

Sexual Harassment in the #MeToo/Time's Up Era



It's hard to read or watch the news lately without hearing of another prominent entertainer, politician or leader accused of sexual harassment. The #MeToo and Time's Up movements are helping to raise awareness and prompting more women to come forward.

About six in 10 women in the U.S. say they have experienced unwanted sexual advances or verbal or physical harassment of a sexual nature, according to a 2018 Pew Research Center study. Of those, 69 percent say this happened in a professional or work setting.

In male-dominated industries like transportation, experts say the numbers could be even higher.

"In today's climate, awareness is at an all-time high," says Kailee Wahler, Senior Human Resources Consultant at accounting firm Schenck SC, who has led a workshop series on sexual harassment. "People are starting to feel comfortable talking to employers. In the past, everything was hush, hush. Now, when something happens, both victims and witnesses feel more empowered to come forward."

As the tide changes, it's more important than ever for companies in all industries, including transportation, to take steps to prevent sexual harassment at the workplace and be prepared to handle claims should they occur.

IDENTIFYING HARASSMENT

What exactly constitutes sexual harassment? There are two main categories, explains Bridgette Blich, Partner at legal firm Blich Westley, S.C. who recently presented a webinar on the topic for Women In Trucking (WIT).

1. Quid Pro Quo sexual harassment. The harasser seeks to exchange "this for that" – such as a positive performance review for a sexual favor.

2. Hostile work environment harassment. This occurs when behavior is so toxic that it alters the conditions of the victim's employment. It might take the form of a steady barrage of insults or a single incident of inappropriate touching.

Other hostile behaviors could include posting sexual cartoons or posters in a truck cab, telling inappropriate jokes, or sending instant messages that make a person feel uncomfortable, says Margarita Santos Krncevic, Of Counsel at Benesch, Friedlander, Coplan & Aronoff LLP, a legal firm that advises clients on sexual harassment issues.

The harasser's behavior may not be intentional, points out Joel Blich, another Partner at Blich Westley, S.C. "When I speak to those accused of harassment, they often say they 'didn't mean anything by it.' But intent is not material. What matters is how the conduct is viewed and its impact."

It is important to be aware that companies can be held liable for actions of third parties. "The harasser could be an employee at a truck stop or one of your best customers. Regardless, you still have a duty to protect your employee," he explains.

Also, note that sexual harassment doesn't always refer to men harassing women. "Harassment can be male to male, women to women or women to men too," explains Jackie Staple, Associate Attorney at Benesch, Friedlander, Coplan & Aronoff LLP.

POLICIES & PROCEDURES

To help prevent unwelcome behavior from occurring, companies need to take a strong stand against sexual harassment.

The first step, Bridgette Blich recommends, is to make sure that your company has an anti-harassment/anti-discrimination policy. "You need to have a zero tolerance rule and a progressive disciplinary policy in place."

A sexual harassment policy/procedure should cover four main areas, Wahler says.

1. Objective of policy – why is it in place?
2. What is prohibited conduct?
3. Clearly outlined complaint procedure.
4. Confidentiality, to the extent possible.

The complaint procedure is a common oversight. "A lot of company policies are missing a good reporting procedure," notes Santos Krncevic. "It can be hard for an employee to come forward."

She suggests providing an anonymous way to report such as a hotline or internet portal.

When it comes to confidentiality, Joel Blich says, "Advise the employee that their complaint will be kept as confidential as possible, but Human Resources will be notified and an investigation will be conducted."

Another point that many policies often miss is retaliation, Wahler says. Often, employees

are concerned that voicing a complaint will jeopardize their career path. "Make it very clear to employees, 'We want you to come forward. You won't be retaliated against for speaking out,'" she advises.

It's also critical to get buy-in from the top, Wahler notes. "You need your top leaders on board. And their behaviors need to be aligned with the policy."

PREVENTION VIA TRAINING

"The best preventative steps an employer can take are to train its workforce in what constitutes inappropriate conduct and to train supervisors in how to respond to internal complaints of harassment and retaliation," Joel Blich advises. "No company should wait until they have a claim to do preventative maintenance."

At a minimum, Staple recommends that companies have mandatory training for supervisors and managers – ideally in person, but at least online.

Wahler advocates for a continued focus on training throughout the year using multiple avenues — employee newsletters, quarterly meetings, etc. "Talk about the laws, share examples of what is and isn't harassment, talk about hot topics in the news," she suggests. "Let employees know you take this issue seriously and are not afraid to talk about it."

Staple suggests starting the training process with managers and helping them understand the risks involved. She points out that, in some states, an individual can be sued as well as the company in harassment cases. While that individual might be the harasser, it could also be a supervisor who didn't take a complaint seriously, she warns.

HANDLING COMPLAINTS

If a complaint of sexual harassment is made, it is important to respond quickly and professionally – whether it is a formal complaint or a casual comment.

"Action should be taken the moment the supervisor learns of a complaint, regardless of whether the complaining employee wants to take action or believes that action is warranted," Bridgette Blich explains, pointing out that the employee need not use the words "discrimination" or "harassment" to trigger their responsibility.

Have established internal mechanisms in place to deal with claims, she advises. "What you do on Day 1 or Day 2 could be the difference between whether or not a complaint is filed with the EEOC or another agency."

When a harassment complaint occurs, Blich recommends taking three key steps:

1. Get the employee out of the uncomfortable situation.
2. Turn the issue over to Human Resources or senior management.
3. Interview parties involved.

That first step can be particularly challenging in the trucking industry, Staple points out. "You could have two employees together in a truck cab for hours where the alleged victim can't get out of the situation and call the dispatcher. Take the situation seriously. It's critical to take prompt action. Separate those parties immediately," she emphasizes.

To provide help as quickly as possible, offer a 24-hour help line. "Don't just have a phone

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number where the message goes to voicemail. You need someone there to answer the call regardless of the time," Bridgette Blitch says.

CONDUCTING AN INVESTIGATION

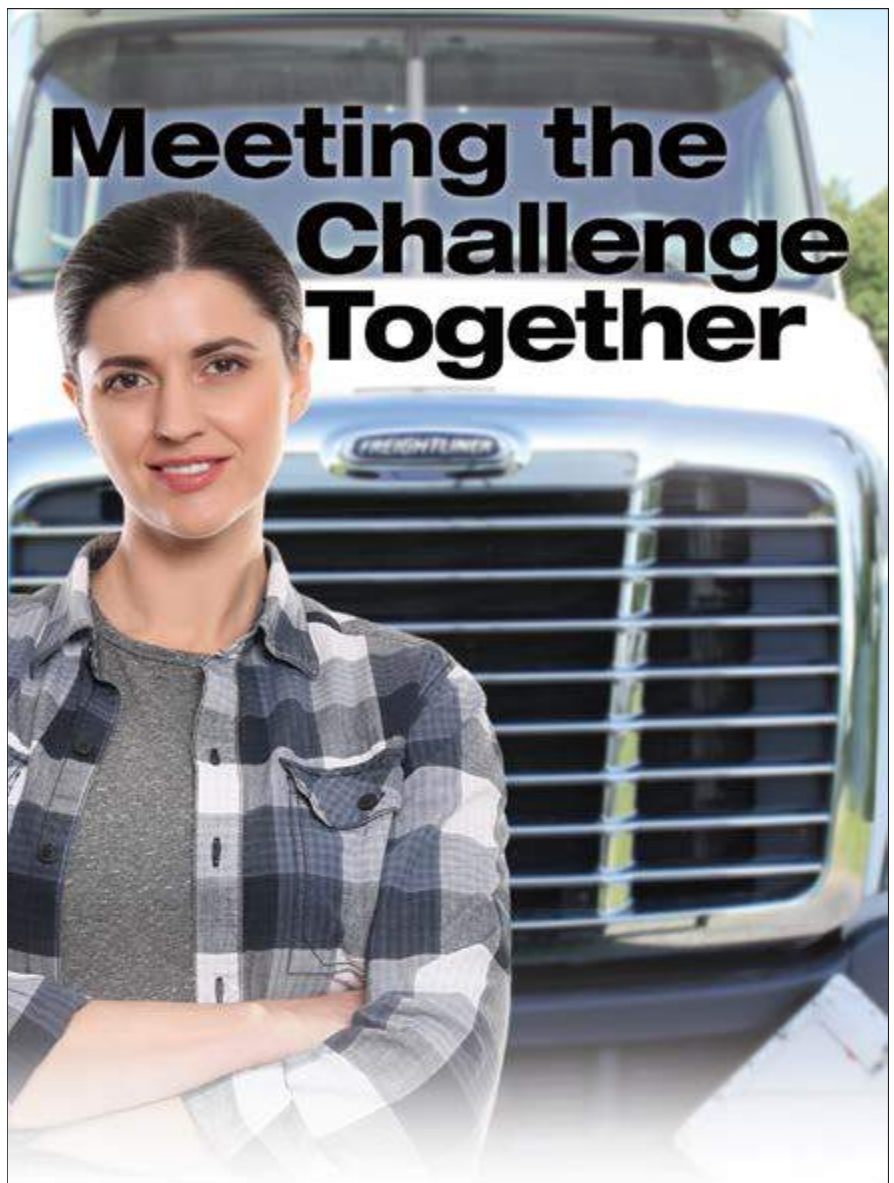
If someone brings forward a claim, the investigation should be conducted by a non-biased person, usually a third party or legal counsel, Wahler recommends. When interviewing those involved, try to have more than one person in the room, preferably male and female.

"Listen to the employee's concerns closely. Do not make judgements or attempt to minimize or explain away the employee's concerns," Bridgette Blitch says. She recommends asking open-ended questions to get as much detail as possible, then asking the employee to sign a written statement detailing the complaint, ideally within 24 hours.

When interviewing the alleged harasser, don't initially mention that there is a complaint against him/her, Blitch advises. Ask open-ended questions related to the complainant's allegations in a friendly, informal manner. The U.S. Equal Employment Opportunity Commission (EEOC.gov) can be a good resource to help develop appropriate questions.

Once you've concluded the investigation and decided how to proceed, Wahler urges employers to follow up with the employee who made the complaint. "Share your reasoning for your decision and explain actions taken, so they feel they were heard and that they can come forward again," she says.

Ultimately, how you handle a sexual harassment claim can significantly impact your business. "Take complaints and the investigation process seriously," says Santos Krncevic. "Your company reputation is on the line. It's already hard to recruit, hire, and retain women in the transportation industry. If you don't handle claims promptly and thoroughly, that process will be much harder." ■



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