

BUSINESS MONDAY

Wave of sexual misconduct is a wake-up call for employers on workplace policies

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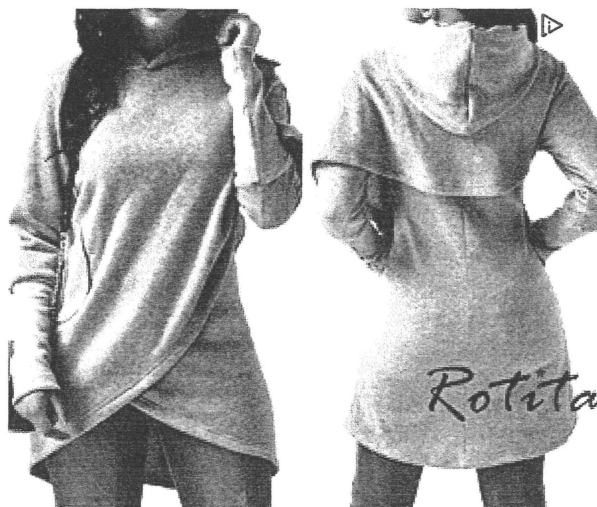
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From Silicon Valley to Hollywood to Washington, D.C., allegations of workplace sexual harassment and assault are in the headlines daily and have ended the careers of numerous high-profile executives and politicians. Last month, the “Me Too” hashtag prompted thousands of women and men to take to social media and share stories of sexual harassment and assault.

Closer to home, Florida’s Democratic Party Chair Stephen Bittel stepped down and Republican State Senator Jack Latvala is under investigation as a result of high-profile sexual harassment accusations.

If there is a lesson to be learned from the recent wave of high-profile claims, it is that sexual misconduct allegations are bad for a company's employees, its bottom line, its reputation, and its corporate culture. Simply put, now is not just a good time — it is an essential time — for employers to review their workplace harassment policies and procedures to ensure that they are updated to a 21st century standard.



Following is some practical compliance advice and recommendations as to what you should be doing to ensure that your company stays ahead of the concerns that are rocking America.

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Understand the law: Not all workplace harassment is illegal. Rather, workplace harassment is typically actionable if it is based on a protected classification. Under federal law, age, race, color, ethnicity, religion, national origin, genetic information, gender, pregnancy, disability status, and veteran status, among others, qualify an employee for a potential workplace harassment claim.

Florida law protects several additional categories, such as marital status, AIDS/HIV status, and sickle cell trait. And many localities, such as Miami-Dade, Broward, and Palm Beach Counties offer additional protections, including for sexual orientation or gender identity.

Elements of an effective workplace harassment policy: Your workplace harassment policy should describe what harassment is, and explain that harassment is neither tolerated nor condoned in the workplace — by anyone, regardless of title or position. And it should provide a mechanism for reporting harassment without fear of retaliation.

The best policies provide workers with multiple routes to voice complaints when confronted with harassment or retaliation. Depending on the size of your organization, identify at least two individuals (ideally of different genders) so that employees have options in reporting their experiences. Consider supplementing your reporting processes with a complaint hotline, giving employees yet another avenue to raise concerns.

Additionally, consider how other company policies may impact your efforts to combat workplace harassment. For example, it is important to review your technology policies to ensure that the company's non-harassment policies extend to use of employer-provided email or devices. And, confirm that the company has a right (but not an obligation) to review and access any messages or information transmitted on company systems.

Spread the word: Conduct effective training. Effective communication and training on the policy should occur at least annually. The training should be in real time (either in person or virtually) to ensure that participants have the opportunity to raise complicated questions. And, it should be given to everyone in the company — at all levels. In other words, it should be treated as an important and mandatory aspect of employment at the company and should have the support of the very top employees in the organization.

Conduct effective investigations: Harassment investigations can be conducted in a variety of manners, utilizing both in-house and outside resources.

The key is to ensure that you are proactive and have a written investigation protocol in place, explaining which individuals or departments have responsibility for investigation and how outcomes are reported. The day after your company receives a complaint is not the time to ask yourselves “so, how should we handle these type of complaints?”

Importantly, “no one is above the law,” and the investigative team cannot be unduly influenced by those being investigated. If the alleged harasser is someone with significant authority within the organization, it may be more prudent to involve outside resources for the investigation.

Walk the walk: Policies without action are not sufficient: The best-drafted policies are meaningless if they sit gathering dust on a shelf or are accessible via an intranet link that nobody clicks. Decision-makers in your company, starting with the board of directors and its executive officers, must take corrective action and all steps necessary (including termination) to ensure that misconduct in violation of your policies does not recur. Cover-ups and payoffs do not set the proper tone.

One way to foster accountability for high-level employees is to review the “Cause” provisions in executive and other employment agreements. Ensure that violation of sexual harassment policies constitutes a “for Cause” termination and require executives to indemnify the company if there are proven allegations of sexual harassment or assault. These actions can help avoid a situation where a C-suite manager who is accused of or even admits to harassment, walks away with a huge severance payment.

Be proactive, not just reactive: In addition to anti-harassment training, strive for an inclusive workplace culture in which women are equally represented at the highest levels of your business. Review your company’s diversity and inclusion training programs and policies and, as with harassment, make sure your company “walks the walk” when it comes to fostering an inclusive workplace, in which *all* employees feel safe and valued.

As the renewed focus on workplace harassment demonstrates, harassment is still a problem in American workplaces. Workplace harassment is detrimental: It can affect the company’s bottom line, reputation, employee recruiting and retention

efforts, and the ability to attract, secure and maintain clients and business. Taking those steps necessary to ensure that unlawful (and all other forms of) harassment is not occurring in your workplace is simply good business.

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