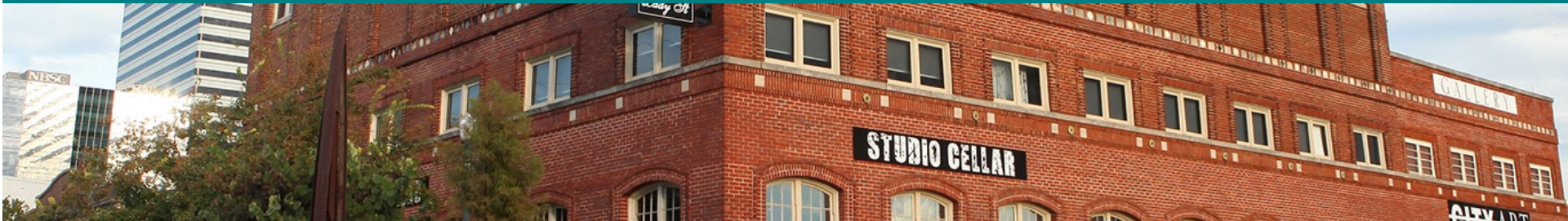


The How-Tos on #MeToo: Addressing and Preventing Workplace Sexual Harassment

Grant Burnette LeFever, Esq.
Clarke & Company | June 16, 2021



BURNETTE SHUTT MCDANIEL

Moving law forward.

THE START OF THE #METOO MOVEMENT



- Half a million people responded to Milano's tweet in the first 24 hours.
- Facebook released statistics showing that there were more than 12 million posts, comments, and reactions regarding "MeToo" in less than 24 hours by 4.7 million users around the world.
- Within one week, Facebook said 45% of users in the U.S. had friends who had posted "me too."
- Within one week, #MeToo reached 85 countries with 1.7 million tweets.
- By year end, a powerful person had been accused of misconduct at a rate of nearly once every 20 hours since Harvey Weinstein.



IMPACT OF #METOO AT WORK

- Companies can no longer assume that it does not impact *their* workplace.
- More reports
- Increased potential for exposure
- Judge and jury outcomes
- Greater consequences for harassers



HOW COMMON IS SEXUAL HARASSMENT?

- 1 in 3 women ages 18 to 34 harassed at work
- 81% of women experience verbal harassment
- 44% of women encounter unwanted touching
- 25% of women have received lewd texts or emails

WHO IS SEXUALLY HARASSING?

- 75% were targeted by **male co-workers**
 - 49% were harassed by **male clients or customers**
 - 38% were harassed by **male managers**
 - 10% were harassed by **female co-workers**
-
- Can **men** experience sexual harassment? **Yes!**
 - Can the perpetrator be the **same sex** as the victim? **Yes!**



KNOW THE LAW

KNOW THE LAW

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

- Applies to employers with 15 or more employees
- Prohibits employment discrimination (including harassment and retaliation) based on race, color, religion, **sex**, and national origin.
- **Sex** includes **sexual orientation, gender identity, and pregnancy.**

KNOW THE LAW

Places

- Work
- Work function
- Work-related social event
- Recruiting event or interview
- Social media

Sources

- Owner
- Board member
- Supervisor
- Supervisor in another area
- Co-worker
- Subordinate
- Client or customer
- Vendor

KNOW THE LAW

Sexual harassment according to the EEOC:

“It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include ‘sexual harassment’ or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).”



KNOW THE LAW



Two categories of sexual harassment:

1. Quid Pro Quo
2. Hostile Work Environment

KNOW THE LAW

Quid Pro Quo

Sexual coercion: involving job-related threats or bribes to force unwilling workers to enter into a sexual relationship with the harasser. One example of this is when an employer threatens to fire an employee if he/she doesn't agree to sex. While often the most damaging, most harassment tends not to be this blatant.



KNOW THE LAW

Hostile work environment

Unwanted sexual attention: involving unwelcome sexual advances towards someone else in the workplace that are regarded as unwelcome or offensive. This can include sexual touching, leering, pointing, asking for dates, etc. Since it can involve threats or bribes, there can be considerable overlap between this category and the first one.

Gender harassment: involving hostile behavior aimed at undermining workers simply due to their gender. This can include denigrating comments, off-color jokes that are intended to be offensive, mocking, and even violent threats. This is the most common form of sexual harassment in the workplace.



KNOW THE LAW

Enforcement

- EEOC
- SCHAC
- State/Federal Court





HAVE A POLICY

EMPLOYMENT POLICIES

Equal Opportunity Policy

- Prohibits discrimination at all levels within the company
- Includes recruiting, hiring, training, pay, benefits, transfer, promotion, demotion, layoff, termination
- Questions/concerns must be raised to supervisor, manager or HR
- No retaliation
- Confidentiality to the fullest extent possible
- Disciplinary action, up to and including termination



EMPLOYMENT POLICIES

Anti-Harassment Policy

- Prohibits harassment based on sex, race, color, religion, national origin, ancestry, disability, veteran status, age, or any other basis protected by local, state or federal law
- Defines prohibited behavior
- Questions/concerns must be raised to supervisors/ managers
- No retaliation
- Confidentiality to the fullest extent possible
- Disciplinary action, up to and including termination, for those who harass AND those who retaliate



EMPLOYMENT POLICIES

Non-Fraternization Policy

- Discourages interoffice romantic/sexual relationships
- Prohibits such relationships between supervisors and supervisees
- Any permitted romantic relationships must not interfere with the work environment or cause distractions.

EMPLOYMENT POLICIES

Other policy considerations

- Encourage reporting and provide multiple ways to report
- Give specific examples
- Detail procedures for handling complaints
- List penalties to be used in disciplinary actions
- End practice of reassigning perpetrators
- If reassigning the reporter, ensure reassignment is to a desirable position/area and is not perceived as punishment
- Implement documentation system that supports best practices





FOLLOW THE POLICY

BEST PRACTICES

Ensure employees have knowledge of policies

- Display required posters in break rooms
- Include policy in employee handbook
- Require employees to sign an acknowledgment of their reading and understanding of the sexual harassment policy



BEST PRACTICES

Handling Procedures

- Report it!
- Elevate to human resources
- Do not condone
- Work in pairs when interviewing or counseling employees
- DOCUMENT
- Tell employees how breaches will be dealt with, including potential consequences
- Protect confidentiality and investigate discretely
- Promote empathy and respect

BEST PRACTICES

Employer-Sponsored Training

- Management
 - How to recognize and report
- Investigators
 - Interviewing and documentation
- All employees
 - Reporting
 - Consequences
 - Bystander intervention



QUESTIONS



BURNETTE SHUTT MCDANIEL

Moving law forward.



Grant Burnette LeFever, Esq.

glefever@burnetteshutt.law

803.904.7920

burnetteshutt.law