



## Creating a Culture of Empowerment: Advice for Employers in the #MeToo Era

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The #MeToo movement burst onto the scene after shocking accusations of sexual harassment and assault brought down Hollywood producer Harvey Weinstein. In a cultural shift, women were no longer afraid of being blackballed in their industry for speaking out against the harassment they faced in the workplace.

Communicating online using the hashtag #MeToo on social media, women shared their stories, and helped spark a revolutionary movement.

The movement also changed the discussion about how organizations handle allegations of sexual harassment and discrimination, and the International Association of Commercial Collectors is no exception. As employers try to move forward in the #MeToo era, attorneys Christina M.

Reger and Robyn F. Pollack have offered the following suggestions on how commercial collection professionals can navigate the rocky terrain.

Reger is an attorney and shareholder at Bazelon Less & Feldman P.C. She has represented employers in all aspects of employment litigation including employment discrimination and harassment, employment contracts, and wage and hour claims.

Pollack is a former turnaround management attorney and the founder/CEO of Trellis Consulting LLC, a business strategy firm with an expertise in diversity and inclusion.

Together the two women said their advice is meant to inspire a culture of empowerment, which will help keep everyone safe.

### Planning Ahead Ensures Preparedness

The first step for employers looking to address this issue, Reger said, is to put a plan in place to handle any allegations that may occur and ensure everyone is on the same page about what's considered appropriate behavior.

"Make sure your company has all the right pieces in place," said Reger. "Have a good harassment policy in place. It's important to have a policy that complies with federal, state and local laws. You also need to have an effective complaint policy, which offers multiple ways for employees to complain about an incident or voice a concern."

Once a policy is in place, employees then need to receive ongoing training on the policy, so that everyone knows what's considered acceptable behavior and what options an employee has if they feel they need to file a complaint. This training goes beyond the legal definitions

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of what's considered appropriate and inappropriate. Employers and employees need to discuss their own company's culture and agree on what's acceptable behavior for them.

"The office hugger may be acceptable in some places but not others," said Pollack, for example. "Employees have to feel comfortable about what's acceptable and what isn't. That's the initial piece."

### **Look Outward to Ensure Smart Internal Practices**

Having a policy in place and training employees is just the beginning though. Employers need to create a zero tolerance culture that's preventative and proactive against harassment. "Take steps ahead of time, so you can head it off at the pass," said Pollack.

In addition, organizations should hire outside consultants to review their policies and expose any cultural or leadership issues that may be concerning.

"Create solutions that solve the specific problems that the data uncovers," said Pollack. "Otherwise you're doing things in the dark, which likely will not have an impact."

A harassment policy that simply pays lip service to the issue without actually addressing it can work against an organization when it comes to potential litigation. "You need systems of accountability," said Pollack. "And to be able to measure: Did we accomplish what we set out to do? The last thing you want is exposure. The costs are too great."

Additionally, employers and employees need to understand that part of a zero tolerance culture means that

when a complaint is received, it will be taken seriously, investigated and action will be taken.

Then employers need to follow through with that action. "Even if that means terminating your president, vice president or the best salesman in the company, it has to happen," said Pollack. "That's where organizations fail."

Having a policy in place without leadership embracing that policy and implementing it no matter what, is a useless policy. "You need to close the loop," she said.

### **It's OK to Settle It Yourself**

While it's important for employees to understand and follow the law when it comes to sexual harassment issues, not every issue needs to be addressed through formal settings. Sometimes issues can be resolved by employees simply working out their differences face to face. "That is getting lost in our text and email society," said Reger. "People lose the ability to discuss issues amongst themselves and confront others that offend them."

"In order for a culture to change though, it needs to start at the top," said Pollack. Employers need to be committed to creating an environment of empowerment and accountability. Then employees will follow their lead.

"Don't take the humanness out of this whole thing," said Pollack, who shared a story of a client so afraid of offending a fellow employee they wouldn't even say hello to them. "You can't take out interactions. We are people. Just think about how we're interacting with others.

It doesn't mean you can't say to someone 'you look nice today.'"

### **You Never Really Leave the Office**

In a world where people are on their phones and other electronic devices at all hours of the day, employees never truly leave the office. With constant access to email, social media and other communication tools, their behavior online in and out of the office needs to be the same.

"It doesn't matter if you're communicating through a work email or a Facebook account," said Reger. "Lots of employees struggle with this. It's a matter of education. People don't realize their actions have consequences."

While employees may say or do something inappropriate when they are off the clock, employers still have a right to discipline and/or fire them for their actions. "There's no First Amendment right to employment," Reger said.

As part of training, employers need to educate their employees that there are no 9-5 confines anymore. For example, "if an employee has their photo taken participating in a hate rally," Reger said, "an employer has the right to fire them."

### **Harassment Is in the Eye of the Beholder**

When it comes to colleague interaction outside the physical confines of the office - whether it's at an office holiday party, conference, hotel etc. - the at-work rules still apply, said Pollack. Employees need to maintain a level of professionalism at all times.

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That said, what's considered inappropriate behavior depends on the nature of the relationship. "Sexual harassment is in the eye of the beholder," Reger said.

How someone receives another person's action may not always be how that action was intended. And what's acceptable behavior to some people may not be for others. Colleagues, for example, who are also close friends may be able to say things to each other that would be completely inappropriate to say to someone they've just met.

"You have to look at what's going on. That's why it's difficult," said Pollack. "There are so many different areas of gray." Reger added, "when you're looking at harassment, the actions or words have

to be severe or pervasive. A one-time offensive thing is not going to rise to the level of an actionable claim in most cases."

While it can be difficult for employers to feel prepared to face a sexual harassment complaint, Reger and Pollack reiterated two points that should help: have a policy on paper and continue to reinforce the right behavior.

To effectively make a change, you need to implement a policy consistently, said Reger.

Otherwise, "you're better off not having a policy at all. You're telling a court you had something written but chose not to comply with your policy. To be successful in bringing change, you need to embrace it wholeheartedly."

Part of that wholehearted embrace is reminding employees what is acceptable behavior through ongoing training "People don't learn something by hearing it once," said Pollack. "They learn it over time. It's important to continue to reinforce behaviors. The cost to companies not approaching this in the right way is tremendous."

Navigating the post-#MeToo climate can be difficult, but not impossible. By following these basic tips, employers will be on the right track toward creating a culture of empowerment.

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