

# Trouble in the Clubhouse: Defending Sexual Harassment Claims in Today's World

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# **TROUBLE IN THE CLUBHOUSE: DEFENDING SEXUAL HARASSMENT CLAIMS IN TODAY'S WORLD**

## **WELCOME TO THE #METOO WORLD – THE FUTURE AIN'T WHAT IT USED TO BE<sup>1</sup>**

Reports of sexual harassment by celebrities, politicians, and other prominent figures have exploded over the last year, with accusations being lodged against (and, in many instances, confessed by) the likes of Matt Lauer, Senator Al Franken, Dustin Hoffman, Harvey Weinstein, and even the President of the United States. Beyond the world of celebrity gossip, the number of reports of sexual harassment in the workplace is steadily on the rise, at least in part due to the positive response from the public in support of women experiencing such harassment. A poll released by Pew Research Center in the summer of 2017 showed that only twenty-two percent (22%) of employed females interviewed in the poll reported being sexually harassed at work.<sup>2</sup> Just a few months later, thirty percent (30%) of females participating in an Economist/YouGov poll reported being a victim of sexual harassment at work, followed by a November 2017 NPR/PBS NewsHour/Marist survey of registered voters with 35% of females reporting being sexually harassed or abused at work.<sup>3</sup>

A growing percentage of the public now seems to view allegations of sexual harassment in a new light. According to a CNN poll reported on in December 2017, nearly seven out of ten Americans viewed sexual harassment as a “very serious” problem.<sup>4</sup> That figure represents a thirty-four (34) point increase from a similar CNN poll from 1998.<sup>5</sup> Not unexpectedly, the 2017 CNN poll found that women believed sexual harassment to be a serious problem at a greater rate than men, with a difference of seventy-three percent

(73%) of women surveyed holding that view and sixty-three percent (63%) of men taking that position.<sup>6</sup>

Other polls support the existence of a general public mindset similar to that reflected in the CNN poll. A recent survey by Ipsos of 1,133 adults, including 392 Democrats, 332 Republicans, and 274 independents, found that almost nine out of ten participants felt that a “zero tolerance” policy regarding sexual harassment was integral to cause a “change in our society.”<sup>7</sup> Roughly seventy-five percent (75%) of Democrats and sixty-seven percent (67%) of Republicans in the survey agreed that the average woman had likely “experienced some form of sexual harassment in her life.”<sup>8</sup> Fifty-nine percent (59%) of the survey’s female participants reported having been sexually harassed, while twenty-seven percent (27%) of men responding likewise reported having been sexually harassed.<sup>9</sup>

## **SEXUAL HARASSMENT OVERVIEW – IT’S LIKE DEJA VU ALL OVER AGAIN**

What is “sexual harassment” and under what circumstances can an employer be held responsible for the conduct of its employees? The Equal Employment Opportunity Commission (“EEOC”) explains on its website that:

“It is unlawful to harass a person (an applicant or employee) because of that person’s sex. Harassment can include ‘sexual harassment’ or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature and can include offensive remarks about a person’s sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer."<sup>10</sup>

Title VII of the Civil Rights Act of 1964 forbids an "employer," as defined under federal law, to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges or employment, because of such individual's . . . sex."<sup>11</sup> As noted by the United States Supreme Court, the terms "quid pro quo" and "hostile work environment" are not contained in the statutory text of Title VII and, instead, first appeared "in the academic literature" before being adopted and utilized by the courts.<sup>12</sup>

Quid pro quo sexual harassment involves, with some degree of variation from case to case, a supervisor attempting to extort sexual favors from a subordinate in exchange for job benefits and/or retaliating against an "uncooperative" subordinate. A plaintiff pursuing a quid pro quo theory of sexual harassment "must show that he [or she] suffered a tangible employment action as a result of his [or her] acceptance or rejection of his [or her] supervisor's alleged sexual harassment."<sup>13</sup> A "tangible employment action," according to the United States Supreme Court, "constitutes a significant change in employment status, such as hiring, firing . . . or a decision causing a significant change in benefits."<sup>14</sup>

The other form of sexual harassment, known as hostile work environment sexual harassment, arises when the conduct of a supervisor or co-worker "unreasonably

interferes with an individual's work performance, or creates an intimidating, hostile, or offensive working environment.”<sup>15</sup> A hostile work environment claim may involve, among other things, crude language, the sending or posting lewd pictures, off-color jokes, unwelcome touching and groping, and indecent exposure.<sup>16</sup> A hostile work environment claim has four elements: (1) the employee belongs to a protected class; (2) the employee was subject to unwelcome sexual harassment; (3) the harassment was based on a protected characteristic; and (4) the harassment affected a term, condition, or privilege of employment.<sup>17</sup> Sexual harassment “affect[s] a term, condition, or privilege of employment” if it is “sufficiently severe or pervasive so as to alter the conditions of employment and create an abusive working environment.”<sup>18</sup>

Notwithstanding the fact that the United States Supreme Court has not issued any significant decisions in this area for many years, the United States Courts of Appeal continue to follow the Supreme Court's well-established legal standards for quid pro quo and hostile work environment claims.<sup>19</sup> The bottom line appears to be that while there has been a drastic uptick in media coverage and public interest in sexual harassment allegations and scandals, the legal landscape remains largely unchanged.

### **THE PUBLIC'S VIEW OF “SEXUAL HARASSMENT” – YOU CAN OBSERVE A LOT BY JUST WATCHING**

Recent polls have revealed not only that a majority of the participants view sexual harassment as a serious societal problem, but also that men and women tend to view certain behaviors differently. An October 2017 poll by the Barna Group showed that ninety-six percent (96%) of women and eighty-six percent (86%) of men agreed that “touching or groping” constituted sexual harassment and that eighty-six percent (86%) of

women and seventy percent (70%) of men felt that sexual harassment included “making sexual comments about looks or body.”<sup>20</sup> A large percentage of women (83%) responded that sexually explicit emails and texts amounted to sexual harassment, while only sixty-nine percent (69%) of men agreed.<sup>21</sup> Fifty-eight percent (58%) of women in the poll and forty-seven percent (47%) of men in the poll agreed that persistence in asking for a date after being told no rose to the level of sexual harassment.<sup>22</sup> The most striking differences in responses to the poll questions came from, not surprisingly, Democratic women and Republican men.<sup>23</sup> Only fifteen percent (15%) of Democratic women participating in the Ipsos poll agreed that “nearly all instances of sexual harassment would end if the woman simply told the man to stop.”<sup>24</sup> Forty-three percent (43%) of Republican men believed the statement to be accurate.<sup>25</sup> Employers, their counsel, and their insurers should keep statistics like these in mind if forced to try a sexual harassment claim.

**RESOLVING SEXUAL HARASSMENT AND ABUSE CLAIMS  
IN LIGHT OF SECTION 13307 OF THE TAX CUTS AND JOBS  
ACT - A NICKEL AIN'T WORTH A DIME ANYMORE**

1. Overview of the new tax reform bill

Historically, employers had the right to deduct ordinary and necessary business expenses incurred in operating their businesses, including, but not limited to, legal settlements and payments to a plaintiff, attorney’s fees paid to the plaintiff’s attorney, and legal fees incurred in the defense of the litigation. Congress, however, recently amended the tax laws to explicitly prohibit deductions for:

- a. any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a non-disclosure agreement, or
- b. attorney’s fees related to such a settlement or payment.

Keep in mind, of course, that tax exempt entities like schools, churches, and non-profit groups are not affected by the new tax reform bill.

2. Analysis of the new tax reform bill

The new tax reform bill leaves several questions unanswered for employers, their counsel, and their insurers. Hopefully, Congress or the courts will eventually provide some clarity, but for now, the following are a few of the issues to consider when resolving sexual harassment and abuse claims, as well as making other employment-related decisions.

a. The new bill does not define the terms “settlement” or “payment”

The tax reform bill does not address whether the prohibition on deductions applies only to the settlement of a single “sexual harassment” or “sexual abuse” claim, or, rather, whether the bill extends to scenarios in which a plaintiff has asserted multiple claims, only one of which is a sexual harassment or abuse claim. The bill does not address its application in instances when an employer includes broad language in a release that would encompass a waiver of any sexual harassment or abuse claims, even where the nature of the suit was, for example, racial discrimination. The bill likewise leaves unanswered the question of whether it applies to routine severance agreements in which departing employees waive sexual harassment and/or sexual abuse claims.

The bill likewise does not indicate whether the term “payment” includes expenses incurred in the course of defending a sexual harassment or abuse claim, such that those expenses might no longer be deductible. The bill also does not specify whether payments such as expert fees, court costs, and the like are included in the term “payment.”

b. The new bill does not define the term “related to” with respect to attorney’s fees and does not specify whose attorney’s fees are no longer deductible

Under the broadest reading of the new statute, an employer would be prohibited from deducting expenses and fees paid to its attorney to defend the claim, as well as any portion of a settlement carved out as compensation to the plaintiff's attorney.

- c. The new bill does not address whether the exclusion applies when the settlement or payment is made by an insurance company

The bill can be read to preclude insurers from taking a deduction, just the same as would be the case if an employer settled or made "payments" to resolve a sexual harassment or abuse claim with a confidentiality provision attached to the release.

- d. The new bill does not define the terms "sexual harassment" or "sexual abuse"

The bill lacks clarity as to whether it encompasses sexual discrimination claims or claims involving allegations that an employer retaliated against an employee for complaining about sexual harassment or abuse.

### 3. Potential adverse implications for plaintiffs under the new tax reform bill

- a. A plaintiff may want a confidentiality provision for several reasons, including that public knowledge that the plaintiff has made and/or settled a sexual harassment or abuse claim may hinder the plaintiff's ability to find another job. Employers could leverage the plaintiff's desire for a confidentiality provision to obtain a more favorable settlement.
- b. U.S. tax laws provide that a plaintiff whose attorney is paid by his or her employer is considered to have income, but the plaintiff has historically been permitted to deduct that payment so that the result is the plaintiff has no net income related to the attorney's fee payment. Given the lack of specificity in the statute, it seems that the plaintiff may lose the potential deduction and



ultimately walk away from a settlement with less than the amount actually bargained for with the employer.

**PRACTICAL TIPS AND BEST PRACTICES - YOU'VE GOT TO BE VERY CAREFUL IF YOU DON'T KNOW WHERE YOU ARE GOING BECAUSE YOU MIGHT NOT GET THERE**

As noted above, polls and public opinion surveys bear out that the public views sexual harassment as a serious problem. With sexual harassment claims on the rise, prudent employers should consider taking necessary steps to mitigate the risk of being sued for employee misconduct.

The following are some of the tools in an employer's arsenal to guard against the filing of these claims:

1. A comprehensive, updated anti-harassment policy
  - a. Most employers have anti-harassment language in their policy manuals and employee handbooks. Employers, however, should routinely review these policies to ensure their handbooks are up to date and consistent with current harassment law.
  - b. Always remember to check your local and state laws regarding harassment as there has been and will continue to be a wave of legislation on sexual harassment issues.
  - c. Cross-coordinate the policies in your handbook. Revise your electronic device usage, dating, conflicts of interest, dress code, client interaction, and other similar policies to refer to and reiterate the company's anti-harassment policy.

- d. Consider prohibiting not only “illegal” sexual behaviors but also “inappropriate” behaviors in general.
- e. Include examples of what constitutes both illegal and inappropriate conduct.
- f. Explain how victims and bystanders can report sexual harassment.
- g. Note in your policy that all complaints of sexual harassment will be promptly and thoroughly investigated.
- h. Make it clear that individuals who complain of and report sexual harassment or otherwise participate in sexual harassment investigations will be protected against retaliation.
- i. Be sure to advise employees that harassment can occur outside the office or away from the company’s facility.
- j. Remember that the overwhelming majority of your employees use social media. Plainly spell out that sexual harassment can occur outside an employee’s work station and that employees who violate company policies will be disciplined even if their misconduct occurs outside of the physical workplace.
- k. Don’t expect that the mere existence of an appropriately-written anti-harassment policy will be an adequate substitute for committed leadership from the human resources department and management or for adequate training.

## 2. Training

- a. In June 2016, the EEOC released a report on harassment in the workplace.<sup>26</sup> The EEOC bluntly noted that “training must change,”

commenting that “ineffective training can be unhelpful or even counterproductive.”<sup>27</sup>

- b. The goal of training should be to create a culture of anti-harassment. Training is obviously critical for insulating your company from legal liability, but employees expect and, in today’s #MeToo world, want employers to create a workplace that rejects sexual harassment. As the EEOC noted, the majority of training over the last several decades has “been too focused on simply avoiding legal liability.”<sup>28</sup>
- c. Train all levels of employees and management.
- d. Train with relatable examples that are modeled specifically for your business environment. Use hypotheticals. An anti-harassment policy that you paid an attorney a large sum of money to draft is useless if employees do not understand how to follow it.
- e. Train not only about what constitutes “illegal sexual harassment” but also what behaviors, if permitted, can eventually lead to unlawful conduct. Don’t let the little things slide by unchecked.
- f. Bystander intervention training is critical.
- g. Encourage reporting.
- h. Do not forget to train staff responsible for receiving complaints of harassment on how to fill that role properly.
- i. Be sure to keep abreast of State and local legislation. New York, for example, adopted a budget in April 2018 that impacts private employers by, among other things:

- (1) requiring them to adopt sexual harassment policies that meet or exceed the minimum standards to be established by the New York State Department of Labor and Division of Human Rights and to provide training on harassment prevention for all employees at least once a year,
  - (2) prohibiting them from including mandatory arbitration clauses in sexual harassment claims contracts signed by employees (although this provision may be preempted by the Federal Arbitration Act), and
  - (3) barring them from including confidentiality clauses in releases for sexual harassment claims unless the confidentiality provision is requested by the accuser.<sup>29</sup>
- j. Train male employees, supervisors, and managers, in particular, to avoid alienating female employees out of fear of sexual harassment complaints. A 2018 survey conducted by *LeanIn.org* and SurveyMonkey demonstrated that roughly half of the male managers participating in the survey were concerned about working alone with women or socializing with them outside work.<sup>30</sup> Movements like #MentorHer have been launched to address this issue.<sup>31</sup>
- k. Involve upper level managers and executives in training to emphasize the importance the company places on maintaining a work environment free of sexual harassment. Have the upper level managers and executives personally send the invitation for training to employees and attend the

training sessions with other employees. Employees are more likely to take the training sessions seriously if upper level management does, too.

- I. Train employees about the company's sexual harassment reporting policies and procedures.

### 3. Reporting procedures

- a. Having appropriate reporting procedures in place is critical to an employer's ability to assert a *Ellerth/Faragher* defense in hostile work environment claims. Under this defense, an employer can "mitigate or avoid liability by showing (1) that it exercised reasonable care to prevent and promptly correct any harassing behavior and (2) that the plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities that were provided."<sup>32</sup>
- b. As noted in the EEOC's June 2016 report, "[e]ffective reporting systems for allegations of harassment are among the most critical elements of a holistic anti-harassment effort."<sup>33</sup> The best reporting systems allow employees who "experience" and who "observe" harassment to notify the employer of the harassment.<sup>34</sup>
- c. Reporting systems should offer an employee multiple avenues for reporting either what he or she has experienced or observed, and the individuals to whom reports may be given should be accessible and knowledgeable about fielding such reports. Many companies not only identify several individuals who can accept sexual harassment reports but also provide other options for reporting like email submissions and a telephonic hotline.

- d. Some employers, recognizing that employees now often prefer to communicate via their cellphones, allow employees to report sexual harassment through smart phone apps like STOPit and Callisto.<sup>35</sup>
- e. Whatever reporting mechanisms are offered, those mechanisms and procedures should be clearly communicated to employees in multiple formats (including, but not necessarily limited to, in the employer's handbook, posted in the break room, etc...). Courts have observed that "not every [anti-harassment] policy eliminates liability; generic policies that offer no specific complaint procedure may be insufficient to satisfy the *Ellerth/Faragher* defense."<sup>36</sup>
- f. Be sure that employees who are authorized to receive reports of sexual harassment are trained to take complaints seriously, to make reporting employees feel safe and free from retaliation, and to be thorough in obtaining basic information about the complaints.
- g. Employers should also periodically test their reporting systems to see how well they are working.

#### 4. Investigating complaints of sexual harassment

##### a. External investigations

With all that is at stake in a potential sexual harassment lawsuit, there are many instances in which a business should strongly consider retaining outside counsel or an independent investigator to conduct the inquiry into an employee's claims. The following questions should be asked to help determine whether to retain an external investigator.

- (1) Who are the parties involved in the complaint?

Utilize outside counsel or an independent investigator when the company's key personnel are "too close" to the situation. When the company's human resources manager, supervisors, and/or in-house counsel work with the accuser or accused on a regular basis, are subordinate to either the accuser or accused, or otherwise may hold biases toward either the accuser or accused, an external investigation should be considered.

(2) What is the nature and scope of the complaint?

If the sexual harassment extends beyond a small number of accusers and/or accused employees, outside counsel may be appropriate. A widespread problem with sexual harassment may warrant an investigation that will yield a better understanding of the issue.

(3) Who is available to investigate the complaint?

If the internal personnel lack training or are otherwise not capable of conducting a swift, thorough investigation, an outside investigation is likely the appropriate way to go.

b. Investigation protocols and guidelines

(1) Designate the lead investigator

Choose a neutral person to spearhead the litigation, whether internally or externally from the business. Be sure to select someone who is not involved in the alleged harassment and who is not a potential witness.

(2) Consider whether to involve other key personnel in the investigation

Depending upon the nature of the allegations, consider whether upper level managers, executives, or in-house counsel need to be involved in or oversee the investigation or provide input as to the scope and procedures of the investigation.

(3) Document the complaint and interview the accused

If the accused has not submitted a written complaint and, instead, has orally reported harassment, document the nature of the complaint, all pertinent details (date, time, place, witnesses or others with potential knowledge of the individuals involved or the circumstances, and potentially relevant documents or data sources). Be sure to ask other pertinent questions such as:

How did you react?

Have you been the victim of sexual harassment previously, whether at this company or elsewhere?

Did you report the sexual harassment to anyone or talk about it with anyone informally?

Is there any physical evidence related to the accusation?

Has the sexual harassment affected your ability to work or to work in the same office/station/location in the facility or to work with any particular individual(s)?

Have you seen a doctor, counselor, or other professional regarding the sexual harassment event?

What do you want the company to do?

Has anyone retaliated against you for making this complaint?

(4) Reassure the accuser that the company will investigate the claims

Have the lead investigator and possibly upper level management or executives reassure the accuser that all complaints of sexual harassment are considered serious and will be investigated promptly and thoroughly. Keep the accuser informed from the outset of the company's plan and as progress is made in the investigation.

(5) Preserve relevant documents



An allegation of sexual harassment should be treated comparably to the manner in which the company responds to the threat of any type of litigation. Immediately prepare and disseminate litigation hold notices, and, with the assistance of your company's IT department, suspend applicable document deletion protocols. Consider whether there may be pertinent information on employees' personal cell phones, laptops, or other similar devices and take appropriate steps to attempt to secure that information.

(6) Ensure that there is no retaliation against the accuser

Hopefully long before complaints of sexual harassment surface, you have trained supervisors and managers on the subject of retaliation. If you have not done so already, do so immediately. If you have already trained your staff, reiterate the importance of refraining from actions and comments that either are, or could reasonably be perceived as, retaliatory. There is no reason to turn what could be a baseless allegation of sexual harassment into a viable retaliation lawsuit.

(7) Meet with the accused

Give the accused the opportunity to defend him- or herself against the allegations made by the accuser. Do not jump to conclusions either way.

(8) Conduct a comprehensive, thorough fact-based investigation

Meet with all witnesses and review all pertinent documents. Memorialize what witnesses report accurately and completely and have them thoroughly review any statements you may obtain from them before the statements are signed.

Consider whether the circumstances dictate that the identity of the accuser and the accused remain anonymous before commencing these meetings. There may be

instances when it is impossible to conduct an appropriate interview without identifying one or both of those individuals.

(9) Document, document, document

To quote every regulatory agency inspector, “if it’s not documented, it didn’t happen.”

(10) Take action

Once the investigation has been completed, make a decision and notify the accuser and accused of that decision.

(11) Reassess after the investigation

At the end of the day, employers should assess what happened, why it happened, how it can be prevented in the future, and whether company policies and procedures for dealing with complaints of sexual harassment worked appropriately.

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1. In the spirit of this year's EPL/PL seminar theme, all subtitles for this article are brought to you courtesy of Yogi Berra.
  2. See [www.forbes.com/sites/bowmanmarisco/2018/01/16/sexual-harassment-what-do-the-polls-say/#43f57cef5ac0](http://www.forbes.com/sites/bowmanmarisco/2018/01/16/sexual-harassment-what-do-the-polls-say/#43f57cef5ac0).
  3. *Id.* When asked about sexual harassment in general, rather than specifically limited to the workplace setting, the percentage of women reporting experiencing such harassment is even greater. *Id.*
  4. [www.cnn.com/2017/12/22/politics/sexual-harassment-poll/index.html](http://www.cnn.com/2017/12/22/politics/sexual-harassment-poll/index.html)
  5. *Id.*
  6. *Id.*
  7. See [www.npr.org/2017/12/14/570601136/poll-sexual-harassment-ipsos](http://www.npr.org/2017/12/14/570601136/poll-sexual-harassment-ipsos).
  8. *Id.*
  9. See [www.npr.org/about-npr/571064846/poll-american-attitudes-on-sexual-harassment](http://www.npr.org/about-npr/571064846/poll-american-attitudes-on-sexual-harassment).
  10. See [www.eeoc.gov/laws/types/sexual\\_harassment.cfm](http://www.eeoc.gov/laws/types/sexual_harassment.cfm)
  11. 42 U.S.C. § 2000e-2(a)(1)
  12. *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 752 (1998).
  13. *Casino v. AT&T Corp.*, 213 F. 3d 278, 283 (5<sup>th</sup> Cir. 2000).
  14. *Ellerth*, 524 U.S. at 761.
  15. See [www.eeoc.gov/publications/fs-sex.cfm](http://www.eeoc.gov/publications/fs-sex.cfm).
  16. See *Gross v. Burggraf Constr. Co.*, 53 F. 3d 1531 (10<sup>th</sup> Cir. 1995) and *O'Rourke v. City of Providence*, 235 F. 3d 713 (1<sup>st</sup> Cir. 2001).
  17. *EEOC v. Boh Bros Constr. Co., LLC*, 731 F. 3d 444, 453 (5<sup>th</sup> Cir. 2013).
  18. *Stewart v. Mississippi Transp. Comm'n*, 586 F. 3d 321, 330 (5<sup>th</sup> Cir. 2009) (quoting *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 116 (2002)).
  19. See, e.g., *Hales v. Casey's Marketing Co.*, No. 16-3770, 2018 WL 1597783 (8<sup>th</sup> Cir. Apr. 3, 2018); *Doe v. Hutchinson*, No. 17-3070, 2018 WL 1565671 (10<sup>th</sup> Cir. Mar. 30, 2018); *Mys v. Michigan Dept. of State Police*, No. 17-1445, 2018 WL

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- 1514581 (6<sup>th</sup> Cir. Mar. 28, 2018); *Justice v. Rockwell Collins, Inc.*, No. 15-35678, 2017 WL 6559788 (9<sup>th</sup> Cir. Dec. 21, 2017); *Kennedy v. Federal Express Corp.*, NO. 16-3634-CV, 698 F. App'x 24 (2<sup>nd</sup> Cir. 2017).
20. See [www.forbes.com/sites/bowmanmarisco/2018/01/16/sexual-harassment-what-do-the-polls-say/#43f57cef5ac0](http://www.forbes.com/sites/bowmanmarisco/2018/01/16/sexual-harassment-what-do-the-polls-say/#43f57cef5ac0).
  21. *Id.*
  22. *Id.*
  23. See [www.npr.org/2017/12/14/570601136/poll-sexual-harassment-ipsos](http://www.npr.org/2017/12/14/570601136/poll-sexual-harassment-ipsos).
  24. *Id.*
  25. *Id.*
  26. See EEOC report from the Select Task Force on the Study of Harassment in the Workplace, [www.eeoc.gov/eeoc/task\\_force/harassment](http://www.eeoc.gov/eeoc/task_force/harassment).
  27. *Id.*
  28. *Id.*
  29. See [www.lawandtheworkplace.com/2018/04/new-york-state-budget-includes-workplace-and-anti-sexual-harassment-measures/](http://www.lawandtheworkplace.com/2018/04/new-york-state-budget-includes-workplace-and-anti-sexual-harassment-measures/) and [www.nyassembly.gov/leg/?bn=S07507&term=2017](http://www.nyassembly.gov/leg/?bn=S07507&term=2017).
  30. See <https://leanin.org/sexual-harassment-backlash-survey-results/>.
  31. See <https://leanin.org/mentor-her/> and [www.forbes.com/sites/kimelsesser/2018/02/07/can-sheryl-sandberg-smash-the-sex-partition-with-mentorher/#53b157625b62](http://www.forbes.com/sites/kimelsesser/2018/02/07/can-sheryl-sandberg-smash-the-sex-partition-with-mentorher/#53b157625b62).
  32. *Vance v. Ball St. Univ.*, 570 U.S. 421, 430 (2013).
  33. See EEOC report from the Select Task Force on the Study of Harassment in the Workplace, [www.eeoc.gov/eeoc/task\\_force/harassment](http://www.eeoc.gov/eeoc/task_force/harassment).
  34. *Id.*
  35. See [www.stopitsolutions.com](http://www.stopitsolutions.com) and [www.projectcallisto.org](http://www.projectcallisto.org).
  36. *Boh Bros. Constr.*, 731 F. 3d at 463.