

PROGRESSIVE WOMEN'S LEADERSHIP PRESENTS:

*Women Leaders
Share What's
Working:*

New Ways to
Prevent Sexual
Harassment



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WOMEN'S LEADERSHIP

Women Leaders Share What’s Working: New Ways to Prevent Sexual Harassment

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Introduction

Think about this ... Someone on your team comes to you with a sexual harassment complaint. Are you 100% confident you're prepared to handle it?

Most women leaders get it. Many have either been sexually harassed themselves or know women who have been. The statistics are staggering:

- Almost half of working women say they've been harassed at their job, according to a recent NBC News/Wall Street Journal poll.
- 70% of women do not report, according to Myra Golden, who conducts sexual harassment training with Fortune 500 companies.

Creating a safe space

Women leaders are in a unique position to help other women who've been harassed. They can create a safe space for them to tell their stories, of course, but they can also champion a shift in the workplace culture of their own companies. And it starts with how you skillfully handle each complaint.

So, are you equipped if allegations happen in your own office?

She Said It:

“For so long women were silent ... now the law is on the side of women, or men, who encounter harassment, and that's a good thing.”

– Supreme Court Justice
Ruth Bader Ginsburg

With sexual harassment complaints at an all-time high, leaders need to brace themselves for such complaints – and know how to handle them with sensitivity, respect and fairness.

It's been more than a year since countless stories of workplace sexual harassment started making headlines and the #MeToo movement began. New data suggests the number of harassment complaints and lawsuits won't be declining any time soon.

Sexual harassment suits up 50%

While employers attempt to change workplace cultures to eliminate sexual harassment, the Equal Employment Opportunity Commission (EEOC) is attempting to help the process along. The agency released preliminary findings from its examination of the effect of the #MeToo movement. And while many HR experts predicted sexual harassment claims would rise, the Commission's numbers now show you just how much.

Overall, the EEOC's data shows a massive increase in sexual harassment claims, as well as pro-employee rulings. Here's a breakdown of the numbers:

- During 2018, sexual harassment charges filed with the EEOC increased by 12%. This is the first time this number has gone up in five years.

Most women don't report sexual harassment: 4 reasons

According to corporate sexual harassment trainer Myra Golden, 70% of women do not report sexual harassment. Here's why:

1. Fear of retaliation ("Will I be fired?")
2. Goes against corporate norms ("Will I be overlooked for promotions?")
3. Trust issues ("I don't want to be judged.")
4. Feeling alone ("I won't be believed.")

- The number of sexual harassment lawsuits the EEOC filed against employers increased by 50%.
- Successful, EEOC-run mediation proceedings went up 43%.
- The Commission recovered roughly \$70 million for harassment victims in 2018, an amount that increased by 22%.
- Visits to the sexual harassment page of the EEOC's website (tinyurl.com/EEOCsexhar) went up more than 100%.

While we're waiting on new guidance ...

It's clear from the EEOC's data that the issue of sexual harassment isn't going away. To encourage employers to keep improving anti-harassment efforts, the Commission is working on revising its guidance, which hasn't been updated in 20 years.

Toward that end, the EEOC recently held a public meeting called "Revamping Workplace Culture to Prevent Harassment," which stressed the importance of implementing programs that are supported throughout the company from top to bottom – CEOs, supervisors and employees.

These efforts are a huge help, of course, but women leaders need to be able to step up and understand their own role in addressing sexual harassment – how to prevent it and how to stop it.

Here, we will give you a blueprint to follow should someone tell you they've been sexually harassed in your workplace. We will tell you how other companies, and their leaders, have handled sexual harassment and you'll hear from legal experts how to maintain a safe working environment.

Chapter 1: *What is Sexual Harassment?*

In the #MeToo era, sexual harassment has been on everybody's mind. The scandals of the past year have shed light on just how persistent workplace harassment is – in spite of the fact that 90% of employers have sexual harassment training in place.

To help you put an end to sexual harassment in your own workplace, you need to know exactly what sexual harassment is so you can inform every employee what's considered acceptable behavior.

While training educates employees on what constitutes harassment, studies show it doesn't do enough. Managers and supervisors need to be made aware behavior that seems funny to some could be sexual harassment to others. That's why it's important that those in leadership remind their managers and supervisors to watch for signs of sexual harassment and put a stop to it.

She Said It:

“We need to keep talking to each other. We can't have men take this moment and say, 'Now I can never interact with women,' or vice versa.”

– Gloria Steinem, feminist,
journalist and political activist

Catch issues early

It's also important to make sure all employees know how to report harassment issues they have with co-workers or managers. That way upper management, along with HR, can catch issues before they spiral into something much worse.

Sometimes sexual harassment in the workplace is not that apparent. It's subtle. A sexual joke or making an advance? No question. But sexual harassment can also be a slight touching or an off-hand comment.

Before we discuss ways to help companies implement policies and change the workplace culture, we need to take a look at exactly what sexual harassment is and why it's crucial for those in leadership to have a no-nonsense approach when it comes to this topic.

It's unwelcome behavior

So what is sexual harassment? Quite simply, it's unwelcome behavior. Whether a joke, a gesture or a sexual comment, it's behavior that's offensive to the person being subjected to it.

According to the EEOC, sexual harassment can include many things:

- unwelcome sexual advances
- requests for sexual favors
- facial expressions, winking, throwing kisses or licking lips

- neck massage
- verbal or physical conduct of a sexual nature
- unwanted sexual looks or gestures
- unwanted letters or phone calls of a sexual nature
- unwanted pressure for dates

She was a witness to harassment, so why did she win a \$1.5M verdict?

Vicky Crawford brought a sexual harassment suit against her employer, the Metro School District in Nashville, when she was fired for "poor performance," although she believed it was in retaliation because she was a witness in an internal sex harassment investigation.

Because she wasn't the victim in the investigation, her employer believed incorrectly that there couldn't be any retaliation against her.

Decision: The company lost when a jury awarded Vicky \$1.56 million.

Key: It's clear leaders need to be cautious when dealing with any employee involved in protected conduct. While employers need to conduct prompt investigations of claims of harassment, employers must exercise great care, even seeking legal advice, when contemplating firing an employee who's been interviewed during the investigation.

Even though a company may have cause to fire such an employee, it must be carefully considered and may even need to be delayed.

- unwanted deliberate touching, leaning over, cornering or pinching, and
- actual or attempted rape or sexual assault.

2 types of sexual harassment

There are many forms of sexual harassment that may not be clear to all employees. But for leaders, use this filter: A problem exists if an employee says it exists.

There are two types of sexual harassment you want to be aware of:

1. Quid pro quo sexual harassment: This type of sexual harassment is overt. It's when a supervisor requires sex, sexual favors or sexual contact from an employee as a condition of employment or advancement. The sexual harassment is quite clear.

Quid pro quo is a situation in which an employee is confronted with sexual demands in return for a raise, promotion, bonus, etc. Some examples:

- The request can be explicit ("If you sleep with me, I'll give you a raise") or implicit ("You might have a better chance of a promotion if you're nicer to the boss.")
- The victim doesn't need to be the target of the abuse (you might overhear a sexually explicit conversation or be aware of a boss who's having sex with a subordinate)
- It only takes one sexual advance.

A recent court case: A male manager began making unwanted sexual advances toward a female sales rep. When she refused his advances, he retaliated by cutting her hours from 40 per week to 32. She was punished with reduced hours because she did not have sex with the sales manager. This was a viable quid pro quo claim, said the court.

2. Hostile work environment sexual harassment: Jane works as an admin in a busy construction company. The construction workers use coarse language and make sexual advances toward her. Jane is working in a hostile work environment.

Whenever an employee is subject to unwelcome advances, sexual innuendos or offensive sexual language, this is considered hostile work environment sexual harassment.

A hostile work environment amounts to unwelcome sexual conduct that:

- unreasonably interferes with job performance, or
- creates an offensive or intimidating work environment.

Some examples of a sexually hostile environment:

- jokes or remarks
- cartoons, posters or other graphics, and
- innuendo or suggestive looks.

Any employee exposed to a hostile environment can claim to have been sexually harassed. The person doesn't need to be the actual target.

Some examples of "hostile work environment" victims:

- a witness to harassment of a co-worker
- a passerby who has to listen to explicit jokes, and
- a witness to flirting between a supervisor and an employee.

A recent court case: A female employee, who objected to sexually explicit photos and magazines in the workplace, was awarded \$875,000.

How can we make sexual harassment training stick?

Question: We conduct thorough sexual harassment training with our employees. But how can we make sure it actually sticks?

Answer: There are approaches to make anti-sexual harassment training more effective (and memorable), says Jennifer Farthing, global head of content at ethics and compliance firm LRN Corp.

Two examples:

- **Tell an evocative story creatively.**
It can make the material more memorable and depict the emotional cost in a way videos or written materials can't. One idea is to depict a workplace bully who transforms into a monster as his behavior worsens over time.
- **Use interactive elements.**
Short quizzes and drag-and-drop activities (moving the cursor over a selection and moving it to another location) can help employees retain information by making them do something with it, rather than just passively watching a video.

You as a company leader are responsible for protecting your employees from anyone your company has some control over – and not just another employee, including:

- customers
- delivery people
- independent contractors
- temps, and
- vendors.

You're also responsible if your employees are offsite at a work-sponsored event or on a client visit. And it's a leader's responsibility to act on any report of sexual harassment, of course, but you should also be proactive in having zero tolerance for any inappropriate remark, behavior or communication.

Is hugging now taboo in the workplace?

While hugging is often an “innocent” form of social greeting, an employer needs to focus on how hugging makes the recipient feel. One woman is saying that it's sexual harassment – and the courts have agreed to hear on the case.

A woman sued her company, claiming that her boss created a sexually hostile work environment for her. Over a span of 12 years, she counted he hugged her at least 100 times.

The company argued that the hugging was merely innocuous, socially acceptable conduct. Most of the incidents in which he hugged her were at office parties, awards banquets and some training sessions. At no point, the company claimed, did he hug her when they were alone.

But the female employee claimed she became constantly stressed and anxious about his touching, which she believed had sexual overtones.

The number and frequency of the hugs, and the fact that they came from a supervisor were key factors in this suit going forward, said the court.

We'll update you when there's a verdict.

Chapter 2: *Handling Sexual Harassment Carefully, Confidently, Confidentially (and Quickly)*

Of the thousands of sexual harassment complaints filed with the EEOC each year, the majority are based on supervisors not responding to initial complaints. Most firms get into trouble because supervisors don't take complaints seriously, so employees feel forced to go outside to get someone to listen to them.

Every person in management has a responsibility

Workplace coach Lynne Curry often hears three reasons managers give for overlooking harassment that seemingly goes on right under their noses:

1. *"No one ever asked her for sex."* That defense is common because too many managers think sexual harassment is only about sex. Those in leadership need to be aware that the category includes comments, innuendo, insults and so-called "harmless" physical contact (see page 5 for a complete list).
2. *"She never complained."* Victims do have some responsibility for ringing the alarm, but, in many court cases, judges and juries have warned that managers have responsibility, too. The reason: The law recognizes that victims often are intimidated and reluctant to make waves for fear of losing their jobs or just being branded as troublemakers. That means leaders have a responsibility to be proactive about suspicions, and not wait until the victim pleads for help.
3. *"He's a great employee who'd never do something like that."* Sometimes a manager may be reluctant to take action against a high-performing or well-liked employee, for fear of losing the employee's services or having to find a good replacement. Here's how that looks to a court: You let someone victimize another employee because of business convenience. Then things start to get really expensive for the employer.

She Said It:

“It's unacceptable to not have a policy (against sexual harassment) ... We encourage our employees that if something is happening, they raise it.”

- Mary Barra, CEO, GM

Employees wear many hats these days – and often end up reporting to several supervisors. But, when it comes to harassment, every person in management has a responsibility to act on reports of sexual harassment – whether they hear it from a direct report or another employee. And HR needs to be alerted immediately about any harassment complaints.

A good first move

When an employee tells you she's being sexually harassed, what are your responsibilities? First and foremost, treat all harassment complaints seriously and handle them promptly. Since it's very difficult for victims of sexual harassment to come forward, leaders should immediately put a stop to the behavior and promptly conduct an investigation.

A good first move is to ask the employee to tell you the whole story in her own words.

It's the manager's job to tell the employee that the company will do a full investigation and that retaliation against them won't be tolerated, says HR expert Steve Cadigan.

She Said, He Said: Can you tell who's more credible?

Sometimes the facts are clear in a sexual harassment complaint. But in the classic "he said, she said" scenario, you'll need to discern who's telling the truth.

To help you make a credibility decision, test your knowledge of how to investigate and detect lies. Respond True or False to the following:

1. If an employee is going to give you an account of an incident, it's best that you listen to the account in a face-to-face meeting to, among other things, pick up on body language.
2. When taking a spoken statement, make note of your questions while the person is talking, and save your questions for the end, rather than ask them during the statement.
3. When asked to retell a story, a liar will often add details and a truthful person will recite the same details as in their first statement.

See the answers on the following page.

Answers

1. False. Most of us want to believe we're skilled interrogators who, as in detective movies, can pick up on expressions and body language. In fact the opposite is more common.

People use body language to cover lies, sometimes quite skillfully. A written statement is always better. Some experienced interrogators even suggest that when you must take a spoken statement, do it on the phone.

2. True. In a face-to-face, the idea is to let the person keep talking, and possibly even make contradictory statements that can help get to the truth. If the person stops talking, you then can ask a question or say, "What happened next?"

3. False. Studies show that a liar will rotely recite details a second time, without added information. Truthful people who are asked for a second telling often remember details they didn't mention the first time.

When to pull in outside help

Managers are in a delicate position if they have to investigate allegations against a boss. So knowing when to pull in an outside investigator is key.

These situations include:

- the accused or accuser is a VP or above or in HR
- there are multiple people and incidents
- the accuser has already hired legal counsel, or
- criminal misconduct (groping, assault, etc.) is alleged.

A leader's role when an employee reports

Now more than ever, leaders need to know what to do when sexual harassment happens in their workplace. Here, some experts and employment attorneys give their best advice:

Investigate allegations immediately. Any reports of sexual harassment should be made a top priority. Delaying an investigation will send the message that the allegations aren't important, which won't help should a complaint wind up in court. It's crucial to start interviewing all involved parties right away, document the entire investigation and separate the accuser and the accused.

Treat all complaints seriously. No matter who came to you or what they said (or whether you believe the person who comes to you with a complaint), you need to listen, then promptly and thoroughly investigate the complaint.

Get the facts. Listen without passing judgment. It's important to listen to the language the employee uses when reporting the claim and to make factual determinations rather than legal conclusions. "Factually describe the situation without using loaded terms like 'harassment' or 'inappropriate,'" advises employment attorney Janine Yancey, CEO of Emtrain, an online compliance education platform. "Just write the facts and consequences of those facts," she says. "If described well, the company will see the risk and take action."

Listen with intent to understand. "Many of us listen with the intent to reply," says sexual harassment expert Myra Golden. "We may not have intent to judge, but we do. As a manager, you need to do the opposite. Say, 'I want to understand your journey.'"

The right response: Be empathetic, but effective

As someone in leadership, you know the importance of your company having clear sexual harassment policies, training and reporting methods.

But one aspect that's just as important is how you interact with an employee who's reporting harassment. When discussing such a sensitive topic, it's important to be gentle, but also firm – all sexual harassment allegations are serious.

Here's how to come across as empathetic, according to business lawyer Darren Heitner:

1. **Go to a private place.** This will make the employee feel they can talk freely.
2. **Listen.** The employee may get emotional. Let them speak and listen closely. Comfort them if needed, but also make it clear an investigation will be conducted before action is taken.
3. **Offer help.** The employee might benefit from resources that provide support, such as an employee assistance program. Let them know what's available to help.
4. **Check in consistently.** Let the employee know the status of the investigation from time to time. You don't want them to think you've forgotten their claims. And when the investigation is through, explain the findings.

Here's how to listen with the intent to understand:

- Take on the accuser's perspective. (Do not cut them off.)
- Communicate understanding. (Paraphrase what they tell you.)

Tell the employee the company's got their back. It's the manager's job to tell the employee that the company has an obligation to look into the allegation, says HR expert Steve Cadigan, founder of recruitment firm Cadigan Talent Ventures. Leaders need to reassure the person that their identity is going to be protected and that retaliation against them won't be tolerated. It's also the manager's job to tell the employee that the company will investigate the allegation promptly.

Don't allow the process to stall. Slow or inadequate responses can cause lawsuits down the road. Taking prompt action to investigate and remedy situations will show the employee (and courts later on, if necessary) that you not only want to do the right thing, but also, you're doing your best to create an environment that encourages employees to speak up. And that includes conducting a thorough investigation (or hiring an outside investigator). It's important that you get the details: dates, times, locations, witnesses and anything else (emails, voicemails, texts, etc.) to help clarify what happened.

Take appropriate action. As a leader, you'll need to put distance between the accuser and the accused. Depending on your company's policies, you might take the following protective steps during the investigation, says employment attorney Lynne C. Hermle:

1. Allow the complainant paid time off;

2. Alter work assignments so that an alleged harasser does not work directly with or supervise the complainant;
3. Place the alleged wrongdoer on paid or unpaid leave; and
4. Ensure that all supervisors understand that retaliation will not be allowed.

Make an informed decision. Once you conclude the investigation, and your company determines if policies were violated, it's time to take appropriate disciplinary action. "The correct discipline, depending on the severity of the situation," says Hermle, "can include warning, counseling, impact on bonus, impact on future compensation increases, suspension or immediate firing."

When the offender's the big boss ...

How should you respond if an employee accuses one of your company's leaders of sexual harassment?

This can get messy.

If a company executive (e.g., your boss) is accused of harassment, it can put you and your company in a very difficult spot.

Suddenly, you're faced with having to investigate an individual you report to, right? Well ... maybe not, if you take some preemptive steps.

What would you do if your boss got accused? 3 leaders say

What if an executive at your company is accused of sexual harassment? We asked three women leaders what they would do if the accuser was a VP or above in their companies:

- **Follow policy.** "You have to follow your company policy, including possible termination, depending on the severity," says Paula Welch, HR coordinator, Precision Concrete Construction.
- **Counsel the accused.** "You have to get each person's side of the story," says Tami Holbert, HR manager, NIBCO. "And when I'm talking to the accused, I'd have a counseling session with him – without assigning guilt – to reiterate the harassment policy. While there may be no proof of harassment, there's something there. You have to act."
- **Go right to the top.** "When you talk to the accused, I'd make sure the company president is there," says Chantelle Hernandez, HR manager, Wilson Orchard & Vineyard Supply. "From there, you need to see how all the stories run together before deciding on your next course of action."

A blueprint for success, fairness

It all starts with coming up with a plan for how you (and your company) will react ... before you have to.

Love gone wrong? Or sexual harassment?

Since #MeToo, the lines between flirting and sexual harassment have become blurred. And for those in leadership, this is a very difficult subject.

A romance gone bad can present a special challenge to managers. In this situation, just remember to:

- Not make assumptions about their relationship
- Take each incident seriously
- Get both sides, but don't take sides, and
- Make decisions based on the most recent and most relevant facts; patterns of behavior do matter, but you can't prejudge that a pattern exists.

Here are some best practices to implement now – from employment law attorneys and experts on harassment prevention:

1. Create a protocol

It's unlikely an executive would sign off on an investigation of him/herself, so it's often smart to create a protocol that automatically kicks in should an executive be accused of harassment.

Some things your company may want to have the protocol state:

- What will trigger an investigation – such as when the accused or the complainant is a company executive or owner.
- What will happen when the investigation is over – i.e., When will the findings result in a suspension or termination? (Remember, if guilty, a harasser doesn't have to be fired as long as what you do effectively prevents or stops the harassment.)
- An impartial, outside firm will conduct the investigation (it can help to already have the firm picked out or on retainer).

One nice thing that can come from putting a protocol like this together is it sends the message up the ladder that harassment won't be tolerated at any level.

And that kind of message can also trickle down through an organization in a very positive way.

2. Give employees multiple outlets to report harassment

When harassing behavior comes from a direct supervisor or a person in a position of power, employees are more reluctant to complain out of fear of retaliation.

So give employees multiple people they can go to with complaints (perhaps including a third-party investigative firm) and multiple avenues to issue complaints that executives can't access (such as an online portal or phone hotline).

To use these resources to the fullest, the EEOC recommends those responsible for receiving complaints:

- know how to take all complaints seriously
- are trained not to retaliate and know consequences of retaliation
- understand/maintain confidentiality
- have authority to initiate investigations, and
- document everything – from intake to investigation to resolution.

3. React promptly, consistently

Prompt action is key to preventing further damage. This includes not only in launching the investigation, but also in handing out discipline.

If an investigation does result in discipline, it can also pay to follow up with the accuser(s) to find out if they feel the company's actions are effectively preventing or stopping further harassment.

One final key: To avoid the appearance of favoritism, make sure executives are treated the same as employees when it comes to conducting an investigation and disciplining (or firing) the accused.

The investigation: Tough questions you need to ask

When you're gearing up to investigate an employee's sexual harassment complaint, you need to ask tough, direct questions. The following questions will help give you a guideline. (Note: You should consult with HR or an employment attorney as well.)

The complainant: Get every detail

1. Who committed the alleged harassment? What happened? When did it happen? Where did it happen?
2. How often did it occur? How did it affect you?
3. How did you react? What was your response when the incident(s) occurred or afterwards?
4. Has your job been affected in any way?
5. Who may have seen or heard the incident that you know of?
6. Did the person who harassed you harass anyone else that you know of?
7. Are there any notes, physical evidence, or other documentation regarding the incident(s)?

The accused: Get their version

1. What is your response to the allegations?
2. Why would the complainant lie?
3. Please give me your version of the incident.
4. Are there any other persons who have relevant information?
5. Are there any notes, physical evidence, or other documentation regarding the incident(s)?

Witnesses: Get them to fill in the blanks

1. What did you see or hear? When did this occur? Can you describe the alleged harasser's behavior toward the complainant and toward others in the workplace?
2. What did the complainant tell you? When did s/he tell you this?
3. Are there other persons who have relevant information?

Chapter 3: *Learn from Them: How Other Companies Handled Sexual Harassment*

Since most women do not report sexual harassment (see page 3 for statistics), are you confident your company is doing enough to stop inappropriate behavior in the workplace?

The spike in sexual harassment lawsuits and complaints should make all those in leadership hyper-aware of their role in maintaining a safe workplace.

She Said It:

“The only women who don't believe that sexual harassment is a real problem in this country are women who have never been in the workplace.”

– Cynthia Heimel, feminist writer

Despite decades of experience trying to address sexual harassment in the workplace, the recent wave of workplace harassment complaints all over the media have put employers back on their heels.

Google's #MeToo moment

Most recently, thousands of female Google employees walked off the job to protest a company culture that allowed a “history of harassment, discriminations and protecting abusers.”

This was in response to news reports that the company paid one of its top executives \$90 million in exit payouts after an investigation found that he coerced a fellow Google employee into performing a sexual act.

If the Google employees achieve their goals of having clear, uniform and inclusive processes for all employees and contract workers to report sexual misconduct, their demands might well provide a blueprint for changes to harassment policies, reporting procedures and transparencies at all companies. It could also accelerate changes to EEOC guidance that would force companies everywhere to update their policies.

Recent court cases illustrate how best to prevent – and handle – sexual harassment if it should strike your company.

Let's take a look at how other companies handled sexual harassment complaints in ways that led to lawsuits.

These stories best illustrate how all those in leadership should respond to a situation of sexual harassment, as well as to all complaints, so they do not wind up in court like these companies did.

Leadership lesson #1: Take protective measures to provide a safe workplace

What happened: Shannon* brought a sexual harassment complaint against a male employee. The company put both parties on separate shifts while it investigated and held an internal disciplinary hearing on the complaint. The company's board determined the harassment occurred (mainly crude verbal statements) and the offending employee was given a three-day suspension for the offense.

The company also took extra steps to right the wrong by hiring an independent law firm to investigate the complaint to determine if the company had an ongoing gender discrimination and sexual harassment problem. Conclusion: The harassment did occur and further sexual harassment training should be implemented for the entire organization.

Who won the lawsuit? The employer, since the court dismissed the lawsuit.

Takeaway for leaders: The most important thing the company did was end the harassment. Federal law doesn't say you have to fire a harasser – you just have to do all you can to make sure the harassment stops. By investigating the complaint, separating those involved and conducting harassment training after the incident, the company took crucial steps to protect its employees and the company.

7 million reasons why swift action pays

Two recent court cases can help convince others in leadership roles why now more than ever, a sexual harassment complaint can never be taken lightly:

- **A bad fire:** Pan American Laboratories was forced to pay employee Carleen Black \$3.45 million in punitive damages and back pay. She sued her former employer for sexual harassment, after getting fired for making complaints about being harassed by company executives. The jury said it set the award so high because the managers involved in the harassment were the same managers who made the firing decision.
- **Failure to act:** Alorica Inc, of Irvine, CA, paid \$3.5 million to resolve a sexual harassment lawsuit for subjecting male and female customer service employees to a sexually hostile work environment by managers and co-workers. On-site human resources staff failed to properly address the harassment despite repeated complaints by employees.

* Names have been changed to protect privacy.

Leadership lesson #2: Policies only go so far ...

What happened: Lisa* claimed she'd been sexually harassed by a co-worker for years. He'd often grope her and force her to work with him. She never complained, even though the company had an anti-harassment policy in place and an anonymous reporting hotline. When she eventually reported the harassment, she resigned the next day. She then filed a sexual harassment lawsuit, alleging a hostile work environment.

Who won the lawsuit? The employer. The court said the company wasn't liable because it wasn't aware of the harassment until after she resigned.

Takeaway for leaders: The company's anti-harassment policy and reporting hotline did show the court it took preventing harassment seriously. But while having an anonymous hotline is a great tool, it's key to make sure all employees are aware of it by putting up posters and sending out emails. Often a hotline exists in obscurity, warn employment law experts.

Leadership lesson #3: Think twice before firing an employee who files a complaint

What happened: Just a few months after filing a sexual harassment complaint, Janice* was fired. Her employer said it was for abuse of sick leave and because she "wasn't catching on as quickly as she should have." After the firing, she sued her employer.

Who won the lawsuit? The employee.

What the company did wrong: The court said the employee's firing was the result of the harassment because it had the appearance of terminating a victim of sexual harassment. Plus, the vague reason that the employee wasn't "catching on" made the firing look all the more suspicious.

Takeaway for leaders: There's a heavy burden of proof on employers who choose to fire an employee who's filed a complaint. That's not to say it's impossible or shouldn't be done under certain circumstances. It does mean, however, that your documentation and business reasons for the actions will have to be rock-solid to stand up in court. And, of course, none of the reasons can be even remotely tied to the complaint.

Is your sexual harassment policy robust enough?

To make sure your company's sexual harassment policy is up to par, start with your complaint procedures, says employment law attorney Matt Gilley of the firm Ford Harrison LLP.

Ask yourself: If an employee needed to come forward with a complaint, does the policy make it clear whom the employee needs to contact? (Ideally, they should be able to go to more than one person.)

Chapter 4: Proactive steps: What Every Leader Needs to Know (and Do)

In the #MeToo era, employees (in particular, female employees) are looking to leaders to ensure their workplaces are safe. And many think female leaders are better equipped to do this than men.

Being a better leader and creating a safer and more respectful culture in your organization takes some effort. First, you need to gather information about your company's current policies.

She Said It:

“Sometimes when women come forward about sexual harassment, they're seen as a troublemaker.”

– Gretchen Carlson, who won a \$20 million sexual harassment lawsuit against Fox News' Roger Ailes

In this tight job market, companies that lack a sexual harassment policy risk losing candidates. Nearly half (48%) of job seekers said hearing about a sexual harassment incident at a potential employer would discourage them from applying there, and 63% said it's important to know about such a policy before submitting an application, according to a new Jobvite study.

But sexual harassment policies are not enough. Those in leadership also need to create a safe environment should any harassment take place, and that means taking a very proactive approach to sexual harassment – essentially becoming more attuned to the goings-on in the workplace and shutting down even the slightest improprieties the moment they occur.

Step #1: Put policies, procedures and protocols in place

How do you begin to reshape your company culture to become a harassment-free zone? “A great start is putting policies in place so everyone feels safe. This is not a be-all and end-all solution, but we need to have policies that are carried out through management,” says Golden.

Often, people will report sexual harassment outside the company – to a lawyer or online. “You don't want either of those. You want ideally your employees to come to you,” says Golden.

That way HR can catch issues before they spiral into something much worse. And thanks to your swift action, those involved will know that you've handled their complaints fairly and expeditiously.

While those in leadership may not always set policy, they can be instrumental in setting the tone for revamping and updating a new sexual harassment policy. Employment law attorneys Jennifer Sandberg and Joseph Shelton of the firm Fisher Phillips suggest leaders take the following preemptive steps:

- 1. Review policies.** Many courts have demonstrated recently they want to see employers shouldering more of the responsibility in addressing sexual harassment. This includes having a zero-tolerance policy that: defines sexual harassment, provides examples, contains reporting methods and guarantees no retaliation.
- 2. Blitz those policies.** Your sexual harassment policy is only helpful if employees know what it says. Many employers distribute the policy to new hires and have them sign it, which is a good start, but it's not enough. That policy will be quickly forgotten by new employees who are overwhelmed with information. A policy does not alter behavior on its own. It is the leadership behind the policies that moves the needle.

Is third party reporting right for your company?

No one wants to be the first accuser because their credibility is often attacked. But one accusation often results in more. That's why some companies are using a third-party reporting company to track workplace harassment issues.

There's been a wave of third party reporting businesses that have emerged in the #MeToo era:

- **AllVoices**, which lets employees report anonymously directly to the CEO, bypassing HR.
- **Bravely**, which works with employers to offer workers an independent HR "coach" with whom they can have a 45-minute phone conversation.
- **tEquitable**, which has a website and an app where an employee can confidentially discuss a complaint and get assistance with how to address it. The company then shares the data and provides recommendations for improving the workplace culture. "We can serve as an early warning system," said Lisa Gelobter, founder, tEquitable.

A good way to communicate the policy is by leading regular meetings and having managers send out reminder emails every now and then. Live in-person presentations may be the best way to make employees aware. Or, offer video or recorded training. Some companies even make short videos with the CEO saying something like "We don't tolerate this. We want to know if you feel in any way that you have a problem."

Worked for Her: 'How I expanded our sexual harassment training'

"We had a sexual harassment policy, and employees were required to understand it and sign off on it. Still, we wanted to do better. So we took the initiative to revamp our sexual harassment training.

"I looked through our options and discovered an online harassment training program was available through our insurance provider. This interactive training was 45 minutes long and concluded with a test. Those who passed it received certification. For our supervisors, the training was twice as long.

"We had all of our staff get certified immediately, and they'll be required to retake the training annually."

- Diana Holmes, HR Manager, MTE Communications, Midvale, ID

3. Enforce policies consistently. After discovering harassment allegations are true, it's essential for employers to follow through. If the policy calls for termination – no matter who the accused is – you need to terminate. A court will not take kindly (nor will employees) to employers giving certain high-ranking employees special treatment (*See Google's #MeToo moment on page 17*).

Step #2: Create a harassment-free culture

There's no one-size fits-all approach to changing workplace culture and eliminating workplace harassment. Leaders need to set the right tone and create different training platforms. "But training is not enough," says Golden. "It is a great start but we have to do more."

Here are some ways to address sexual harassment in your own workplace:

Assess where you are today. In order to know how to move forward in creating a safe environment, leaders need to assess the sexual harassment climate in their own workplaces. In a recent survey, 94% of C-suite executives (95% of whom were male) said sexual harassment was not an issue in their workplace. Those in upper management may think they have a safe workplace, "but the fact is you don't know everything that is going on because most women do not report sexual harassment," says Golden.

She recommends companies conduct a short anonymous survey (a paper survey or on an app) and ask questions like: "Do you feel safe at work?" and "Have you been harassed at work?" This can give you a gauge as to where you are today. "You need to know that because your organization is probably not as pure as you hope it is," says Golden.

If you see something say something. "If I'm in a meeting and if I hear a remark that is off color or inappropriate ... As a manager I have a responsibility to say something," says Golden. She suggests that you pull that person aside after the meeting and simply say, "I need you not to do x ... Are we in agreement?" or "I need that not to happen again." As a leader, you need to get comfortable addressing unacceptable behavior.

Those in leadership need to train their managers to watch for inappropriate behavior and reinforce the rules in their everyday actions, says Golden.

Offer empathy training. In addition to sexual harassment training, managers need empathy training, says Golden. Being able to view events from the other person's perspective. "We need to convey empathy.

Otherwise, how are we going to deal with an issue that is so emotionally charged?" Some companies craft videos that depict a victim of sexual harassment discussing their dread and fear of coming forward and why they feel conflicted to speak up. Others ask employees to write from the perspective of a harassed employee to help them learn empathy.

Ensure an environment of open communication.

A leader needs to create an environment in which all work-related issues can be discussed – budgets, quarterly goals, suggestions for team building activities, etc. This creates an open dialogue so that if something should come up and an employee has a question about sexual harassment, they will be comfortable coming to you.

Appoint peer counselors or advisors. A company in the UK tried a different approach to sexual harassment and it is working quite well, said Golden. This company decided to designate certain empathetic employees, who have regular jobs in the company, as trusted counselors for people to go to when they've been sexually harassed.

"These people have an ability to listen, to coach, to give feedback, to be empathetic, and they're specifically trained in these positions," said Golden.

Sidestep this common mistake in sexual harassment training

Question: We're getting ready to start a new round of sexual harassment training. What potential costly mistakes should we try to avoid?

Answer: A typical approach to addressing sexual harassment is to train "the little guy." But research indicates that more effective anti-harassment training strategies target and engage with leaders first, says Dr. Marsha Ershaghi Hames, CCEP, a managing director at LRN, where she advises corporate ethics & compliance programs.

For anti-sexual harassment training to have the greatest impact, the dialogue needs to start around the role and accountability of leaders in modeling the organization's policies and decision-making.

Instead of talking to their supervisor or filing a complaint, you talk to this person whose photos and bios are posted throughout the organization so people will know who these people are. "Their role is to not only be there, to listen, but to walk you through if there needs to be a next step in reporting, *and* help employees work through their own issues."

Maybe that's a role you'd like to fill, or you know co-workers you'd nominate.

Let people report anonymously. "If people are allowed to fill out a quick card without giving their name, you're going to get more feedback," said Golden.

However, "employees need to see that you're taking action on every complaint," says Golden. For instance, if there are four anonymous complaints about an employee and that person is not disciplined or fired, then people will stop reporting.

Have multiple reporting channels. Don't just try one approach to root out sexual harassment. Fear of retaliation adds to the difficulty of filing a complaint, so reporting channels must allow for informal, formal, confidential and anonymous complaints. "In 2019, an app is probably the best way to do it anonymously," says Golden.

When it comes to sexual harassment, you never want to be in a place that you did nothing, said nothing. When you take swift action, those involved will know that you've handled their complaints fairly and expeditiously.

Why women need to mentor men

What's the No. 1 way to combat a culture of sexual harassment? Women mentoring men in the workplace, said Michael Chamberlain, Men Advocating Real Change (onthemarc.org), at the recent PA Conference for Women.

"Men who have been mentored by women tend to go on and mentor more women," he said. And mentoring men will help develop the pool of men that will advocate for women, and against sexual harassment.

It is a leader's job to create an environment of trust and open communication. And since women leaders can be particularly empathetic to those who've been sexually harassed since they themselves have most likely been victims, they are the ones who can be the change when it comes to sexual harassment.

You can discover more ways to build and improve your knowledge and skills, as well as develop other leadership skills, through Progressive Women's Leadership.

Please visit us at

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