

Sexual Harassment Survey and Strategies

BY JILLIAN KINSALA

“Not so long ago, many people in the legal profession asked whether sexual harassment was really a problem,” says ABA President Hilarie Bass.

Not anymore. Thanks to the #MeToo Movement—sparked by media reports, resignations and terminations of high-profile men accused of sexual harassment and rape—there is increased consciousness about sexual harassment in our culture. As more accounts emerge, the public is learning that women aren’t the only victims, and Hollywood isn’t the only setting for this intransigent problem. Every industry has battled the epidemic. And the legal profession—as evidenced in data from national and local surveys, included one conducted by the State Bar of Arizona—is very much included.

In Arizona, beyond the survey, a webinar titled “Sexual Harassment: Changing the Conversation” was hosted at the State Bar, where legal leaders and Arizona Supreme Court members shared their understanding of the issue and potential solutions. These experts, and others, may offer insight into what firms can do to combat the problem.

Many of the high-profile cases that have recently come to light involve sexual harassment that took place years—sometimes decades—ago. Individuals and companies have had to consider why so many of these cases share this common trend. Based on the State Bar survey data and personal accounts, one reason may simply be the demographics of the profession.

Labor and employment attorney De-

nise Blommel explains why so many may feel uncomfortable coming forward—and for so long. She bluntly says, “Women in male-dominated professions are least likely to speak out.”

Based on a 2018 ABA National Lawyer Population Survey, men made up 64 percent of the legal profession, and women just 36 percent.

Of the Arizona attorneys who took the sexual harassment survey by the State Bar, only 16 percent said they reported the harassment that they witnessed or experienced to a supervisor or superior. Forty percent said they did nothing when they personally experienced sexual harassment. Interestingly enough, of that 40 percent, 45 percent were men and 39 percent were women—

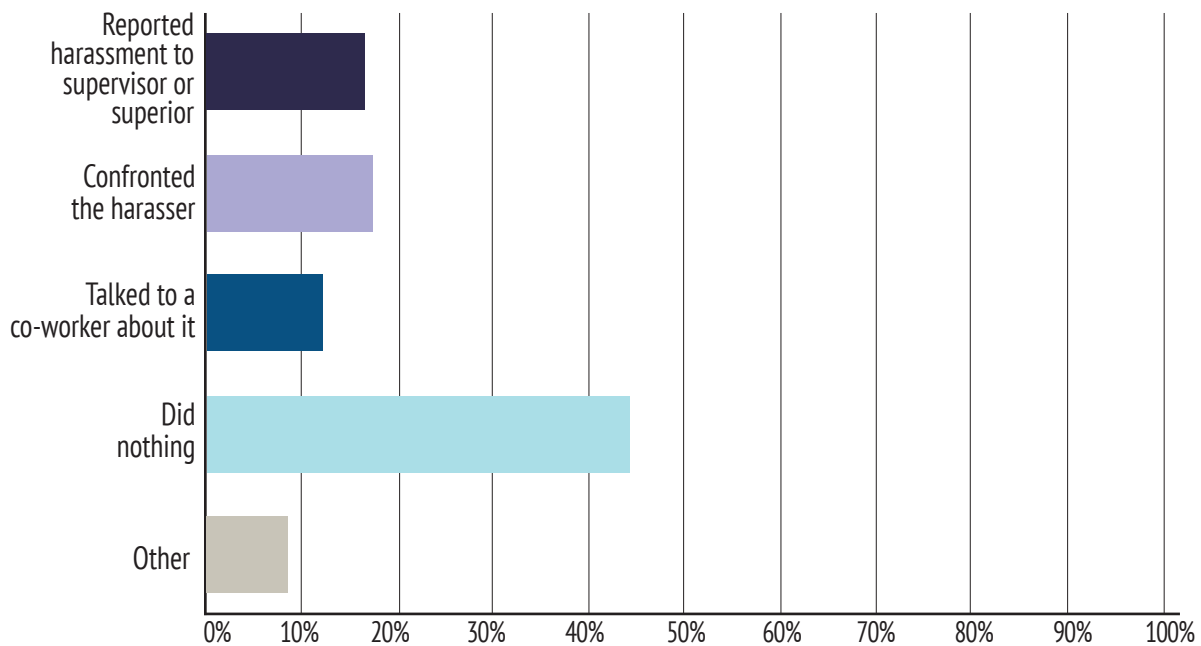
showing that both men and women fail to report incidents for one reason or another.

Further data show what was done when sexual harassment claims *were* made—and that was often “nothing”—receiving the highest number of responses for both men and women. When asked what was done when a report of sexual harassment was presented to a supervisor or superior, the highest percentage of responses—34 percent—answered “Nothing was done that I know of.” Twenty percent answered they—the reporter of the harassment—had been reprimanded in some way. Only 15 percent said that the person in question was reprimanded.

Even with those results, 57 percent of those surveyed believe their workplace does



If you personally experienced sexual harassment what action did you take?



enough to combat sexual harassment. Only 16 percent believe otherwise. That may reflect the fact that many of those who had experienced harassment had moved to a better workplace. Or it could indicate lowered expectations for those in the legal profession.

Fifteen percent of the men who took the survey said they've experienced sexual harassment in the workplace. A follow-up question asked what that harassment in-

involved, offering four answers to choose from. Forty-five percent reported that harassment was in the form of words, including jokes and/or remarks. Seventy-one percent of women who took the survey reported they've experienced sexual harassment in the workplace—and 58 percent of those women said the behavior included words, unwanted physical touching and/or unwanted messages.

At the Bar's webinar, Judge B. Don Taylor III, presiding Judge of the Phoenix Municipal Court, noted that trainings on sexual harassment in the workplace focus on technicalities, but we often get stuck in gray areas, leaving employers and employees unsure how to proceed. Dr. Samra Cerven, Psy.D., said that some actions considered sexual harassment aren't always about sex, and that's where things can get challenging. Actions or words can be used to show power, aggression, manipulation and control.

A question on a Florida Bar's 2015 YLD Survey on Women in the Legal Profession asked women if they had experienced varying biases during their legal career and to provide examples. Responses ranged from being referred to as a cute assistant, honey and sweetie; a lack of sensitivity by other women in the legal profession; direct harassment by a female supervisor who was more focused on appearances than productivity; and being treated differently after

OTHER RESOURCES

- Lauren Stiller Rikleen, *Women's Bar Association of Massachusetts Survey of Workplace Conduct and Behaviors in Law Firms*, June 21, 2018: <https://wbawbf.org/content/survey-workplace-conduct-and-behaviors-law-firms>
- Kerwin Kofi Charles et al., *The Effects of Sexism on American Women: The Role of Norms vs. Discrimination*, University of Chicago Becker Friedman Institute, August 2018: https://bfi.uchicago.edu/sites/default/files/file_uploads/WP_2018-56.pdf
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- ABA, Trends in Lawyer Demographics: www.americanbar.org/content/dam/aba/administrative/market_research/National_Lawyer_Population_Demographics_2008-2018.authcheckdam.pdf
- ABA releases sexual harassment handbook for lawyers: www.americanbar.org/news/abanews/aba-news-archives/2018/03/aba_releases_sexual.html
- Florida Bar 2015 YLD Survey on Women in the Legal Profession: www.floridabar.org/wp-content/uploads/2017/04/results-of-2015-survey.pdf
- Heather McLaughlin, Christopher Uggen & Amy Blackstone, *The Economic and Career Effects of Sexual Harassment on Working Women*, GENDER & SOC'Y, 31(3), 333-358 (2017).
- Nilofer Merchant, *The Insidious Economic Impact of Sexual Harassment*, HARV. BUS. REV., <https://hbr.org/2017/11/the-insidious-economic-impact-of-sexual-harassment>

having taken maternity leave. These instances of sexual harassment undermine victims and perpetuate a toxic imbalance of power.

Thus, sexual harassment—which affects both men and women, at the hands of both men and women—may appear in nearly any workplace. The effect of sexual harassment in the workplace can have a damaging effect emotionally, physically and economically. A recent study by sociologist Heather McLaughlin, an assistant professor in Sociology at Oklahoma State University, found that 80 percent of women who have been harassed leave their jobs within two years. And as individuals drop out, opt out, and tune out of their chosen fields, chances are lost for many who could have made a strong economic impact. Many people have found their voice, using it to propel the #MeToo Movement further. And because such harassment is still happening, it's important to consider why.

As Robin Runge, Senior Gender Specialist in the Equality and Inclusion Department at the Solidarity Center and a professorial lecturer in law at The George Washington University Law School says, “We’re not talking about some random person on the street. We’re talking about bosses, superiors. And people don’t want to lose their jobs, so they stay silent.” Some high-profile cases demonstrate that victims are often concerned they will be

reprimanded—a realistic concern.

Furthermore, there may be situations fall into the gray area addressed by Judge Taylor. Webinar panelists debated how to handle a hypothetical situation in which a coworker is going through a divorce. Some said it would be inappropriate to console that person by touch—for instance, touching them on the hand or on the shoulder. Others disagreed. And victims could feel their situation doesn’t fit the mold of what society says constitutes sexual harassment.

If a person feels uncomfortable with another employee touching their hand, they could hesitate to come forward because many noteworthy cases of sexual harassment involve actions that appear to be more severe in nature. But no matter the stance each had about what’s appropriate or inappropriate, panelists agreed that doing something like touching another employee—even in a consoling way—could set the stage for a sexual harassment claim. If the #MeToo movement cases have taught anything, it’s that there’s no one-size-fits-all solution to this issue.

The widespread revelation about sexual harassment and inappropriate behavior in the media has been the first step in addressing the issue, but how does society move forward? Runge says, “Defining sexual ha-

arrassment is tricky because the court’s definition—the legal definition—is very narrow, but what workers experience is much broader.” So, how can employers and employees come to a common understanding of what is and isn’t acceptable when everyone’s experiences and tolerance is so diverse? Could an approach focus more on institutions, rather than on individuals?

Runge urges more transparency by companies.

“This issue is institutional *and* individual,” she says. “Let’s publish quarterly reports on how many complaints were filed. Let’s ask employees what *they* need to feel safe.”

“We have to change current workplace structure to effectively address sexual harassment. Companies need to ask the victim what they want to have happen. Many times, victims don’t want the accuser to quit—they just want it to stop.”

Some companies are creating materials as resources for employees and employers. The ABA has released a sexual harassment handbook for lawyers in the hopes of ensuring workplaces are “free of harassing behavior and that, to the extent that such behavior does take place, it will be expeditiously and appropriately addressed without retaliation to the victim.” 