

LOOK BACK, MARCH FORWARD

November 1, 2019

1



2

3

bloomberg
10-05-18



Less Famous Faces . . .



David Meltzer, Former
American Red Cross General Counsel



Wayne Pacelle, Former
CEO of Humane Society of US



Justin Caldbeck, Co-Founder of
Venture Capital Firm:
Binary Capital



Trevor Edwards, Former
President of Nike

What do these faces have in common?

- Harassers who were fired, forced to retire, resign or step out of the public eye.
- Multiple allegations of sexual harassment by numerous people – often for many years.
- Complaints of sexual harassment that were never effectively addressed by HR Departments or management.
- Serious financial consequences for their employers and companies.



12

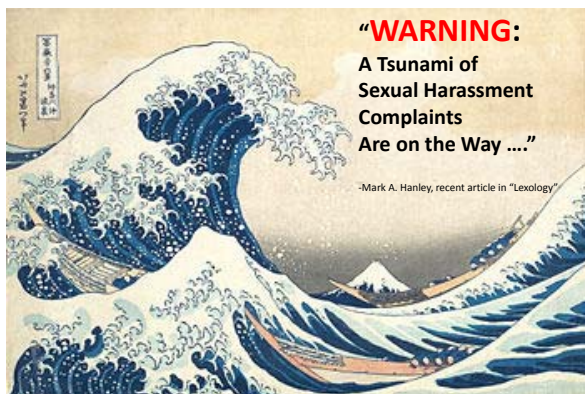


13

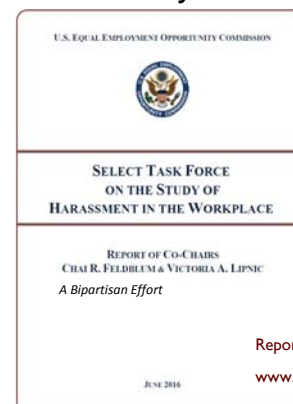
The Silence Breakers



But Have Things Changed?



June 2016: Commission issues Select Task Force on the Study of Harassment in the Workplace



Harassment continues to be one of the most frequently raised complaints —

- over 32% of all private sector cases
- 43% of Federal sector cases

Report available at:

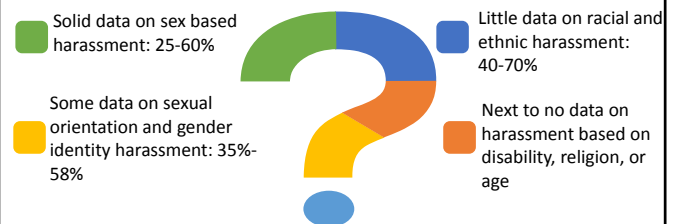
www.eeoc.gov/task_force/harassment/report.cfm




Harassment Statistics FY 2018

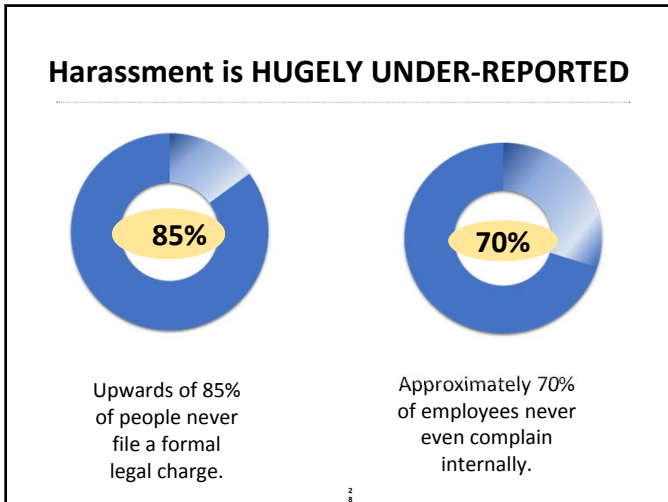
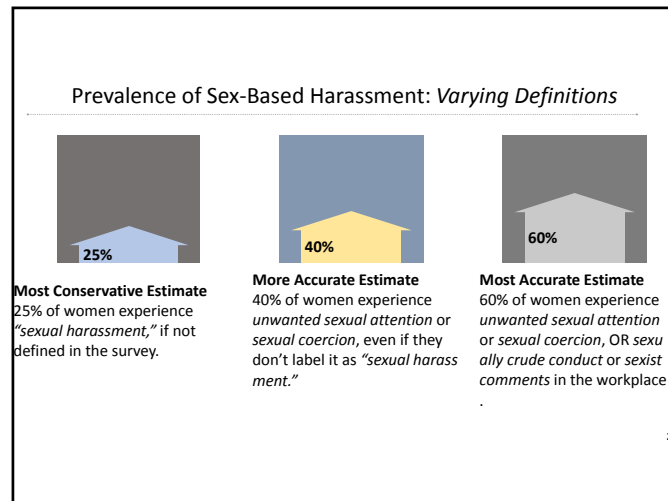
- 66 of the 199 lawsuits filed allege harassment; 41 of those allege sexual harassment
- Sexual harassment allegations brought to the EEOC increased by 12% from FY 2017
- EEOC recovered nearly \$70 million for victims of sexual harassment through litigation and administrative enforcement—up from \$47.5 million in FY 2017

Prevalence of Workplace Harassment: *What does the Survey Data Say?*





Workplace Harassment Too Often Goes Unreported



Common Responses to Harassment



Endure the behavior

Avoid the harasser

Downplay the gravity of the situation

Seek support from family & friends

Leave the job, if one can



31

"The most reasonable response to harassment in *many* organizations is not to report it, not to file a complaint, not even to speak to management about the problem."
-Professor Lilia Cortina, University of Michigan
(Testimony to the Select Task Force)

32



There is a Compelling Business Case For Stopping and Preventing Harassment

Blindness to Boundaries is Costly – The Economic Case for Compliance

- In the last 20 years, employment lawsuits have risen 400%. [Bloomberg Law Reports].
- Avg compensatory award in federal employment cases > \$490,000 [Bloomberg Law Reports].
- In 2016, the EEOC secured more than \$482 million for victims of discrimination.
[\[www.eeoc.gov\]](http://www.eeoc.gov)

\$949,700,000

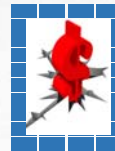
Between FY2010 to FY2017,
employers paid \$949.7 million
during EEOC's pre-litigation
enforcement process to
employees alleging harassment.

36

Indirect Financial Costs



Health and
workplace
productivity of
the target of
harassment



Health and
workplace
productivity of
coworkers who
witness
harassment



Job turnover



Reputational harm

40

Health Impact and Workplace Productivity of the Target of Harassment

Psychological Harm

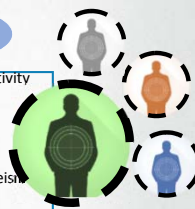
- depression
- anxiety
- PTSD
- negative mood
- eating disorders
- self-blame
- anger
- substance abuse

Physical Harm

- headaches
- exhaustion
- sleep problems
- nausea
- weight changes
- cardiovascular issues
- gastric issues
- respiratory issues

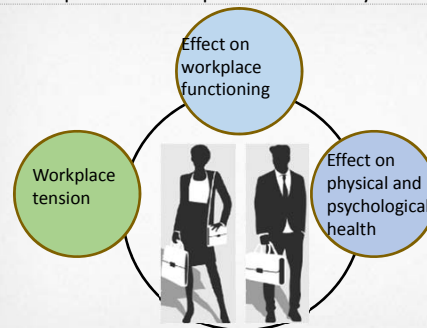
Workplace Productivity

- decreased productivity
- job dissatisfaction
- work withdrawal
- disengagement
- tardiness
- excessive absenteeism
- work time spent discussing the harassment



41

Health Impact and Workplace Productivity of Coworkers



42

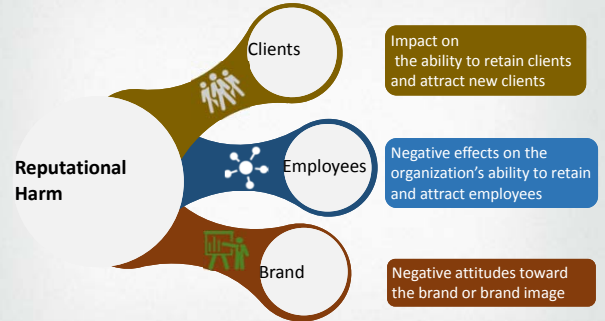
Job Turnover



Job turnover is potentially the largest single component of the overall cost of harassment.

43

Reputational Harm



44

A Holistic Effort to Prevent Harassment & Promote Respect



- All of us are responsible for preventing harassment
- Nip harassing conduct before it becomes unlawful harassment
- Workplaces that promote respect and accountability have less harassment.
- Committed leadership, accountability, and effective policies, procedures and training support a culture of respect.

45

Preventative Action



Five core principles

- Committed and engaged leadership.
- Consistent and demonstrated accountability.
- Strong and comprehensive harassment policies.
- Trusted and accessible complaint procedures.
- Regular interactive training tailored to the audience and organization.

Check out the Report's Checklists!

Appendix B: Checklists for Employers

1. **Leadership & Accountability** p. 79
2. **Anti-Harassment Policy** p. 80
3. **Reporting Procedures & Investigations** p. 81
4. **Compliance Training** p. 82

https://www.eeoc.gov/eeoc/task_force/harassment/checklists.cfm

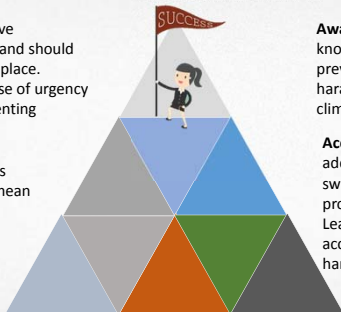
It Starts at the Top



Leadership: It Starts at the Top

Values: Leaders believe harassment is wrong and should not occur in the workplace. Leaders convey a sense of urgency in stopping and preventing harassment.

Authenticity: Workers believe that leaders mean what they say.



Awareness: Leadership knows about the prevalence of workplace harassment: e.g., via climate surveys.

Accountability: Leaders address harassment in a swift, effective, and proportionate manner. Leadership holds managers accountable for stopping harassment.

53

"One organization I worked with several years ago asked me if I had new courseware for use with some previously trained managers. When I asked them what they wanted to accomplish, they indicated that several individuals were continuing to tell off-color jokes and make inappropriate comments. While I welcomed the opportunity to be of service, it seemed to me the issue was not what training to do next but rather why these decision-makers hadn't taken steps to deal with these individuals' behavior and failure to perform to clear standards."

-Stephen Paskoff, founder of Employment Learning Innovations, Inc.
8 Fundamentals of a Civil Treatment Workplace

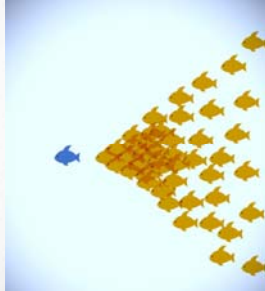
54

Frontline Management is Key

Frontline managers must be trained on how to respond to reports or observations of harassment in a swift and correct manner.

Frontline managers must be held accountable for their responses to harassment – using discipline or accolades.

The extent of harassment in a manager's division is not necessarily best measured by the number of complaints from that division.



55

Check Out the
Checklist on

Leadership

→→→

Checklist One: Leadership and Accountability

The first step for creating a holistic harassment prevention program is for the leadership of an organization to establish a culture of respect in which harassment is not tolerated. Check the box if the leadership of your organization has taken the following steps:

- ☐ Leadership has allocated sufficient *resources* for a harassment prevention effort
- ☐ Leadership has allocated sufficient *staff time* for a harassment prevention effort
- ☐ Leadership has *assessed harassment risk factors* and has taken steps to *minimize* those risks

56

Check Out the
Checklist on

Leadership

→→→

Checklist One: Leadership and Accountability

Based on the commitment of leadership, check the box if your organization has the following components in place:

- ☐ A harassment prevention *policy* that is *easy-to-understand* and that is *regularly communicated* to all employees
- ☐ A harassment reporting *system* that employees *know about* and is *fully resourced* and which accepts reports of harassment experienced and harassment observed
- ☐ *Imposition of discipline* that is prompt, consistent, and proportionate to the severity of the harassment, if harassment is determined to have occurred

57

Check Out the
Checklist on

Leadership

→→→

Checklist One: Leadership and Accountability

Based on the commitment of leadership, check the box if your organization has the following components in place:

- ☐ *Accountability* for mid-level managers and front-line supervisors to prevent and/or respond to workplace harassment
- ☐ Regular *compliance trainings* for *all employees* so they can recognize prohibited forms of conduct and know how to use the reporting system
- ☐ Regular *compliance trainings* for *mid-level managers and front-line supervisors* so they know how to prevent and/or respond to workplace harassment

58

Check Out the
Checklist on
Leadership
→→→

Checklist One: Leadership and Accountability

Bonus points if you can check these boxes:

- ☐ The organization conducts *climate surveys* on a regular basis to assess the extent to which harassment is experienced as a problem in the workplace
- ☐ The organization has implemented *metrics* for harassment response and prevention in supervisory employees' performance reviews
- ☐ The organization conducts *workplace civility training* and *bystander intervention training*
- ☐ The organization has *partnered with researchers* to evaluate the organization's holistic workplace harassment prevention effort

59

Anti-Harassment Policies

- Drafted in **simple** and **clear** language
- Clear explanation of **prohibited** conduct, including examples
- Protection against **retaliation** for employees who make complaints or participate in the investigation
- Clearly described **complaint process** with multiple, accessible avenues of complaint and a **prompt, thorough**, and impartial investigation
- Assurance that the employer will protect the **confidentiality** of harassment complaints to the extent possible;
- Assurance that the employer will take **immediate and proportionate** corrective action and respond appropriately to behavior

Check out the checklist on **Effective Harassment Prevention Policies**

Reporting Procedures



Must **protect** against retaliation and be kept confidential

Must take complaints **seriously**

Must be **well-resourced** with well trained investigators

Must be **fair** to all parties

Checkout the checklist on **Reporting Procedures**

61

**Plaintiff Attacks on Investigations -
Potential Deficiencies**

- The Company just asked the harasser what happened;
- The investigation took too long;
- The investigation was not documented;
- Relevant witnesses were not interviewed;
- There was no corrective action, especially if the harasser admitted the alleged conduct; or
- The company responded to other complaints more earnestly

(See Daily Labor Report, 118 DLR B-1(June 19, 2013))

62

Harassment Claims – Practice Pointers

promoted by prominent defense counsel

- Document periodic review of harassment policy with Company personnel
- Immediately address complaints/concerns of harassment
- Require immediate notice to Human Resources/Legal of potential harassment
- Properly document all complaints and investigations
- Conduct a prompt and thorough investigation
- Take appropriate corrective action to avoid recurrence of conduct
- Insure all documentation is forwarded to Human Resources
- Avoid potential retaliation claims
- Consider translation of policy in appropriate circumstances
- Document periodic training of managers (and employees)

63

Self Check

- Did your actions
 - end current harassment?
 - deter future harassment?

Workplace Risk Factors: *Situational Awareness*



- ☐ There are factors that may put a workplace at risk for harassment.
- ☐ While existence of a risk factor does not mean that harassment will occur, analyzing workplace risk factors is a good means of prevention.
- ☐ Check out the checklist of risk factors.

Risk Factors for Harassment

- Homogenous Workforce
- Workplaces where some employees don't conform to workplace norms
- Cultural and language differences
- Coarsened sexual discourse outside the workplace
- Young workforces
- "high value employees"
- Decentralized workplaces
- Workplaces with significant power disparities
- Workplaces that rely on customer service or client satisfaction
- Work is monotonous or tasks are low-intensity
- Isolated workplaces
- Workplaces that tolerate or encourage alcohol consumption

66

★ The Perils of the Superstar Harasser ★



Employers often make a wrong cost-benefit analysis when faced with allegations of harassment against a highly valued employee.

Employers are often tempted to ignore misconduct for **fear of cost to the organization.**

In reality, the cost of allowing harassment to go unchecked is higher than the cost of losing a highly valued employee.

67



- Hired worker mid 2000s. "There was always an issue with his level of **respect**. He had a **bullyish** attitude. He'd tell an **edgy joke** that you weren't sure was a joke, just to get under someone's skin."
- 2011: Owner focuses on company values – pamphlet + weekly meetings Shegda tries to coach him, to no avail.
- 2014 In October, owner gave the man a generous severance and let him go (+ two others on team)
- Productivity : \$85 to \$90 an hour
In November, sales per hour rose to \$123 - without three of the factory's most productive workers.
Dec & Jan – more modest, but still 13% higher

http://www.philly.com/philly/business/20160907_How_a_Philly_firm_fired_a_toxic_star_performer_and_sales_went_up.html

The #MeToo Backlash

I didn't want to end up in a situation where me and Ms. Campbell were alone for an extended period of time throughout that 15- or 16-hour day, and so out of precaution, I wanted to have her bring someone with her — a male colleague.



No more dinners with female colleagues.

Don't sit next to them on flights. Book hotel rooms on different floors. Avoid one-on-one meetings. In fact, as a wealth adviser put it, just hiring a woman these days is "an unknown risk." What if she took something he said the wrong way?

-The #MeToo Backlash on Wall Street

Information Escrow

Some colleges and companies are turning to "Information Escrows" such as Callisto.



Silicon Valley Version

- **MATCH:** Victims submit a timestamped report of the incident confidentially. If a match of victims with the same perpetrator is found, a Callisto counselor will reach out to each victim individually
- **COUNSELING:** Callisto Options Counselor will guide victims through the reporting process, their choices, and offer to connect them with others who have named the same assailant.

Sections

The Washington Post

Democracy Dies in Darkness

Opinions

I'm a female chef. Here's how my restaurant dealt with harassment from customers.

by **Erin Wade** March 29
Erin Wade is a chef, restaurateur and co-author of ["The Mac + Cheese Cookbook."](#)

Removing bias from the reporting process

"...when [women] tried to report it to male managers, they were often ignored because the incidents seemed unthreatening through a male lens."

YELLOW: creepy vibe or unsavory look.

- *Manager must take over the table if the staff member chooses*

ORANGE: comments with sexual undertones, such as certain compliments on a worker's appearance.

- *Manager takes over the table*

RED: overtly sexual comments or touching, or repeated incidents in the orange category after being told the comments were unwelcome.

- *Customer is ejected from the restaurant*

October 2017 - Chicago City Council unanimously passed "Hands Off Pants On" Ordinance



- 49% of housekeepers: guests exposed themselves, flashed them, or answered the door naked.
- 65% of casino cocktail servers: guests groped, pinched, grabbed or tried to touch them in an unwelcome way.

Only 1/3 of workers told manager or supervisor when a guest harassed them.

- 43% of hotel workers said **they knew someone who reported sexual harassment and nothing changed**
- 24% of casino workers said **they thought there was nothing they or anyone else could do about it**

- **Panic button** by July 1, 2018 for all hotel workers who work alone in guest rooms and restrooms
- **Written policy that specifically addresses sexual harassment by guests.**
- **Prohibits retaliation**

Traditional Training,
Standing Alone,
Is Not Enough

The EEOC concluded that trainings have failed as a prevention tool because they are *“too focused on simply avoiding legal liability, and not addressing what happened to the person who was harassed”*



Training Must Change

Problems with Traditional Harassment Prevention Training



- There is some really **bad** training out there.
- Training is sometimes done primarily to avoid **legal liability**.
- Training is often done in a **vacuum**, not as part of a holistic harassment prevention effort.



77

Good Training

- Training is essential, but it needs to be the right training.
- Compliance training is critical and new types of training hold promise.



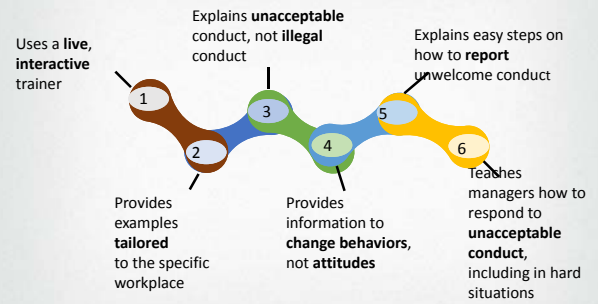
78

"Compliance training is not training to change your mind, it's training to keep your job."

-Jonathan Segal, Select Task Force Member

79

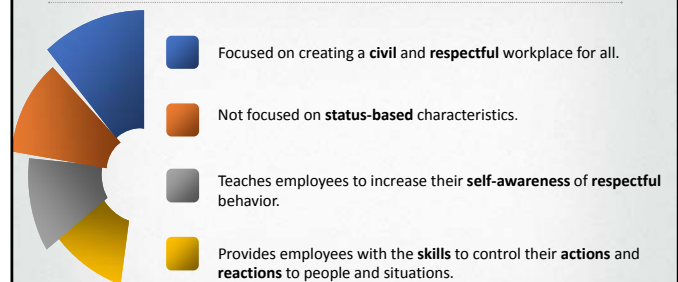
Good Compliance Training



80

Other Trainings that Hold Promise....

Workplace Civility Training



82

"Workplace incivility might act as a sort of 'gateway drug' to more egregious forms of abuse, including illegal harassment."

-Professor Lilia Cortina, University of Michigan
Testimony to the Select Task Force on the Study of Workplace Harassment

83

Bystander Intervention Training



- Deployed frequently on college campuses to **reduce** sexual assault.
- Teaches students to recognize **warning signs** of sexual assault.
- Creates a sense of **collective responsibility and confidence to intervene**.
- Empowers** students by giving them the realistic, actionable options for intervention.

84

What would this look like in the workplace?

Unacceptable Behavior



Workers would know what behavior is unacceptable.
(Check out Compliance Training)

Collective Responsibility



Workers would feel collectively responsible for having a harassment-free workplace

Tools and Training



Workers would be given tools and training for intervention, specific to that workplace.

Rewards, not Retaliation



Workers who stop harassment would be rewarded, not retaliated against.

85

October 2017: EEOC Announces New Respectful Workplaces Training (inspired by the Task Force Findings)

- ✓ Interactive, skills-based training
- ✓ Separate modules for supervisors and employees
- ✓ Reviews acceptable conduct in the workplace
- ✓ Teaches how to create respectful workplaces
- ✓ Provides tools for responding to harassing conduct
- ✓ Teaches bystanders when and how to intervene



What is the Difference between Supervisor and Employee Training?



RESPECT
Module 1

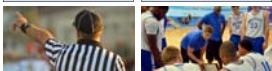


WHAT GOES WRONG: DERAILERS
Module 2

POLICY REVIEW
Module 2A

FAIRLY HANDLING EMPLOYEE COMPLAINTS
Module 3

COACHING FOR BEHAVIOR CHANGE
Module 4



- Authority
- Legal Responsibility

STEPPING UP AND STEPPING IN
Module 3



- Influence
- Build feedback skills

FEEDBACK: GETTING THE GIFT
Module 4



88

What Should I Do If I Have EEO Questions as an HR Professional or Employer Representative?

Access EEOC Resources

- Visit the EEOC web site at www.eeoc.gov for guidance, fact sheets, EEO updates and training opportunities.
- Contact the EEOC program analyst in your area to ask EEO-related questions.

Training, Outreach & Technical Assistance

Maria E. Flores
Outreach and Education Manager
Chicago District
EEOC Milwaukee Area Office
Phone (414) 662-3699
Email: maria.flores@eeoc.gov