



## Practical Tips for Increasing **#MeToo Awareness**

By Gerald L. Maatman Jr., Esq.

In this scenario, a staffing company owner considers **the world-wide attention on sexual harassment in the workplace** and, especially, the #MeToo movement. What can he do to proactively **protect his employees and his company?**

**T**he #MeToo movement emerged as a worldwide social phenomenon in 2018 with significant implications for the staffing industry and workplaces in general. Roger Randolph, owner of a small Delaware-based staffing company, (thankfully) hasn't had any sexual harassment allegations at his company, but he's worried about what could happen if one emerges. He wants to be proactive about protecting his employees and avoiding workplace harassment litigation, which he knows can be very expensive and risky.

Since his company is a member of ASA, Randolph knows the association is usually on top of the most pressing legal updates. Sure enough, he goes to the Law & Advocacy page of *americanstaffing.net* and finds the information he needs: ASA has recently published an issue paper titled "Staffing Industry Class Action Report—Part I," and it includes a section on #MeToo issues and other harassment litigation.

Randolph learns that his fear is grounded in reality: Social media has fueled the #MeToo movement and the increasing



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focus of both the private bar and government enforcement agencies on this emerging area of litigation. The Equal Employment Opportunity Commission's release of data on workplace harassment in October 2018 confirmed that on-the-job sexual harassment has increased, and the impact of the #MeToo movement is widespread throughout the country.

Indeed, the biggest story of 2018 in terms of EEOC-initiated litigation centered on the drastic increase in lawsuits that alleged sexual harassment in the workplace.

### Emerging #MeToo Effects

In response to the #MeToo movement, many states have updated their laws on workplace harassment in the past year. In 2018, Washington and California changed their laws to bar employers from use of mandatory nondisclosure agreements for employees asserting sexual harassment and abuse claims. Several states also have explored extending or ending statutes of limitations for these types of legal claims.

More than any other state, California has been at the forefront of introducing #MeToo bills, including banning mandatory arbitration clauses in employment contracts, which require workers to waive the right to take an employer to court in the event of a dispute.

### Keeping an Eye on Staffing

According to the issue paper, the #MeToo movement continues to fuel employment litigation targeting the staffing industry—giving company owners a compelling reason to pay closer attention to this workplace issue. Staffing

companies were among employers most often challenged by the EEOC for allegations of sexual harassment in the workplace. Among the new lawsuits filed were claims of sexual harassment by supervisors, co-workers, or customers of staffing company clients; failure to implement or communicate a complaint procedure for employees to use when allegedly harassed while on assignment; and failure to respond to, investigate, or remedy an employee's complaints of sexual harassment while on assignment. To reduce the risk of sexual harassment claims, staffing companies should consider the following.

- **Enhance and redistribute written policies** to employees and management that clarify behavioral expectations, inappropriate conduct, consequences for misconduct, and protections for employees raising a concern about workplace harassment and nonretaliation provisions. These policies include nonharassment policies, antidiscrimination policies, investigation procedures, and disciplinary procedures.
- **Maintain and distribute clear complaint procedures** that ensure multiple wide-open reporting channels and robust response protocols, such as hotlines, HR structures, open door options, equal employment opportunity (EEO) coordinators, rapid response team and plan, and stamping out gateway behavior.
- **Expand antiharassment training and pursue proactive reinforcement** by training all employees to comply with new state and local training requirements—especially those passed in Cali-

fornia, Delaware, Maine, Massachusetts, New York State, New York City, Rhode Island, and Vermont.

- **Expand EEO training on EEO policies** to include training for short-term contract workers.
- **Model culture and behavior from the top by setting the tone**, communicating proactively, and asking executives to make “opening statements” at internal trainings to confirm commitment and awareness.
- **Create and enhance a respectful workplace culture** by coaching on bystander intervention techniques and providing individual coaching for senior executives or managers “at risk.”
- **Respond to complaints within 24 hours whenever possible** by investigating the allegations and working with the complainant. Follow up with the complainant and accused in person at the conclusion of the investigation.
- **Consistently impose discipline** that is proportional to the conduct, regardless of the level of employees involved.

The issue paper also explores wage and hour collective actions and class action waivers in mandatory arbitration agreements—topics that Randolph will save to read another day. He also looks forward to reading Part II of the report, scheduled to be published this summer. Randolph feels more comfortable with the steps he needs to take to protect his employees and company from sexual harassment claims, and will consult with his attorney to help him draft new written policies and complaint procedures as well as training materials. ■

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Gerald L. Maatman Jr. is partner in the law firm Seyfarth Shaw LLP. Send questions about this article to [gmaatman@seyfarth.com](mailto:gmaatman@seyfarth.com). Engage with ASA on social media—go to [americanstaffing.net/social](http://americanstaffing.net/social).

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