

Concurrent Session

#MeToo in a #ChurchToo World

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Sexual Harassment

“Issues of sexual abuse and exploitation and gender discrimination are not just for one political party or type of theology.”

- Kelly Rosati, vice president for child advocacy at Focus on the Family.

“One by one the stories tumbled out, and every single woman at that table of church members had a story to tell.”

<https://www.washingtonpost.com/news/acts-of-faith/wp/2017/12/01/what-churches-must-do-right-now-to-stop-being-part-of-the-sexual-harassment-problem/>

Discussion

1. Background

In 2006, activist Tarana Burke founded the “me too” movement after a 13-year-old girl at a youth camp at which Burke worked confided in her about sexual abuse by a stepfather, and Burke was devastated to not know what to say to the child or how to help her, even to say the words echoing in her mind – “me too.” Her organization, Just Be Inc., seeks to empower young women, particularly low-income young women of color, and help them to heal and thrive after sexual assault.

After a series of explosive articles in October 2017 in the *New York Times* and the *New Yorker* describing decades of sexual abuse and harassment by film executive Harvey Weinstein, actress Alyssa Milano encouraged people who have been sexually harassed or assaulted to share the words “me too” in order to raise awareness of how widespread the problem is and to turn focus to victims rather than the perpetrator dominating the headlines. The hashtag #MeToo was retweeted nearly a million times in 48 hours, and shared in more than 12 million posts and reactions on Facebook in the first 24 hours. A tipping point seemed to have been reached, and the floodgates opened for people to share experiences of abuse and allegations against individuals across a wide variety of industries, from music to tech to politics to sports to the military to comedy to academia. A conversation about the nature of sexual harassment, power dynamics, and accountability was thrust into the mainstream. In the wake of the #MeToo movement, industries and workplaces all across the world have had to reckon with these questions and how they may need to change and adapt in response. Movement founder Tarana Burke has stated that the #MeToo movement’s success would include resources, policies, and laws that support survivors, encourage healing, and prevent as much harassment and abuse as possible, including effective workplace sexual harassment policies.

In November 2017, writers Emily Joy and Hannah Paasch started the #ChurchToo hashtag to create a space for survivors of sexual harassment and assault in the church context, or those who confided about their abuse in a trusted church leader who blamed or shamed them for it, to share their stories and help each other to heal. A group of 140 evangelical women leaders launched the #SilenceIsNotSpiritual campaign in December 2017 to call on church leaders and members to use their faith to bring healing to the world and the church and help end every form of violence against women and girls around the world. #ChurchToo co-founder Emily Joy pointed out that there is an “added level of trauma” when sexual abuse or harassment occurs in a religious environment - “It’s one thing to say, ‘I’m abusing you,’ and it’s another to say, ‘I’m abusing you, and this is how God wants it.’” When the workplace is a church, sexual harassment issues can be especially complex due to issues of trust, culture, privacy, and the ability to give a veneer of righteousness to the behavior.

2. Overview – Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964 (“Title VII”). Title VII and most state-law counterparts make it an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual regarding his compensation, terms, conditions, or privileges of employment, because of such individual's sex. Harassment may include sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Sexual harassment. The phrase is considered by many as a punch line. When sexual harassment is mentioned, it may conjure memories of years past when smoking in the office was encouraged, and sexism was seemingly a way of life. However, even today, sexual harassment is still a serious matter that every employer and employee should be prepared to identify and manage. The law and good conscience demand as much.

According to the EEOC for 2016, 84% of the complaints were filed by women. U.S. Merit System Protection Board reports that less than 1% of the perpetrators are female when the victim is female. The Defense Department reports that 95% of the time the perpetrator was male. EEOC also claims that surveys show that 80% of the harassment goes unreported. Of those who report, about 75% report retaliatory actions from their employer because of their report.

3. Recent Reports of Sexual Harassment.

While history has proved that the American workplace can and has evolved for the better, sexual harassment in the workplace continues to exist (by the allegation, if nothing else) to the detriment of employers and employees. Below are a few relatively recent news stories which serve as reminders that sexual harassment in the workplace or allegations of same are not extinct and likely never will be so long as two or more humans work together:

- Bill Voge, Chairman of Latham & Watkins, a \$3 billion law firm, resigns on March 20, 2018, over emails and text messages of a sexual nature to a woman to whom he was providing spiritual guidance. <https://abovethelaw.com/2018/03/latham-chiefs-undoing-began-by-offering-christian-reconciliation-help/>
- An independent investigation found Christian apologist Ravi Zacharias abused massage therapists, demanded or manipulated women into sending explicit photos, and used ministry funds to pay victims, in at least one case demanding sex after providing the funds. <https://www.christianitytoday.com/news/2021/february/ravi-zacharias-rzim-investigation-sexual-abuse-sexting-rape.html>
- Houston Chronicle identifies more than 700 victims of sexual abuse or harassment at the hands of Southern Baptist ministers. <https://www.houstonchronicle.com/news/investigations/article/Southern-Baptist-sexual-abuse-spreads-as-leaders-13588038.php>
- IndyStar finds that USA Gymnastics failed to report or act on allegations of sexual abuse by at least 50 coaches, and failed to supervise or act on complaints about team doctor Larry Nassar, whom at least 150 people have alleged sexually abused them.

<https://www.indystar.com/story/news/investigations/2016/08/04/usa-gymnastics-sex-abuse-protected-coaches/85829732/>
<https://www.indystar.com/story/news/2016/09/12/former-usa-gymnastics-doctor-accused-abuse/89995734/>

- *Second Lawsuit Filed Against Pastors for Sexual Misconduct.*
http://lompocrecord.com/news/local/second-lawsuit-filed-against-former-church-for-life-pastors-charges/article_22d090eb-61ec-5a80-98ba-0e112207570f.html.
March 23, 2018.
- *Youth pastor sues Rancho Bernardo Community Presbyterian Church over sexual harassment.* <https://www.sandiegoreader.com/news/2017/aug/08/ticker-youth-pastor-sues-rancho-bernardo-presbyter/#>. August 8, 2017.
- *Chopourian vs. Catholic Healthcare West (2012).* Jury awards \$168 million as damages for sexual harassment in the workplace. A judge later reduced the damages to \$82 million.
<http://www.juryverdictalert.com/jury-verdicts/item/employment/chopourian-v-catholic-healthcare-west>
- *Alford vs. Aaron's Rents (2011).* Jury awards \$95 million as damages for sexual harassment in the workplace. A judge later reduced the damages to \$41 million.
<https://www.reuters.com/article/us-sexharassment-suit/illinois-jury-awards-95-million-in-sex-harassment-suit-idUSTRE7596IS20110610>

4. Legalities of Sexual Harassment.

The term “sexual harassment” is generally not used in the federal or state statutes upon which the claims are based. Sexual harassment claims are premised on the prohibition of sex discrimination under Title VII. All forms of unlawful harassment based on protected classes (age, race, sex, national origin, the color of skin, pregnancy, disability) are prohibited.

5. EEOC and State Agencies.

The Equal Employment Opportunity Commission (“EEOC”) is charged with handling charges of sexual discrimination and sexual harassment. Most states have a state agency that enforces and oversees state-law sexual discrimination claims filed under state law. Or, the EEOC and the applicable state agency will partner when a claim is filed under both Title VII and the state-law counterpart. The general objectives of the EEOC and its state-agency counterparts are to eliminate alleged “unlawful employment practice by informal methods of conference, conciliation, and persuasion.”¹ However, if a claim cannot be resolved by conciliation and persuasion, the parties may ultimately duke out the claim in a federal or state court proceeding, which is generally time-consuming, public, expensive and detrimental to all involved.

6. Quid Pro Quo and Hostile Work Environment.

¹ See, e.g., TEX. LAB. CODE § 21.207(a).

Claims of harassment are generally divided into two basic groups. The first is “quid pro quo” harassment, which involves conditioning of employment benefits on sexual favors - - *you scratch my backside, and I’ll let you keep your job*, for example. The second group involves harassment that, while not affecting economic benefits, creates a hostile or abusive work environment. In 2010, the Texas Supreme Court described the substantive elements of a cognizable sexual harassment claim:

To make out a statutory sexual-harassment claim, the employee must prove more than that she found the harassment offensive. The [law governing sexual harassment claims] contemplates discrimination affecting the “terms, conditions, or privileges of employment.” . . . A constructive discharge qualifies as an adverse personnel action . . . , but requires proof that the employer made the **working conditions so intolerable** that a **reasonable person would feel compelled to resign**. Alternatively, the plaintiff can show that she remained in her position and endured a hostile work environment, but must show **discriminatory conduct “sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.”** (Emphasis added.)

An abusive environment can arise “[w]hen the workplace is permeated with ‘**discriminatory intimidation, ridicule, and insult**’.” (Emphasis added.) Courts look to all the circumstances in determining whether a hostile work environment exists, including the frequency of the discriminatory conduct and whether it unreasonably interfered with the employee's work performance.

“All of the sexual hostile environment cases decided by the [United States] Supreme Court have involved **patterns or allegations of extensive, long lasting, unredressed, and uninhibited sexual threats or conduct that permeated the plaintiffs’ work environment**.” Accordingly, “single incidents should not be viewed in isolation because it is the cumulative effect of all offensive behavior that creates the work environment.”² (Emphasis added.)

² *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 805-06 (Tex. 2010) (internal citations omitted).

7. How to Identify Unlawful Sexual Harassment.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. The law rarely prohibits simple teasing, offhand comments, or isolated incidents that are not very serious. However, **harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision.** The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a vendor, member, or volunteer.

In determining whether a workplace constitutes a hostile work environment, courts consider "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance."³ For harassment to be actionable, it generally must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."⁴

Every act of harassment, although reprehensible, does not necessarily cause a hostile environment claim. To be actionable, the **harassment must be systematically directed to the employee and sufficiently severe or pervasive as to alter the conditions of the claimant's employment** and create an abusive, hostile environment.⁵ The United States Supreme Court has held that "simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment."⁶ Rather, **the environment "must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive,** and one that the victim did perceive to be so." *Id.* (Applying the standard to sexual harassment cases.)

8. Other forms of harassment.

Harassment need not be sexual. Harassment can include offensive remarks about a person's sex. For example, it may be illegal to harass a woman by making offensive comments about women.

Also, Title VII and most state law counterparts prohibit harassment regardless of the sex of the claimant or the harasser. The laws protect individuals against harassment, a form of sex discrimination, by members of either the same sex or the opposite sex.

9. Sexual Harassment & the Church - Special Issues

Churches are not immune to problems of sexual harassment. A 2009 study by the Baylor University School of Social Work found that 3.1% of women who attended religious services at least monthly reported being the target of a sexual advance by a clergyperson or religious leader in their

³ *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 114 S. Ct. 367, 371, 126 L. Ed. 2d 295 (1993).

⁴ *Ramsey v. Henderson*, 286 F.3d 264, 268 (5th Cir. 2002).

⁵ See *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 60 (1986).

⁶ *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) (internal citation omitted).

congregation. 92% of those advances were made in secret, and 67% of the offenders were married to someone else at the time of the advance. 1 in 50 churchgoing women have been subjected to an advance by a married religious leader in their own congregation at some point in their adult life, and the average American congregation of 400 contains, on average, 7 women who have experienced clergy sexual misconduct. Less than 5% of these women reported to a religious authority, and only 63% told anyone at all. A 2010 follow-up study of firsthand accounts identified six common factors which may be related to sexual abuse by religious leaders:

- Ignoring warning signs: Friends and family members ignoring warning signs or red flags in the offender's public behavior because they mistrusted their own judgment or thought of themselves as hypersensitive because the offender was a trusted leader.
- Niceness culture: American culture tends to value "niceness", and this is particularly true in Christian congregations. Niceness is seen as avoiding confrontation, giving people the benefit of the doubt, and ignoring social missteps to prevent embarrassment.
- Ease of private communication: Texts, emails, social media, and video chatting makes private communication easy, and it is perfectly normal in many congregations for a pastor to have a private meeting with a congregant to provide counsel.
- No oversight: Particularly in nondenominational churches or churches without a strong governing organization, religious leaders may have little to no oversight of their daily activities.
- Multiple roles: Religious leaders often serve many roles – teacher, spiritual leader, counselor, friend, administrator. They may learn intimate details about a congregant's personal life. Sharing struggles can create a bond of intimacy that makes the congregant vulnerable. This effect is heightened when the congregant is also the leader's employee.
- Trust in the sanctuary: Congregants (quite reasonably) believe their house of worship to be a safe space where they can let down their guard. They may share feelings and experiences with religious leaders that they would not share with anyone else.

A pastor or religious leader should be particularly aware of the power dynamic inherent in their role as spiritual leader to a layperson, and especially so when that person is also an employee of the church. Extra care should be shown to maintain healthy and appropriate boundaries, avoid blurring the lines of the leader's roles (for instance, referring an employee in crisis to a counselor or trusted clergy colleague at another church), and being as transparent in action and communication as possible.

10. Reporting and Responding to Allegations

Employees must have multiple avenues to report a complaint. If the pastor is the offender, and the policy is to report harassment to the pastor, the employee is extremely unlikely to report the misconduct. Other options for reporting can include the Human Resources Department, the church administrator, office manager, or business manager, the diocese or other local denominational office, and/or the board of elders or other governing body of the church.

A 2016 report by the EEOC found that reporting of sexual harassment increased when the specific acts that were defined as harassment were more specifically defined. An employee may feel uncomfortable with behavior but not sure that it rises to the level of sexual harassment. Setting clear policies – for instance, stating that sexual jokes or personal questions about an employee’s romantic status constitute harassment – can encourage employees to report harassment when it happens and can let other employees know where the boundaries of appropriate behavior in the church workplace lie. The same EEOC report also found that training immediate supervisors in appropriately responding when an employee reports harassment and training rank and file workers on effective bystander intervention can be far more effective than the traditional office sexual harassment training.

It is important to realize that the motive for sexual abuse and sexual harassment is often based around power, insecurity, and seeking validation, rather than purely on sexual desire. A 2021 University of Washington study found that women who make claims of sexual harassment are more likely to be believed if they are young, conventionally attractive, and appear and act feminine, while women who don’t fit the mold of the “prototypical woman” are considered less credible, and the same behavior is more often considered harassment if done to the young, attractive, feminine woman than if done to a woman who does not fit that profile. Sexual harassment can take a toll on mental health, stress, well-being, job performance, and more. Numerous studies have found that the greater the difference in power between the offender and their target, the more severe the negative effects. The vast majority of people do not report harassment in the workplace or sexual assault because of fear of retaliation, ridicule, isolation, and disbelief. Many people who have reported describe the process as being “retraumatized” because of these reactions. These factors can be magnified in the church context, with a religious leader who is seen as a trusted moral authority and church management and parishioners who want to protect the church’s image and standing. Allegations against a church employee, particularly a leader, should be taken seriously and the facts and credibility of all parties involved investigated with this context in mind.

11. Case Studies

A. A supervisor tells a female subordinate that she is easy on the eyes, and he would like to go out with her. Fearing she would lose her job if she refused his invitation, she went along with a romantic relationship for two years. She did not report the problem to higher management because she was afraid of losing her job. Finally, she quit the relationship and files a complaint with HR. Can she now bring a charge of harassment?

B. Employees continually made insensitive remarks toward a Hispanic employee regarding her heritage. They left notes on her desk disparaging her Hispanic heritage. They spoke Spanish to her, knowing that she could not speak or understand Spanish. Can she bring a charge of harassment?

C. A member made flirtatious remarks towards a female staff member. The member eventually asked her to go out. She refused his request. The member is a close friend of the several senior pastors. The female staff told her manager she would never attend any events where the member was present again but did not explain why. The manager took no action. Can she bring a charge of harassment?

D. A female employee has noticed that her new boss leans extremely close to her when they are going over the reports that she prepares. He touches her hand, hair, or shoulder frequently as they discuss work. The female employee tries to move away from him in these situations, but he doesn't seem to get the message. Later the boss "traps" the female employee in his office after they finish discussing work by standing between her and the door of the small office. Can she bring a charge of harassment?

Sample Policy Language for Employee Handbook

Sexual and Other Unlawful Harassment

ABC CHURCH expects that employees' conduct will be in keeping with the Christ-centered values of the Church.

ABC CHURCH prohibits sexual harassment and any other forms of harassment based on race, color, sex, age, national origin, disability, and any other protected status under the law. Sexual harassment and harassment based on race, color, sex, age, national origin, disability, and any other protected status under the law is against Church policy and is in violation of Title VII of the Civil Rights Act on 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, as well as state law.

It is the Church's policy to provide a work environment free of sexual and other harassment. Therefore, harassment of ABC CHURCH's employees by management, supervisors, coworkers, or nonemployees who are in the workplace is absolutely prohibited. The Church encourages reporting of all perceived incidents of discrimination or harassment. It is the policy of the Church to promptly and thoroughly investigate these reports. Further, any retaliation against an individual who has complained about sexual or other harassment or retaliation against individuals for cooperating with an investigation of a harassment complaint is similarly unlawful and will not be tolerated. ABC CHURCH will take all steps necessary to prevent and eliminate unlawful harassment.

Definition of Unlawful Harassment

Unlawful harassment is conduct that has the purpose or effect of creating an intimidating, hostile, or offensive work environment; has the purpose or effect of substantially and unreasonably interfering with an individual's work performance; or otherwise adversely affects an individual's employment opportunities because of the individual's membership in a protected class.

Unlawful harassment includes, but is not limited to, epithets; slurs; jokes; pranks; innuendo; comments; written or graphic material; stereotyping; or other threatening, hostile, or intimidating acts based on race, color, ancestry, national origin, gender, sex, sexual orientation, marital status, religion, age, disability, veteran status, or other characteristic protected by state or federal law.

Definition of Sexual Harassment

Sexual harassment refers to behavior of a sexual nature that is not welcome, is personally offensive, deliberates morale, or interferes with the work performance and effectiveness of its victim. Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of sexual nature constitutes harassment when:

- submission to conduct is made explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of that conduct by an individual is used as a basis for an employment decision affecting the individual; or

- the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may include a range of subtle and not-so-subtle behaviors and may involve individuals of the same or different genders. If comments or conduct of a sexual nature are unwelcome by an individual, they may constitute harassment. The Church will not accept as an excuse to a complaint of sexual harassment that an offender was "only joking" or "didn't think the person would object."

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct that, if unwelcome, may constitute sexual harassment depending on the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- Unwanted sexual advances, whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life, comments or teasing about an individual's body, comments or teasing about an individual's sexual activity, preferences, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, or cartoons;
- Unsolicited letters, calls, or materials of a sexual nature;
- Pressure for dates or activities with a sexual nature;
- Offer to use influence in return for sexual favor;
- Attempted sexual assault or rape;
- Actual sexual assault or rape; and
- Unwelcome leering, suggestive looks, attempts to fondle or kiss, whistling, touching or brushing up against the body, closeness, sexual gestures, or suggestive or insulting comments.

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment and retaliation against individuals for cooperating with an investigation of sexual harassment complaint is unlawful and will not be tolerated at ABC CHURCH.

Reporting Complaints

Any employee who believes he or she has been subject to or witnessed illegal discrimination, including sexual or other forms of unlawful harassment, is requested and encouraged to make a report. It is not necessary that the employee follow a chain of command. It is imperative, however, that an individual initiate a complaint to trigger the protection afforded by this policy. The Church cannot rely on second-hand information or gossip as grounds to initiate an investigation. Employees may report harassment directly to their immediate supervisor, who will take appropriate action including reporting it to the Executive Pastor. If the supervisor is unavailable or the employee believes it would be inappropriate to report to their supervisor, the employee should immediately contact the Executive Pastor, Senior Pastor, or designated representative (at least one of whom will be female) as identified at www.ABC Church.org/employees. All concerns will be handled in a timely and confidential manner. Alternatively, any person who perceives themselves to have been sexually harassed may take their concerns to the denominational authority. Similarly, if an employee observes acts of discrimination toward or harassment of another employee, the observer is requested and encouraged to report this to one of the individuals listed above.

No reprisal, retaliation, or other adverse action will be taken against an employee for making a report of discrimination or harassment, in good faith, or for assisting in the investigation of any such report. Any suspected retaliation or intimidation should be reported immediately to one of the persons identified above. However, if, after investigating any complaint of harassment or unlawful discrimination, the Church determines that the complaint is not bona fide or that an employee has provided false information regarding the complaint, disciplinary action up to and including termination may be taken against the individual who filed the complaint or who gave false information.

Investigation

ABC CHURCH will carefully investigate each complaint of sexual harassment or any other type of legally prohibited harassment. The Church cannot guarantee confidentiality of complaints of illegal harassment because it may be necessary to divulge information as part of the investigation or under a legal proceeding. Still, the Church will protect the confidentiality of harassment allegations to the extent possible. Information about a complaint will be shared, to the extent possible, only with persons who need to know.

The Church will interview the complainant, the individual accused of harassment (e.g., sexual or any other illegal harassment), and any witnesses identified by either party. Within a reasonable time of concluding the investigation, the person initiating the complaint, as well as the accused, will be told the results of the investigation and any disciplinary measures that the Church has chosen to take as a result of the investigation.

Any individual who violates this policy will be subject to discipline up to and including termination. ABC CHURCH may terminate an offender or take any other appropriate disciplinary action, irrespective of whether it is the offender's first violation of this policy.

Takeaways & Things to Do

[illegible]

Takeaways & Things to Do

[illegible]