

JANUARY 12, 2018

HOORAY FOR HOLLYWOOD. . . EMPLOYERS, TAKE NOTE

Fresh off the 75th Annual Golden Globes Awards, which took place on January 7, mainstream and social media alike are abuzz with Oprah Winfrey's historic acceptance of the Cecil B. DeMille Award. Winfrey, the first black woman to receive the prestigious award, brought the crowd to its feet on several occasions during her emotional acceptance speech as she promised that "[a] new day is on the horizon."

The most rousing cheers from the audience were in response to the media mogul's warning-shot-across-the-bow of the "brutally powerful men" who have "[broken our] culture":

For too long, women have not been heard or believed if they dare speak the truth to the power of those men. **But their time is up. Their time is up. Their time is up.** And I just hope—I just hope that Recy Taylor died knowing that her truth, like the truth of so many other women who were tormented in those years, and even now tormented, goes marching on.

Pretty powerful stuff, and employers should take note.

Consider the fact that since our last harassment-related [blog](#), which was posted just a few weeks ago, **10** additional men have been added to the [running list](#) (compiled by NBC News) of high-profile men accused of sexual misconduct. (Harvey Weinstein was the first person on NBC News' list.)

Consider the fact that the Harvey Weinstein story followed on the heels of the harassment-related woes of Fox News, which followed on the heels of the developments that came to light on the presidential campaign trail.

Consider the fact that the last time workplace harassment issues were front and center in the national spotlight—during Anita Hill's 1991 testimony before the Senate Judiciary Committee in connection with Justice Clarence Thomas's confirmation hearings—EEOC charge filings for harassment and hostile work environment claims spiked upwards by 50 percent.

And finally, consider the fact that in the time it took to get this blog entry from draft to final form, **3** more men have been added to NBC News' [running list](#): Ben Vereen, Paul Haggis and James Franco.

As pointed out in our November 30 [blog](#), **now** is the time to implement best practices with respect to both civility and sexual harassment. To reiterate:

- Conduct regular training, beginning at orientation, to ensure that management, employees and/or students understand their responsibilities under the law and the harassment policy, know how to report harassment and comprehend that they are required to do so if they are victims or witnesses of harassment. Document such training.
 - At risk of redundancy and stating the obvious, now is an ideal time to conduct training.
- Ensure the harassment policy is straightforward and sets forth clear reporting alternatives so that any given employee or student is not dependent on any one individual or any one reporting line to be able to lodge a complaint.
- Ensure that individuals who report harassment are insulated against retaliation under the policy and practice of the organization.
- Require victims and witnesses of harassment to report it. Consider enabling anonymous reporting.
- Communicate and enforce the harassment policy evenhandedly with no exceptions based on (for example) executive status or a physician's productivity.
- Promptly investigate and address any harassment complaints. At the least and in all cases, remind all parties of the harassment policy. Make sure any accused individual is aware that he/she may not retaliate.
- Document clearly all steps taken to address harassment complaints and the reasoning behind all decisions regarding the appropriate response in each instance.

- Ensure that all levels of the organization recognize the importance of fostering a safe and harassment-free workplace, and work cooperatively to achieve this goal.
- Encourage senior leadership to be engaged with and accessible to the rank and file, in part to enable the leadership to tune in to employees' perceptions about harassment and take steps to address those perceptions before a complaint is filed.

Question: Do onsite training and following best practices hold the key to a perfectly content workforce, gender equality and workplace nirvana? Candidly, they do not. One client, for example, forwarded a link to a *New York Times* article, penned by Claire Cain Miller, which suggested that harassment training doesn't work.

But, following best practices and conducting onsite training **unequivocally** lowers an employer's legal risk—a point that even Claire Cain Miller appears to concede in her *New York Times* [article](#).

Two 1998 Supreme Court cases determined that **for a company to avoid liability in a sexual harassment case, it had to show that it had trained employees on its anti-harassment policies.**

But, **while training protects companies from lawsuits**, it can also backfire by reinforcing gender stereotypes, at least in the short term.

In light of the twin goals of 1) lowering your legal risk while 2) improving civility and employee morale in the workplace, consider implementing onsite training and best practices **in addition to** offering more diverse content and information to your workforce, which are aimed at "creat[ing] a culture in which women are treated as equals and employees treat one another with respect." Claire Cain Miller, citing a host of research and academic studies, offers up the following suggestions.

- Empower the bystander—equip everyone in the workplace to stop harassment instead of relegating folks to one of two undesirable roles: harasser or victim.
- Encourage civility—teach employees both what they should **not** do (typical focus of harassment training), as well as what they **should** do (typical focus of civility training).
- Train seriously and often—make it in person, interactive and tailored for the particular workforce.
- Promote more women—research shows that companies with more women in management have less sexual harassment.
- Encourage reporting—identify a large pool of employees (beyond just the HR folks) who have responsibility for receiving reports of harassment, and make it clear that not every report of harassment automatically ends the alleged harasser's career (i.e., proportional consequences).

Although the entire universe of her suggestions, research and conclusions exceed the scope of this blog article, the details and supporting data can be found in the [article](#). It's a great read and provides a forward path for employers looking to "think outside the box" on the topic of workplace harassment.

If you have any questions, please feel free to contact [Dana E. Stutzman](#) at (317) 977-1425 or dstutzman@hallrender.com or your regular Hall Render attorney.