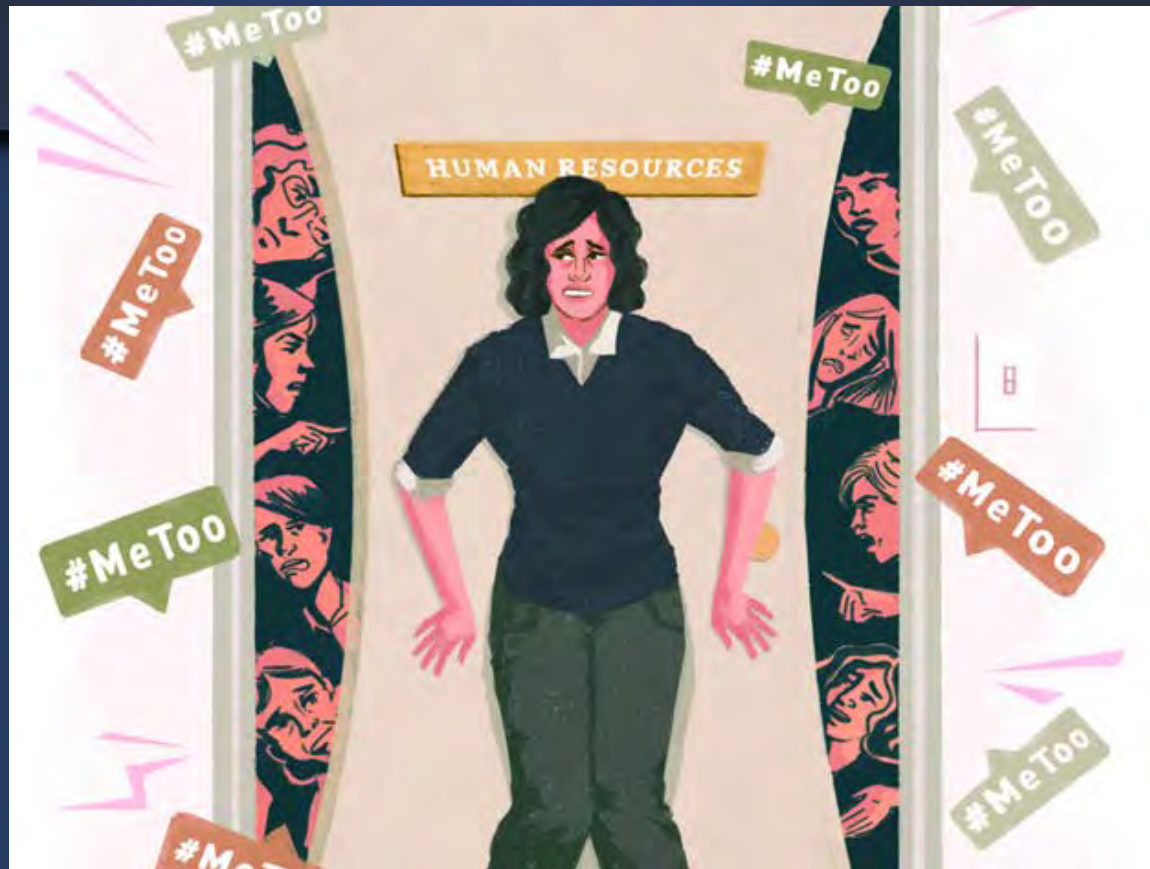


- Words: more than “Mere Utterance”
- Physical Actions
- Emails, Texts, Messages
- Web Surfing
- Social Media

NOT Just Employees

- Independent Contractors
- Customers
- Any Third Parties





Responding to Sexual Harassment Claims

Responding to the Initial Complaint

- **TAKE ALL CLAIMS SERIOUSLY**
- Do not wait for buzz words
- Be impartial and don't trivialize
- Report according to policy
- Consider paid administrative leave for the accused
- Promptly investigate
- Prompt and appropriate resolution
- Follow up

Reminder: NO RETALIATION

- Retaliation – most commonly alleged basis of discrimination in the workplace
- Not just termination or discipline:
 - Job assignments
 - Work area relocations
 - Shift changes
 - “Cold shoulder”



Investigation

- Get help from impartial third party if needed
- Speak to witnesses (document!)
- Review any documentation/evidence
- Advise that there may be limits to confidentiality

Partial Defense

- Employer had an **effective** complaint process, which
- The employee declined to use, and
- If the employee had used it, he or she would have avoided damages

CORRECTING Harassing Behavior

- Explanation of why behavior was offensive and instruction as to future offenses
- Group training
- Separate the employee responsible from the complaining employee
- Disciplinary action
- **No VIP Treatment Allowed!**





PREVENTING Sexual Harassment in the Workplace

"Culture always trumps compliance."

Johnny C. Taylor, SHRM-SCP, SHRM CEO

The Role of Written Policies

- Mandated by Law (with specific requirements)
- Clear Expectations
- Point of Reference
- Uniform Procedures and Processes
- Must be worth more than the paper they're written on!
- Regularly audit & revise



Sexual Harassment Training: Beyond AB 1825

- ALL companies should provide training;
- More than every 2 years;
- More than just supervisors; and
- Varying durations.



Practical Tips: Making Training MEANINGFUL

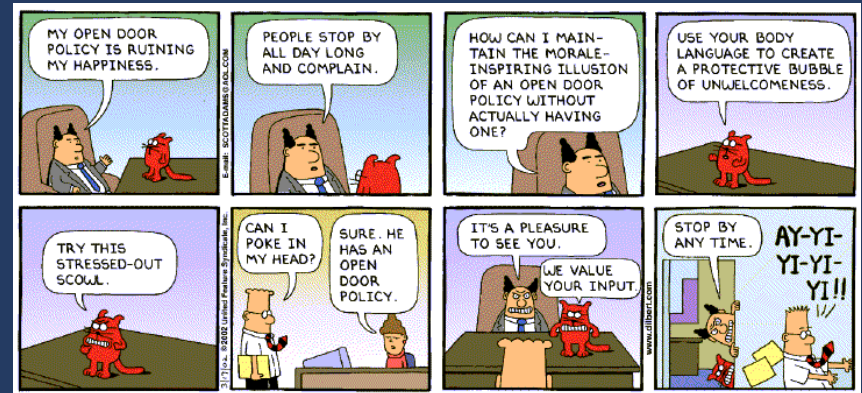
- CEO / senior leaders - attend and meaningfully participate
- In-person training vs. videos or web-based
- Encourage & facilitate discussion & open dialogue
- Clearly communicate company expectations and policies
- Give specific examples (severe and subtle)
- Unacceptable vs. illegal conduct

Making Training MEANINGFUL (cont.)

- Customize per audience (e.g., supervisors vs. entry-level employees)
- Mindful use of humor, videos, illustrations, etc.
- Emphasize non-retaliation
- Voluntary & anonymous evaluations of each session
- **KEY TIP:** sexual harassment training cannot take place in a vacuum!

The (Real) Open Door Policy

- Literal interpretation
- Be honest about your time
- Walk-ins vs. appointments
- Emails, texts, calls
- Focus and listen to ALL employees bringing an issue to your open door!
- Foster trust – **daily!**



Beyond the Open Door: Reporting Sexual Harassment

- Clear Reporting Points
 - Clarify that employees can “jump the chain”
- Dedicated Hotlines
- Dedicated Email Accounts
- Apps



Emphasize Bystander Intervention

- Not only supervisors
- Don't wait for a "formal" complaint
- Cultivating a (maybe) new culture
- Support bystander intervention
- Model bystander intervention



#SaySomething



**DON'T BE PART OF THE
POTENTIAL BACKLASH!**

Questions?

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