



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

NONPROFIT ADVISOR

For DAV Departments and Chapters

Volume 10, No. 2

Spring 2018

CHANGING TIMES FOR HARASSERS **What's Next For Sexual Harassment Law?**

Harvey Weinstein. Matt Lauer. Bill Cosby. These names, once staples of the “Arts and Style” section, have been catapulted to the front page. Accused of sexual misconduct – in some cases dating back for decades – these men have been among the most prominent targets of groundswells like #TimesUp and #MeToo (“Movements”). The Movements have had a profound effect on the entertainment industry and the corporate world at large. Nor have charities been exempted: Oxfam and the Humane Society, to name but two, are swooning in the wake of sexual allegations against top officials. Even though DAV has had vigorous sexual harassment policies in place for years, prudence demands that our leadership take note of the Movements.

Thus far, the Movements have mostly targeted prominent, high net-worth individuals. The garden variety sexual harassment cases that typically arise in many workplaces seem, at least for the moment, to be unaffected. Certainly, there has as yet been no change in the governing legal standards. Nonetheless, it is important to realize that the Movements are likely to have a significant trickle-down effect. Which ones are most likely?

Resurrection of Older Grievances. The Movements rely largely on extra-judicial remedies, such as public pressure and media exposure. There is no statute of limitations on these kinds of measures. As such, there may be a growing awareness that even stale complaints

may not necessarily be “dead,” even though the time for legal enforcement may be long passed. Once an individual is targeted, there can be a domino effect. Mr. Weinstein is a case in point. Based in significant part on “old” complaints, he was forced to resign from his own company and became something of a pariah in the film industry. Then, the Attorney General of New York State blocked the sale of the Weinstein company pending assurances that he (Weinstein) would not receive any of the proceeds from the sale of the organization. A huge chunk of those proceeds was earmarked for a compensation fund for victims.

Greater Focus on Individual Liability. For the most part, sexual harassment laws (especially federal) have been ineffective in placing liability directly on the harasser. In the corporate world, companies and organizations bear the brunt of remedies for sexual harassment. The Movements have targeted the wrongdoers directly. Even though the laws shielding individuals have not changed, there may well be creative ways around those barriers. For example, we are aware of (non-DAV) cases in which a victim of harassment has demanded – and gotten – the termination of the perpetrator as a condition of settlement.

Enhanced Response Time to Allegations. Given the renewed and intensified focus on sexual harassment that the Movements have brought about, we can expect to see companies responding faster and more



FULFILLING OUR PROMISES TO THE MEN AND WOMEN WHO SERVED

aggressively to well-supported claims of misconduct. The all-too-common corporate practice of taking a “wait-and-see” attitude on complaints will likely give way to a more robust approach to investigation. To the extent that such a development yields greater justice, it is to be welcomed. However, it is important that companies not sacrifice evidence for expediency. To be sure, the Movements have arisen in large measure as a response to the disregarding of victims of sexual misconduct. However, the victimization of the innocent is not a way to remedy that injustice. It just perpetuates it.

Now What? The incidence of sexual harassment might be reduced if those in control – managers, leaders – paid greater attention to the observance of rules of civility in the workplace. In many instances, a would-be harasser broke the basic rules of civility in dealing with his victim, and the incivility later grew into harassing

behavior. Unchecked, a “meaningless” but still over-personal touch easily evolves to an inappropriate groping, and a “concerned” question or comment morphs into an intolerably personal and explicit discussion. We should not be surprised at this phenomenon. Human beings inclined to immorality often “test the waters” before taking the plunge.

It is quite likely that an increase in civility would produce a decrease in sexual harassment. Civility can be taught, and should be taught. It can be demanded and should be demanded. An excellent starting point would be the enforced prohibition of incivility – especially gender-based incivility – in the workplace. Civility rules should be as commonplace as rules regarding legally actionable sexual harassment. A great introduction to the civility literature is P.M. Forni, *Choosing Civility: The Twenty-Five Rules of Considerate Conduct* (New York: St. Martin’s Press, 2002).

Nonprofit Advisor is prepared by the Office of the DAV’s General Counsel and is published quarterly for the informational use of DAV Departments and Chapters. This newsletter is not intended to replace legal advice that may be required to address individual situations.