



Stopping Sexual Harassment

By || **KELLY ARMSTRONG**

As workplaces across industries face an overdue reckoning on sexual harassment, law firms must take steps to empower and protect their employees.

There is finally momentum for significant change in the United States regarding sexual harassment. As more people feel safe coming forward, complaints and allegations against powerful individuals are increasing, and many industries—from politics to entertainment—are examining their own practices in an effort to curb sexual harassment within their ranks. Similarly, law firms should create a workplace environment free from sexual misconduct by taking the following steps.¹

Retain Employment Counsel

Many states are introducing new sexual harassment legislation in response to recent, high-profile allegations, and law firms should retain employment counsel to ensure they are in compliance with all applicable state and federal regulations.² California, for example, enacted new regulations in 2017 that include legal requirements for ensuring a confidential complaint process, timely response,

impartial and timely investigations by qualified personnel, documentation and tracking for reasonable progress, options for remedial actions and resolutions, and timely closure.³ Even if your state does not yet have robust sexual harassment laws, firms should follow best practices to protect their employees.

Implement a Strong Complaint Mechanism

Having a useful complaint mechanism is key—one of the most important things a law firm can do is to create a harassment reporting procedure that makes employees feel safe coming forward. For example, California requires employers to offer multiple reporting options, such as a complaint hotline provided by the firm or access to an ombudsperson so that employees do not need to go directly to their supervisor.⁴

Train human resources (HR) employees on how to respond to sexual harassment complaints in a sensitive, professional, and confidential manner by using independent, outside consultants who are



not biased in favor of the law firm's legal and financial interests. Remind HR employees that their priority should *not* be to protect the firm at all costs. Rather, they should take all complaints seriously and never attempt to coerce an employee into dropping a complaint or act resentful toward the employee.

Law firms can also retain independent plaintiff and defense sexual harassment attorneys to conduct investigations pursuant to established comprehensive guidelines. Communicate the conclusions of the investigation, as well as recommendations for future action—such as training, warnings, suspensions, and termination—to both the complainant and alleged harasser.

Cultivate a Culture of Openness

Assure employees that they are truly encouraged—and should not be afraid—to come forward with complaints of sexual harassment. Inform them that the firm cannot survive without employees who feel safe and protected—and that perpetrators of harassment will be dealt with and disciplined accordingly.

When employees complain about sexual harassment, fully investigate the allegations and collect evidence. Some HR professionals and investigators may take the stance that the allegations are not true unless there is overwhelming evidence that confirms them. Standard practices should be followed, but keep in mind that sexual harassment usually occurs behind closed doors.

Investigation procedures should protect the privacy of all involved to the greatest extent possible—this way,

everyone can speak candidly without fear of repercussion. After a complaint has been made, make sure HR updates the employee in writing on the latest progress and steps taken. The firm's reaction to an employee's complaint can set the tone for how safe other employees may feel in coming forward. Many victims of sexual harassment describe how they delayed reporting due to fear of losing their jobs after they saw other employees forced out after complaining.

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Establish Clear Policies and Procedures

Employee handbooks are often outdated and contain only boilerplate language when addressing sexual harassment. Work with local employment counsel to implement new sexual harassment policies and procedures that are simple, practicable, and easy to follow—and make sure that everyone knows the policies and procedures.

For example, take the current boilerplate language common in sexual harassment policies and definitions, and convert it into easy-to-understand terms, such as “sending, texting, or instant messaging sexual memes to coworkers is not allowed”; “do not touch coworkers beyond a handshake”; and “there is zero tolerance for talking about sex and sexual preferences at work.”

Employees should sign a document

stating that they have reviewed the policy and agree not to violate it and take a quiz confirming that they understand the policy. In my experience, many deponents who have been designated as the most qualified person to speak on his or her company's sexual harassment policies and investigations do not even know what those policies are—or what constitutes a good faith investigation, which includes reviewing the alleged harasser's personnel file, emails, and computer hard drive, as

well as retaining a private investigator to conduct a background check.

Engage All Employees

All employees—not just managers—should engage in live sexual harassment training conducted by experienced sexual harassment practitioners who provide hypothetical scenarios. Online training is less meaningful, as many attendees are distracted. Use annual refresher training sessions with quizzes for all partners, managers, and employees so they remember the importance of following the firm's sexual harassment policies.

Every six months to a year, conduct confidential surveys with all partners and employees regarding sexual harassment to gauge overall firm culture and find problems employees may be hesitant to report formally. Employ roundtable

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discussions about recent high-profile sexual misconduct claims in the media, and engage all employees in open, candid discussion about sexual harassment. A midlevel manager or HR employee should hold the discussion so employees are not intimidated about speaking candidly in front of upper management. He or she can provide general talking points, such as the participants' understanding of the definition of "sexual harassment."

All law firm partners and employees should be encouraged to read, think about, and discuss the firm's sexual harassment policies and procedures with each other. Partners can directly encourage staff and associates to bring sexual harassment complaints and concerns to the attention of the firm's HR department, making sure that change begins at the top. 



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NOTES

1. The Equal Employment Opportunity Commission recently released a report with recommendations proposing new sexual harassment training tailored to each workplace. See U.S. Equal Emp't Opportunity Comm'n, *Select Task Force on the Study of Harassment in the Workplace* (June 2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm; see also U.S. Equal Emp't Opportunity Comm'n, *Rebooting Workplace Harassment Prevention* (June 2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/rebooting_harassment_prevention.pdf.
2. See, e.g., Vivian Wang, *Albany Lawmakers Signal Consensus on New Sexual Harassment Policies*, N.Y. Times (Jan. 2, 2018), <https://www.nytimes.com/2018/01/02/nyregion/albany-sexual-harassment-cuomo.html>; see also M.J. Lee and Juana Summers, *Lawmakers Introduce Legislation to Tackle Capitol Hill's Sexual Harassment Problem*, CNN (Nov. 15, 2017), www.cnn.com/2017/11/15/politics/sexual-harassment-legislation-speier-congress/index.html.
3. Cal. Code Regs. tit. 2, §11023 (2017).
4. *Id.*