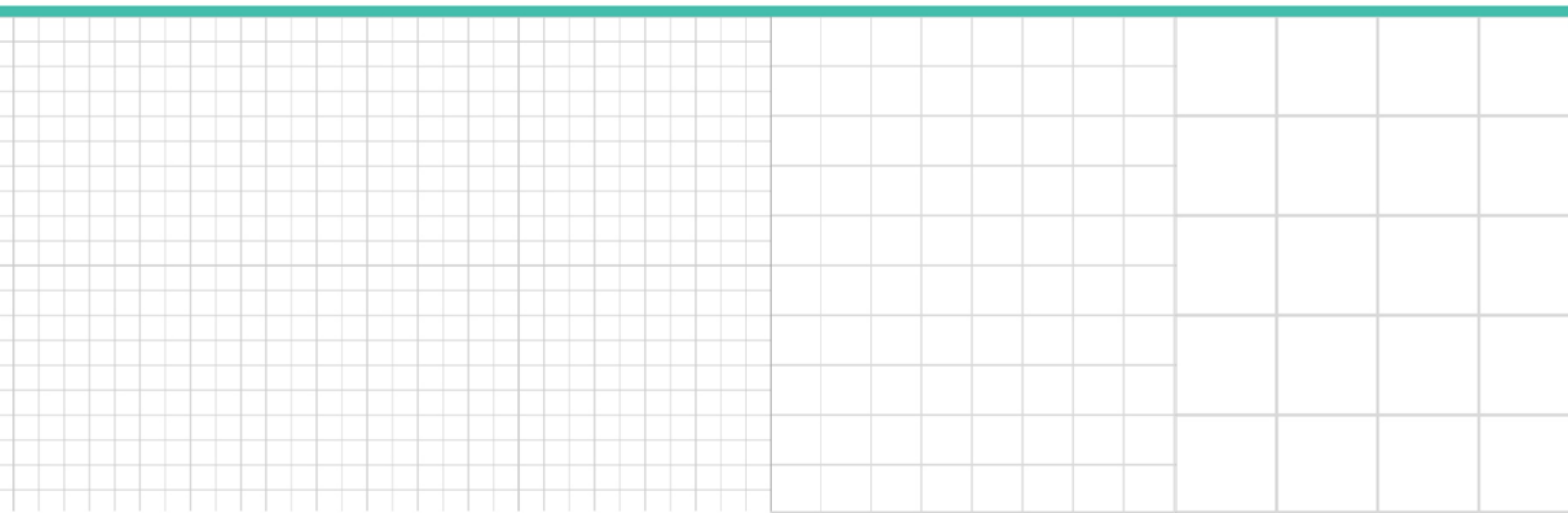


**Professional Perspective**

# **How Employers are Developing New Best Practices in Response to #MeToo**

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# How Employers are Developing New Best Practices in Response to #MeToo

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Since the #MeToo movement went viral in Oct. 2017, a number of states, including, most recently, Illinois and New York, have enacted stronger harassment prevention laws. Women and men continue to speak up about the harassment they have experienced, and the Equal Employment Opportunity Commission continues to make workplace harassment an enforcement priority. The focus on addressing and preventing workplace harassment has become a priority in the private and public sectors.

The good news is that many employers are taking this issue seriously by devoting time and resources to creating workplace cultures where harassment is simply not tolerated. While no two companies are addressing these issues in the exact same way, some general themes are emerging from best-in-class employers.

## Defining Harassment

While #MeToo shone a much-needed light on sexual harassment in the workplace, this form of harassment does not exist in a vacuum. Harassment on the basis of race, national origin, religion, disability, sexual orientation, gender identity, and age are also significant problems. For example, one-third of harassment charges received by the EEOC in 2018 alleged racial harassment, including hanging nooses, using racial epithets, and posting racially derogatory drawings and pictures in the workplace. Many other charges alleged intersectional harassment, such as harassment on the basis of sex and national origin, or race and disability.

Top employers realize that in order to truly prevent workplace harassment, they cannot limit their efforts to just eradicating sexual harassment. Instead, they are implementing robust harassment prevention programs that effectively combat harassment and discrimination on all bases.

## Preventing Bad Behavior

The best way to prevent illegal harassment is not to try to ferret out bad actors, but rather to focus on creating a culture of safety, respect, and inclusion, where all forms of disrespectful behavior—from rudeness and incivility to bullying, abuse, and harassment—are not tolerated. Incivility is often a gateway drug to harassment. If an employer stops the small behaviors, the large ones are less likely to flourish.

Moreover, when employees feel respected and valued, and when they feel psychologically safe, they are more likely to speak up or get help when a problem is still relatively minor. When employees do not feel psychologically safe, they keep their concerns to themselves and let the problem fester, until they feel they have no choice but to act out, quit, or go to the press.

Many employers have put measures in place to create safe, respectful, and inclusive workplace cultures. Their leaders state their values and their expectations, and hold people accountable when employees fail to meet these expectations—even when the person who has engaged in misconduct is at a high level in the organization or a prolific producer. They show—with words, actions, and resources—the importance they place on how employees treat each other.

## Improving Workplace Culture

In its [2016 report](#), the EEOC recommended that employers conduct climate surveys to assess their organizational cultures. Some employers are taking that recommendation one step further and are retaining law firms and consultants to do full-fledged assessments of their workplace culture, through use of focus groups, interviews, and quantitative surveys. These employers take lessons gleaned from the cultural assessment and develop targeted responses to address opportunities for growth and change.

Other employers are using their employee engagement surveys to better evaluate their organizational culture and assess employee relations and legal risk, including risk posed by abusive, bullying, and harassing conduct. They use machine learning and e-discovery techniques to review natural language responses to their surveys. This review can help employers identify themes and offer suggestions for areas that require attention. Such reviews can also inform what issues to probe if the employer wishes to conduct a full-scale cultural assessment as a follow-up measure.

## Key Role of Policies

The #MeToo movement has become a much-needed incentive for employers to review and update their policies on anti-harassment and anti-discrimination. For example, conflict of interest dating policies could be updated to include rules regarding relationships between employees and vendors. Or, expectations for respect and civility could be incorporated into existing policies that prohibit harassment. Employers have also revised their conduct standards and social media policies in light of the [recently changed position](#) from the National Labor Relations Board that civility codes are presumptively lawful.

## Complaint and Investigation Procedures

Leading employers are also reviewing their complaint and investigation procedures to ensure their policies are being implemented effectively. In a well-functioning system, complainants are thanked for coming forward with reports, investigations are conducted in a prompt and fair manner, and appropriate corrective actions hold people accountable. Employers could also develop a framework HR managers can use when recommending corrective actions. This type of framework provides sufficient flexibility to the decision-maker while ensuring general consistency across the company.

Another employer best practice is to audit investigation files to determine whether procedures need to be strengthened, investigators need additional training, and investigations have reached consistent outcomes. In addition, employers should think creatively about how to be more transparent about the findings of their investigations and the corrective actions they have imposed. However, such initiatives can be complicated. HR and legal departments need to work together in a collaborative manner to develop the best approach for their organization.

## Compliance and Skills-Based Training

Employers should provide standard compliance training that teaches employees what behaviors are unacceptable, and what employees should do if they experience or observe such behavior. Depending on the state where the employer is located, employers may also need to provide training on the legal definition of harassment and employee rights under federal and state law. The best trainings are live, interactive, and engaging, although when necessary, high-quality video-based training can be effective as well.

Best-in-class employers realize, however, that compliance training is not sufficient. In order to create a respectful workplace culture, these employers also provide practical skills-based training that teaches employees how to treat each other with civility and respect, how to give and receive constructive feedback, and for supervisors, how to receive complaints and how to coach employees who are engaging in problematic behavior. These employers also provide training on how employees can be engaged bystanders when they witness other individuals experiencing inappropriate behavior.

## Diversity and Inclusion

The EEOC Report found that one of the greatest risk factors for harassment is a homogenous workplace, where people who are “different” are often at the receiving end of disrespectful or harassing behavior. Many top employers, therefore, are undertaking significant diversity and inclusion efforts, such as recruiting and hiring members of under-represented communities, developing employee resource groups, and providing education on implicit biases to increase representation and inclusion of diverse communities.

## New State and Local Laws

The efforts described above are essential steps to a harassment-free workplace, and lead to the related benefits of an engaged and productive workforce. But new state and local laws are also driving change. For example, the recently-enacted New York State law defines illegal harassment as conduct that subjects an employee to “inferior terms, conditions, or privileges of employment” on the basis of a protected status, a much lower standard than the federal requirement that harassing conduct must be “severe or pervasive” to be illegal.

The law also provides an employer with an affirmative defense against liability only if it can show that the harassing conduct did not rise above what a reasonable person would consider “petty slights and trivial inconveniences.” What better moment than now to start creating a culture in which everyone is treated with civility and respect?

## Conclusion

It is clear that #MeToo is not a passing moment in time. Leading employers are moving to create long-lasting cultural change in their workplaces. These changes will not only mitigate the legal risk of harassment, but will also create an environment of civility and respect where employees feel psychologically safe to work, and to speak up. The time for change is now.