



CONVERSATIONS THAT MATTER

Preventing Sexual Misconduct in the Workplace

PROACTIVE FIRST STEPS



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Introduction

Oprah Winfrey summed it up succinctly in her Golden Globe Awards speech as she accepted the Cecil B. de Mille Award for Lifetime Achievement at this year's gala. "Their time is up."

Her speech was influenced by allegations, which came to light in early October from more than 80 women, that Harvey Weinstein sexually harassed and sexually assaulted them in Hollywood over several decades. After the accusations were made, the film producer was terminated from his company and ejected from the Academy of Motion Picture Arts and Sciences.

Shortly after that, actor Alyssa Milano sent a tweet asking people who have been sexually harassed or assaulted to write 'me too' as a reply in order to give people a sense of the magnitude of the problem. By the following day, it had gone viral, with more than 53,000 people leaving comments and thousands of women sharing their related stories of harassment and assault.

Since then, several high-profile businessmen, actors, politicians and others have left their jobs or been fired in relation to allegations of harassment, including Today show co-host Matt Lauer, Fox News anchor Bill O'Reilly, and Oscar-winning actor Kevin Spacey, who was removed from a completed movie.

In its article naming "The Silence Breakers" as its Person of the Year 2017, Time magazine said:

“

"This reckoning appears to have sprung up overnight. But it has actually been simmering for years, decades, centuries. Women have had it with bosses and co-workers who not only cross boundaries but don't even seem to know that boundaries exist. They've had it with the fear of retaliation, of being blackballed, of being fired from a job they can't afford to lose. They've had it with the code of going along to get along. They've had it with men who use their power to take what they want from women. These silence breakers have started a revolution of refusal, gathering strength by the day, and in the past two months alone, their collective anger has spurred immediate and shocking results: nearly every day, CEOs have been fired, moguls toppled, icons disgraced. In some cases, criminal charges have been brought.

"Emboldened by (Ashley) Judd, Rose McGowan and a host of other prominent accusers, women everywhere have begun to speak out about the inappropriate, abusive and in some cases illegal behavior they've faced."

At the Golden Globes, along with Winfrey's speech, women wore black as a symbolic stand against sexual assault and sexual harassment, and many women and men wore pins with the words 'Time's Up.'

The recently formed Time's Up group is backed by more than 300 women in the entertainment industry and has started a campaign to prevent sexual harassment in workplaces across the United States. According to the organization, Hollywood actors Jennifer Aniston, Meryl Streep and Reese Witherspoon are among the donors to the \$13 million US fund to provide legal and communication support.

As the movement to end sexual harassment in workplaces spreads across the globe — by early November the hashtag MeToo had been tweeted 2.3 million times in 85 different countries, Britain's Defense Secretary Michael Fallon quit after allegations, and the hashtag BalanceTonPorc (roughly translated as snitch out your pig) was conceived in France — it's the responsibility of all human beings to join together to support the meaning behind this rally. It doesn't matter who you are, or where you are, sexual harassment needs to stop, and we all play a role in that.

The U.S. Equal Employment Opportunity Commission (EEOC), in a task force report released in June 2016, noted: "While we offer suggestions in this report for what EEOC can do to help prevent harassment, we caution that our agency is only one piece of the solution. Everyone in society must feel a stake in this effort. That is the only way we will achieve the goal of reducing the level of harassment in our workplaces to the lowest level possible."



74%

of women in a professional capacity or in **top management jobs** have experienced sexual harassment in their lifetime

European Agency for Fundamental Rights
(2014 survey of 42,002 women in 28 member states of European Union)

What is Sexual Harassment?

Are some of these things happening in your workplace? If they are, it's considered sexual harassment.

- Sexual innuendos or stories/ turning work discussions to sexual topics
- Sexual comments about a person's clothing, anatomy, or looks
- Neck massage
- Touching an employee's clothing, hair, or body
- Looking a person up and down (elevator eyes)
- Facial expressions, winking, throwing kisses, or licking lips
- Unwanted pressure for sexual favors
- Unwanted deliberate touching, leaning over, cornering, or pinching
- Unwanted letters, telephone calls, or materials of a sexual nature
- Unwanted pressure for dates
- Unwanted sexual teasing, jokes, remarks, or questions

Please note that these are a few examples from a long list of behaviors associated with sexual harassment.

Sexual harassment is:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Source: Preventing Sexual Harassment (BNA Communications, Inc.) SDC IP .73 1992 manual

There are two types of sexual harassment:

Quid Pro Quo

The name for this type of harassment is Latin for “this for that.” In essence, this type of harassment occurs when an employer says that they will give an employee this job, this promotion, or this benefit, for that sexual favor.

Hostile Environment

This type of harassment is much more difficult to pin down. It occurs when the harassing behavior creates a hostile, negative work environment for the employee.

Behavior Categories

The U.S. Merit Systems Protection Board states that unwelcome behavior can fall into seven categories.

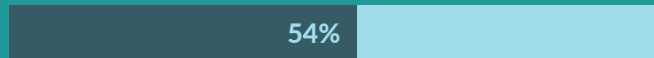
- Sexual teasing, remarks, jokes, or questions
- Pressure for dates
- Letters, e-mail, telephone calls, or materials of a sexual nature
- Sexual looks or gestures
- Deliberate touching, leaning over, cornering, or pinching
- Pressure for sexual favors
- Actual/attempted sexual assault or rape



Sexual Misconduct by the Numbers

ABC News-Washington Post poll (October 2017)

54% of American women have experienced “unwanted and inappropriate sexual advances” at some point in their lives



The poll found that 33 million U.S. women have been sexually harassed—and 14 million sexually abused—in work-related episodes



95% of women polled report that male perpetrators of such abuse usually go unpunished

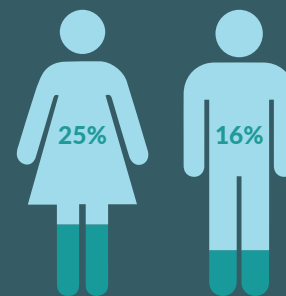


Working without Fear: Results of the 2012 Sexual Harassment National Telephone Survey (Australia)

21% of people over age 15 experienced sexual harassment in the workplace in the past five years

25% of women over age 15 experienced sexual harassment in the workplace in the past five years

16% of men over age 15 experienced sexual harassment in the workplace in the past five years



Angus Reid Institute, Canada (2014)

43% of Canadian women say they have experienced sexual harassment at work



12% of Canadian men say they have experienced sexual harassment at work



75% of those who were subjected to sexual harassment in the workplace had multiple experiences of such harassment



European Agency for Fundamental Rights (2014 survey of 42,002 women in 28 member states of European Union)

33% experienced physical and/or sexual violence since the age of 15

19% have experienced unwelcome touching, hugging or kissing since the age of 15

Of those women who have experienced sexual harassment at least once since the age of 15, **32%** indicated a colleague, boss or a customer as the perpetrator

11% have experienced inappropriate advances on social websites or have been subjected to sexually explicit emails or text messages

74% of women in a professional capacity or in top management jobs have experienced sexual harassment in their lifetime and **25%** have been confronted with sexual harassment in the 12 months prior to the survey



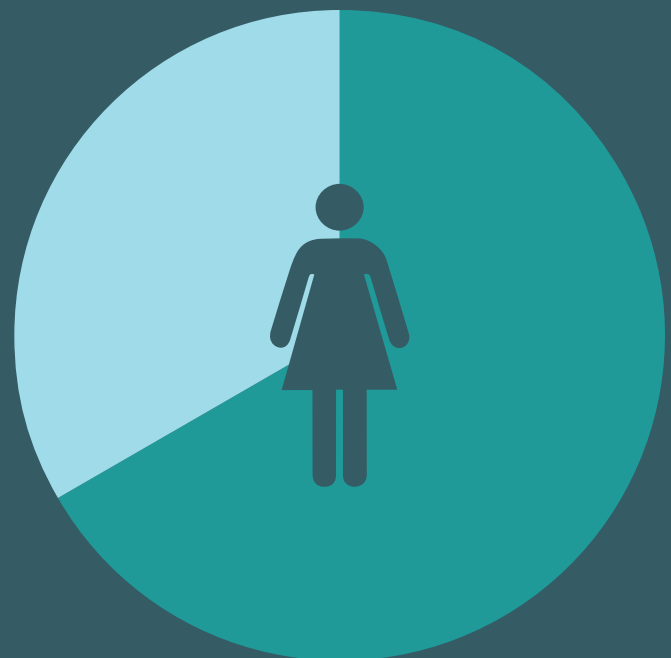
EEOC report citing 2003 study

75% of employees who spoke out against workplace mistreatment faced some form of retaliation



Legal Week Study 2017

2/3 of female lawyers in South Africa experienced sexual harassment in the workplace more than once



Impact on Workplaces

Businesses and other organizations need to be proactive with respect to eliminating sexual harassment because of the negative effects it has, striving to pursue/engage in/carry out/undertake/tackle creating a positive work environment.

Employers

- Financial costs
- Legal liability
- Decreased productivity
- Employee turnover
- Increased sick leave
- Harm to reputation
- Negative atmosphere

Employees (victims)

- Loss of wages
- Negative impacts on victims' physical and emotional health
- Can suffer from PTSD
- Negative atmosphere (can also affect others who are not subjected to harassment)
- Decreased productivity
- Increased sick leave



The Business Case for Stopping and Preventing Harassment

(Based on the June 2016 Report of the Co-chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf)

“Employers should care about stopping harassment because harassment is wrong – and, in many cases, it is illegal. Workplace harassment can produce a variety of harms – psychological, physical, occupational, and economic harms that can ruin an employee’s life.

However, moral obligation and legal duty are not the complete story. Employers should also care about stopping harassment because it makes good business sense.

Along with direct financial costs associated with harassment complaints, time, energy, and resources are diverted from operation of the business to legal representation, settlements, litigation, court awards, and damages.

“The business case extends far deeper. It encompasses employees who endure but never report harassment, as well as coworkers and anyone else with an interest in the business who witness or perceive harassment in the workplace. When accounting for all those affected by it, harassment becomes more insidious and damaging. In addition to the costs of harassment complaints, the true cost of harassment includes detrimental organizational effects such as decreased workplace performance and productivity, increased employee turnover, and reputational harm.”

Direct Financial Costs of Harassment

Charges of harassment come at a steep cost for employers. In 2015, 5,518 charges involving allegations of harassment were resolved by the EEOC in favor of the charging party, resulting in \$125.5 million in benefits for employees. Since 2010, employers have paid out \$698.7 million to employees alleging harassment through the Commission’s administrative enforcement prelitigation process alone.

One estimate of settlement payments and court judgments solely in 2012 for harassment lawsuits clocked in at over \$356 million. The largest sexual harassment jury award in 2012 totaled \$168 million.

Indirect Costs

Employees experiencing sexual harassment are more likely to report symptoms of depression, general stress and anxiety, posttraumatic stress disorder (PTSD), and overall impaired psychological well-being. Sexual harassment has also been tied to psychological effects such as negative mood, disordered...

...eating, self-blame, reduced self-esteem, emotional exhaustion, anger, disgust, envy, fear, lowered satisfaction with life in general, and abuse of prescription drugs and alcohol. Physical harm can also result. Studies have linked sexual harassment to decreased overall health perceptions or satisfaction, as well as headaches, exhaustion, sleep problems, gastric problems, nausea, weight loss or gain, and respiratory, musculoskeletal, and cardiovascular issues.

The damaging personal effects of harassment are not limited to victims. There is growing understanding that employees who observe or perceive mistreatment in their workplace can also suffer mental and physical harm.

“It follows, then, that when employees are suffering harassment, the work can suffer. It is well established that workplace harassment and conflict can result in decreased productivity.”

Studies focusing largely on sexual harassment have found that harassment is associated with debilitating job dissatisfaction and work withdrawal. This largely takes form as disengagement from work, which is manifested as distraction, neglecting a project, malingering, tardiness, or even excessive absenteeism.

Often, work time is spent talking about the harassment with others, seeking personal treatment or assistance, reporting the harassment, and navigating the complaint and investigation processes. Work withdrawal and disengagement due to harassment can also go beyond the individual to affect team and group relationships. The mere awareness of sexual harassment among a work group can create a tense environment, negatively influencing the group's day-to-day functioning.

“All of this is a drag on performance – and the bottom line.”

Perhaps most costly of all, workplace harassment can lead to increased employee turnover.

In 1994, the Merit Systems Protection Board conservatively estimated that over two years, as a result of sexual harassment, job turnover (\$24.7 million), sick leave (\$14.9 million), and decreased individual (\$93.7 million) and workgroup (\$193.8) productivity had cost the U.S. government a total of \$327.1 million.

An additional cost to consider is the damage workplace harassment can inflict on a firm's reputation. For example, studies have linked sexual harassment to negative effects on a firm's ability to attract employees. A 2008 study of the impact of sexual harassment on a consumer brand found that prospective employees' perceived sexual harassment in a sales workplace was negatively related to their intentions to work for the firm.

The ability of a firm to retain customers and clients, or attract new ones, could also be affected. Studies demonstrate that perceived sexual harassment in the workplace has a negative effect on attitudes toward the brand and brand image.”

What Can Be Done? Steps to Take

Creating a positive work environment involves a multi-faceted approach that includes establishing a code of conduct, celebrating diversity, eliminating harassment and bullying, and resolving conflict and disputes.



Why is Training Important?

Many people feel they don't need training. Others feel that they don't need to be told how to behave. The truth is, we all need some help with basic skills, especially since the legal aspect of harassment is changing constantly.

Training can help prevent sexual harassment

Harassers may think twice about their behavior, victims will know how to prevent and confront harassers, and managers will be prepared to prevent and deal with these types of situations. Training is also an excellent opportunity to review your sexual harassment policy. Most good training programs also help people identify ways to reduce their risk of harassment and educate victims on what to do if they are harassed.

Training increases morale

It tells employees that you care about them and their well-being. It also sends the message that you're willing to listen and confront this type of behavior.

Training can reduce your liability if a complaint is filed

A large part of sexual harassment complaints center around the notion of a hostile environment, an environment that is poisoned against a particular group. If an environment is found to be hostile, the employer will likely be liable for any harassment complaints.

Employees, managers, and those involved in the complaint resolution process should all receive different types of training geared towards the role that they will play. Everyone should know how to protect themselves and others from a harassment complaint, and what to do in the event that a complaint is filed.



“Harassment in the workplace will not stop on its own – it’s on all of us to be part of the fight to stop workplace harassment. We cannot be complacent bystanders and expect our workplace cultures to change themselves.”

—Report of the Co-chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace

Implementing: Creating a Harassment Policy

Key Policy Points

The best way to prevent harassment from occurring is by setting a clear policy, educating employees about it, and enforcing it. The policy needs to be written by a team of people (typically the Human Resources department), preferably with the input of staff at all levels and some legal advice. This group should also lay out education, follow-up, and monitoring guidelines to ensure that the policy is effective. Writing a policy will take time, resources, and effort, but the end result will be a document that outlines your company's stance on harassment.

Writing the Policy

Above all, ensure the policy is clear, up to date, and updated periodically.

The rules

State clearly that harassment is not acceptable in the workplace and will be dealt with. Then, state what the rules are in the company. Make sure that these rules are in line with the laws in your area.

Specific behaviors, examples, and circumstances

The document should spell out what behaviors are and are not acceptable. If the company has special circumstances (such as a gym, or if business travel is required) rules for those situations should be spelled out as well.

Safe from reprisal clause

Make sure the policy clearly states no one will be acted against for bringing a claim to the employer's attention or attesting to details within that claim.

The consequences

Make sure you include the possible solutions and consequences for a harassment violation, including what disciplinary action may be taken. Also include consequences for false claims.

A complainant's rights

Make sure victims know what will happen if they file a complaint and what rights they have, including confidentiality, privacy, and the right to a fair hearing. They should also know their avenues of complaint: to the internal Human Resources department, to the appropriate government department, to police, or to the legal system.

This guide is intended to begin the conversation where you work, containing information that you need to make sure that sexual harassment and sexual assault in the workplace end now, keeping in mind that this is not meant as legal advice. To continue the conversation, we encourage you to find local experts, resources and services in your jurisdiction.

Upcoming ‘Conversations That Matter’ Guides

At Velsoft, we believe it's imperative to have a safe, respectful and harassment-free work environment, and we'd like to continue this conversation through a series of guides that use information from courses we've developed, which we hope can help your organization provide a positive and healthy work environment.

- **Code of Conduct: Setting the Tone for Your Workplace**
- **Harassment in the Workplace**
- **Bullying in the Workplace**
- **Creating a Positive Work Environment**
- **Workplace Violence: How to Manage Anger and Violence in the Workplace**
- **Workplace Diversity**
- **Conflict Resolution: Getting Along in the Workplace**
- **Dispute Resolution: Mediation Through Peer Review**
- **Orientation Handbook: Getting Employees off to a Good Start**
- **Managing Difficult Conversations**
- **Crisis Management**

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