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February 21 - 22, 2019

Best Practices for Handling #MeToo or #Time's Up Allegations

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AGENDA

- A Different Environment
- Mechanics of An Investigation
 - Pre-investigation issues
 - Conducting an effective investigation
 - Special privilege issues in investigations
 - The investigatory report
 - Post-investigation issues
 - “Sham” investigations
- Preventing harassment and takeaways



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Famous Faces . . .



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#QuiTam #FBA



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WHAT DO THESE FACES HAVE IN COMMON?

- Harassers who were fired, forced to retire, resign or step out of the public eye.
- Multiple allegations of sexual harassment by numerous people – often for many years.
- Complaints of sexual harassment that were never effectively addressed by HR, law departments, or company management.
- Serious financial consequences for their employers and companies.



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ALYSSA MILANO

- Social Media
- Waves of victims
- Very public
- Media awareness
- High stakes/material risk



[Alyssa Milano](#)

✓ [@Alyssa_Milano](#)

If you've been sexually harassed or assaulted write 'me too' as a reply to this tweet.

[4:21 PM - Oct 15, 2017](#)



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HARVEY WEINSTEIN

October, 2017

Stepped down as CEO of
the Weinstein Company.

Currently facing class
action lawsuits.

Merger/Acquisition was
blocked following NY
attorney general lawsuit



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#METOO ERA CHARACTERISTICS:

- High profile allegations of sexual misconduct.
- CEOs or high profile employees have either stepped aside or been terminated.
- Major/Material risk to the sustainability of the organization.
- Negative publicity and seemingly quick adjudication via the media.
- Company management and board are called into question.
- Lawsuits well beyond employment – shareholder, regulatory, law enforcement.



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THE EVOLUTION OF NEW STAKEHOLDERS

- The Company/Organization
- Federal & State government agencies
- Federal & State Court
- Employee and/or counsel
- Social Media
- The News Media
- The Court Of Public Opinion Via Media Headlines.
- Consumers/Customers
- Brand stakeholders
- The Board of Directors



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#METOO's IMPACT TO INTERNAL INVESTIGATIONS:

- Notice via Social Media vs internal complaint
- Immediate public awareness, judgment, and PR challenge
- Numerosity of victims occurs via public exchanges
- Lack of interest in litigation or legal defenses
- A whole new approach to investigations
- The need for super fast investigations to get to a decision point
- Decision point is often a change of direction (i.e. senior management)



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EEOC STATISTICS:

- About 30% of all charges related to sex discrimination
- Retaliation charges increasing – 48% 2018
- In 2018, 12% increase of sexual harassment charges
- 50% increase of sexual harassment lawsuits
- \$70 million for sexual harassment victims (up \$23 million)



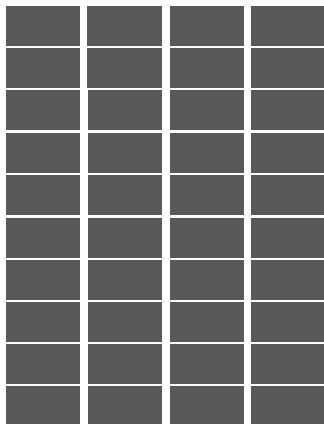
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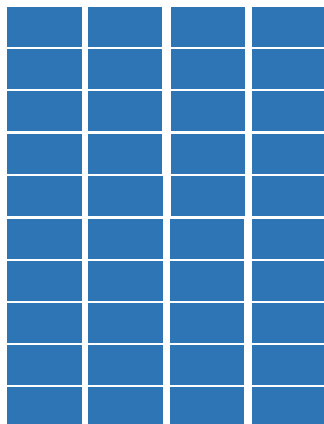
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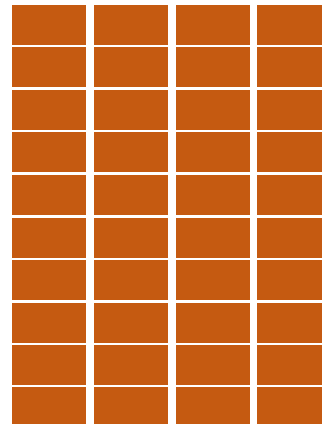
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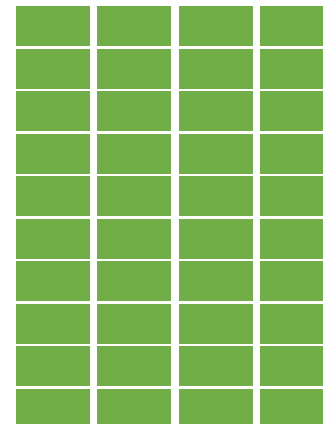
Health and
workplace
productivity of
the target of
harassment



Health and
workplace
productivity of
coworkers who
witness
harassment



Job turnover



Reputational &
Brand harm



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**TIME'S
UP**

NEW THIS MORNING

HOLLYWOOD STARS JOIN FORCES TO TAKE ON HARASSMENT
"TIME'S UP" FOR WORKPLACE MISCONDUCT

GMA
#GMAA

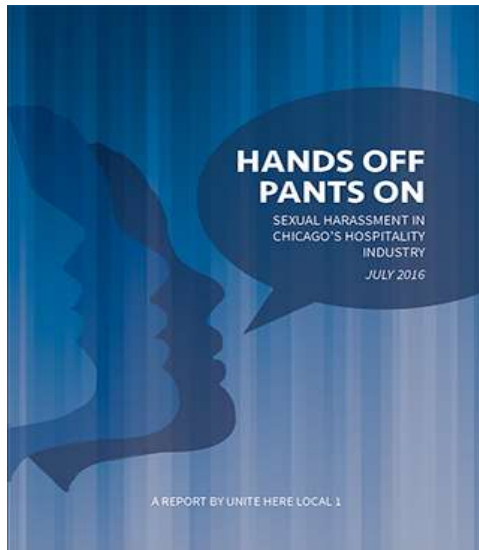
#TIMESUP



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October 2017 - Chicago City Council unanimously passed "Hands Off Pants On" Ordinance

Survey Found:

- 49% of housekeepers: guests exposed themselves, flashed them, or answered the door naked.
- 65% of casino cocktail servers: guests groped, pinched, grabbed or tried to touch them in an unwelcome way.

Only 1/3 of workers told manager or supervisor when a guest harassed them.

- 43% of hotel workers said they knew someone who reported sexual harassment and nothing changed
- 24% of casino workers said they thought there was nothing they or anyone else could do about it

- **Panic button by July 1, 2018 for all hotel workers who work alone in guest rooms and restrooms**
- **Written policy that specifically addresses sexual harassment by guests.**
- **Prohibits retaliation**



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PREVENTING HARASSMENT

BEHAVIOR



Workers would know what behavior is unacceptable.

COLLECTIVE RESPONSIBILITY



Workers would feel collectively responsible for having a harassment-free workplace

TOOLS AND TRAINING



Workers would be given tools and training for intervention, specific to that workplace.

REWARD REPORTING



Workers who stop harassment would be rewarded, not retaliated against.



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KEY TAKEAWAYS:

- Workplace harassment has emerged towards a more material risk to the organization and now impacts reputation, brand, and sustainability in addition to posing monetary risks.
- Traditional concepts of harassment avoidance still apply, however, the public awareness, and social media aspects of these cases infuse a great deal of complexity.
- No longer merely for human resources & legal; senior management and the board have a role to play. Organizations must have an effective compliance, investigative and risk plan.
- Investigations must be managed accordingly
- Management of financials, financial controls, and public filings are a good model.



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