

A man and a woman in business attire are shown in profile, looking out a large window. The woman is on the left, and the man is on the right. They appear to be in a professional setting, possibly an office or a conference room. The lighting is soft and warm, suggesting an indoor environment with natural light coming from the window. The background shows a blurred cityscape.

NAVEX GLOBAL®

A NAVEX Global eBook

You Can't Delegate Ethics on the Issue of Sexual Harassment

A Call to Action for the C-Suite | #YCDEthics

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OVERVIEW

There is no denying the alarming scope and prevalence of workplace

sexual harassment. For the past several months, it seems not a day goes by without news of another troubling example of egregious workplace behavior. Victims of sexual harassment have moved beyond simply speaking up; they are now standing up, speaking out and making sure their voices are heard. While it's troubling to learn that so many (mostly) women have suffered the traumatic impact of sexual harassment, their bravery to bring this issue into the light deserves applause.

For leaders of organizations, this is a tipping point – and we are clearly past the point of half-measures. Policies and training will continue to be vital, but more important is taking bold and decisive steps to fundamentally change workplace culture. If codes of conduct, anti-harassment policies and trainings are contradicted by day-to-day experiences, investment in these tools is wasted. Worse, employees and companies are left at great risk.

While organizations that have apparently tolerated inappropriate behavior fill the news cycle, it is important to recognize that thousands of companies have been incredibly successful establishing ethical cultures.

- Bob Conlin, President and CEO, NAVEX Global



1 SEXUAL HARASSMENT SCANDALS ARE A WATERSHED MOMENT BUT WE'VE HAD THOSE BEFORE

By Carrie Penman, Chief Compliance Officer and Senior Vice President, Advisory Services, NAVEX Global

The fact that sexual harassment continues to dominate the headlines is a hopeful sign that some organizations might make fundamental changes in how they identify and deal with this insidious cultural failure. And we all have something to learn.

First, harassment is an age-old problem; decades of regulatory or policy proclamations have not been able to stop or prevent it. Second, this isn't just a male to female issue – it happens in all directions and involves many dynamics. Third, and most importantly, it is not a compliance issue; it is an abuse of power issue.

Many organizations clearly tolerated this behavior or looked the other way for years because they could – certain harassers had great power. This is why delegating responsibility for this issue to HR or Compliance does not work. Change will only occur when all senior leaders and boards of directors own the elimination of harassment and no longer tolerate its perpetuation. Today, good people in power need to take responsibility. If you are in a position of power, you cannot sidestep your responsibility on this issue.

Watershed Moments Need Real Action & Leadership, Not More Policies and Regulations

TIME named "The Silence Breakers" Persons of the Year for 2017. This sounds very much like a watershed moment and it is giving many great hope. But I remember another TIME cover naming "The Whistle-Blowers" as Persons of the Year ... in 2002.

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This is a sad sign that not much has changed. Fear of retaliation remains one of the biggest cultural challenges for organizations. And retaliation is most often included in complaints to the Equal Employment Opportunity Commission (EEOC) along with complaints of harassment and discrimination. Retaliation too, is an abuse of power issue – not a compliance issue.

In 2016, before Weinstein, before Susan Fowler and Uber, before case after case monopolized the headlines, we had another missed opportunity for concern and real action. The EEOC released a report that harassment is a persistent problem – it too often goes unreported, there's a business case for preventing it, and prevention starts at the top.

Because time and time again a group of courageous individuals get their 15 minutes; we delegate ethics, we write some new regulations or policies, and then we pass the buck and go back to business as usual. And worse, we bury ethics and accountability in the cloak of compliance programs.

For this watershed moment to truly make a difference, organizational leaders need to address the real problem behind both harassment and retaliation – the abuse of power. Leaders and board members must be accountable for the culture of, and the behaviors in, their organizations – their responsibilities extend beyond just the financial results. Ethics can't be delegated. Responsibility can't be shirked. Accountability must be owned at the highest levels.

We are all still defining the scope of this issue and the best course of action to eliminate it. But often, when there is not an immediate fix, our search for improvement wanes and our attention fades. So what we need now is for all organizations to amplify the voice of the solution seekers and engage boards and leadership teams in identification and ownership of the solutions for the real problem – abuse of power.



2 YOU CAN'T DELEGATE THE ETHICS OF RESPECT & DIGNITY

By Hui Chen, Ethics and Compliance Leader

Pulitzer Prize-winning business reporter Charles Duhigg, in his bestseller *The Power of Habit: Why We Do What We Do in Life and Business*, described the shock and confusion to investors when Paul O'Neil made his first appearance on Wall Street as the new CEO of Alcoa in 1987. Instead of talking about revenues and inventories, O'Neil talked about one thing: his intention to make Alcoa the "safest company in America" by reducing worker injuries. Investors stampeded out of the room. Some rushed to the phone to tell clients to sell Alcoa stocks.

Contrary to the investors' predictions, however, Alcoa profits hit a record high within a year, and its net income and market capitalization rose steadily under O'Neil's leadership. And yes, Alcoa became one of the safest companies in America to work: work days lost to injury dropped from 1.86 per 100 workers to 0.125 in 2012.

O'Neil accomplished this by taking personal ownership of the safety issue. Approximately six months into his tenure, O'Neil received news that a worker had been killed in an accident at a plant. Within 14 hours, O'Neil was personally holding a root-cause analysis meeting with his senior executives, identifying every factor that contributed to the accident. Concrete changes were implemented within a week of the meeting. O'Neil invited workers to make safety suggestions, and gave out his home phone number for them to call should their managers fail to follow up on their safety suggestions. This personal engagement and open door resulted not only in safety suggestions, but other great ideas that improved Alcoa's business.

Making the workplace safer was O'Neil's driving ethic, and he did not delegate it to a department or to paper policies. The result was not only a safer company, but one where workers were engaged and profits grew. When a leader commits to concrete action rather than pay lip service to a cause, those actions do speak louder than words in earning the trust of employees and stakeholders.

The benefits a culture of safety achieved for the manufacturing sector 30 years ago are similar to what a culture of respect and dignity can achieve for all workplaces today.

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Consider sexual harassment. What would it look like if company leaders took personal ownership of addressing this issue? It is fundamental for leaders to demonstrate the desired behavior personally, and to do so in a variety of ways: treating everyone – whether entry-level or senior management – with respect and courtesy; consistently



addressing inappropriate behaviors brought to their attention (recognizing that some behavior deserves condemnation, while others may be remediated through coaching); ensuring diversity of backgrounds and opinions on the leadership team, inviting dissenting voices at meetings. When leaders actually model these behaviors, employees take note.

Leaders also need to champion initiatives that support these values in ways that are credible. For example, if you, as a senior leader in the company, do not believe the sexual harassment training is worth attending, don't talk like it's important, then slip out after the introduction (everyone definitely notices that). Instead, demand that your HR and compliance leaders deliver training that would make it worth your time and attention. In doing so, you are not only enhancing the credibility of the training, but also showing your respect for your employees' time and intellect.

Finally, listen to employees and solicit their views and experiences in earnest. While it's likely unnecessary to invite all employees to escalate issues to your home phone, there are other ways to reach out to them beyond formal meetings and town halls. One executive I know, for example, schedules a lunch or coffee with five random employees every week. These are employees who would not normally have direct encounters with senior management, and these informal gatherings allow the executive to meet people and hear things he might not otherwise have known.

Creating a workplace of respect and dignity impacts every employee in the organization: It is ethics that leaders must demonstrate, not delegate.

3 PEOPLE ARE THE CAUSE, & THE SOLUTION, TO SEXUAL HARASSMENT IN THE WORKPLACE

By Ingrid Fredeen, Vice President, Online Learning Content, NAVEX Global

Given the recent scandals stemming from allegations of sexual harassment, the power of the narrative is beginning to shift from the organization to individuals who are not just speaking out, but also being heard. Movements like #Metoo and #Timesup are empowering and emboldening individuals all over the world to demand a workplace free from sexual harassment.

But organizations should have no doubt that establishing a workplace free from sexual harassment is less about compliance with the law, and all about organizational culture.

The recent convergence of heightened awareness and the demand for change gives management the opportunity – and responsibility – to listen more closely and take active steps. And in this new era, leaders must realize they can't delegate ethics on the issue of sexual harassment. While everyone in an organization plays an important role in stopping the cycle of harassment, leaders should consider the role they and other managers play in stopping and preventing sexual harassment. Next, they should consider what role all employees can play and enlist their help in creating the culture everyone needs.

In most allegations of sexual harassment, there are four parties involved: the perpetrator, the target, bystanders (a term we'll use for simplicity's sake here, but which we'll discuss later) and senior management. When all actors are considered, and all do their part and hold others accountable, it's possible to create a culture where harassment is not tolerated.

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What Should Be Expected of the Four Parties

When it comes to **perpetrators**, some are inconsiderate, cruel, and abusers of power – and they must be held accountable for their actions and must pay the consequences for poor decisions, no matter how harsh it may seem. Others may be inconsiderate or simply say something offensive. Regardless, their behavior must be appropriately addressed; when harassing behavior is tolerated, it leaves lasting stain on an organization's culture that is hard to erase.

In a healthy culture, managers will address this conduct, and coworkers will even step up to call the perpetrators out. Employees will also grow more comfortable calling out even less egregious forms of sexual harassment or disrespectful behavior, helping reinforce that all forms of harassment are unacceptable.

Senior managers should be strong role models – and shouldn't engage in harassing behaviors or tolerate it from anyone (employees, peers, leaders, or business

partners). Reports should be taken seriously. They should be investigated, followed by swift, decisive action – including exiting the harasser if necessary. Protecting the health of the whole organization should be top priority.

Management must also give “permission” to speak up by making it an expectation. Make it known that calling out those who are out of line is exactly “what we do here.” This should be communicated and reinforced through every means available, including manager behavior, until it becomes a cultural norm. They should start by setting the tone and making it clear to all employees what type of interaction is acceptable and what is not.

Targets of harassment must be supported – as they need to know that management has their back. This means that they trust the reporting systems will work, and expect management to be fair and work to identify and address any issues. They should also know they won’t be pre-judged or blamed for a harasser’s bad behavior. Finally, they must trust that their organization cares about providing a harassment-free workplace. This is a tall order for many organizations, and it’s typically where most organizations fail their own employees.

If there is even a perception that there’s a professional price to pay for exposing sexual harassment, people won’t do it. And the cost for silence is a high one to pay for an organization.

Bystander isn’t really the best term to use in these discussions – as it’s somewhat passive, and employees who witness harassment must be allies if organizations want to better manage the cycle of harassment. Speaking up can be difficult for some, and there are lots of reasons why employees choose not to. But in a healthy workplace, all employees feel a sense of ownership over the culture and call out behavior that undermines it. If leadership values a strong culture, it must count on bystanders to speak up, especially in the case of sexual harassment. For far too long, harassment has been treated as a personal issue (not a systemic culture failure) and bystanders have not felt empowered or obligated to speak up. That must change.



4 WE NEED TO TALK ABOUT GRAY AREAS WHEN ADDRESSING SEXUAL HARASSMENT

By Marcia Narine Weldon, Professor of Legal Writing and Lecturer in Law

Given the elevated discourse regarding sexual harassment, we need to start illuminating the related gray areas if we ever hope to drive meaningful change during the times when the issue is black and white. We need to set clear boundaries when possible, and embed guiding core values everywhere else.

Although most people can agree on what clearly violates the law or company policy, reasonable people can disagree on the gray areas. Almost by definition, gray areas lead to confusion. But when it comes to sexual harassment in the workplace, even though these gray areas may not in fact be illegal, they can lead to uncomfortable if not toxic working dynamics. Gray areas embolden permissive cultures that can allow bad behavior to fester long enough to lower morale, lead to employee attrition, and eventually warrant legal action.

Frequency & Severity Add Color to Gray Areas

Actions viewed as isolated incidents can turn into “he said, she said.” That’s not to say one-off cases of sexual harassment do not occur, but systemic change is best aimed at the rule rather than the exception. To do this, we need to add color to gray areas by assessing frequency and severity. The EEOC provides the federal definition of sexual harassment, which states harassment has to be “so frequent or severe that it creates a hostile or offensive work environment or when results in an adverse employment decision (such as the victim being fired or demoted).”

Gray areas embolden permissive cultures that can allow bad behavior to fester long enough to lower morale, lead to employee attrition, and eventually warrant legal action.

Even if the conduct offends the recipient, the standard is based on what a reasonable person would think. So how do we determine what a “reasonable person” would find offensive? For instance, say one employee tells another, “You look really nice today.” All things equal, this will most likely be interpreted as a common pleasantry. Now, if the employee says, “You look reallllly nice today,” and accompanies the comment with some leering, we’re still not necessarily in the arena of unlawful harassment, even though the recipient of the “compliment” may feel uncomfortable.

This conduct could, however, violate company policy. One inappropriate comment would not likely amount to legal trouble for an organization or an employee. Even the second example is somewhat subjective. In other words, severity alone is hard to gauge for something that could be seen as both legal and subjective.

Frequency, though, changes things. A series of incidents from either category above might more easily be viewed as possibly meeting the criteria that a reasonable

person would find unworkable. And that can open up organizations to legal problems, and especially permissive culture problems.

These matters are further complicated by some societal and workplace trends. We currently have members of five generations in the workforce, and a Millennial's perspective on what's appropriate might be wildly different than a Baby Boomer's. Social media and personal device proliferation have also changed attitudes when it comes to what's appropriate to talk about. And even the popularity of open-office plans can make inappropriate comments echo beyond office doors. This means that two people having a conversation may offend a third person, who is not part of the discussion, but who nonetheless objects to its content.

It May Be Gray, but It Can't Be Delegated

C-suites and members of boards need to be highly involved in addressing sexual harassment and eliminating the toxicity of its gray areas. Both groups need the same level of training, if not more, than expected from their employees. They also need heightened exposure to organizational policies and procedures on the issue.

Specifically, C-suite members need training on exactly what employees will encounter with co-workers, clients or customers (e.g., what can happen on business trips, office parties or other events where employees may be more social or alcohol may be served). Zero-tolerance policies and practices need to ensure zero-tolerance for retaliation as well. Board members need to understand how and when to ask the right questions, and compliance representatives should regularly update the board on action items to address corporate culture, and specifically sexual harassment. In addition, HR executives should examine compensation, retention and promotion practices to ensure that they reward the right behavior and do not inadvertently incentivize or ignore the wrong behavior. For example, promoting the serial harasser while demoting or moving the complainant sends the message that the company does not take corroborated allegations seriously.

Address Your Workplace & Your Employees

Leadership needs to be fully part of the solution by taking the sexual harassment trainings, reading the policies and understanding the full scope of the issue at their workplace. This is how the importance of those activities will make its way through the rest of the organization. It will also give leaders the insights needed to tackle gray areas with two key tools: compliance training and the organization's code of conduct.

In both arenas, leadership needs to make sure they take their own unique corporate cultures into consideration. Too often, organizations simply copy and paste their codes without regard to industry, demographics of the employee base, core values, or mission statement. Failing to tailor the code to the company's specific needs tells employees they can copy and paste their behaviors – "I act like this outside of work, so I'll act the same way at work." Employees may believe that the company is simply checking the box by posting a mandatory policy.

Companies also need to conduct highly case-sensitive training that account for which concepts are presented, how they are presented, and to whom they are presented. A small technology company staffed by a group of computer programmers in their 20s might roll their eyes at content designed for an organization of accountants in their 50s. Similarly, a company staffed primarily by truck drivers may not get much value by watching training videos clearly created with an office environment in mind. Video training can work if it's relevant and relatable to the trainees' lives and work experiences, but interactive training that involves tactics like role-playing increases effectiveness because employees can ask questions and learn to model appropriate behavior.

As such, leaders in the workplace need to make sure they're asking enough hard questions of their own organizations, and that includes everything from the clearly illegal to the gray areas that can lead to problems later.



ABOUT THIS RESOURCE

This NAVEX Global eBook is a compilation of content originally appearing on the NAVEX Global blog, Ethics & Compliance Matters™. The Ethics & Compliance Matters blog strives to go beyond the “what” and educate, inform and inspire compliance professionals on “why” things matters, and “how” it applies to them.

ABOUT THE #YCDETHICS CAMPAIGN

The You Can't Delegate Ethics (#YCDEthics) campaign supports the conversation driven by movements like #MeToo and #TIMESUP, and intends to elevate the need for action up to the level of the C-suite and board of directors. Systemic change will occur only when good people in power take responsibility for the issue of sexual harassment and create workplaces that do not tolerate it. You can't delegate ethics on the issue of sexual harassment.

ADDITIONAL RESOURCES

» **Awareness Videos**

Series of awareness videos to initiate a more thoughtful conversation about sexual harassment's effect on workplace culture – and culture's central role is stopping it.

[Watch and Download the Videos](#)

» **Sample Harassment Policy**

This zero-tolerance sample policy focuses on maintaining a work environment free from harassment including racial, color, religious, national origin, sexual, age, disability, genetic information, military status, or other harassment based on a legally-protected status.

[Get Free Sample Policy](#)

» **When Sexual Harassment Impacts Corporate Culture eBook**

Get the latest insights and best practices on how to proactively address your company's expectations for employee behavior, identify gaps in a speak-up culture, and properly respond to allegations of misconduct.

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