

Protect Your Company from Sexual Misconduct Issues in the Workplace

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Panelists



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The headlines

**Calls to anti-sexual assault helpline up by 21%
after Harvey Weinstein allegations**

The Guardian, Oct. 25, 2017

**After Harvey Weinstein, women around
the world are saying #MeToo**

The Washington Post, Oct. 17, 2017

**The Workplace After Harvey Weinstein:
Harassment Scandals Prompt Rapid Changes**

The Wall Street Journal, Nov. 10, 2017

**Not just Harvey Weinstein: The depressing
truth about sexual harassment in America**

The Washington Post, Oct. 12, 2017

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Hypo No. 1

Monday morning letter from counsel for current marketing assistant. Alleges sexually assaulted by CEO at Company event. Event started as sales meeting at office. Group of 20 employees and managers go bar hopping after sales meeting, not required but strongly encouraged by CEO. Drinks on CEO's tab. The group dwindled to 10 at second bar. Then further dwindled to 5 at third bar. Marketing assistant and CEO leave third bar. He invites her up to his apartment; she consents to going to apartment. A few years later, she alleges CEO sexually assaulted her. Letter demands response in 24 hours or going to media.

Hypo No. 2

Same facts but complaint to HR from employee that she heard about incident from someone else where CEO “sexually assaulted” employee.

What to do

- Preparing to communicate
- Investigation
 - Create a plan
 - Select a “neutral” investigator
 - Timing (ASAP but don’t be rash)
 - Steps to take with accused or complainant
- Concluding investigation
 - Final report considerations
 - Remedial action
 - Follow up with complainant
 - Communications

Internal and external communications

- When to notify the Board
- Confidentiality
 - Requiring confidentiality?
 - NLRA
 - NDA enforceable during investigation? After investigation? If settlement?
 - EEOC/SEC – no interference language
- Privilege issues
 - Fact investigation
 - Advice
- Media/PR management

An ounce of prevention is worth a pound of cure

1. Have and regularly disseminate policies
 - ❖ prohibiting harassment and retaliation
 - ❖ reporting mechanism
 - ❖ provide for a timely investigation upon receiving a complaint
 - ❖ remedial action will be taken
2. Keep in mind California differences (investigation, tracking, notice to employees with DFEH language)
3. Training
 - ❖ All employees on anti harassment
 - ❖ Supervisors on handling complaints (required in California)

An ounce of prevention is worth a pound of cure

- Policies and training alone aren't enough
- Create a culture
 - Internal communications
- Is anyone above the law?

Questions?

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CLE credit

- Please email Catherine Dunbar with the code word and your licensing information (State and Bar No.) so she can properly record attendance.
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HRCI

- Contact Debra Shniderson at debra.shniderson@haynesboone.com.

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