

# Insurance Coverage and the #MeToo Movement

# The #MeToo Movement

#MeToo is a movement aimed at increasing awareness of the magnitude of sexual assault and harassment and “disrupting all systems that allow sexual violence to flourish.”

To achieve its objectives, the Movement focuses on building a community of survivors of sexual misconduct, giving those survivors a voice by encouraging them to speak out about sexual violence.

Ten years before gaining national attention, the “Me Too” Movement was created to provide survivors of sexual violence with a community and method to communicate support to one another.

In October 2017, the Movement gained national attention when allegations of sexual assault and harassment by Hollywood producer Harvey Weinstein were publicized. Soon after, actress Alyssa Milano encouraged survivors of sexual misconduct to post “#MeToo” to their social media accounts.

Alix Langone, *#MeToo and Time's Up Founders Explain the Difference Between the 2 Movements – And How They're Alike*, Time (Mar. 8, 2018), <http://time.com/5189945/whats-the-difference-between-the-metoo-and-times-up-movements/>.

Abby Ohleiser, *Meet the Woman Who Coined 'Me Too' 10 Years Ago – to Help Women of Color*, Chicago Tribune (Oct. 19, 2017), <http://www.chicagotribune.com/lifestyles/ct-me-too-campaign-origins-20171019-story.html>.



# Evolution of #MeToo

- **2006: Birth of “Me Too”**
  - Tarana Burke coined the phrase to help women of color who had survived sexual abuse, assault and harassment— phrase was intended to communicate support among survivors.
- **January 20, 2017: Women’s March**
  - Opposing Trump administration’s positions on numerous issues including women’s rights and reproductive rights.
- **February 19, 2017: Sexual Harassment at Uber**
  - Former Uber engineer Susan Fowler writes blog post about Uber’s failure to respond to sexual harassment complaints —nine Uber executives, including former CEO Travis Kalanick, resign and 20 employees are fired.
- **August 25, 2017: Former Uber Engineer Susan Fowler Files Petition with Supreme Court**
  - Questions propriety of requiring employees to sign arbitration agreements.
- **October 2017: Growing Reports of Sexual Misconduct in Hollywood Reignite “Me Too” Movement**
  - Harvey Weinstein is publicly accused of sexual misconduct.
  - Alyssa Milano tweets, "If you've been sexually harassed or assaulted write 'me too' as a reply to this tweet." Complaints of sexual misconduct by Hollywood “A-listers” follow in the ensuing months.
- **November–December 2017: Sexual Misconduct in Politics**
  - Roy Moore, former Alabama Senate candidate, accused of sexual harassment.
  - Al Franken resigns after sexual harassment allegations.
- **January 1, 2018: Time’s Up Initiative Created**
- **January 20, 2018: Second Annual Women’s March**
- **February 5, 2018: Former Doctor for USA Gymnastics and Michigan State Athletics Department Larry Nassar Sentenced Up to 125 Additional Years in Prison**

Lydia Dishman, *This “Me Too” Timeline Shows Why 2017 Was A Reckoning For Sexism*, Fast Company (Dec. 6, 2017), <https://www.fastcompany.com/40504569/this-me-too-timeline-shows-why-2017-was-a-reckoning-for-sexism>.

Alan Fram, *Combative Franken Quits*, NBC Boston (Dec. 7, 2017), <https://www.nbcboston.com/news/politics/Franken-Fresh-Accusations-Future-462495643.html>.

Christen A. Johnson and KT Hawbaker, *#MeToo: A Timeline of Events*, Chicago Tribune (Mar. 28, 2018), <http://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htmlstory.html>.

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Lauren Theisen, *Larry Nassar Sentenced to Additional 40 to 125 Years in Prison*, DeadSpin (Feb. 5, 2018), <https://deadspin.com/larry-nassar-sentenced-to-additional-40-to-125-years-in-1822724375>.



# The Prevalence of Sexual Harassment and Assault

- **Scale of Sexual Harassment and Assault**
  - 81% of women and 43% of men reported experience sexual harassment or assault.
  - Nearly half of women working in the U.S. have been harassed at their jobs.
  - Typically, sexual harassment in the workplace is not isolated—almost half of women between 30 and 31 years old that have experienced harassment at work, experienced it four or more times.
  - Most women do not report workplace harassment.
- **Workplaces with Higher Rates of Harassment**
  - **Lack of Diversity.** Sexual harassment occurs most frequently in workplaces lacking diversity or those where diverse employees are segregated across job types.
  - **Customer Service Focus.** Workplaces where customer service is key to job performance and tied to compensation are more likely to have higher rates of sexual harassment.
  - **Distant Management.** Harassment is more likely to occur at jobs where management is not near the site where most of the work is performed.
  - **Women in Positions of Power.** 58% of female supervisors in male-dominated environments will experience harassment.

Melissa Chan, *Nearly Half of the Women Working in America have been Harassed on the Job*, Time (Oct. 30, 2017), <http://time.com/5002182/sexual-harassment-work-me-too/>.

Chantal Da Silva, *#MeToo Study Finds Nearly All Women and Almost Half of Men in U.S. have Faced Sexual Harassment or Assault*, Newsweek (Feb. 22, 2018), <http://www.newsweek.com/after-metoo-study-finds-nearly-all-women-and-almost-half-men-us-have-815660>.

Heather McLaughlin, *Who's Harassed, and How?*, Harvard Business Review (Jan. 31, 2018), <https://hbr.org/2018/01/whos-harassed-and-how>.

Lynn Parramore, *\$MeToo: The Economic Cost of Sexual Harassment*, Institute for New Economic Thinking (Jan. 2018), <https://www.ineteconomics.org/research/research-papers/metoo-the-economic-cost-of-sexual-harassment>.



# The Cost of Sexual Harassment and Assault

- **The Cost to Employers**

- The EEOC determined that since 2010, employers have paid a total of **\$699 million** to employees alleging harassment.
- The EEOC estimated that in 2012, court judgments and settlements of harassment lawsuits amounted to more than **\$356 million** in costs.
- A 1998 study found that a typical Fortune 500 company lost \$6.7 million a year owing to absenteeism, increased health-care costs, poor morale, low productivity and staff turnover as a result of sexual harassment — **over \$14 million per year** in 2017 dollars.

# Perceptions and Concerns

## • Perceptions about #MeToo

- A recent study found that **43% of working individuals** believed #MeToo will impact the industry in which they work.
- Another study indicated that **61% of women** and **39% percent of men** view #MeToo *favorably*.
- **47% of men** and **34% of women** believe #MeToo has gone too far.

## • Women's Concerns about #MeToo

- Even though a majority of women support the #MeToo, many still have concerns about the undesired negative consequences.
  - Women who support the movement express *greater* concern than women as a whole.
- **60% of women** are concerned that #MeToo will cause women to be denied professional opportunities because men are reluctant to work with them.
- **63% of women** are worried about men being falsely accused of sexual assault and harassment.

Chelsea Emery & Dana Jackson, *Sexual Harassment in the Professional Workplace: Behind the Research*, Financial Planning (Mar. 12, 2018), <https://www.financial-planning.com/news/sexual-harassment-in-the-workplace-sourcemediastudy?tag=00000162-0c25-d132-af7b-dca5d2f70000>.

Anna North, *Why Women are Worried About #MeToo*, Vox (Apr. 5, 2018), <https://www.vox.com/2018/4/5/17157240/me-too-movement-sexual-harassment-aziz-ansari-accusation>.

*New Bucknell Survey Finds Americans Deeply Divided by #MeToo*, Bucknell Institute for Public Policy (Apr. 5, 2018), <http://bipp.blogs.bucknell.edu/2018/04/05/new-bucknell-survey-finds-americans-deeply-divided-by-metoo/>.



# States Respond to #MeToo: Non-Disclosure Agreements

- **California:** Lawmakers are pushing a bill that would ban sexual harassment agreements from including a non-disclosure clause prohibiting a victim from speaking publicly about the harassment.
  - Bill introduced in response to the lawsuits filed against Harvey Weinstein.
- **New Jersey:** Bill barring employment contracts that waive procedural rights or remedies and/or prevent disclosure of discrimination claims.
- **Vermont:** Proposed bill prohibits employment agreements from preventing or discouraging a victim from disclosing harassment.
- **Washington:** Enacted bills that bar employment contracts requiring an individual, as a condition of employment, to sign an agreement forbidding disclosure of sexual harassment and/or waiving the right to pursue legal action for workplace sexual assault or harassment.

Rebecca Beitsch, *#MeToo Movement has Lawmakers Talking About Consent*, Huffington Post (Jan. 24, 2018), [https://www.huffingtonpost.com/entry/metoo-movement-has-lawmakers-talking-about-consent\\_us\\_5a6758dfe4b06bd14be5067f](https://www.huffingtonpost.com/entry/metoo-movement-has-lawmakers-talking-about-consent_us_5a6758dfe4b06bd14be5067f).

Christopher Galusha, *A Response to the #MeToo Movement: NJ Bill Tightens Position on Employment Agreements*, Construction Law Now (Jan. 9, 2018), <https://www.constructionlawnowblog.com/labor-employment/new-jersey-bill-tightens-position-on-employment-agreements/>.

Michael Lotito, *WPI State of the States: Pay Equity, Sexual Harassment Continues to Drive State Bills*, Littler (Apr. 2, 2018), <https://www.littler.com/publication-press/publication/wpi-state-states-pay-equity-sexual-harassment-continue-drive-state>.

Jack Thurston, *#MeToo Inspires New Legislation in Vermont Statehouse*, New England Cable News (Jan. 25, 2018), <https://www.necn.com/news/new-england/MeToo-inspires-new-legislation-in-VT-Statehouse-471202463.html>.

# States Respond to #MeToo: Harassment in the Workplace

- **Connecticut**: Proposed legislation, called “The Time’s Up Act,” would require: all employers to email their sexual harassment policy to employees *annually*, employers with at least 3 employees to provide sexual harassment training to supervisory *and non-supervisory* employees, among other things.
- **New York City**: Considering bill requiring employers with at least 15 employees to conduct annual sexual harassment training, provide sexual harassment information sheet to each employee upon hire, among other things.
- **Vermont**: Bill would authorize the Vermont AG’s office and state’s Human Rights Commission to audit workplaces to ensure employers are abiding by state sexual harassment laws.

Jonathan Bing & Richard L. Greenberg, *New York City Legislation Would Mandate Sexual Harassment Training, Expand Employer Coverage under Human Rights Law*, Jackson Lewis (Mar. 7, 2018), <https://www.jacksonlewis.com/publication/new-york-city-legislation-would-mandate-sexual-harassment-training-expand-employer-coverage-under-human-rights-law>.

Galusha, *A Response to the #MeToo Movement: NJ Bill Tightens Position on Employment Agreements*.

Thurston, *#MeToo Inspires New Legislation in Vermont Statehouse*.





# States Respond to #MeToo: Expanding the Statute of Limitations

- **Connecticut**: Proposed “The Time’s Up Act,” extends statute of limitations for filing a claim of harassment with the Connecticut Human Rights Office from 180 days to 2 years.
- **Michigan**: Michigan Progressive Women’s Caucus pushing to eliminate the statute of limitations on sexual assault cases involving a victim under 16 years old.
- **New York**: Legislation proposed that would extend the statute of limitations to file harassment claims with the New York City Commission on Human Rights from one year to three years.
- **Pennsylvania**: Proposed bill extends statute of limitations to file complaints with the Pennsylvania Human Relations Commission from 180 days to 2 years.

Bing & Greenberg, *New York City Legislation Would Mandate Sexual Harassment Training, Expand Employer Coverage under Human Rights Law*.

Galusha, *A Response to the #MeToo Movement: NJ Bill Tightens Position on Employment Agreements*.

J.D. Prose, *Gov. Wolf, Democratic Legislators Champion Reforms to Curtail Sexual Harassment, Protect Victims*, Time (Apr. 5, 2018), <http://www.timesonline.com/news/20180405/gov-wolf-democratic-legislators-champion-reforms-to-curtail-sexual-harassment-protect-victims>.

Kristen Shamus, *Larry Nassar Case, #MeToo Spurs New Michigan Legislation to Combat Sexual Assault*, Detroit Free Press (Feb. 13, 2018), <https://www.freep.com/story/news/local/michigan/2018/02/13/larry-nassar-metoo-sexual-assault/329805002>.



# States Respond to #MeToo: Affirmative Consent & the Force Requirement

• **Eliminating Force Requirements.** In 2015, more than half of the states' rape laws required proof that the perpetrator used force or that the victim actively resisted. Today, various states are reviewing bills that would remove these requirements from their rape laws.

• **Requiring Education on Affirmative Consent.**

- Bills have been introduced in Pennsylvania and West Virginia that require the code of conduct for college students contain affirmative consent.
  - Pennsylvania: Bill removes focus on victim's consent by requiring *all* parties consent to sexual activity.
- In Maine and Michigan, lawmakers are pushing legislation that requires K-12 schools to teach affirmative consent in sex education.

# States Respond to #MeToo: Survivors' Rights

Proposed survivors' rights legislation seeks to establish stricter guidelines for rape kit testing, prohibit charging victims for rape kits, among other things.

- **Iowa**: Bill would require notifying the victim as his or her rape kit proceeds through testing.
- **Minnesota**: Proposed bill aimed at eliminating the backlog of untested rape kits by requiring law enforcement to pick up rape kits within 10 days and drop off kits to crime lab within 60 days.
- **New Hampshire and New York**: Lawmakers pushing bills that forbid charging victims for rape kits.

# Federal Government Responds to #MeToo

- **EEOC Budget Boost:** EEOC received \$379.5 million to spend in the remainder of 2018, representing a \$16 million increase from 2017.
  - EEOC's first budget increase in eight years.
  - EEOC intends to use additional \$16 million to more promptly and thoroughly address sexual harassment complaints and update educational resources.
- **Ending Forced Arbitration of Sexual Harassment Act (“EFASHA”):** If enacted, EFASHA would forbid the practice of including sexual harassment claims in employee arbitration agreements, which by their nature, conceal sexual harassment claims and related settlements.
  - Would require amending Federal Arbitration Act, adding an exception to mandatory arbitration in cases of alleged workplace sexual harassment.
- **Reforming the Congressional Accountability Act (“CAA”):** Reformation would alter how CAA addresses employment complaints in the legislative branch. For example, the reformation would remove NDAs as a prerequisite to initiate a complaint or as a mandatory requirement to settlement and would allow retaliation claims to relate back to the initial filing.

Jennifer Calfas, *A \$16 Million Win for #MeToo and Time's Up was Slipped into Trump's Budget*, Time (Mar. 29, 2018), <http://time.com/money/5221146/metoo-eeoc-funding-increase/>.

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Jen Herrick, *Congress Must Address Its Harassment and Discrimination Problem*, People for the American Way (Jan. 19, 2018), <http://www.pfaw.org/blog-posts/congress-must-address-its-harassment-and-discrimination-problem/>.

Nicole Ogrysko, *#MeToo Movement Prompts Long-Awaited Budget Boost for EEOC in 2018*, Federal News Radio (Mar. 27, 2018), <https://federalnewsradio.com/budget/2018/03/metoo-movement-prompts-long-awaited-budget-boost-for-eeoc-in-2018/>.

*Attorneys General Seek to Ban Mandatory Arbitration for Workplace Sexual Harassment*, Ballard Spahr, LLP (Feb. 27, 2018), <https://www.ballardspahr.com/alertspublications/legalalerts/2018-02-27-ag-seek-to-ban-mandatory-arbitration-for-workplace-sexual-harassment.aspx>.



# EPLI Coverage Issues

- EPLI policies are usually sold on a claims-made basis, meaning, the policy in place at the time a claim is *asserted* responds to the claim, rather than the policy in place at the time of the alleged misconduct.
- Sexual harassment claims are covered by EPLI policies as a “wrongful employment practice.”
- Sexual harassment of employees *and* third parties (*e.g.*, client, customers and vendor) is often covered by EPLI policies.
- Not all EPLI policies cover bodily injury.
- Punitive damages may not be covered, and, in some states, punitive damages are not insurable (*e.g.*, Illinois and New York).
- Employer’s knowledge of misconduct may prevent coverage.

Mark Garbowski, *The #MeToo Movement Puts a Spotlight on Employment Practices Liability Insurance*, Anderson Kill (Feb. 15, 2018), <https://www.andersonkill.com/Publication-Details/PublicationId/1620>.

James Murray & Jared Zola, *Addressing Sexual Harassment Claims with EPLI Coverage*, Risk Management (Jan. 29, 2018), <http://www.rmmagazine.com/2018/01/29/addressing-sexual-harassment-claims-with-epli-coverage/>.

Andrew Wells, *Sexual Harassment: Employment Liability Tipping Point*, Insurance Journal (Jan. 8, 2018), <https://www.insurancejournal.com/magazines/mag-cover/2018/01/08/476191.htm>.

*The Spotlight on Sexual Harassment, Discrimination & EPL Insurance*, Lexology (Nov. 20, 2017), <https://www.lexology.com/library/detail.aspx?g=7ec8cd40-731d-4b80-afb4-163f76872a7c>.



# *People v. Weinstein*

- **FEB. 11, 2018**: NY Attorney General filed action alleging NY civil rights' violations against Harvey Weinstein ("HW"), Robert Weinstein ("RW") and The Weinstein Company ("TWC").
- **COUNT I: Hostile Workplace Harassment and Quid Pro Quo Harassment** (against HW and TWC)
- **COUNT II: Aiding and Abetting HW's Violations** (against RW and TWC)
  - "TWC, through the actions and inactions of its executives and senior management, condoned and/or acquiesced in HW's sexual harassment of and gender-based discrimination against female employees."
- **COUNT III: Gender-Based Discrimination** (against all Respondents)
  - TWC is liable because HW "was an executive employee with managerial responsibilities," and "its executives and senior management failed to take immediate and appropriate investigative or remedial action . . . ."
- **COUNT IV: Denial of Equal Protection** (against all Respondents)
  - "knowingly, repeatedly, and persistently, deprived women of equal treatment in terms, conditions, and privileges of employment and of the right to be free from severe or pervasive hostile treatment . . . ."
- **COUNT V: Persistent or Repeated Illegal Business Conduct** (against all Respondents)
  - Violations of "New York Penal Law provisions prohibiting forcible touching[ ], sexual abuse[ ], and coercion [ ], unlawful sexual misconduct [ ], criminal sexual acts [ ], and attempts to commit the same."

# *People v. Weinstein:*

## The Allegations

- **Hostile Work Environment**

- HW “used gender stereotypes to insult and belittle female employees.” For example, HW told one female employee “that she should leave [TWC] and make babies since that was all she was good for.”
- Female employees had to “to procure HW's erectile dysfunction shots.” One such employee received a bonus for obtaining these shots and was “directed by HW to administer the injections . . . .”

- **Quid Pro Quo Harassment**

- HW made “demands for sex or intimate physical contact in exchange for career advancement, or [qualified] career opportunities on flirtatious or otherwise attractive dress and behavior.”
- To make HW “happy,” female assistants were taught to “wear[ ] skirts or dresses, look[ ] feminine, show[ ] more leg or shoulder, wear[ ] high heels, smell[ ] ‘good,’ and introduc[e] [HW] to women.”

- **Weinstein Used TWC Employees and Resources to Support His Misconduct**

- Assistants were required to schedule time for HW’s sexual encounters, and were instructed “to clear or adjust any and all other scheduled plans that potentially conflicted with the [sexual encounter], sometimes at great difficulty.”
- Assistants had to “help purchase flowers, gifts, robes, lingerie, and other gifts for [women HW contacted regularly for sexual encounters]. These purchases frequently were made on TWC corporate credit cards.”

# *People v. Weinstein:* Alleged Corporate Failures

- **Failures of TWC Management**

- TWC’s policy prohibiting sexual harassment was not followed, and employees did not receive training or guidance on TWC’s sexual harassment policy or how to report misconduct.
- HR was “not empowered to take any steps to address HW’s ongoing sexual harassment.”
- Sexual harassment complaints were not treated confidentially, and sometimes were forwarded to HW.
- RW received an email informing him of “claims of repeated and persistent [misconduct], but he took no measures to further investigate the claims [ ], to terminate HW’s employment, to restrict or prohibit HW from supervising women.”
- Complainants were often separated from TWC and forced to sign a settlement and NDA.

- **Failures of Corporate Oversight**

- Board did not investigate “adequately credible claims of sexual harassment,” and, after TWC COO and other employees notified independent board member of HW’s misconduct, no follow-up investigation took place.
- HW’s Employment Contract
  - Expired in 2015—original contract stated that HW could be terminated *only* in extreme circumstances, but did not explicitly bar Board “from taking actions that would help prevent future recurrence of misconduct . . . .”
  - Board was not obligated to renew HW’s contract upon its expiration in 2015.
  - In 2015, Board extended HW’s contract—extension “placed no effective restrictions on [HW’s] activity.”
  - Contract extension “monetized, rather than prohibited, ongoing acts of sexual . . . misconduct.” Extension stated “that if TWC had to ‘make a payment to satisfy a claim that [HW] treated someone improperly, . . . [HW] would face escalating financial penalties:’ ” \$250K for the first instance, \$500K for the second, etc.
  - No penalty as long as HW “personally covered the costs of any payments [ ] to satisfy claims of [misconduct].”



# *People v. Weinstein:*

## Damages Sought

- **Civil penalty to the State of New York in the sum of:**
  - **\$100,000** *for each* violation of New York State Human Rights Laws (“NYSHRL”) § 296(1) (prohibiting hostile workplace harassment and *quid pro quo* harassment),
  - **\$100,000** *for each* violation of NYSHRL § 296(6) (prohibiting aiding and abetting of acts prohibited by NYSHRL § 296),
  - **\$250,000** *for each* violation of New York City Human Rights Law § 8-107(1)(a) (prohibits gender-based discrimination), and
  - **\$500** *for each* violation of New York Civil Rights Law § 40(c) (equal protection).
- **Restitution and damages in the amount of the harm to the victims of Respondents' illegal conduct in connection with its hostile workplace environment and sexual harassment of women.**

# Weinstein's Personal Liability Insurers Claim No Duty to Defend or Indemnify

- **Feb. 28, 2018:** Weinstein's personal liability insurers filed a complaint seeking a declaratory judgment that policies do not provide coverage for defense or indemnity to various lawsuits filed against Weinstein for sexual misconduct.
- **Mar. 21, 2018:** Case removed to federal court on diversity jurisdiction grounds.
- **Policies' Exclusionary Provisions**
  - **Intentional Acts.** "We do not cover any damages arising out of a willful, malicious, fraudulent or dishonest act or any act intended by any covered person to cause personal injury or property damage. But we do cover such damages if the act was intended to protect people or property unless another exclusion applies. An intentional act is one whose consequences could have been foreseen by a reasonable person."
  - **Director's Liability.** "We do not cover any damages for any covered person's actions or failure to act as an officer or member of a board of directors of any corporation or organization . . . ."
  - **Business Pursuits.** "We do not cover any damages arising out of a covered person's business pursuits, investment or other for-profit-activities, any of which are conducted on behalf of a covered person or others, or business property."
  - **Discrimination.** "We do not cover any damages arising out of discrimination due to age, race, color, sex, creed, national origin, sexual harassment, or any other discrimination."
  - **Sexual Assault.** Some of the policies expressly exclude coverage for damages arising out of any actual, alleged or threatened sexual molestation, sexual misconduct or abuse or abuse.
- **"Occurrence"**
  - Policies required to provide coverage for "damages a covered person is legally obligated to pay for personal injury or property damage which take place anytime during the policy period and are caused by an occurrence . . . ."
  - Policies defined "occurrence" as either an "accident" or an "accident or offense."
  - Insurers denied coverage on the grounds that Weinstein's alleged egregious and intentional acts do not constitute an "accident" or "offense."

# Weinstein's Personal Liability Insurers: Declaratory Relief

- Based on the policies' exclusionary provisions, Weinstein's insurers seek judicial declarations that:
  - “personal liability coverage . . . is not triggered by the [sexual misconduct lawsuits] because the alleged injuries do not arise out of an ‘accident,’ ‘offense,’ or ‘occurrence’”;
  - “there is no coverage under any [ ] policy not in effect on the date of the alleged injuries of any of the plaintiffs in the [sexual misconduct lawsuits] because the insuring agreements of the personal liability coverage of those policies are not triggered”; and
  - there is no coverage for either defense or indemnity for the [sexual misconduct lawsuits] because coverage is precluded by the:
    - Intentional Act Exclusion,
    - Molestation, Misconduct or Abuse Exclusion,
    - Director's Liability Exclusion,
    - Business Pursuits Exclusion,
    - “Discrimination Exclusion, and
    - Public policy.

# Expected Implications/Trends in Insurance Coverage

- More companies seeking coverage;
- Carriers requiring insureds to institute or update sexual harassment policies;
- Carriers requiring anti-harassment training;
- Potential rate increases, sometimes selectively;
- Coverage exclusions.

# Reevaluating Workplace Training and Policies

- Identify any employment agreements requiring non-disclosure or arbitration of claims so necessary measures can be promptly taken if laws prohibiting such agreements are enacted.
- Confirm that harassment and discrimination policies are consistently enforced and ensure an effective procedure for reporting misconduct is in place.
- Train non-supervisory employees on discrimination and harassment policies and the internal complaint process.
- Train supervisory employees on recognizing discrimination and harassment and appropriately and promptly responding to any such conduct.
- The trainings should be formatted to allow employees to ask questions and get answers.
- Create and maintain a *written* record of: (1) any reported misconduct, (2) follow-up investigation, (3) findings from investigation and (4) any action taken.
  - The written record should include notes from interviews of: (1) the employee that reported the misconduct, (2) the accused employee and (3) other employees that may have witnessed or experienced similar conduct by the accused employee.

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