

Transformational Change: Sexual Harassment & Workplace Culture

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Program Materials

1. PowerPoint Presentation

Reference Materials

1. Dorsey eUpdate: *How to Handle a #MeToo Moment: Legal, Language and Cultural Tips* (October 12, 2018)
<https://www.dorsey.com/newsresources/publications/client-alerts/2018/10/how-to-handle-a-metoo-moment>
2. Dorsey eUpdate: *California Governor Signs Spate of #MeToo Era Bills Into Law* (October 2, 2018)
<https://www.dorsey.com/newsresources/publications/client-alerts/2018/10/metoo-era-bills>
3. Dorsey Blog: *U.S. Employment in the #MeToo Era* (July 25, 2018)
<https://crossbordercounselor.com/u-s-employment-in-the-metoo-era/>

For more information on **Labor and Employment** matters, see Dorsey's **Quirky Questions blog** at <https://quirkyemploymentquestions.com/>.

Dorsey's **Labor & Employment Law Guides** on varied legal issues, at both the federal and state level at <https://www.dorsey.com/services/labor-employment-guides>.

Materials are Available on www.dorsey.com at <https://www.dorsey.com/newsresources/events/event/2018/10/corporate-counsel-symposium-2018-materials>

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Sexual Harassment: The Tweet Heard 'Round the World



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The Movement Broadens: Time's Up



Founded January 2018 to address sexual assault, harassment, and inequality in the workplace led by women in Hollywood

- Created legal defense fund (National Women's Law Center)
- Advocates for legislation to punish companies that tolerate harassment
- Movement toward gender pay parity in entertainment industry and beyond

www.timesupnow.com

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Sexual Harassment: A National Priority

This month, the EEOC shared preliminary data for its 2018 fiscal year (October 2017 – October 2018):

- Statistics show a **12 percent increase** in the number of sexual harassment complaints the agency has received in the year since the Weinstein scandal broke — this is the **first increase** in such charges the agency has seen in the last ten years.
- The agency initiated **50% more** sexual harassment lawsuits in FY 2018 than it did in FY 2017.
- The agency recovered approximately **\$70 million** for sexual harassment victims in FY 2018, compared with approximately \$47 million recovered in FY 2017.

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Sexual Harassment: A National Priority

The bar is rising and law is changing . . .

- **State prohibitions on non-disclosure terms in sexual harassment settlements**
- **Mandatory reporting of harassment settlements (MD)**
- **No federal tax deductions for sexual harassment settlements with confidentiality requirements**
- **Proposed federal “Ending Secrecy About Workplace Harassment Act”**
 - **Would include EEO-1 reporting of sex discrimination settlements**
 - **Potential adverse effect**
- **Proposed Minnesota legislation would have eliminated “severe or pervasive” standard for sexual harassment claims**

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Impact of #MeToo: The New Normal

- **Spotlight on the workplace**
- **State legislators getting involved**
- **Increased agency focus**
- **Public demand that employers take action**
- **Threshold for acceptable conduct has changed**



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Sexual Harassment in the Post-#MeToo World: Women in the Workplace

Is there a deeper problem?



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Women in the Workplace

Women in Management Occupations

- Human resources managers 74%
- Social and community service managers 71%
- Education administrators 65%
- Food service managers 46%
- Marketing and sales managers 45%
- Chief executives 27%
- Computer and information systems managers 26%
- Construction managers 7%



U.S. Department of Labor, March 2017

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Women in the Workplace

Women in Management Occupations

- Women in professional specialty occupations earn 72.7% of what men in the same position earn.
- Women in upper level executive, administrative and managerial occupations earn even less at 72.3%.
- The pay gap across all occupations is 77.5%.



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The Case for a Holistic View



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Sexual Harassment in the Post-#MeToo World: Mitigating Risk & Effecting Meaningful Change

What can employers do?

5 easy pieces



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Five Easy Pieces - #1

Review and Revise **Anti-Harassment & Discrimination Policies**

- Adopt latest EEOC guidance
- Proactive reinforcement of culture of respect
- Ensure robust reporting options
- Greater emphasis on “bystander” reporting
- Stronger non-retaliation provisions



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Five Easy Pieces - #2

Increase Focus on **Training**

- Broaden the audience – not only employees and supervisors, but also contractors, executives, Board members, and others
- Include discussion of micro-inequities and unconscious bias



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Five Easy Pieces - #3

Evaluate Process for **Conducting Investigations**

- Greater oversight
- Increased urgency
- More reporting and tracking
- Lower threshold to trigger investigation
- Use of outside investigators



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Five Easy Pieces - #4

Increase **Accountability** for Inappropriate Conduct

- Send a strong “zero tolerance” message
- No exceptions! Applies to all levels within your organization.
- Enforce your expectations with customers, vendors, and other third parties



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Five Easy Pieces - #5

Increase **Transparency**

- Follow up with complainants
- Follow up with witnesses
- Follow up with work group



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How Do You Solidify New Cultural Norms?

Change Management



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Buy-In from the Top

Buy-in from the top involves:

- **Who:** Do you have the **right person** spearheading respectful workplace efforts at your Company?
- **What:** Are you sending the **right message** to the leadership team?
- **When:** Are your efforts to integrate means to effect cultural change **in line** with other business initiatives?
- **Why:** Does leadership understand the **business case** for a cultural change?
- **How:** Do you have a **strategic plan** to help leadership understand the long-term goals and how to achieve them?

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Buy-In from the Ground Up

New studies on effective change management show that buy-in from employees is as important – if not more so – than leadership buy-in

- Shifting away from a traditional leadership-centric perspective that views employees as tacit followers

Co-creation: Strategy that brings together multiple stakeholders to jointly produce a mutually valued outcome



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Ten Steps for Meaningful Change Management

- 1) Assess any barriers or resistance to change
- 2) Make the formal case for change – “vision statement”
- 3) Identify leaders at every level of the organization - messaging shifts from HR to business leaders
- 4) Create “ownership incentives” – co-creation
- 5) Prepare integrated and ongoing communication
- 6) Be explicit and detailed about the desired cultural goals
- 7) Make it personal – why should this matter to you?
- 8) Continue to reassess over time – evaluate the “hard” factors

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Culture Change Hurdles?

Are employers at risk of overreacting?



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Final thoughts

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Questions?

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