

A Mid-Year #METOO Check-In

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By Christina Hynes Mesco

As the echoes of survivors' stories of harassment and assault continue to reverberate through our culture, many of our clients have taken the time to re-evaluate sexual harassment policies and prevention measures for their businesses. Not only is this the right thing to do to ensure that your employees feel safe, welcome, and included at work, it also may prevent needless liability for your organization.

Here are our best suggestions to guide your team as you re-evaluate your policies and procedures:

EVALUATE YOUR CULTURE

What is the culture of your organization? What is your written (and/or unwritten) code of conduct? Which behaviors are acceptable and which warrant discipline? Are bad behaviors tolerated? If so, why and when are they permitted? Do employees feel safe in their environment? If they have lodged complaints about workplace harassment or other issues, have their complaints been addressed satisfactorily? Often the culture of an organization looks much different from the perspective of entry- and mid-level employees than it does from management's view. How can management bridge that divide and obtain useful information about the business' actual culture? And what action should management take on the basis of that information?

- **First**, survey your employees to allow them an anonymous opportunity to have a voice about the culture of the organization—before they do it themselves. Surveys can be conducted internally or with the help of company culture and employee relations experts. Once the surveys have been collected and analyzed, be prepared to act on the results. Study after study has shown that employees who feel safe, secure, and valued are more productive for your business.
- Look for patterns. **If you have repeated complaints about one employee**, terminate his or her employment. Quickly. The old adage “hire slowly, fire swiftly” bears repeating. Nothing – no sales numbers, no network of contacts, no brilliant strategy – is worth causing your valued employees embarrassment or pain, or the possibility that you have allowed, or tacitly condoned, repeated bad acts (for which you will be held accountable). And if you have a problem employee that you allow to remain employed and for whom you consistently clean up “messes,” even settlement agreements with confidentiality clauses can become admissible as evidence in subsequent actions and may come back to haunt you (and possibly establish that you engaged in or allowed a pattern and practice of harassment).
- Once you have evaluated the culture, decide what is healthy and positive and should be kept, and what must

be discarded and revamped. Then train, train, train. Teach your managers and employees proper communication techniques, appropriate office conduct, conflict resolution, and proper protocol for filing grievances. Remember, some people (potentially members of your management team) may struggle with empathy and have difficulty understanding what it's like to be on the receiving end of a joke or suggestive comment. They might not comprehend how deeply such behavior can hurt another person, driving him or her straight to the courthouse. Training is the proper antidote: teach your employees perspective-taking and be very clear about the boundaries of acceptable behavior in your organization.

EVALUATE SEXUAL HARASSMENT POLICIES

Once you've evaluated and moved your culture in the right direction, go in depth about how to handle internal complaints regarding sexual harassment.

- It is integral that you have policies and procedures in place for preventing and addressing sexual harassment in your workplace. This is one of the first questions the EEOC will ask if your business is subjected to an action based on harassment. Your policy should provide for multiple methods of reporting harassing behaviors to ensure that victims can report around managers that may be the alleged perpetrators.

- Make sure that you train your employees on your sexual harassment policies. It is not enough to slap a 75-page book of procedures onto your employee's desk (or better yet, send them a link to download the policy), and then expect them to read, comprehend, and faithfully implement it on their own. Be proactive: host a training to review the handbook in a group setting (at the very least for managers responsible for implementing the policies). You'll receive valuable feedback regarding policy implementation, thoughtful questions you might not have considered, and previews of potential pitfalls. You will also have the assurance that you have done everything possible to free your workplace of unwanted behavior. Your employees will notice – as will any fact-finder in subsequent litigation.

USE MANAGEMENT TOOLS TO IMPLEMENT AND ENFORCE YOUR POLICIES

How can you determine whether managers are indeed abiding by the policies you have promulgated? What actions are necessary if the policies are being ignored or disregarded? Your policies, mission statement, and codes of conduct will be meaningless unless you have clear consequences for those who choose to violate the rules.

- In addition to climate surveys, utilize **anonymous 360 evaluations and exit interviews** regularly and routinely to help your management team have a more complete picture of its people-related performance. Once new

policies have been in place for some time, ask employees to evaluate interpersonal communication skills, conflict resolution skills, the degree to which they feel included in the business unit, and whether they feel policies and procedures are enforced fairly. Employees who are given the opportunity to provide candid feedback on management can help you prevent disasters. These surveys and conversations can also serve to provide answers to nagging questions about your organization: Why is morale low? Why are employees leaving a division of your company as if there is a revolving door? The answers are at your fingertips if you only ask. As mentioned above, be prepared to take action on the results you receive.

- **Document and investigate** all instances of complaints you receive from employees while keeping sensitive information confidential if you have agreed to do so. Depending on the type of allegations involved, involving a third party (e.g., your employment legal counsel) can help ensure the investigation is conducted swiftly, correctly, and resolved in a manner that can help avoid litigation.
- For repeated, lower-level infractions that do not warrant immediate termination, ensure that you record problems through devices such as **Performance Improvement Plans (PIPs) and written warnings** to confirm wrongful behavior stops immediately. Failure to document

and act on employee misconduct can be viewed as condonation by the employer under Illinois law. Doing nothing is not an option.

Be proactive about stopping the wrongful behavior the #MeToo movement has finally shone a light on. Following the above steps can help guide your organization towards being a safe place for all employees. Instead of getting demoralized by workplace troubles, your valued employees will feel free to focus on their most important task – the work of your business.



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