

One year later, what employers can do to address #MeToo

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One year ago, 10 days after the Harvey Weinstein sexual harassment story broke, actress Alyssa Milano tweeted, "If you've been sexually harassed or assaulted write 'me too' as a reply to this tweet." That ignited a huge outpouring on social media and a cultural turning point.

In the nine days following Milano's tweet, the #MeToo hashtag garnered 1.7 million tweets across every continent. Eighty-five countries had at least 1,000 #MeToo tweets. In the first 24 hours following Milano's tweet, Facebook reported 12 million posts by 4.7 million users.

The #MeToo movement has dominated the news over the past year. Headlines regarding sexual harassment at U.S. companies have continued. Fallout has often been swift for the executives involved, with firings or resignations following accusations of sexual misconduct. Even after statutes of limitations have expired, the media has doggedly investigated claims of sexual harassment and misconduct.

#MeToo is affecting the legal landscape. One defense attorney directly attributed a recent \$13.4 million judgment against a manufacturing company to the jury being empowered by the #MeToo movement.

Legislating change

The movement has spurred legislatures to act on harassment. The federal Tax Cuts and Jobs Act of 2017 prohibits parties from deducting settlement costs related to sexual assault and harassment. The U.S. House and Senate each have proposed bills to end forced arbitration of sexual harassment claims.

States have enacted laws restricting nondisclosure and arbitration agreements related to sexual harassment, requiring sexual harassment training, mandating sexual harassment policies and prohibiting state funds from being used for harassment-related settlements. Arizona, California, Delaware, Louisiana, Maryland, New York, Vermont and Washington have all passed #MeToo-related laws affecting private employers. Connecticut, Minnesota, New Jersey, Pennsylvania and South Carolina have proposed similar legislation.

The EEOC, with a larger budget this fiscal year, has been active, too. In a somewhat unusual step in October, it released preliminary data on sexual harassment for the 2018 fiscal year. The EEOC reported a greater than 50% increase in sexual harassment suits from fiscal year 2017. It recovered nearly \$70 million for sexual harassment victims, \$22.5 million more than in 2017.

Surprisingly, the EEOC saw only a 12% increase in charges alleging sexual harassment from fiscal year 2017 to fiscal year 2018. That may show that employers are more proactively addressing sexual harassment in light of the #MeToo movement.

What employers can do

#MeToo and concern over sexual harassment in the workplace continues to be a hot topic. To protect your organization, consider taking the following actions:

Conduct a #MeToo audit: Review your current policies, training materials and investigation procedures, and ensure they are up to date and compliant. Provide employees with resources and direction on both the law and the company's expectations for employee behavior. Review the effectiveness and accessibility of your complaint systems.

Modernize employee training: Consider implementing training programs for both supervisors and front-line workers that include real-life examples and bystander-intervention training.

Lower the threshold to trigger investigations: If rumors circulate or charges are raised through social media, don't wait for a formal report to be submitted to investigate.

Balance enhanced responsibility with the rights of alleged harassers: Many high-profile #MeToo firings seem to happen overnight. When harassment allegations arise, conduct a prompt and thorough investigation that considers all parties.

Make senior leaders accountable: The tone is set at the top of an organization. Leaders need to demonstrate a public commitment that harassment will not be tolerated. Ensure that you have an investigation process specifically designed to address claims against senior management.

Have a public relations action plan: The #MeToo movement demonstrated that sexual harassment claims do not pose just a legal problem for employers, but a public relations challenge as well. Many of the allegations that have rocked large companies are several years old and well past the statute of limitations for employment discrimination claims. However, they still have a profound impact on the company. Be proactive in assessing risk and formulating a planned response.

Prepare for the next wave: The #MeToo movement is spreading beyond sexual harassment and into general gender-equality issues. Stakeholders, shareholders and the public are demonstrating a commitment to a more equal workplace. Consider asking your attorney to conduct attorney/client-privileged promotion and pay equity audits.

While the fundamental federal anti-discrimination laws have not changed, the #MeToo movement is creating a new landscape for employers. This is an area in which cultural expectations and employer obligations are likely to continue to shift.

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