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Moving the Culture Forward: #MeToo and Sexual Harassment in the Workplace

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Education





Moving the Culture Forward: #MeToo and Sexual Harassment in the Workplace

Thursday, November 29, 2018
12:00 p.m. – 1:00 p.m.

New York State Bar Association
Albany, NY

1.0 MCLE Credit
1.0 Diversity, Inclusion and Elimination of Bias

*Sponsored by the Committee on Diversity and Inclusion, the Women in Law Section
and the Committee on Continuing Legal Education of the
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Program Agenda

11:30 a.m.	Registration & Breakfast
12:00 p.m. – 12:05 p.m.	Welcome and Introductions
12:05 p.m. – 1:00 p.m.	Moving the Culture Forward: #MeToo and Sexual Harassment in the Workplace
1:00 p.m.	Adjournment

Accessing the Online Course Materials

Below is the link to the online course materials. These program materials are up-to-date and include supplemental materials that were not included in your course book.



www.nysba.org/MeToo2018CLEMaterials

All program materials are being distributed online, allowing you more flexibility in storing this information and allowing you to copy and paste relevant portions of the materials for specific use in your practice. WiFi access is available at this location however, we cannot guarantee connection speeds. This CLE Coursebook contains materials submitted prior to the program. Supplemental materials will be added to the online course materials link.

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New York Rules of Professional Conduct

These Rules of Professional Conduct were promulgated as Joint Rules of the Appellate Divisions of the Supreme Court, effective April 1, 2009, and amended on several occasions thereafter. They supersede the former part 1200 (Disciplinary Rules of the Code of Professional Responsibility).

The New York State Bar Association has issued a Preamble, Scope and Comments to accompany these Rules. They are not enacted with this Part, and where a conflict exists between a Rule and the Preamble, Scope or a Comment, the Rule controls.

This unofficial compilation of the Rules provided for informational purposes only. The official version of Part 1200 is published by the New York State Department of State. An unofficial on-line version is available at www.dos.ny.gov/info/nycrr.html (Title 22 [Judiciary]; Subtitle B Courts; Chapter IV Supreme Court; Subchapter E All Departments; Part 1200 Rules of Professional Conduct; § 1200.0 Rules of Professional Conduct).

**[http://nycourts.gov/rules/jointappellate/
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NYS Minimum Standards for Sexual Harassment Prevention Policies

Minimum Standards for Sexual Harassment Prevention Policies



Combating Sexual Harassment

Every employer in the State of New York is required to adopt a sexual harassment prevention policy pursuant to Section 201-g of the Labor Law. An employer that does not adopt the model policy must ensure that the policy that they adopt meets or exceeds the following minimum standards. The policy must:

- i) prohibit sexual harassment consistent with [guidance](#) issued by the Department of Labor in consultation with the Division of Human Rights;
- ii) provide examples of prohibited conduct that would constitute unlawful sexual harassment;
- iii) include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws;
- iv) include a complaint form;
- v) include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
- vi) inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;
- vii) clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue; and
- viii) clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

Employers must provide each employee with a copy of its policy in writing. Employers should provide employees with the policy in the language spoken by their employees.

* * *

The adoption of a policy does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

NYS Sexual Harassment Prevention Model Policy

Sexual Harassment Policy for All Employers in New York State



Combating
Sexual Harassment

Introduction

[Employer Name] is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. All employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of [Employer Name's] commitment to a discrimination-free work environment. Sexual harassment is against the law¹ and all employees have a legal right to a workplace free from sexual harassment and employees are urged to report sexual harassment by filing a complaint internally with [Employer Name]. Employees can also file a complaint with a government agency or in court under federal, state or local antidiscrimination laws.

Policy:

1. [Employer Name's] policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with [Employer Name]. In the remainder of this document, the term "employees" refers to this collective group.
2. Sexual harassment will not be tolerated. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action (e.g., counseling, suspension, termination).
3. Retaliation Prohibition: No person covered by this Policy shall be subject to adverse action because the employee reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. [Employer Name] will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of [Employer Name] who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees² working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, or [name of appropriate person]. All employees, paid or unpaid interns or non-employees who believe they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.

¹ While this policy specifically addresses sexual harassment, harassment because of and discrimination against persons of all protected classes is prohibited. In New York State, such classes include age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity and criminal history.

² A non-employee is someone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in the workplace. Protected non-employees include persons commonly referred to as independent contractors, "gig" workers and temporary workers. Also included are persons providing equipment repair, cleaning services or any other services provided pursuant to a contract with the employer.

4. Sexual harassment is offensive, is a violation of our policies, is unlawful, and may subject [Employer Name] to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.
5. [Employer Name] will conduct a prompt and thorough investigation that ensures due process for all parties, whenever management receives a complaint about sexual harassment, or otherwise knows of possible sexual harassment occurring. [Employer Name] will keep the investigation confidential to the extent possible. Effective corrective action will be taken whenever sexual harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.
6. All employees are encouraged to report any harassment or behaviors that violate this policy. [Employer Name] will provide all employees a complaint form for employees to report harassment and file complaints.
7. Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to [person or office designated].
8. This policy applies to all employees, paid or unpaid interns, and non-employees and all must follow and uphold this policy. This policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring.

What Is “Sexual Harassment”?

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an

individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment.

Any employee who feels harassed should report so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

Examples of sexual harassment

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
 - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
 - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
 - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - Sabotaging an individual's work;
 - Bullying, yelling, name-calling.

Who can be a target of sexual harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

Where can sexual harassment occur?

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

Retaliation

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- reported that another employee has been sexually harassed; or
- encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Reporting Sexual Harassment

Preventing sexual harassment is everyone's responsibility. [Employer Name] cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or non-employee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or [person or office designated]. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or [person or office designated].

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.

Employees, paid or unpaid interns or non-employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

Supervisory Responsibilities

All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, **are required** to report such suspected sexual harassment to [person or office designated].

In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

Complaint and Investigation of Sexual Harassment

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner, and will be confidential to the extent possible.

An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. The investigation will be kept confidential to the extent possible. All persons involved, including complainants, witnesses and alleged harassers will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. **[Employer Name]** will not tolerate retaliation against employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this policy.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- Upon receipt of complaint, **[person or office designated]** will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate. If complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the verbal reporting.
- If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve them.
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses;
- Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
 - A list of all documents reviewed, along with a detailed summary of relevant documents;
 - A list of names of those interviewed, along with a detailed summary of their statements;
 - A timeline of events;
 - A summary of prior relevant incidents, reported or unreported; and
 - The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- Keep the written documentation and associated documents in a secure and confidential location.
- Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- Inform the individual who reported of the right to file a complaint or charge externally as outlined in the next section.

Legal Protections And External Remedies

Sexual harassment is not only prohibited by **[Employer Name]** but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at **[Employer Name]**, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

State Human Rights Law (HRL)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to **[Employer Name]** does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov.

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

NYS Sexual Harassment Prevention Poster

Sexual Harassment Prevention Policy Notice



Sexual harassment is against the law.

All employees have a legal right to a workplace free from sexual harassment, and [Employer Name] is committed to maintaining a workplace free from sexual harassment.

Per New York State Law, [Employer Name] has a sexual harassment prevention policy in place that protects you. This policy applies to all employees, paid or unpaid interns and non-employees in our workplace, regardless of immigration status.

If you believe you have been subjected to or witnessed sexual harassment, you are encouraged to report the harassment to a supervisor, manager or [other person designated] so we can take action.

Our complete policy may be found: _____

Our Complaint Form may be found: _____

If you have questions and to make a complaint, please contact:

[Person or office designated]

[Contact information for designee or office]

For more information and additional resources, please visit:

www.ny.gov/programs/combating-sexual-harassment-workplace

NYS Sexual Harassment Prevention Toolkit for Employers

Introduction

New York State is a national leader in the fight against sexual harassment and is partnering with employers across the state to further our commitment to ending sexual harassment in the workplace.

This toolkit will provide you step-by-step guidance to implementing the required training and sexual harassment policy, directing you to resources available through New York State and the relevant state agencies.

These resources are all available on the State's Combating Sexual Harassment in the Workplace website: www.ny.gov/programs/combating-sexual-harassment-workplace.

What are the New Requirements?

The 2019 New York State Budget includes the nation's strongest and most comprehensive sexual harassment package, including new resources and requirements for employers. There are two key components under this law:

Policy (see pages 2-4)

Under the new law, every employer in New York State is **required to establish a sexual harassment prevention policy**. The Department of Labor in consultation with the Division of Human Rights has established a model sexual harassment prevention policy for employers to adopt, available at www.ny.gov/programs/combating-sexual-harassment-workplace. Or, employers may adopt a similar policy that meets or exceeds the minimum standards of the model policy (www.ny.gov/combating-sexual-harassment-workplace/employers#model-sexual-harassment-policy).

Training (see pages 5-6)

In addition, every employer in New York State is **required to provide employees with sexual harassment prevention training**. The Department of Labor in consultation with the Division of Human Rights has established this model training for employers to use. Or, employers may use a training program that meets or exceeds the minimum standards of the model training (www.ny.gov/combating-sexual-harassment-workplace/employers#training-requirements).

Policy: Implementation

All employers must adopt and provide a sexual harassment prevention policy to all employees by **October 9, 2018**.

If you want to adopt the State Model Policy:

- The State Model Policy contains fields for you to list your business name and the name/contact information for the individual(s) you have designated to receive sexual harassment complaints. Fill in those fields and apply whatever branding (e.g., logos, etc.) you like. You may choose to modify the policy to reflect the work of your organization and industry specific scenarios or best practices.
- Distribute the policy to all employees in writing or electronically. Employers are also encouraged to have employees acknowledge receipt of the policy, and to post a copy of the policy where employees can easily access it.

If you already have a policy and do NOT want to adopt the State Model Policy:

- Use the checklist on the next page to ensure your policy meets or exceeds the required minimum standards.
- If it already meets those standards, ensure it already has been or will be distributed to employees by October 9, 2018. All future new employees should receive the policy before commencing work.
- Ensure your complaint form and process are up to date and that employees are made aware of it as part of the policy.
- If you do not have a complaint form, a model is available online: www.ny.gov/combating-sexual-harassment-workplace/employers#model-complaint-form
- Review the online FAQs, which outline numerous common questions that may arise: www.ny.gov/combating-sexual-harassment-workplace/combating-sexual-harassment-frequently-asked-questions
- Distribute a copy of your finalized policy to all employees in writing. This may be done electronically, for example, by email. Employers are also encouraged to have employees acknowledge receipt of the policy, and to post a copy of the policy where employees can easily access it.
- You are also encouraged to provide the policy and training to anyone providing services in the workplace.

If you do NOT yet have a policy:

- Download the model policy, available online: www.ny.gov/combating-sexual-harassment-workplace/employers#model-sexual-harassment-policy
- Customize the document by filling in the employer name, person or office designated to receive complaints and appropriate contact information, as highlighted throughout.
- You may choose to modify the policy to reflect the work of your organization and industry specific scenarios or best practices.
- Review the online FAQs, which outline numerous common questions that may arise: www.ny.gov/combating-sexual-harassment-workplace/combating-sexual-harassment-frequently-asked-questions
- Distribute a copy of your finalized policy to all employees in writing. This may be done electronically, for example, by email. Employers are also encouraged to have employees acknowledge receipt of the policy, and to post a copy of the policy where employees can easily access it.
- You are also encouraged to provide the policy and training to anyone providing services in the workplace.

Policy: Minimum Standards Checklist

An employer that does not use the State model policy -- developed by the State Department of Labor and State Division of Human Rights -- must ensure their policy meets or exceeds the following minimum standards.

The policy **must**:

- ☐ Prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
- ☐ Provide examples of prohibited conduct;
- ☐ Include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws;
- ☐ Include a complaint form;
- ☐ Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
- ☐ Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;
- ☐ Clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue; and
- ☐ Clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

Training: Instructions for Employers

All employers are required to train current employees by October 9, 2019. New employees should be trained as quickly as possible. In addition, all employees must complete sexual harassment prevention training at least once per year. This may be based on calendar year, anniversary of each employee's start date or any other date the employer chooses.

If you already have a training:

- Use the checklist on the next page to ensure your training meets or exceeds the required minimum standards.
- If your existing training does not, it should be updated to include all the listed elements. You may also provide supplemental training to employers who have already completed the training to ensure they have received training that meets or exceeds the minimum standards.
- Review the online FAQs, which outline numerous common questions that may arise: www.ny.gov/combating-sexual-harassment-workplace/combating-sexual-harassment-frequently-asked-questions

If you do NOT yet have a training:

- Download the model training, available online: www.ny.gov/combating-sexual-harassment-workplace/employers#training-requirements.
 - You may execute this training in a variety of ways, including live in person, via webinar or on an individual basis, with feedback as outlined in the training guidance document.
 - Depending on how you choose to present your training, you may utilize different available resources. For example, if you do a live presentation, you should download the PowerPoint and read the script that appears in the "Notes" of each slide.
 - If you choose to train employees with the video, you may direct them to watch it online or download it and show to a group, after which you would provide them a mechanism for feedback, as outlined in the training guidance document.
- Customize the training document(s) and modify them to reflect the work of your organization, including industry specific scenarios or best practices.
- The training should detail any internal process employees are encouraged to use to complain and include the contact information for the specific name(s) and office(s) with which employees alleging harassment should file their complaints.
- You may wish to include additional interactive activities as part of the training, including an opening activity, role playing or group discussion(s).
- Review the online FAQs, which outline numerous common questions that may arise: www.ny.gov/combating-sexual-harassment-workplace/combating-sexual-harassment-frequently-asked-questions

Training: Minimum Standards Checklist

An employer that does not use this model training -- developed by the State Department of Labor and State Division of Human Rights -- must ensure their training meets or exceeds the following minimum standards.

The training **must**:

- ☐ Be interactive (*see the model training guidance document for specific recommendations*);
- ☐ Include an explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
- ☐ Include examples of unlawful sexual harassment;
- ☐ Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to targets of sexual harassment;
- ☐ Include information concerning employees' rights of redress and all available forums for adjudicating complaints; and
- ☐ Include information addressing conduct by supervisors and additional responsibilities for supervisors.

NYS Combat Harassment Complaint Form

Model Complaint Form for Reporting Sexual Harassment



Combating Sexual Harassment

[Name of employer]

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to [person or office designated; contact information for designee or office; how the form can be submitted]. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

For additional resources, visit: ny.gov/programs/combating-sexual-harassment-workplace

COMPLAINANT INFORMATION

Name:

Work Address:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method:

☐ Email

☐ Phone

☐ In person

SUPERVISORY INFORMATION

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

Adoption of this form does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: ☐ Supervisor ☐ Subordinate ☐ Co-Worker ☐ Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? ☐ Yes ☐ No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

The last question is optional, but may help the investigation.

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: _____

Date: _____

Instructions for Employers

If you receive a complaint about alleged sexual harassment, follow your sexual harassment prevention policy.

An investigation involves:

- Speaking with the employee
- Speaking with the alleged harasser
- Interviewing witnesses
- Collecting and reviewing any related documents

While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Document the findings of the investigation and basis for your decision along with any corrective actions taken and notify the employee and the individual(s) against whom the complaint was made. This may be done via email.

NYS Minimum Standards for Sexual Harassment Prevention Training

Minimum Standards for Sexual Harassment Prevention Training



Combating Sexual Harassment

Every employer in the State of New York is required to provide employees with sexual harassment prevention training pursuant to Section 201-g of the Labor Law. An employer that does not use the model training developed by the State Department of Labor and Division of Human Rights must ensure that the training that they use meets or exceeds the following minimum standards. The training must:

- (i) be interactive;
- (ii) include an explanation of sexual harassment consistent with [guidance](#) issued by the Department of Labor in consultation with the Division of Human Rights;
- (iii) include examples of conduct that would constitute unlawful sexual harassment;
- (iv) include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment;
- (v) include information concerning employees' rights of redress and all available forums for adjudicating complaints; and
- (vi) include information addressing conduct by supervisors and any additional responsibilities for such supervisors.

As of Oct. 9, 2018, each employee must receive training on an annual basis. Employers should provide employees with training in the language spoken by their employees.

* * *

Providing employees with training does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

NYS Sexual Harassment Prevention Model Training

Model Sexual Harassment Prevention Training

OCTOBER 2018 EDITION



Combating
Sexual Harassment

Purpose of this Model Training

New York State is a national leader in the fight against sexual harassment in the workplace and the 2019 Budget includes legislation to further combat it.

Under the new law, every employer in New York State is **now required to establish a sexual harassment prevention policy** pursuant to Section 201-g of the Labor Law. The Department of Labor in consultation with the Division of Human Rights has established a model sexual harassment prevention policy for employers to adopt, available at www.ny.gov/programs/combating-sexual-harassment-workplace. Or, employers may adopt a similar policy that meets or exceeds the minimum standards of the model policy.

In addition, every employer in New York State is **now required to provide employees with sexual harassment prevention training** pursuant to Section 201-g of the Labor Law. The Department of Labor in consultation with the Division of Human Rights has established this model training for employers to use. Or, employers may use a training program that meets or exceeds the minimum standards of the model training.

An employer's sexual harassment prevention training **must be interactive**, meaning it requires some level of feedback by those being trained.

The training, which may be presented to employees individually or in groups; in person, via phone or online; via webinar or recorded presentation, should include as many of the following elements as possible:

- Ask questions of employees as part of the program;
- Accommodate questions asked by employees, with answers provided in a timely manner;
- Require feedback from employees about the training and the materials presented.

How to Use This Training

This model training is presented in a variety of formats, giving employers maximum flexibility to deliver the training across a variety of worksite settings, while still maintaining a core curriculum.

Available training elements include:

1. **Script** for in-person group training, available in PDF and editable Word formats
2. **PowerPoint** to accompany the script, available online and for download, also in PDF
3. **Video** presentation, viewable online and for download
4. **FAQs**, available online to accompany the training, answering additional questions that arise

Instructions for Employers

- This training is meant to be a model that can be used as is, or adapted to meet the specific needs of each organization.
- Training may include additional interactive activities, including an opening activity, role playing or group discussion.
- If specific employer policies or practices differ from the content in this training, the training should be modified to reflect those nuances, while still including all of the minimum elements required by New York State law (shown on Page 4).
- The training should detail any internal process employees are encouraged to use to complain and include the contact information for the specific name(s) and office(s) with which employees alleging harassment should file their complaints.
- It should also be modified to reflect the work of the organization by including, for example, industry specific scenarios.
- To every extent possible, this training should be given consistently (using the same delivery method) across each organization's workforce to ensure understanding at every level and at every location.
- It is every employer's responsibility to ensure all employees are trained to employer's standards and familiar with the organization's practices.
- All employees must complete initial sexual harassment prevention training before Oct. 9, 2019.
- All employees must complete an additional training at least once per year. This may be based on calendar year, anniversary of each employee's start date or any other date the employer chooses.
- All new employees should complete sexual harassment prevention training as quickly as possible.
- Employers should provide employees with training in the language spoken by their employees. When an employee identifies as a primary language one for which a template training is not available from the State, the employer may provide that employee an English-language version. However, as employers may be held liable for the conduct of all of their employees, employers are strongly encouraged to provide a the policy and training in the language spoken by the employee.
- On occasion, a participant may share a personal or confidential experience during the training. If this happens, the trainer should interrupt and recommend the story be discussed privately and with the appropriate office contact. After the training, follow up with this individual to ensure they are aware of the proper reporting steps. Managers and supervisors must report all incidents of harassment.

Minimum Training Standards Checklist

An employer that does not use this model training -- developed by the State Department of Labor and State Division of Human Rights -- must ensure their training meets or exceeds the following minimum standards.

The training **must**:

- ☐ Be interactive;
- ☐ Include an explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
- ☐ Include examples of unlawful sexual harassment;
- ☐ Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to targets of sexual harassment;
- ☐ Include information concerning employees' rights of redress and all available forums for adjudicating complaints; and
- ☐ Include information addressing conduct by supervisors and additional responsibilities for supervisors.

NEW YORK STATE
**Sexual Harassment
Prevention Training**

ELEMENT 1: TRAINING SCRIPT

OCTOBER 2018 EDITION



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Trainer Introduction

- Welcome to our annual training on sexual harassment prevention.
- My name is _____[**name**]_____ and I am the _____[**title**]_____ at _____[**organization**]_____.
- In recent years, the topic of sexual harassment in the workplace has been brought into the national spotlight, bringing with it renewed awareness about the serious and unacceptable nature of these actions and the severe consequences that follow.
- The term “sexual harassment” may mean different things to different people, depending on your life experience.
- Certain conduct may seem acceptable or have seemed acceptable in the past. That does not mean it is acceptable to the people we work with.
- The purpose of this training is to set forth a common understanding about what is and what is not acceptable in our workplace.

Sexual Harassment in the Workplace

- New York State has long been committed to ensuring that all individuals have an equal opportunity to enjoy a fair, safe and productive work environment.
- Laws and policies help ensure that diversity is respected and that everyone can enjoy the privileges of working in New York State.
- Preventing sexual harassment is critical to our continued success. Sexual harassment will not be tolerated.
- This means any harassing behavior will be investigated and the perpetrator or perpetrators will be told to stop.
- It also means that disciplinary action may be taken, if appropriate. If the behavior is sufficiently serious, disciplinary action may include termination.
- Repeated behavior, especially after an employee has been told to stop, is particularly serious and will be dealt with accordingly.
- This interactive training will help you better understand what is considered sexual harassment.
- It will also show you how to report sexual harassment in our workplace, as well as your options for reporting workplace sexual harassment to external state and federal agencies that enforce anti-discrimination laws.
- These reports will be taken seriously and promptly investigated, with effective remedial action taken where appropriate.

What is Sexual Harassment?

- Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law.
- Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.
- Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:
 1. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
 2. Such conduct is made either explicitly or implicitly a term or condition of employment; or
 3. Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.
- There are two main types of sexual harassment.

Hostile Environment

- A hostile environment on the basis of sex may be created by any action previously described, in addition to unwanted words, signs, jokes, pranks, intimidation, physical actions or violence, either of a sexual nature or not of a sexual nature, directed at an individual because of that individual's sex.
- Hostile environment sexual harassment includes:
 - Sexual or discriminatory displays or publications anywhere in the workplace, such as displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic.
 - This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
 - This also includes sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience.
 - Hostile actions taken against an individual because of that individual's sex, such as:
 - Rape, sexual battery, molestation or attempts to commit these assaults.
 - Physical acts of a sexual nature (including, but not limited to, touching, pinching, patting, grabbing, kissing, hugging, brushing against another employee's body or poking another employee's body)

- Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
- Sabotaging an individual's work;
- Bullying, yelling, name-calling.

Quid Pro Quo Sexual Harassment

- Quid pro quo sexual harassment occurs when a person in authority trades, or tries to trade, job benefits for sexual favors.
- Quid pro quo is a legal term meaning a trade.
- This type of harassment occurs between an employee and someone with authority, like a supervisor, who has the ability to grant or withhold job benefits.
- Quid pro quo sexual harassment includes:
 - Offering or granting better working conditions or opportunities in exchange for a sexual relationship
 - Threatening adverse working conditions (like demotions, shift alterations or work location changes) or denial of opportunities if a sexual relationship is refused
 - Using pressure, threats or physical acts to force a sexual relationship
 - Retaliating for refusing to engage in a sexual relationship

Who can be the Target of Sexual Harassment?

- Sexual harassment can occur between any individuals, regardless of their sex or gender.
- New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace.

Who can be the Perpetrator of Sexual Harassment?

- The perpetrator of sexual harassment can be anyone in the workplace:
- The harasser can be a **coworker** of the recipient
- The harasser can be a **supervisor** or **manager**
- The harasser can be any third-party, including: a **non-employee, intern, vendor, building security, client, customer** or **visitor**.

Where Can Workplace Sexual Harassment Occur?

- Harassment can occur **whenever and wherever** employees are fulfilling their work responsibilities, including in the field, at any employer-sponsored event, trainings, conferences open to the public and office parties.
- Employee interactions during non-work hours, such as at a hotel while traveling or at events after work can have an impact in the workplace.
- Locations off site and off-hour activities can be considered extensions of the work environment.
- Employees can be the target of sexual harassment through calls, texts, email and social media.
- Harassing behavior that in any way affects the work environment is rightly the concern of management.

Sex Stereotyping

- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of either sex should act or look.
- Harassing a person because that person does not conform to gender stereotypes as to "appropriate" looks, speech, personality, or lifestyle is sexual harassment.
- Harassment because someone is performing a job that is usually performed, or was performed in the past, mostly by persons of a different sex, is sex discrimination.

Retaliation

- Any employee who has engaged in “protected activity” is protected by law from being retaliated against because of that “protected activity.”
- “Protected activities” with regard to harassment include:
 - Making a complaint to a supervisor, manager or another person designated by your employer to receive complaints about harassment
 - Making a report of suspected harassment, even if you are not the target of the harassment
 - Filing a formal complaint about harassment
 - Opposing discrimination
 - Assisting another employee who is complaining of harassment
 - Providing information during a workplace investigation of harassment, or testifying in connection with a complaint of harassment filed with a government agency or in court

What is Retaliation?

- Retaliation is any action taken to alter an employee’s terms and conditions of employment (such as a demotion or harmful work schedule or location change) because that individual engaged in any of the above protected activities. Such individuals should expect to be free from any negative actions by supervisors, managers or the employer motivated by these protected activities.
- Retaliation can be any such adverse action taken by the employer against the employee, that could have the effect of discouraging a reasonable worker from making a complaint about harassment or discrimination.
- The negative action need not be job-related or occur in the workplace, and may occur after the end of employment, such as an unwarranted negative reference.

What is Not Retaliation

- A negative employment action is not retaliatory merely because it occurs after the employee engages in protected activity.
- Employees continue to be subject to all job requirements and disciplinary rules after having engaged in such activity.

The Supervisor's Responsibility

- Supervisors and managers are held to a high standard of behavior. This is because:
 - They are placed in a position of authority by the employer and must not abuse that authority.
 - Their actions can create liability for the employer without the employer having any opportunity to correct the harassment.
 - They are required to report any harassment that is reported to them or which they observe.
 - They are responsible for any harassment or discrimination that they should have known of with reasonable care and attention to the workplace for which they are responsible.
 - They are expected to model appropriate workplace behavior.

Mandatory Reporting

- Supervisors **must report any harassment** that they observe or know of, even if no one is objecting to the harassment.
- If a supervisor or manager receives a report of harassment, or is otherwise aware of harassment, it must be promptly reported to the employer, without exception,
 - Even if the supervisor or manager thinks the conduct is trivial
 - Even if the harassed individual asks that it not be reported
- Supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.
- Supervisors and managers will also be subject to discipline for engaging in any retaliation.

What Should I Do If I Am Harassed?

- We cannot stop harassment in the workplace unless management knows about the harassment. It is everyone's responsibility.
- You are encouraged to report harassment to a supervisor, manager or other another person designated by your employer to receive complaints (as outlined in the sexual harassment prevention policy) so the employer can take action.
- Behavior does not need to be a violation of law in order to be in violation of the policy.

- We will provide you with a complaint form to report harassment and file complaints, but if you are more comfortable reporting verbally or in another manner, we are still required to follow the sexual harassment prevention policy by investigating the claims.
- If you believe that you have been subjected to sexual harassment, you are encouraged to complete the Complaint Form and submit it to:
 - *[Person or office designated]*
 - *[Contact information for designee or office]*
 - *[How the Complaint Form can be submitted]*
- You may also make reports verbally.
- Once you submit this form or otherwise report harassment, our organization must follow its sexual harassment prevention policy and investigate any claims.
- You should report any behavior you experience or know about that is inappropriate, as described in this training, without worrying about whether or not it is unlawful harassment.
- Individuals who report or experience harassment should cooperate with management so a full and fair investigation can be conducted and any necessary corrective action can be taken.
- If you report harassment to a manager or supervisor and receive an inappropriate response, such as being told to “just ignore it,” you may take your complaint to the next level as outlined in our policy under “Legal Protections And External Remedies.”
- Finally, if you are not sure you want to pursue a complaint at the time of potential harassment, document the incident to ensure it stays fresh in your mind.

What Should I Do If I Witness Sexual Harassment?

- Anyone who witnesses or becomes aware of potential instances of sexual harassment should report it to a supervisor, manager or designee.
- It can be uncomfortable and scary, but it is important to tell coworkers "that's not okay" when you are uncomfortable about harassment happening in front of you.
- It is unlawful for an employer to retaliate against you for reporting suspected sexual harassment or assisting in any investigation.

Investigation and Corrective Action

- Anyone who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action, up to and including termination.
- [Name of Company] will investigate all reports of harassment, whether information was reported in verbal or written form.
- An investigation of any complaint should be commenced immediately and completed as soon as possible.
- The investigation will be kept confidential to the extent possible.
- Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment.
 - It is illegal for employees who participate in any investigation to be retaliated against.

Investigation Process

- Our organization also has a duty to take appropriate steps to ensure that harassment will not occur in the future. Here is how we will investigate claims.
- [Person or office designated] will conduct an immediate review of the allegations, and take any interim actions, as appropriate
- Relevant documents, emails or phone records will be requested, preserved and obtained.
- Interviews will be conducted with parties involved and witnesses
- Investigation is documented as outlined in the sexual harassment policy
- The individual who complained and the individual(s) accused of sexual harassment are notified of final determination and that appropriate administrative action has been taken.

Additional Protections and Remedies

- In addition to what we've already outlined, employees may also choose to pursue outside legal remedies as suggested below.

New York State Division of Human Rights (DHR)

- A complaint alleging violation of the Human Rights Law may be filed either with DHR or in New York State Supreme Court.
- Complaints may be filed with DHR any time **within one year** of the alleged sexual harassment. You do not need to have an attorney to file.
- If an individual did not file at DHR, they can sue directly in state court under the Human Rights Law, **within three years** of the alleged sexual harassment.
- An individual may not file with DHR if they have already filed a Human Rights Law complaint in state court.
- For more information, visit: **www.dhr.ny.gov**.

United States Equal Employment Opportunity Commission (EEOC)

- An individual can file a complaint with the EEOC anytime **within 300 days** from the alleged sexual harassment. You do not need to have an attorney to file.
- A complaint must be filed with the EEOC before you can file in federal court.
- For more information, visit: **www.eeoc.gov**.
- *NOTE: If an individual files an administrative complaint with DHR, DHR will automatically file the complaint with the EEOC to preserve the right to proceed in federal court.*

Local Protections

- Many localities enforce laws protecting individuals from sexual harassment and discrimination.
- You should contact the county, city or town in which you live to find out if such a law exists.
- Harassment may constitute a crime if it involves things like physical touching, coerced physical confinement or coerced sex acts. **You should also contact the local police department.**

Other Types of Workplace Harassment

- Workplace harassment can be based on other things and is not just about gender or inappropriate sexual behavior in the workplace.
- Any harassment or discrimination based on a protected characteristic is prohibited in the workplace and may lead to disciplinary action against the perpetrator.
 - Protected characteristics include age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity and criminal history.
- Much of the information presented in this training applies to all types of workplace harassment.

Summary

- After this training, all employees are should understand what we have discussed, including:
 - How to recognize harassment as inappropriate workplace behavior
 - The nature of sexual harassment
 - That harassment because of any protected characteristic is prohibited
 - The reasons why workplace harassment is employment discrimination
 - That all harassment should be reported
 - That supervisors and managers have a special responsibility to report harassment.
- With this knowledge, all employees can achieve appropriate workplace behavior, avoid disciplinary action, know their rights and feel secure that they are entitled to and can work in an atmosphere of respect for all people.
- Find the Complaint Form **[insert information here]**.
- For additional information, visit: **ny.gov/programs/combating-sexual-harassment-workplace**

Sexual Harassment Case Studies

- Let's take a look at a few scenarios that help explain the kind of behaviors that can constitute sexual harassment.
- These examples describe inappropriate behavior in the workplace that will be dealt with by corrective action, including disciplinary action.
- Remember, it is up to **all employees** to report inappropriate behavior in the workplace.

Example 1: Not Taking “No” for an Answer

Li Yan's coworker Ralph has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Li Yan and Ralph have been friendly in the past and have had lunch together in local restaurants on many occasions. Ralph asks Li Yan to go on a date with him—dinner and a movie. Li Yan likes Ralph and agrees to go out with him. She enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time, but explains that she does not want to have a relationship with him. Ralph waits two weeks and then starts pressuring Li Yan for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.

Question 1. When Ralph first asked Li Yan for a date, this was sexual harassment. True or False?

FALSE: Ralph's initial comments about looking for a girlfriend and asking Li Yan, a coworker, for a date are not sexual harassment. Even if Li Yan had turned Ralph down for the first date, Ralph had done nothing wrong by asking for a date and by making occasional comments that are not sexually explicit about his personal life.

Question 2. Li Yan cannot complain of sexual harassment because she went on a date with Ralph. True or False?

FALSE: Being friendly, going on a date, or even having a prior relationship with a coworker does not mean that a coworker has a right to behave as Ralph did toward Li Yan. She has to continue working with Ralph, and he must respect her wishes and not engage in behavior that has now become inappropriate for the workplace.

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Li Yan complains to her supervisor, and the supervisor (as required) reports her complaint to the person designated by her employer to receive complaints. Ralph is questioned about his behavior and he apologizes. He is instructed by the designated person to stop. Ralph stops for a while but then starts leaving little gifts for Li Yan on her desk with accompanying love notes. The love notes are not overtly offensive, but Ralph's behavior is starting to make Li Yan nervous, as she is afraid he may start stalking her.

Question 3. Ralph's subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Li Yan for dates as instructed. He is just being nice to Li Yan because he likes her. True or False?

FALSE: Li Yan should report Ralph's behavior. She was entitled to have effective assistance in getting Ralph to stop his inappropriate workplace behavior. Because Ralph has returned to pestering Li Yan after being told to stop, he could be subject to serious disciplinary action for his behavior.

Example 2: The Boss with a Bad Attitude

Sharon transfers to a new location with her employer. Her new supervisor, Paul, is friendly and helps her get familiar with her new job duties. After a few days, when no one else is around, Paul comes over to Sharon's work area to chat. Paul talks about what he did last night, which was to go to a strip club. Sharon is shocked that Paul would bring up such a topic in the workplace and says nothing in response. Paul continues talking and says that all the women in the office are so unattractive that he needs to get out and "see some hot chicks" once in a while. He tells Sharon he is glad she joined the staff because, unlike the others, she is "easy on the eyes." Sharon feels very offended and demeaned that she and the other women in her workplace are being evaluated on their looks by their supervisor.

Question 1. Because Paul did not tell Sharon that she is unattractive, he has not harassed her. True or False?

FALSE: Paul has made sexually explicit statements to Sharon, which are derogatory and demeaning to Sharon and her female coworkers. It does not matter that Paul supposedly paid Sharon a "compliment." The discussion is still highly offensive to Sharon, as it would be to most reasonable persons in her situation.

Question 2. By bringing up his visit to the strip club, Paul is engaging in inappropriate workplace behavior. True or False?

TRUE: Simply bringing up the visit to the strip club is inappropriate in the workplace, especially by a supervisor, and it would be appropriate for Sharon to report this conduct. A one-time comment about going to a strip club is behavior that Paul would be told to stop, even though it probably would not rise to the level of unlawful harassment, unless it was repeated on multiple occasions.

Question 3. Paul should be instructed to stop making these types of comments, but this is not a serious matter. True or False?

FALSE: Paul's comments about the female employees are a serious matter and show his contempt for women in the workplace. Paul is required to model appropriate behavior, and must not exhibit contempt for employees on the basis of sex or any protected characteristic. Sharon should not have to continue to work for someone she knows harbors such contempt for women, nor should the other employees have to work for such a supervisor. Management should be aware of this, even if the other employees are not, and Paul should be disciplined and, most likely, removed from his current position.

Example 3: No Job for a Woman?

Carla works as a licensed heavy equipment operator. Some of her male coworkers think it is fun to tease her. Carla often hears comments like “Watch out, here she comes—that crazy woman driver!” in a joking manner. Also, someone keeps putting a handmade sign on the only port-a-potty at the worksite that says, “Men only.”

Question 1. Women in traditionally male jobs should expect teasing and should not take the joking comments too seriously. True or False?

FALSE: Whether Carla is being harassed depends in part on Carla's opinion of the situation; that is, whether she finds the behavior offensive. However, if at any point Carla does feel harassed, she is entitled to complain of the behavior and have it stopped, regardless of whether and for how long she has endured the behavior without complaint. Carla can always say when enough is enough.

Question 2. Carla cannot complain, because the site supervisor sometimes joins in with the joking behavior, so she has nowhere to go. True or False?

FALSE: Carla can still complain to the supervisor who is then on notice that the behavior bothers Carla and must be stopped. The supervisor's failure to take Carla's complaint seriously, constitutes serious misconduct on his or her part. Carla can also complain directly to the person designated by her employer to receive complaints, either instead of going to the supervisor, or after doing so. The employer is responsible for assuring that all employees are aware of its anti-harassment policies and procedures.

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Some of Carla's other coworkers are strongly opposed to her presence in the traditionally all-male profession. These coworkers have sometimes said things to her like, “You're taking a job away from a man who deserves it,” “You should be home with your kids,” and “What kind of a mother are you?” Also, someone scratched the word “bitch” on Carla's toolbox.

Question 3. These behaviors, while rude, are not sexual harassment because they are not sexual in nature. True or False?

FALSE: The behaviors are directed at her because she is a woman and appear to be intended to intimidate her and cause her to quit her job. While not sexual in nature, this harassment is because of her sex and will create a hostile work environment if it is sufficiently severe or frequent.

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Carla complains about the jokes and other behaviors, and an investigation is conducted. It cannot be determined who defaced Carla's toolbox. Her coworkers are told to stop their behavior or face disciplinary charges. The supervisor speaks with Carla and tells her to come to him immediately if she has any further problems. Carla then finds that someone has urinated in her toolbox.

Question 4. There is nothing Carla can do because she can't prove who vandalized her toolbox. True or False?

FALSE: Carla should speak to her supervisor immediately, or contact any other person designated by her employer to receive complaints directly. Although the situation has become very difficult, it is the employer's responsibility to support Carla and seek a solution. An appropriate investigation must be promptly undertaken and appropriate remedial action must follow.

Example 4: Too Close for Comfort

Keisha has noticed that her new boss, Sarah, leans extremely close to her when they are going over the reports that she prepares. She touches her hand or shoulder frequently as they discuss work. Keisha tries to move away from her in these situations, but she doesn't seem to get the message.

Question 1. Keisha should just ignore Sarah's behavior. True or False?

FALSE: If Keisha is uncomfortable with Sarah's behavior, she has options. If she feels comfortable doing so, she should tell Sarah to please back off because her closeness and touching make her uncomfortable. Another option is to complain directly to a person designated by her employer to receive complaints, who will speak with Sarah. Although this may not be sufficiently severe or pervasive to create an unlawful harassment situation (unless it was repeated by Sarah after she was told to stop), there is no reason for Keisha to be uncomfortable in the workplace. There is no valid reason for Sarah to engage in this behavior.

--

Before Keisha gets around to complaining, Sarah brushes up against her back in the conference room before a meeting. She is now getting really annoyed but still puts off doing anything about it. Later Sarah "traps" Keisha in her office after they finish discussing work by standing between her and the door of the small office. Keisha doesn't know what to do, so she moves past her to get out. As she does so, Sarah runs her hand over Keisha's breast.

Question 2. Sarah's brushing up against Keisha in the conference room could just be inadvertent and does not give Keisha any additional grounds to complain about Sarah. True or False?

FALSE: Sarah is now engaging in a pattern of escalating behavior. Given the pattern of her "too close" and "touching" behavior, it is unlikely that this was inadvertent. Even before being "trapped" in Sarah's office, Keisha should have reported all of the behaviors she had experienced that had made her uncomfortable.

Question 3. Sarah touching Keisha's breast is inappropriate but is probably not unlawful harassment because it only happened once. True or False?

FALSE: Any type of sexual touching is very serious and does not need to be repeated to constitute sexual harassment. Keisha should immediately report it without waiting for it to be repeated. Sarah can expect to receive formal discipline, including possible firing.

Example 5: A Distasteful Trade

The following scenario will explain many aspects of quid pro quo sexual harassment.

Tatiana is hoping for a promotion to a position that she knows will become vacant soon. She knows that her boss, David, will be involved in deciding who will be promoted. She tells David that she will be applying for the position, and that she is very interested in receiving the promotion. David says, "We'll see. There will be a lot of others interested in the position."

A week later, Tatiana and David travel together on state business, including an overnight hotel stay. Over dinner, David tells Tatiana that he hopes he will be able to promote her, because he has always really enjoyed working with her. He tells her that some other candidates "look better on paper" but that she is the one he wants. He tells her that he can "pull some strings" to get her into the job and Tatiana thanks David. Later David suggests that they go to his hotel room for "drinks and some relaxation." Tatiana declines his "offer."

Question 1. David's behavior could be harassment of Tatiana. True or False?

TRUE: David's behavior as Tatiana's boss is inappropriate, and Tatiana should feel free to report the behavior if it made her uncomfortable. It is irrelevant that this behavior occurs away from the workplace. Their relationship is that of supervisor and supervisee, and all their interactions will tend to impact the workplace.

David's behavior, at this point, may or may not constitute quid pro quo harassment; David has made no threat that if Tatiana refuses his advance he will handle her promotion any differently. However, his offer to "pull some strings" followed by a request that they go to his hotel room for drinks and relaxation might be considered potentially coercive. Certainly, if David persists in his advances—even if he never makes or carries out any threat or promise about job benefits—then this could create a hostile environment for Tatiana, for which the employer could be strictly liable because David is a management employee.

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After they return from the trip, Tatiana asks David if he knows when the job will be posted so that she can apply. He says that he is not sure, but there is still time for her to "make it worth his while" to pull strings for her. He then asks, "How about going out to dinner this Friday and then coming over to my place?"

Question 2. David engaged in sexual harassment. True or False?

TRUE: It is now evident that David has offered to help Tatiana with her promotion in exchange for sexual favors.

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Tatiana, who really wants the position, decides to go out with David. Almost every Friday they go out at David's insistence and engage in sexual activity. Tatiana does not want to be in a relationship with David and is only going out with him because she believes that he will otherwise block her promotion.

Question 3. Tatiana cannot complain of harassment because she voluntarily engaged in sexual activity with David. True or False?

FALSE: Because the sexual activity is unwelcome to Tatiana, she is a target of sexual harassment. Equally, if she had refused David's advances, she would still be a target of sexual harassment. The offer to Tatiana to trade job benefits for sexual favors by someone with authority over her in the workplace is quid pro quo sexual harassment, and the employer is exposed to liability because of its supervisor's actions.

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Tatiana receives the promotion.

Question 4. Tatiana cannot complain of harassment because she got the job, so there is no discrimination against her. True or False?

FALSE: Tatiana can be the recipient of sexual harassment whether or not she receives the benefit that was used as an inducement.

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Tatiana breaks off the sexual activities with David. He then gives her a bad evaluation, and she is removed from her new position at the end of the probationary period and returns to her old job.

Question 5. It is now "too late" for Tatiana to complain. Losing a place of favor due to the break up of the voluntary relationship does not create a claim for sexual harassment. True or False?

FALSE: It is true that the breakup of a relationship, if truly consensual and welcomed at the time, usually does not create a claim for sexual harassment. However, the "relationship" in this case was never welcomed by Tatiana. David's behavior has at all times been inappropriate and a serious violation of the employer's policy. As the person who abused the power and authority of a management position, David has engaged in sexual harassment.

Example 6: An Issue about Appearances

Leonard works as a clerk typist for a large employer. He likes to wear jewelry, and his attire frequently includes earrings and necklaces. His boss, Margaret, thinks it's "weird" that, as a man, Leonard wears jewelry and wants to be a clerical worker. She frequently makes sarcastic comments to him about his appearance and refers to him "jokingly" as her office boy. Leonard, who hopes to develop his career in the area of customer relations, applies for an open promotional position that would involve working in a "front desk" area, where he would interact with the public. Margaret tells Leonard that if he wants that job, he had better look "more normal" or else wait for a promotion to mailroom supervisor.

Question 1. Leonard's boss is correct to tell him wearing jewelry is inappropriate for customer service positions. True or False?

FALSE: Leonard's jewelry is only an issue because Margaret considers it unusual for a man to wear such jewelry. Therefore, her comments to Leonard constitute sex stereotyping.

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Margaret also is "suspicious" that Leonard is gay, which she says she "doesn't mind," but she thinks Leonard is "secretive." She starts asking him questions about his private life, such as "Are you married?" "Do you have a partner?" "Do you have kids?" Leonard tries to respond politely "No" to all her questions but is becoming annoyed. Margaret starts gossiping with Leonard's coworkers about his supposed sexual orientation.

Question 2. Leonard is the recipient of harassment on the basis of sex and sexual orientation. True or False?

TRUE: Leonard is harassed on the basis of sex because he is being harassed for failure to adhere to Margaret's sex stereotypes.

Leonard is also harassed on the basis of his perceived sexual orientation. It does not matter whether or not Leonard is a gay man in order for him to have a claim for sexual orientation harassment.

Leonard might also be considered a target of harassment on the basis of gender identity, which is a form of sex and/or disability discrimination prohibited by the Human Rights Law. Leonard should report Margaret's conduct, which is clearly a violation of the sexual harassment policy, to a person designated by his employer to receive complaints (i.e. his employer's "designee").

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Leonard decides that he is not going to get a fair chance at the promotion under these circumstances, and he complains to the employer's designee about Margaret's behavior. The designee does an investigation and tells Margaret that Leonard's jewelry is not in violation of any workplace rule, that she is to consider him for the position without regard for his gender, and that she must stop making harassing comments, asking Leonard intrusive questions, and gossiping about his personal life. Margaret stops her comments, questions, and gossiping, but she then recommends a woman be promoted to the open position. The woman promoted has much less experience than Leonard and lacks his two-year degree in customer relations from a community college.

Question 3. Leonard has likely been the target of discrimination on the basis of sex, sexual orientation and/or retaliation. True or False?

TRUE: We don't know Margaret's reason for not recommending Leonard for the promotion, but it is not looking good for Margaret. It appears that she is either biased against Leonard for the same reasons she harassed him, or she is retaliating because he complained, or both.

Leonard should speak further with the employer's designee, and the circumstances of the promotion should be investigated. If it is found that Margaret had abused her supervisory authority by failing to fairly consider Leonard for the promotion, she should be subject to disciplinary action. This scenario shows that sometimes more severe action is needed in response to harassment complaints, in order to prevent discrimination in the future.

Stop Sexual Harassment Act Factsheet

STOP SEXUAL HARASSMENT ACT FACTSHEET

All employers are required to provide written notice of employees' rights under the Human Rights Law both in the form of a displayed poster **and** as an information sheet distributed to individual employees at the time of hire. This document satisfies the information sheet requirement.

The NYC Human Rights Law

The NYC Human Rights Law, one of the strongest anti-discrimination laws in the nation, protects all individuals against discrimination based on gender, which includes sexual harassment in the workplace, in housing, and in public accommodations like stores and restaurants. Violators can be held accountable with civil penalties of up to \$250,000 in the case of a willful violation. The Commission can also assess emotional distress damages and other remedies to the victim, can require the violator to undergo training, and can mandate other remedies such as community service.

Sexual Harassment Under the Law

Sexual harassment, a form of gender-based discrimination, is unwelcome verbal or physical behavior based on a person's gender.

Some Examples of Sexual Harassment

- unwelcome or inappropriate touching of employees or customers
- threatening or engaging in adverse action after someone refuses a sexual advance
- making lewd or sexual comments about an individual's appearance, body, or style of dress
- conditioning promotions or other opportunities on sexual favors
- displaying pornographic images, cartoons, or graffiti on computers, emails, cell phones, bulletin boards, etc.
- making sexist remarks or derogatory comments based on gender

Retaliation Is Prohibited Under the Law

It is a violation of the law for an employer to take action against you because you oppose or speak

out against sexual harassment in the workplace. The NYC Human Rights Law prohibits employers from retaliating or discriminating "in any manner against any person" because that person opposed an unlawful discriminatory practice. Retaliation can manifest through direct actions, such as demotions or terminations, or more subtle behavior, such as an increased work load or being transferred to a less desirable location. The NYC Human Rights Law protects individuals against retaliation who have a good faith belief that their employer's conduct is illegal, even if it turns out that they were mistaken.

Report Sexual Harassment

If you have witnessed or experienced sexual harassment inform a manager, the equal employment opportunity officer at your workplace, or human resources as soon as possible.

Report sexual harassment to the NYC Commission on Human Rights. Call 718-722-3131 or visit NYC.gov/HumanRights to learn how to file a complaint or report discrimination. You can file a complaint anonymously.

State and Federal Government Resources

Sexual harassment is also unlawful under state and federal law where statutes of limitations vary.

To file a complaint with the New York State Division of Human Rights, please visit the Division's website at www.dhr.ny.gov.

To file a charge with the U.S. Equal Employment Opportunity Commission (EEOC), please visit the EEOC's website at www.eeoc.gov.

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Stop Sexual Harassment in NYC

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STOP SEXUAL HARASSMENT

Local Law 95 of 2018 requires the New York City Commission on Human Rights to conspicuously post on its website resources about sexual harassment, including an explanation that sexual harassment is a form of unlawful discrimination under local law. Download the required legal notice in English (Legal size, Letter size), Spanish (Legal size, Letter size) and fact sheet (English, Spanish) for distribution to employees. NOTE: The legal notice is required to be posted by NYC employers in both English and Spanish.

For more info, see our FAQ page.

Sexual Harassment is Discrimination and is Illegal in NYC

The NYC Human Rights Law protects all individuals against discrimination based on gender, which includes sexual harassment in the workplace, in housing, and in public accommodations like stores and restaurants. Sexual harassment is unwelcome verbal or physical behavior based on a person's gender and can include unwanted touching; offensive and suggestive gestures or comments; asking about a person's sex life or making sexualized remarks about a person's appearance; sexualizing the work environment with imagery or other items; or telling sexual jokes. Violators can be held accountable with civil penalties of up to \$250,000 in the case of a willful violation.

The Commission can also assess emotional distress damages and other remedies to the victim, can require the Violator to undergo training, and can mandate other remedies such as community service.

Recent Amendments to Strengthen Sexual Harassment Protections Under the NYC Human Rights Law

On May 9, 2018, Mayor Bill de Blasio signed the Stop Sexual Harassment in NYC Act, a comprehensive legislative package aimed at addressing and preventing sexual harassment in the workplace, into law. Included in the package is an expansion of the City Human Rights Law in cases of gender-based harassment to increase the statute of limitations from one year to three years and expand protections to all employees, regardless of the size of their employer.

Additional obligations for employers include:

1. Under Local Law 96 of 2018, **employers with 15 or more employees are required to conduct annual anti-sexual harassment training for all employees.** Effective April 2019, employers must ensure all employees are trained annually, beginning with Calendar Year 2019, and every year thereafter. The Commission will develop and share an online training to be available on its website that will satisfy this requirement on or before April 1, 2019. Employers may also choose to provide their own annual anti-sexual harassment training for employees provided that it includes the following elements:

- An explanation of sexual harassment as a form of unlawful discrimination under local law;
- A statement that sexual harassment is also a form of unlawful discrimination under state and federal law;
- A description of what sexual harassment is, using examples;
- Any internal complaint process available to employees through their employer to address sexual harassment claims;
- The complaint process available through the Commission, the New York State Division of Human Rights and the United States Equal Employment Opportunity Commission, including contact information;
- The prohibition of retaliation including examples;
- Information concerning bystander intervention, including but not limited to any resources that explain how to engage in bystander intervention; and
- The specific responsibilities of supervisory and managerial employees in the prevention of sexual harassment and retaliation, and measures that such employees may take to appropriately address sexual harassment complaints.

Employers shall keep a record of all trainings, including a signed employee acknowledgement. These may be kept electronically.

2. Under Local Law 95 of 2018, **all employers in the City are required to conspicuously display anti-sexual harassment rights and responsibilities notices** in both English (*Legal size, Letter size*) and Spanish (*Legal size, Letter size*) and distribute a **factsheet** (English, Spanish) to individual employees at the time of hire which may be included in an employee handbook.

Scenarios to Help You Identify Discrimination

Sonia is a cocktail server in a bar/restaurant. She likes the job and the tips she is making. However, one of the regular customers gives her a hard time. He touches her when she walks by and occasionally makes comments about her body. Sonia has told her boss who tells her to “deal with it” because she is making good tips.

Anna is a recent immigrant to the United States and has a job cleaning office buildings in the evening. Her supervisor has brushed up against her, flirted with her, and recently told her that unless she goes to bed with him she will lose her job. Anna is frightened and does not say anything to anyone.

Tim, a communications assistant, frequently tells crude jokes about sex during department meetings. Beth, a graphic artist, is very offended and doesn't think Tim's jokes are funny. She tells Tim to stop, but he doesn't stop and says she is being "overly sensitive" and that it's just a joke.

Retaliation is Prohibited

It is a violation of the law for an employer to take action against you because you oppose or speak out against sexual harassment in the workplace. The NYC Human Rights Law prohibits employers from retaliating or discriminating "in any manner against any person" because that person opposed an unlawful discriminatory practice. Retaliation can manifest through direct actions, such as demotions or terminations, or more subtle behavior, such as an increased work load or being transferred to a less desirable location. The NYC Human Rights Law protects individuals against retaliation who have a good faith belief that their employer's conduct is illegal, even if it turns out that they were mistaken.

The Complaint Process at the Commission

If you are sexually harassed or discriminated against based on a protected category under the Law in New York City, please report this to the NYC Commission on Human Rights. Call 718-722-3131 or visit NYC.gov/HumanRights to fill out an online complaint form.

If you believe you are a victim of sexual harassment inform a manager or the equal employment opportunity officer at your workplace as soon as possible.

View our "Complaint Process" infographic and watch the helpful video below for an overview of the reporting process so you can have a thorough understanding of the Commission's work in investigating acts of discrimination in New York City.

How To File A Discrimination Complaint i...



Possible Outcomes

Violators can be held accountable with civil penalties of up to \$250,000 in the case of a willful violation. The Commission can also assess emotional distress damages and other remedies to the victim without limit, can require the Violator to undergo training, and can mandate other remedies such as community service.

Bystander Intervention: Speak Out and Report It

When it comes to workplace sexual harassment, stigma and a fear of retribution often discourage victims from speaking out. It is critical that individual bystanders learn to recognize and intervene in instances of sexual harassment.

Bystander education and trainings can help individuals better understand sexual harassment in the workplace and how to recognize, speak out, and report it. Bystanders who take action often play an important role in disrupting the sexual harassment and improving the work environment.

For more resources and information about bystander intervention, please visit ihollaback.org

State and Federal Government Resources

Sexual harassment is also unlawful under state and federal law.

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To file a charge with the U.S. Equal Employment Opportunity Commission (EEOC), please visit the EEOC's website.

**Mayor de Blasio Signs Legislation
Strengthening Protections
Against Sexual Harassment**



MayorFirst LadyNewsOfficials

Mayor de Blasio Signs Legislation Strengthening Protections Against Sexual Harassment

May 9, 2018

NEW YORK—Today, Mayor de Blasio signed 11 bills to combat workplace sexual harassment. These bills mandate anti-sexual harassment trainings in the public and private sectors; make information about sexual harassment available so more New Yorkers know their rights; require sexual harassment data reporting from city agencies; and expand sexual harassment protections under the New York City Human Rights Law.

"Society has been stacked in favor of men for far too long, leading many to believe they can harass women without fear of punishment," said **Mayor de Blasio**. "New York City will not allow that continue. We are taking action to protect workers against sexual harassment and saying loudly and clearly that anyone who harasses a co-worker will face justice."

"When women step forward with a grievance, it is the employer's responsibility to listen and take appropriate action," said **First Lady Chirlane McCray**. "With this new package of bills, New York City is holding ALL employers accountable for what they do when employees come forward to report sexual harassment in the workplace."

"As revelations from the #MeToo and Time's Up movements continue to unfold, including the recent troubling events here in New York, it's important victims of sexual harassment know they will always be heard. All New Yorkers are entitled to a safe, respectful workplace, and the 'Stop Sexual Harassment in NYC Act' sends a strong message to public and private employers that there is no place for sexual harassment in our city. It is our responsibility as legislators to take action and protect all of our constituents by ensuring they feel safe no matter where they are – at work, on the train or in the company of people they trust. I thank my colleagues, especially the Council's Committee on Women Chair Helen Rosenthal, for their activism and I thank the Mayor for his support. I am immensely proud New York City is leading the charge to end sexual harassment," said **Speaker Corey Johnson**, **sponsor of Intro. 612-A**.

Requiring Anti-Sexual Harassment Trainings

- **Intro. 612-A** requires all city agencies and the offices of the Mayor, borough presidents, Comptroller, and Public Advocate to conduct annual anti-sexual harassment trainings for all employees.
- **Intro. 632-A** requires employers with 15 or more employees to conduct annual anti-sexual harassment training for all employees.

Ensuring New Yorkers Know Their Rights

- **Intro. 614-A** requires the New York City Commission on Human Rights to clearly post resources about sexual harassment on its website, including an explanation that sexual harassment is a form of unlawful discrimination under local law.
- **Intro. 630-A** requires all employers in the city to display an anti-sexual harassment rights and responsibility poster designed by the Commission on Human Rights.

Reporting on Harassment at City Agencies and Assessing Workplace Climate

- **Intro. 613-A** requires all city agencies and the offices of the Mayor, borough presidents, Comptroller, and Public Advocate to assess workplace risk factors associated with sexual harassment as identified by the United States Equal Employment Opportunity Commission Select Task Force on the Study of Harassment in the Workplace. In doing so, agencies can better develop responsive strategies to combat sexual harassment.
- **Intro. 664-A**, requires all city agencies, as well as the offices of the Mayor, borough presidents, Comptroller and the Public Advocate, to conduct climate surveys to assess the general awareness and knowledge of the city's equal employment opportunity policy, including but not limited to sexual harassment policies and prevention at city agencies.
- **Intro. 653-A** requires all city agencies, as well as the offices of the Mayor, Borough Presidents, Comptroller and Public Advocate, to annually report on incidents of workplace sexual harassment to the Department of Citywide Administrative Services.
- **Intro. 693** requires that contractors and subcontractors that apply for city contracts include their employment practices, policies and procedures as they relate to preventing and addressing sexual harassment in the employment report required of proposed contractors and subcontractors.

Expanding Sexual Harassment Protections Under The New York City Human Rights Law

- **Intro. 657-A**, amends the New York City Human Rights Law to apply provisions related to gender-based discrimination to all employers, regardless of the number of employees.
- **Intro. 660-A** would amend the policy statement of the New York City Human Rights Law to include sexual harassment as a form of discrimination that the New York City Commission on Human Rights shall have the power to eliminate and prevent.
- **Intro. 663-A**, amends the New York City Human Rights Law to increase the statute of limitations for filing harassment claims based on unwelcome conduct that intimidates, interferes with, oppresses, threatens, humiliates or degrades a person based on such person's gender from one year to three years from the time that the alleged harassment occurred.

"Every New Yorker, including the over 330,000 people who work in City government, deserves a safe and respectful workplace that is free of sexual harassment," said **Lisette Camilo, Commissioner of the NYC Department of Citywide Administrative Services**. "The legislation signed today sends a clear message that sexual harassment will not be tolerated and that victims have a voice and will be heard."

"In NYC, 'Time's Up' on sexual harassment!" said **Jacqueline Ebanks, Executive Director of NYC Commission on Gender Equity**. "Taken together, these 11 bills ensure that every person subject to sexual harassment in this City has appropriate recourse. Equally important, these bills require training of

our entire workforce and hold all employers accountable for creating safe workplaces. These are critical steps forward on a seemingly intractable issue. We will never look back."

"New York City is home to the one of the broadest and most protective anti-discrimination and anti-harassment law in the country and today that law gets even stronger," said **Chair and Commissioner of the NYC Commission on Human Rights, Carmelyn P. Malalis**. "I'm incredibly proud to work for a city that takes sexual harassment claims seriously and proactively works across government to enhance those protections. The bills signed today will go a long way in ensuring that every victim of sexual harassment can get justice under the Law and will allow the Commission to hold perpetrators accountable. I applaud City Council and the sponsors of these bills and look forward to continuing our robust enforcement and public education efforts to ensure that every New Yorker understands their rights and how to report sexual harassment."

"This sweeping legislative package represents the beginning of a real shift toward a culture of respect and accountability," said **Council Member Helen Rosenthal, Chair of the Committee on Women, sponsor of Intro. 663-A and 664-A**. "Paraphrasing Becky Hammon, Assistant Coach of the Spurs: 'There have to be boundaries. There has to be an environment where everyone can succeed.' Now the hard work for all of us begins. It's on us to prove to sexual harassment victims and survivors that we aren't just checking a box. To prove that the city does have their back. We owe it to all the brave survivors who come forward, to continue to search for ways to interrupt abuses of power,"

"I want to thank the Mayor for signing this package of legislation to prevent and punish sexual harassment. These are some of the strongest bills in the country and every employee in New York City, whether they work in the private or public sector, deserves protections and a workplace free from any kind of harassment," said **Council Member Carlina Rivera, sponsor of 660-A**. "With the signing of these bills into law, we want all New Yorkers who deal with harassment to be able to come forward and have City Hall standing up for their rights."

"As a staunch advocate for women's rights and gender equality, I'm extremely proud of the signing of the Stop the Sexual Harassment in NYC Act into law. It's a significant milestone in our efforts to strengthen anti-sexual harassment training and expand sexual harassment protections to all employees," said **New York City Council Majority Leader, Laurie A. Cumbo, sponsor of Intro. 630-A and 632-A**. "We can't stop here. I'm deeply committed to lifting the voices, aspirations and power of women who are marginalized, unsupported, defenseless and vulnerable in the workplace, and this legislation will help transform workplace culture across the City."

"I was proud to sponsor Intro 614-A which allows people who have been sexually harassed to have a safe space to begin the process of reporting their complaints. Many victims have gathered the strength to report their abuse, but may not know exactly how or where. The recent reports of sexual harassment highlighted in the media, has been disturbing and I am glad the City of New York will help empower survivors and everyday New Yorkers to know how to move forward without fear. This mandated online informational system catches up with the digital age in which we live while creating a safe and trusting environment for all," said **Council Member Alicka Ampry-Samuel, sponsor of Intro. 614-A**.

"Every person whether they work in government or private industry should be able to do their jobs without fear of being sexually harassed," said **Council Member Adrienne Adams, sponsor of Intro. 613-A**. "We now know that sexual harassment in the workplace is so prevalent that we need to take active measures to stop it before it begins which is why I am joining my colleagues to bring attention to this important issue. My bill, which will mandate an assessment of risk factors, will help to create a safe work environment for all city employees."

"Across the country, an epidemic of sexual harassment plagues every corner of every industry from L.A. to D.C.," said **Council Member Mark Levine, sponsor of 653-A**. "As a city, we have an obligation to protect employees both in and out of government. The bills being signed today--including my own mandating that City agencies publicly report workplace sexual harassment each year--are a clear demonstration of New York's commitment to protect workers, guarantee victims attention they deserve, and confront this ugly epidemic."

"I am proud to pass legislation that addresses sexual harassment in the workplace. My legislation extends sexual harassment protection to employees of any company, regardless of its size. City law will now be consistent with State law when it comes to protecting employees from sexual harassment, and the NYC Human Rights Code amended to extend protection to include employers of all sizes," said **Council Member Keith Powers, sponsor of Intro. 657-A**. "We are experiencing a watershed moment, and the Council's focus on these workplace issues is just the tip of the iceberg. We are overdue for change when it comes to equality and sexual harassment. I look forward to working to continue to make much-needed updates to the law to ensure all New Yorkers have equal protection, and I thank the Mayor for supporting such important legislation." Council Member Powers

"This issue must be taken seriously, and as lawmakers we must do all that we can to ensure that adequate training and resources are provided in the workplace," said **Council Member Jimmy Van Bramer, sponsor of Intro. 693**. "Now signed into law, the bill that I introduced will change the practices of thousands of organizations and companies. This new law requires that organizations seeking to do business with or receive funding from the city provide details of their practices, policies and procedures as they relate to preventing and addressing sexual harassment. I am proud of this bill and I will continue to fight for legislation that expands protections against sexual harassment and assault for all New Yorkers."

"The NAACP applauds Mayor Bill de Blasio and this administration for signing legislation to expand sexual harassment protections for New Yorkers," said **Dr. Hazel N. Dukes, New York President of the NAACP**. "As a strong advocate for equity and human rights for over 50 years, I believe this legislation is a step in the right direction. —Dr. Hazel N. Dukes

"It's about time! I applaud Mayor de Blasio and the New York City Council for your leadership to enact today's comprehensive and visionary package of reforms. Collectively, this package of legislation sends a strong message that the workplace must be filled with respect and that violating basic principles of decency will no longer be tolerated," said **Carole J. Wacey, President and CEO of Women's City Club of New York**. "Women's City Club hopes that today's bold action will prompt even further changes in the private sector--and, throughout society."

"Planned Parenthood of New York City commends Mayor de Blasio and the New York City Council for enacting the Stop Sexual Harassment in NYC Act. This is an important and timely first step in addressing and preventing sexual harassment in the workplace. Requiring anti-sexual harassment training and educating our workforce about bystander intervention and how to safely bring forward complaints are critical to making sure that all people, regardless of gender, are supported and comfortable in their places of work. We look forward to partnering with the City to make safe, ethical, and equitable workplaces a reality for all New Yorkers," said **Laura McQuade, President and CEO, Planned Parenthood of New York City**.

"Recent revelations have exposed the extent to which sexual harassment and abuse continue to be a problem in our society. The legislation signed today will reinforce policies and training programs aimed at

creating a positive and harassment-free work environment. New York City employers fully support these goals," said **Kathryn Wylde, President and CEO of the Partnership for New York City.**

pressoffice@cityhall.nyc.gov

(212) 788-2958

EEOC Leads the Way in Preventing Workplace Harassment



U.S. Equal Employment Opportunity Commission

What You Should Know: EEOC Leads the Way in Preventing Workplace Harassment

In the past twelve months, the country heard story after story of sexual harassment that just one year before might never have been told. The EEOC's mandate to enforce the nation's employment discrimination laws affords us a unique perspective and responsibility to address the pervasive problem of sexual harassment to which the rest of the nation is now awakening. For decades, the EEOC has educated workers and employers to prevent harassment and has also investigated, mediated, litigated and adjudicated many thousands of claims of workplace harassment based on sex, race, color, disability, age, national origin, and religion.

Combatting all forms of workplace harassment remains a top priority of the EEOC. From the launch of the Select Task Force on the Study of Harassment in the Workplace in 2015, to the release of the Co-Chairs' Report in 2016, and through this past fiscal year, the EEOC ramped up its role as enforcer, educator, and leader. The agency also focused on promoting best practices to stop harassing conduct before it becomes legally actionable, to create an effective anti-harassment system that encourages people to come forward, and to hold leaders and supervisors accountable. The EEOC continues to lead the way in preventing workplace harassment on multiple fronts. As described below, the EEOC:



Vigorously Enforced the Law to Combat Workplace Harassment

- The EEOC [filed 66 lawsuits challenging workplace harassment](#), 41 of which alleged sexual harassment. This is more than a 50 percent increase in suits challenging sexual harassment over FY 2017. EEOC's lawsuits sought to protect a wide-range of employees across the entire country, including servers, nurses, administrative assistants, customer service staff, truck drivers, welders, and other workers at cleaners and country clubs, sports bars and airlines, in factories, health care and grocery stores. In both June and August, the EEOC [coordinated](#) the filing of [federal court cases](#) around the country as a reminder that harassment violates the law.
- Charges filed with the EEOC alleging sexual harassment increased by 13.6 percent from fiscal year 2017.
- For charges alleging harassment, reasonable cause findings increased by 23.6 percent to nearly 1,200 in FY 2018.
- EEOC successfully conciliated 498 charges alleging harassment, a 43 percent increase from FY 2017.
- The EEOC recovered nearly \$70 million for the victims of sexual harassment through administrative enforcement and litigation in FY 2018, up from \$47.5 million in FY 2017.
- In appeals of sexual harassment cases involving federal employees, awards increased by more than 180 percent in FY 2018 to \$443,066.

Met the Heightened Demand for Information and Advice

- Hits on the sexual harassment page of the EEOC's website more than doubled this past year, as many individuals and employers sought information to deal with workplace harassment.
- The EEOC developed "[What to do if you believe you have been harassed at work](#)" to explain the steps to take if individuals felt they were being harassed at work.
- The EEOC issued "[Promising Practices for Preventing Harassment](#)" to provide strategies to employers to reduce workplace harassment.
- EEOC staff conducted over 1,000 outreach events on harassment for more than 115,000 individuals and employers. Acting Chair Lipnic and Commissioners Feldblum and Burrows led our harassment outreach efforts with over 80 speeches and events, demonstrating the commitment of the EEOC's leaders to share our expertise and suggestions for promising solutions.
- The EEOC reconvened the Select Task Force on the Study of Harassment in the Workplace for a public meeting, "[Transforming #MeToo into Harassment-Free Workplaces](#)," to examine difficult legal issues and to share innovative strategies to prevent harassment, including app-based reporting, simple color-coded reporting, and panic buttons for hotel workers.

Promoted Respectful Workplaces

- In October 2017, the EEOC launched "[Respectful Workplaces](#)," a new type of training that teaches skills that promote and contribute to respect in the workplace, including how to step in when problematic behavior happens to others. EEOC staff trained over 9,800 employees and supervisors in Respectful Workplaces and over 13,000 in compliance trainings in the private, public and federal sector work forces.
- Numerous organizations have called on the EEOC to share its expertise or relied on the Co-Chairs Report as they revise their policies, procedures, and training programs to improve how they handle workplace harassment, including the U.S. House of Representatives Administration Committee and Women's Caucus, the [Federal Judiciary Workplace Conduct Working Group](#), [National Academies of Sciences, Engineering, and Medicine](#), Women's Caucus of the Maryland General Assembly, Illinois Senate Sexual Discrimination and Harassment Awareness and Prevention Task Force, Illinois House Sexual Discrimination and Harassment Task Force, Rhode Island Legislature, the [Freedom Forum Institute of the Newseum](#), and [Safety, Respect and Equity](#).
- For the first time in nearly a decade, more than 200 EEOC staff and leadership from across the country convened to develop new strategies for a more coordinated approach to the EEOC's oversight and adjudicative responsibilities in the federal sector, including innovative approaches to combat harassment and make the federal government a model workplace.

Led by Example

- The EEOC revised its internal policies and procedures on the prohibition of harassing conduct in our own workplace in November 2017, based on the findings of the Harassment Task Force.
- Acting Chair Lipnic created a Harassment Prevention Action Team in April 2018 to provide internal coordination on harassment prevention efforts across the agency's offices and programs.
- Senior EEOC leadership participated in the Respectful Workplaces training program in May 2018.

Moving Forward

The EEOC has accomplished much this past year as a leader, an enforcer of the law, an educator, and an expert on harassment prevention. But much more remains to be done and we will continue to look for ways to improve the work that we do. For example, the EEOC will implement a new training program for all EEOC investigators that uses a cognitive interviewing approach for harassment victims, will begin an outreach campaign encouraging reporting, and will provide our Respectful Workplaces training to all EEOC staff.

The EEOC will continue to go all out to do its part, but as the Co-Chairs recognized in the [2016 Co-Chairs' Report](#), we are only one player in this movement. To achieve the goal of reducing harassment and making workplaces respectful, safe, and productive, everyone in society must have a stake in this effort and do their part.

**You Can't Change What You Can't See
-- Executive Summary --
Interrupting Racial & Gender Bias
in the Legal Profession**



YOU CAN'T CHANGE WHAT YOU CAN'T SEE

Interrupting Racial & Gender Bias
in the Legal Profession

EXECUTIVE SUMMARY



YOU CAN'T CHANGE WHAT YOU CAN'T SEE

Interrupting Racial & Gender Bias in the Legal Profession

EXECUTIVE SUMMARY

This report was prepared and written for the American Bar Association's Commission on Women in the Profession and the Minority Corporate Counsel Association by Joan C. Williams, Marina Multhaup, Su Li, and Rachel Korn of the Center for Worklife Law at the University of California, Hastings College of the Law.



Cover design by Amanda Fry/ABA Design.

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Printed in the United States of America.

22 21 20 19 18 5 4 3 2 1

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Foreword

For decades, the American Bar Association Commission on Women in the Profession (“the Commission”) and the Minority Corporate Counsel Association (“MCCA”) have worked tirelessly to combat gender and racial bias in the legal profession. Nonetheless, statistics on women’s advancement have not changed appreciably over the years. In 2016, the Commission and MCCA partnered with the Center for WorkLife Law at the University of California, Hastings College of the Law to conduct research to understand further law firm and in-house lawyers’ experiences of bias in the workplace. This new research confirms that many of the traditional diversity tools we have relied upon over the years have been ineffective, and the findings have served as the foundation in developing the next generation of diversity tools that you will find in *You Can’t Change What You Can’t See: Interrupting Racial & Gender Bias in the Legal Profession*.

The first part of this research report details four main patterns of gender bias, which validate theories that women lawyers long have believed and feelings they long have held. Prove-It-Again describes the need for women and people of color to work harder to prove themselves. Tightrope illustrates the narrower range of behavior expected of and deemed appropriate for women and people of color, with both groups more likely than white men being treated with disrespect. Maternal Wall describes the well-documented bias against mothers, and finally, Tug of War represents the conflict between members of disadvantaged groups that may result from bias in the environment.

The second part of the research report offers two cutting-edge toolkits, one for law firms and one for in-house departments, containing information for how to interrupt bias in hiring, assignments, performance evaluations, compensation, and sponsorship. Based upon the evidence derived from our research, these bias interrupters are small, simple, and incremental steps that tweak basic business systems and yet produce measurable change. They change the systems, not people.

Considerable time, energy, and money were invested to develop persuasive proof of why we need to take a different approach to diversity issues and to develop the toolkits that can be used to make those changes. Taken together, the survey results serve as a reminder of the importance of the connections we make between individuals. Through sharing, we are reminded that we are not alone in our experiences in the workplace, and that is an important first step in making the work environment more inclusive and welcoming.

Jean Lee, President and CEO
Minority Corporate Counsel Association

Michele Coleman Mayes, Chair, 2014–2017
ABA Commission on Women in the Profession

Acknowledgments

The ABA Commission on Women in the Profession and the Minority Corporate Counsel Association would like to thank the following individuals for generously donating their time to this important project.

Working Group Members*

Ricardo Anzaldua, MetLife (Retired)
Kara Baysinger, Dentons
Lois Bingham, Yazaki North America, Inc.
Jennifer Daniels, Colgate-Palmolive Company
Kathryn Fritz, Fenwick & West LLP
Julie Gruber, Gap Inc.
Stasia Kelly, DLA Piper
Kim Koopersmith, Akin Gump Strauss Hauer & Feld LLP
Nancy Laben, Booz Allen Hamilton
Wendi Lazar, Outten & Golden LLP
Wally Martinez, Hunton & Williams LLP
Erika Mason, Constangy Brooks, Smith & Prophete LLP
Lorelie Masters, Hunton & Williams LLP
Rick Palmore, Dentons
Tom Sabatino, Aetna
Mark Roellig, Massachusetts Mutual Life Insurance Company
Tom Sager, Ballard Spahr LLP
James Silkenat, World Justice Project
Mary L. Smith, Illinois Department of Insurance
Grace Speights, Morgan Lewis Bockius LLP
Laura Stein, The Clorox Company
D. Jean Veta, Covington & Burling LLP
Robert Weiner, Arnold & Porter Kaye Scholer LLP
Joseph K. West, Duane Morris LLP
Kathleen J. Wu, Andrews Kurth Kenyon LLP

* Organizations listed were current as of 1/03/2018.

Additional Acknowledgments

A heartfelt thank you to Michele Coleman Mayes and Jean Lee for their leadership in shepherding this project.

A special thank you to Joseph K. West for his support of this project, which allowed it to move forward.

Thank you to Michelle Gallardo and Elaine Johnson James for the energy and effort they devoted to this project as Co-Chairs of the Bias Interrupters Committee.

Thank you to staff members Melissa Wood and Lynnea Karlic for their indispensable assistance on the Bias Interrupters Project.

Thank you to Microsoft Corporation and Walmart for their early support in completing this project.

Executive Summary

This report is the first of its kind to provide a comprehensive picture of how implicit gender and racial bias—documented in social science for decades—plays out in everyday interactions in legal workplaces and affects basic workplace processes such as hiring and compensation.

In April 2016, the American Bar Association’s Commission on Women in the Profession, the Minority Corporate Counsel Association, and the Center for WorkLife Law at the University of California, Hastings College of the Law launched a survey seeking to understand in-house and law firm lawyers’ experiences of bias in the workplace: 2,827 respondents completed the survey, and 525 respondents included comments.

The survey asked respondents whether they had experienced the patterns of gender and racial bias that have been documented in decades of experimental social psychology studies. In addition, the survey asked whether attorneys had experienced implicit bias in basic workplace processes (hiring, assignments, business development, performance evaluations, promotions, compensation, and support). Also included was a series of questions about sexual harassment.

To examine how bias affects workplace experiences in the legal profession, we compared the reported experiences of women of color, men of color, white women, and white men. This report shares the survey findings and paints a picture of how bias affects law firm and in-house attorneys. All differences discussed in the following text are statistically significant unless otherwise noted.

Women and people of color reported Prove-It-Again (PIA) and Tightrope bias

Prove-It-Again. Women of color, white women, and men of color reported that they have to go “above and beyond” to get the same recognition and respect as their colleagues.

- Women of color reported PIA bias at a higher level than any other group, 35 percentage points higher than white men.
- White women and men of color also reported high levels of PIA bias, 25 percentage points higher than white men.
- Women of color reported that they are held to higher standards than their colleagues at a level 32 percentage points higher than white men.

Mistaken for janitors? Men of color and women of all races receive clear messages that they do not fit with people’s image of a lawyer.

- Women of color reported that they had been mistaken for administrative staff, court personnel, or janitorial staff at a level 50 percentage points higher than white men. This was the largest reported difference in the report.

- White women reported this bias at a level 44 percentage points higher than white men, and men of color reported this bias at a level 23 percentage points higher than white men.

Tightrope. Women of all races reported pressure to behave in feminine ways, including backlash for masculine behaviors and higher loads of non-career-enhancing “office housework.”

- White women reported doing more administrative tasks (such as taking notes) than their colleagues at a level 21 percentage points higher than white men, and women of color reported doing more of this type of office housework at a level 18 percentage points higher than white men.

Significant bias against mothers reported—and against fathers who take parental leave

Maternal Wall. Women of all races reported that they were treated worse after they had children; that is, they were passed over for promotions, given “mommy track” low-quality assignments, demoted or paid less, and/or unfairly disadvantaged for working part-time or with a flexible schedule. Women also observed a double standard between male and female parents.

- White women reported that their commitment or competence was questioned after they had kids at a level 36 percentage points higher than white men. Women of color reported this at a level 29 percentage points higher than white men.

About half of people of color (47% of men of color and 50% of women of color) and 57% of white women agreed that taking family leave would have a negative impact on their career. 42% of white men also agreed, indicating that the flexibility stigma surrounding leave affects all groups, including majority men.

Bias is pervasive throughout lawyers’ work lives

Most of the biggest findings of the survey had to do with bias existing in the basic business systems of attorneys’ workplaces. Women and people of color reported higher levels of bias than white men regarding equal opportunities to:

- Get hired
- Receive fair performance evaluations
- Get mentoring
- Receive high-quality assignments
- Access networking opportunities
- Get paid fairly
- Get promoted

In other words, gender and racial bias was reported in all seven basic workplace processes.

Women of color often reported the highest levels of bias of any group

In almost every workplace process, women of color reported the highest levels of bias. For example:

- Women of color reported that they had equal access to high-quality assignments at a level 28 percentage points lower than white men.
- Women of color reported that they had fair opportunities for promotion at a level 23 percentage points lower than white men.

As a trend throughout the report, we often found that women of color reported the highest levels of bias overall.

Bias in compensation

The gender pay gap in law has received significant media attention, but much less attention has been paid to bias in compensation systems. Large amounts of bias were reported by both white women and women of color, and these were some of the widest gaps in experience described in the report:

- Women of color agreed that their pay is comparable to their colleagues of similar experience and seniority at a level 31 percentage points lower than white men; white women agreed at a level 24 percentage points lower than white men.
- Similarly, when respondents were asked if they get paid LESS than their colleagues of similar experience and skill level, women of color agreed at a level 31 percentage points higher than white men, while white women agreed at a level 24 percentage points higher than white men.

The racial element of the gender pay gap is rarely discussed and demands closer attention.

In another surprising finding, in-house white women reported roughly the same level of compensation bias as their law firm counterparts. With so much attention placed on the partner pay gap, in house is thought to be a more equitable environment for women in terms of pay. These data suggest that may not be the case.

Differences between law firm and in-house lawyers' experiences reported

Women of all races and men of color reported lower levels of bias in house than in law firms, whereas white men reported lower levels of bias in law firms than in house.

Sexual harassment

About 25% of women but only 7% of white men and 11% of men of color, reported that they had encountered unwelcome sexual harassment at work, including unwanted sexual comments, physical contact, and/or romantic advances. Sexist comments, stories, and jokes appear to be widespread in the legal profession: more than 70% of all groups reported encountering these. Finally, about one in eight white

women, and one in ten women of color, reported having lost career opportunities because they rejected sexual advances at work.

Although implicit bias is commonplace, it can be interrupted

Implicit bias stems from common stereotypes. Stereotype *activation* is automatic: we can't stop our brains from making assumptions. But stereotype *application* can be controlled: we can control whether we act on those assumptions. We've distilled that research in our Bias Interrupter Toolkits, available at the end of this report. These Toolkits provide easily implementable, measurable tweaks to existing workplace systems to interrupt racial and gender bias in law firms and in-house departments. Many bias interrupters will help individuals with disabilities, professionals from nonprofessional families ("class migrants"), and introverted men, in addition to leveling the playing field for women and attorneys of color.

Small Steps, Big Change

Bias Interrupters Tools for Success

Incremental steps can improve law firm and in-house diversity in ways that yield well-documented business benefits. Research shows that diverse workgroups perform better and are more committed, innovative, and loyal.¹ Gender-diverse workgroups have higher collective intelligence, which improves the performance of both the group and of the individuals in the group, and leads to better financial performance results.² Racially diverse workgroups consider a broader range of alternatives, make better decisions, and are better at solving problems.³ Bias, if unchecked, affects many different groups: modest or introverted men, LGBTQ people, individuals with disabilities, professionals from nonprofessional backgrounds (class migrants), women, and people of color. We've distilled the huge literature on bias into simple steps that help you and your firm perform better.

We know now that workplaces that view themselves as being highly meritocratic often are *more* biased than other organizations.⁴ Research also shows that the usual responses—one-shot diversity trainings, mentoring, and networking programs—typically don't work.⁵

What holds more promise is a paradigm-changing approach to diversity: bias interrupters are tweaks to basic business systems that are data-driven and can produce measurable change. Bias interrupters change systems, not people.

Printed here are two toolkits, one for law firms and one for in-house departments, with information for how to interrupt bias in the following business systems:

1. Hiring
2. Assignments
3. Performance Evaluations
4. Compensation
5. Sponsorship Best Practice Recommendation

For additional worksheets and information visit BiasInterrupters.org.

Our toolkits take a three-step approach:

1. **Use Metrics:** Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you've taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)
2. **Implement Bias Interrupters:** Bias interrupters are small adjustments to your existing business systems. They should not require you to abandon your current systems.
3. **Repeat as Needed:** After implementing bias interrupters, return to your metrics. If they have not improved, you will need to ratchet up to stronger bias interrupters.

Small Steps, Big Change

Bias Interrupters Tools for Law Firms

Interrupting Bias in Hiring

Tools for Law Firms

The Challenge

When comparing identical resumes, “Jamal” needed eight additional years of experience to be considered as qualified as “Greg,” mothers were 79% less likely to be hired than an otherwise-identical candidate without children, and “Jennifer” was offered \$4,000 less in starting salary than “John.”⁶ Unstructured job interviews do not predict job success,⁷ and judging candidates on “culture fit” can screen out qualified diverse candidates.⁸

The Solution: A Three-Step Approach

1. Use Metrics

Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you’ve taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)

For each metric, examine:

- Do patterned differences exist between majority men, majority women, men of color, and women of color? (Include any other underrepresented group that your firm tracks, such as military veterans or LGBTQ people.)

Important metrics to analyze:

- Track the candidate pool through the entire hiring process: from initial contact, to resume review, to interviews, to hiring. Analyze where underrepresented groups are falling out of the hiring process.
- Track whether hiring qualifications are waived more often for some groups.
- Track interviewers’ reviews and/or recommendations to ensure they are not consistently rating majority candidates higher than others.

Keep metrics by (1) individual supervising attorney; (2) department; (3) country, if relevant; and (4) the firm as a whole.

2. Implement Bias Interrupters

All bias interrupters should apply both to written materials and in meetings, where relevant. Because every firm is different, not all interrupters will be relevant. Consider this a menu.

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Hiring Worksheet,” available online at biasinterrupters.org, which summarizes hundreds of studies.

A. Empower and Appoint

- **Empower people involved in the hiring process to spot and interrupt bias.** Use the “Identifying Bias in Hiring Worksheet” (available at BiasInterrupters.org). Read and distribute it to anyone involved in hiring.
- **Appoint bias interrupters.** Provide HR professionals or team members with special training to spot bias and involve them at every step of the hiring process. Training is available at BiasInterrupters.org.

B. Assemble a Diverse Pool

- **Limit referral hiring (“friends of friends”).** If your existing firm is not diverse, hiring from your current employees’ social networks will replicate the lack of diversity. If you use referrals, keep track of the flow of candidates from referrals. If referrals consistently provide majority candidates, consider limiting referrals or balance referral hiring with more targeted outreach to ensure a diverse candidate pool.
- **Tap diverse networks.** Reach out to diverse candidates where they are. Identify law job fairs, affinity networks, conferences, and training programs aimed at women and people of color and send recruiters.
- **Consider candidates from multitier schools.** Don’t limit your search to candidates from Ivy League and top-tier schools. This favors majority candidates from elite backgrounds and hurts people of color and professionals from non-professional backgrounds (class migrants)⁹. Studies show that top students from lower-ranked schools are often similarly successful.¹⁰
- **Get the word out.** If diverse candidates are not applying for your jobs, get the word out that your firm is a great place to work for women and people of color. One company offers public talks by women at their company and writes blog posts, white papers, and social media articles highlighting the women who work there.
- **Change the wording of your job postings.** Using masculine-coded words such as “leader” and “competitive” tends to reduce the number of women who apply.¹¹ Tech alternatives (see Textio¹² and Unitive¹³) can help you craft job postings that ensure you attract top talent without discouraging women.
- **Insist on a diverse pool.** If you use a search firm, tell them you expect a diverse pool, not just one or two diverse candidates. One study found the odds of hiring a woman were 79 times greater if there were at least two women in the finalist pool; the odds of hiring a person of color were 194 times greater.¹⁴

C. Resume Review

- **Distribute the “Identifying Bias in Hiring Worksheet”** (available at BiasInterrupters.org). Before resumes are reviewed, have reviewers read the worksheet so they are aware of the common forms of bias that can affect the hiring process.
- **Commit to what’s important—and require accountability.** Commit in writing to what qualifications are important, both in entry-level and lateral hiring. When qualifications are waived for a specific candidate, require an explanation of why they are no longer important—and keep track to see for whom requirements are waived.¹⁵

- **Ensure resumes are graded on the same scale.** Establish clear grading rubrics and ensure that everyone grades on the same scale. Consider having each resume reviewed by two different people and average the score.
- **Remove extracurricular activities from resumes.** Including extracurricular activities on resumes can artificially disadvantage class migrants. A recent study showed that law firms were less likely to hire a candidate whose interests included “country music” and “pick-up soccer” rather than “classical music” and “sailing”—even though the work and educational experience was exactly the same. Because most people aren’t as aware of class-based bias, communicate why you are removing extracurricular activities from resumes.
- **Avoid inferring family obligations.** Mothers are 79% less likely to be hired than identical candidates without children.¹⁶ Train people not to make inferences about whether someone is committed to the job due to parental status and don’t count “gaps in a resume” as an automatic negative.
- **Try using “blind auditions.”** If women and candidates of color are dropping out of the pool at the resume review stage, consider removing demographic information from resumes before review. This allows candidates to be evaluated based solely on their qualifications.

D. Interviews

- **Use structured interviews.** Ask the same list of questions to every person who is interviewed. Ask questions that are directly relevant to the job for which the candidate is applying.¹⁷
- **Ask performance-based questions.** Performance-based questions, or behavioral interview questions (“Tell me about a time you had too many things to do and had to prioritize.”), are a strong predictor of how successful a candidate will be at the job.¹⁸
- **Try behavioral interviewing.**¹⁹ Ask questions that reveal how candidates have dealt with prior work experiences. Research shows that structured behavioral interviews more accurately predict the future performance of a candidate than unstructured interviews.²⁰ Instead of asking “How do you deal with problems with your manager?” say “Describe for me a conflict you had at work with your manager.” When evaluating answers, a good model to follow is STAR²¹: the candidate should describe the Situation faced, the Task handled, the Action taken to deal with the situation, and the Result.
- **Do work-sample screening.** If applicable, ask candidates to provide a sample of the types of tasks they will perform on the job (e.g., ask candidates to write a legal memo for a fictitious client).
- **Develop a consistent rating scale and discount outliers.** Candidates’ answers (or work samples) should be rated on a consistent scale, with ratings for each factor backed up by evidence. Average the scores granted on each relevant criterion and discount outliers.²²
- **If “culture fit” is a criterion for hiring, provide a specific work-relevant definition.** Culture fit can be important, but when it’s misused, it can disadvantage people of color, class migrants, and women.²³ Heuristics such as the “airport test” (Who would I like to get stuck with in an airport?) can be highly exclusionary and not work-relevant. Questions about sports and hobbies may feel

exclusionary to women and to class migrants who did not grow up, for example, playing golf or listening to classical music. Google's work-relevant definition of "culture fit" is a helpful starting point.²⁴

- **"Gaps in a resume" should not mean automatic disqualification.** Give candidates an opportunity to explain gaps by asking about them directly during the interview stage. Women fare better in interviews when they are able to provide information up front rather than having to avoid the issue.²⁵
- **Provide candidates and interviewers with a handout detailing expectations.** Develop an "Interview Protocol Sheet" that explains to everyone what's expected from candidates in an interview or use ours, available at [Bias Interrupters.org](http://BiasInterrupters.org). Distribute it to candidates and interviewers for review.
- **When hiring, don't ask candidates about prior salary.** Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap.²⁶ (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.²⁷)

3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don't see change, you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the hiring process.**
- **Use an iterative process until your metrics improve.**

Interrupting Bias in Assignments

Tools for Law Firms

The Challenge

Every workplace has high-profile assignments that are career enhancing (“glamour work”) and low-profile assignments that are beneficial to the organization but not the individual’s career. Research shows that women do more “office housework”²⁸ than men.²⁹ This includes literal housework (ordering lunch), administrative work (scheduling a time to meet), and emotion work (“she’s upset; comfort her”). Misallocation of the glamour work and the office housework is a key reason leadership across the legal profession is still male dominated. Professionals of color (both men and women) also report less access to desirable assignments than do white men.³⁰

- **Glamour work.** More than 80% of white male lawyers but only 53% of women lawyers of color, 59% of white women lawyers, and 63% of male lawyers of color reported the same access to desirable assignments as their colleagues.³¹
- **Office housework.** Almost 50% of white women lawyers and 43% of women lawyers of color reported that at work they more often play administrative roles such as taking notes for a meeting compared to their colleagues. Only 26% of white male lawyers and 20% of male lawyers of color reported this.³²

In law firms, when lawyers become “overburdened” with office housework, it reduces the amount of billable time that they can report, which can hurt their compensation and their career.³³

Diversity at the top can only occur when diverse employees at all levels of the organization have access to assignments that let them take risks and develop new skills. If the glamour work and the office housework aren’t distributed evenly, you won’t be tapping into the full potential of your workforce. Most law firms that use an informal “hey, you!” assignment system end up distributing assignments based on factors other than experience and talent.

If women and people of color keep getting stuck with the same low-profile assignments, they will be more likely to be dissatisfied and to search for opportunities elsewhere.³⁴ The attrition rates for women and especially women of color in law firms are already extremely high, and research suggests that the cost to the firm of attrition per associate is up to \$400,000.³⁵ Law firms cannot afford to fail to address the inequality in assignments.

The Solution: A Three-Step Approach

Fair allocation of the glamour work and the office housework are two separate problems. Some law firms will want to solve the office housework problem before tackling the glamour work; others will want to address both problems simultaneously. (A “Road Map for Implementation” is available at BiasInterrupters.org.)

1. Use Metrics

A. Identify and Track

The first step is to find out if and where you have a problem.

- What is the office housework and glamour work in your organization?
- Who is doing what and for how long?
- Are there demographic patterns that indicate gender and/or racial bias is at play?

To do this:

1. Distribute the “Office Housework Survey” (available at BiasInterrupters.org) to your employees to find out who is doing the office housework and how much of their time it takes up.
2. Convene relevant managers (and anyone else who distributes assignments) to identify the glamour work and the lower-profile work in the law firm. Use the “Assignment Typology Worksheet” to create a typology for assignments and the “Protocol” for more details (both available at BiasInterrupters.org).
3. Input the information from the typology meeting into the “Manager Assignment Worksheet” and distribute this to managers (available online at BiasInterrupters.org). Have managers fill out the worksheets and submit them, identifying to whom they assign the glamour work and the lower-profile work.

B. Analyze Metrics

Analyze survey results and worksheets for demographic patterns, dividing employees into (1) majority men, majority women, men of color, and women of color, (2) parents who have just returned from parental leave, (3) professionals working part-time or flexible schedules, and (4) any other underrepresented group that your organization tracks (veterans, LGBTQ people, individuals with disabilities, etc.).

- Who is doing the office housework?
- Who is doing the glamour work?
- Who is doing the low-profile work?
- Create and analyze metrics by individual supervising attorney.

2. Implement Bias Interrupters

A. Office Housework Interrupters

- **Don’t ask for volunteers.** Women are more likely to volunteer because they are under subtle but powerful pressures to do so.³⁶

- **Hold everyone equally accountable.** “I give it to women because they do it well and the men don’t” is a common sentiment. This dynamic reflects an environment in which men suffer few consequences for doing a poor job on office housework, but women who do a poor job are seen as “prima donnas” or “not team players.” Hold men and women equally accountable for carrying out all assignments properly.
- **Use admins.** If possible, assign office housework tasks to admins (e.g., planning birthday parties, scheduling meetings, ordering lunch).
- **Establish a rotation.** A rotation is helpful for many administrative tasks (e.g., taking notes, scheduling meetings). Rotating housework tasks such as ordering lunch and planning parties is an option if admins are unavailable.
- **Shadowing.** Another option for administrative tasks is to assign a more junior person to shadow someone more senior—and take notes.

B. Glamour Work Interrupters

- **Avoid mixed messages.** If your law firm values mentoring and committee work (such as serving on the Diversity Initiative), make sure these things are valued when the time comes for promotions and raises. Sometimes law firms say they highly value this kind of work—but they don’t. Mixed messages of this kind will negatively affect women and people of color.
- **Conduct a roll-out meeting.** Gather relevant managing and supervising attorneys to introduce the bias interrupters initiative and set expectations. “Key Talking Points for the Roll-Out Meeting” are available at BiasInterrupters.org.
- **Provide a bounceback.** Identify individual supervising attorneys whose glamour work allocation is lopsided. Hold a meeting with that supervisor and bring the problem to his or her attention. Help the supervisor think through why he or she only assigns glamour work to certain people or certain types of people. Work with the supervisor to figure out (1) if the available pool for glamour work assignments is diverse but is not being tapped fully or (2) if only a few people have the requisite skills for glamour work assignments. Read the “Responses to Common Pushback” and “Identifying Bias in Assignments” worksheets (available at BiasInterrupters.org) before the bounceback meetings to prepare. You may have to address low-profile work explicitly at the same time as you address high-profile assignments; this will vary by law firm.

If a diverse pool has the requisite skills . . .

- **Implement a rotation.** Have the supervisor set up a rotation to ensure fair access to plum assignments.
- **Formalize the pool.** Write down the list of people with the requisite skills and make it visible to the supervisor. Sometimes just being reminded of the pool can help.
- **Institute accountability.** Have the supervisor track his or her allocation of glamour work going forward to measure progress. Research shows that accountability matters.³⁷

If the pool is not diverse . . .

- **Revisit the assumption that only one (or very few) employees can handle this assignment.** Is that true, or is the supervisor just more comfortable working with those few people?
- **Analyze how the pool was assembled.** Does the supervisor allocate the glamour work by relying on self-promotion or volunteers? If so, that will often disadvantage women and people of color. Shift to more objective measures to create the pool based on skills and qualifications.

If the above suggestions aren't relevant or don't solve your problem, then it's time to **expand the pool**:

- **Development plan.** Identify what skills or competencies an employee needs to be eligible for the high-profile assignments work and develop a plan to help the employee develop the requisite skills.
- **Succession planning.** Remember that having "bench strength" is important so your department won't be left scrambling if someone unexpectedly leaves the company.
- **Leverage existing HR policies.** If your organization uses a competency-based system or has a Talent Development Committee or equivalent, use that resource to help develop competencies so career-enhancing assignments can be allocated more fairly.
- **Shadowing.** Have a more junior person shadow a more experienced person during the high-profile assignment.
- **Mentoring.** Establish a mentoring program to help a broader range of junior people gain access to valued skills.

If you can't expand your pool, **reframe the assignment** so that more people could participate in it. Could you break up the assignment into discrete pieces so more people get the experiences they need?

If nothing else works, **consider a formal assignment system.** Appoint an assignments czar to oversee the distribution of assignments in your organization. See examples of what other law firms have done at BiasInterrupters.org.

3. Repeat as Needed

- **Return to your metrics.** Did the bias interrupters produce change?
- **If you still don't have a fair allocation of high- and low-profile work, you may need to implement stronger bias interrupters or consider moving to a formal assignment system.**
- **Use an iterative process until your metrics improve.**

Interrupting Bias in Performance Evaluations

Tools for Law Firms

The Challenge

In one study, law firm partners were asked to evaluate a memo by a third-year associate. Half the partners were told the associate was black; the other half were told the identical memo was written by a white associate. The partners found 41% more errors in the memo they believed was written by a black associate as compared with a white associate.³⁸ Overall rankings also differed by race. Partners graded the white author as having “potential” and being “generally good,” whereas they graded the black author as “average at best.”

The Solution: A Three-Step Approach

1. Use Metrics

Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you’ve taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)

For each metric, examine:

- Do patterned differences exist between majority men, majority women, men of color, and women of color? Include any other underrepresented group that your firm tracks, such as military veterans, LGBTQ people, or individuals with disabilities.
- Do patterned differences exist for parents after they return from leave or for lawyers who reduce their hours?
- Do patterned differences exist between full-time and part-time employees?

Important metrics to analyze:

- Do your performance evaluations show consistent disparities by demographic group?
- Do women’s ratings fall after they have children? Do employees’ ratings fall after they take parental leave or adopt flexible work arrangements?
- Do the same performance ratings result in different promotion or compensation rates for different groups?

Keep metrics by (1) supervising attorney; (2) department; (3) country, if relevant; and (4) the law firm as a whole.

2. Implement Bias Interrupters

All bias interrupters should apply both to written evaluations and in meetings, where relevant. Because every firm is different, not all interrupters will be relevant. Consider this a menu.

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Performance Evaluations Worksheet,” available online at BiasInterrupters.org.

A. *Empower and Appoint*

- **Empower people involved in the evaluation process to spot and interrupt bias.** Use the “Identifying Bias in Performance Evaluations Worksheet,” available online at BiasInterrupters.org. Read and distribute.
- **Appoint bias interrupters.** Provide HR professionals or team members with special training to spot bias and involve them at every step of the performance evaluation process. Training is available at BiasInterrupters.org.

B. *Tweak the Evaluation Form*

- **Begin with clear and specific performance criteria directly related to job requirements.** Try “He is able to write an effective summary judgment motion under strict deadlines” instead of “He writes well.”
- **Require evidence from the evaluation period that justifies the rating.** Try “In March, she argued X motion in front of Y judge on Z case, answered his questions effectively, and was successful in getting the optimal judgment” instead of “She’s quick on her feet.”
- **Consider performance and potential separately for each candidate.** Performance and potential should be appraised separately. Majority men tend to be judged on potential; others are judged on performance.

Separate personality issues from skill sets for each candidate. Personal style should be appraised separately from skills because a narrower range of behavior often is accepted from women and people of color. For example, women may be labeled “difficult” for doing things that are accepted in majority men.

C. *Tweak the Evaluation Process*

- **Level the playing field.** Ensure that all candidates know how to promote themselves effectively and send the message that they are expected to do so. Distribute the “Writing an Effective Self-Evaluation Worksheet,” available online at BiasInterrupters.org.
- **Offer alternatives to self-promotion.** Encourage or require supervisors to set up more formal systems for sharing successes, such as a monthly e-mail that lists employees’ accomplishments.
- **Provide a bounceback.** Supervisors whose performance evaluations show persistent bias should receive a bounceback (i.e., someone should talk through the evidence with them).
- **Have bias interrupters play an active role in calibration meetings.** In many law firms and legal departments, the Executive Committee or another body meets

What's a bounceback?

An example: in one organization, when a supervisor's ratings of an underrepresented group deviate dramatically from the mean, the evaluations are returned to the supervisor with the message: either you have an undiagnosed performance problem that requires a Performance Improvement Plan (PIP), or you need to take another look at your evaluations as a group. The organization found that a few people were put on PIPs, but over time, supervisors' ratings of underrepresented groups converged with those of majority men. A subsequent survey found that employees of all demographic groups rated their performance evaluations as equally fair (whereas bias was reported in hiring—and every other business system).

to produce a target distribution of ratings or to cross-calibrate rankings. Have participants read the “Identifying Bias in Performance Evaluations Worksheet” on bias before they meet (available at BiasInterrupters.org). Have a trained bias interrupter in the room.

- **Don't eliminate your performance appraisal system.** Eliminating formal performance evaluation systems and replacing them with feedback on the fly creates conditions for bias to flourish.

3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don't see change,** you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the performance evaluation process.
- **Use an iterative process** until your metrics improve.

Interrupting Bias in Partner Compensation

Tools for Law Firms

The Challenge

The gender pay gap in law firms has been extensively documented for decades. A 2016 report by Major, Lindsey, and Africa found a 44% pay gap between male and female law firm partners.³⁹ The report also found a 50% difference in origination credit, which many use to explain the pay gap: men earn more money because they bring in more business. Studies show the picture is much more complicated.

- One study found that even when women partners originated similar levels of business as men, they still earned less.⁴⁰
- Another study found that 32% of white women income partners and 36% of women partners of color reported that they had been intimidated, threatened, or bullied out of origination credit.⁴¹
- The same study found that more than 80% of women partners reported being denied their fair share of origination credit in the previous three years.⁴²
- Doesn't everyone think their compensation is unfair? Not to the same degree: a recent survey of lawyers found that male lawyers were about 20% more likely than white women lawyers and 30% more likely than women lawyers of color to say that their pay was comparable to their colleagues of similar experience.⁴³

The Solution: A Three-Step Approach

1. Use Metrics

Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you've taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)

For each metric, examine:

- Do patterned differences exist between majority men, majority women, men of color, and women partners of color? (Include any other underrepresented group that your firm tracks, such as military veterans or LGBTQ people.)
- Are partners disadvantaged for taking parental leave? Are parents or others with caregiving responsibilities excluded from future opportunities?
- Do part-time lawyers receive less than proportionate pay for proportionate work? Are they excluded from future opportunities?

Important metrics to analyze:

- **Compare compensation with a variety of lenses and look for patterns.** Lenses include relationship enhancement, hours and working time revenues, and so forth. Do separate analyses for equity and income partners.
- **Succession.** Analyze who inherits compensation credit and client relationships and how and when the credit moves.
- **Origination and other important forms of credit.** Analyze who gets origination and other important forms of credit, how often it is split, and who does (and does not) split it. If your firm does not provide credit for relationship enhancement, analyze how that rule affects different demographic groups—and consider changing it.
- **Comp adjustments.** Analyze how quickly compensation falls, and by what percentage during a lean period and how quickly compensation rises during times of growth. (When partners lose key clients, majority men often are given more of a runway to recover than other groups.)
- **De-equitization.** Analyze who gets de-equitized.
- **Pitch credit.** Analyze who has opportunities to go on pitches, who plays a speaking role, and who receives origination and other forms of credit from pitches.
- **Lateral partners.** Analyze whether laterals are paid more in relation to their metrics. This is a major factor in defeating diversity efforts at some firms.

Keep metrics by (1) individual supervising lawyer; (2) department; (3) country, if relevant; and (4) the firm as a whole.

2. Implement Bias Interrupters

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Partner Compensation Worksheet,” available online at BiasInterrupters.org.

A. Find Out What Drives Compensation—and Be Transparent about What You Find

- **Commission an analysis.** Although firms may say they value a broad range of factors, many experts agree that origination and billable hours account for almost all variance in compensation.⁴⁴ Hire a law firm compensation consultant or statistician to find out what factors determine compensation at your firm.
- **Be transparent about what drives compensation.** This is a vital first step to empowering women and people of color to refuse work that does not enhance their compensation and focus on work that positions them to receive higher compensation. Studies show that reducing ambiguity reduces gender bias in negotiations—and law firm compensation often involves negotiation among partners.⁴⁵ If only those “in the know” understand what’s really valued, that will benefit a small in group that typically reflects the demography of your existing equity partnership.
- **Value everything that’s valuable.** Give credit for nonbillable work that is vital to sustaining the long-term health of the firm—including relationship enhancement credit, credit for lawyers who actually do the client’s work, and talent manage-

ment. If the firm says it values mentoring and greater diversity but does not in fact do so, this will disadvantage women and lawyers of color.

B. Establish Clear, Public Rules

- **Establish clear rules governing granting and splitting origination and other valuable forms of credit.** Research suggests that men are more likely to split origination credit with men than with women and that women may get less origination credit than men even when they do a similar amount of work to bring in the client.⁴⁶ Set clear, public rules addressing how origination credit should be split by publishing and publicizing a memo that details how partners should split credit under common scenarios.
- **Establish a formal system of succession planning.** If your firm allows origination credit to be inherited, institute a formal succession planning process. Otherwise, in-group favoritism means that your current pattern of origination credit will be replicated over and over again, with negative consequences for diversity.
- **Pitch credit.** Women attorneys and attorneys of color often report being used as “eye candy”—brought to pitches but then not given a fair share of credit or work that results. Establish rules to ensure this does not occur. The best practice is that if someone does the work for the pitch, he or she should be recognized with credit that accurately reflects his or her role in doing and winning the work.
- **Parental leave.** Counting billables and other metrics as “zero” for the months women (or men) are on parental leave is a violation of the Family and Medical Leave Act, where applicable, and is unfair even where it is not illegal. Instead, annualize based on the average of the months the attorney was at work, allowing for a ramp-up and ramp-down period.
- **Part-time partners.** Compensation for part-time partners should be proportional. Specifics on how to enact proportional compensation depends on which compensation system a law firm uses. See the “Best Practices for Part-Time Partner Compensation” paper for details, available at BiasInterrupters.org.

C. Establish Procedures to Ensure the Perception and Reality of Fairness

- **Institute a low-risk way partners can receive help in disputes over credit.** Set up a way to settle disputes over origination and other forms of credit that lawyers can use without raising eyebrows.
- **Provide templates for partner comp memos—and prohibit pushback.** Some firms provide opportunities for partners and associates to make their case to the compensation committee by writing a compensation memo. If your firm does this, distribute the worksheet (online at BiasInterrupters.org) on how to write an effective compensation memo and set rules and norms to ensure that women and minorities are not penalized for self-promotion. If not, give partners the opportunity to provide evidence about their work: research shows that women’s successes tend to be discounted and their mistakes remembered longer than men’s.
- **Institute quality control over how compensation is communicated to partners.** Design a structured system for communicating with partners to explain what factors went into determining their compensation.

- **When hiring, don't ask candidates about prior salary.** Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap.⁴⁷ (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.⁴⁸)
- **Have a bias interrupter at meetings where compensation is set.** This is a person who has been trained to spot the kinds of bias that commonly arise.
- **Training.** Make sure that your compensation committee, and anyone else involved in setting compensation, knows how implicit bias commonly plays out in law firm partner compensation and how to interrupt that bias. Read and distribute the “Identifying Bias in Partner Compensation Worksheet” (available at BiasInterrupters.org).

3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don't see change,** you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the compensation process.
- **Use an iterative process** until your metrics improve.

Small Steps, Big Change

Bias Interrupters Tools for In-House Departments

Interrupting Bias in Hiring

Tools for In-House Departments

The Challenge:

When comparing identical resumes, “Jamal” needed eight additional years of experience to be considered as qualified as “Greg,” mothers were 79% less likely to be hired than an otherwise-identical candidate without children, and “Jennifer” was offered \$4,000 less in starting salary than “John.”⁴⁹ Unstructured job interviews do not predict job success,⁵⁰ and judging candidates on “culture fit” can screen out qualified diverse candidates.⁵¹

The Solution: A Three-Step Approach

1. Use Metrics

Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you’ve taken.

For in-house departments, some metrics may be possible to track; others may require HR or can only be tracked company-wide. Depending on the structure and size of your in-house department, identify what’s feasible.

Whether metrics are made public will vary from company to company and from metric to metric.

For each metric, examine:

- Do patterned differences exist between majority men, majority women, men of color, and women of color? (Include any other underrepresented group that your department/company tracks, such as veterans, LGBTQ people, etc.)

Important metrics to analyze:

- The goal is to track the candidate pool through the entire hiring process—from initial contact, to resume review, to interviews, to hiring—and then to analyze where underrepresented groups are falling out of the hiring process. How much you can track will depend on how your company’s systems are set up, as will the extent to which you will need help from HR.
- Track whether hiring qualifications are waived more often for some groups. You may be able to do this only for those parts of the hiring process that are done at a departmental level, such as final-round interviews.
- Track interviewers’ reviews and recommendations to look for demographic patterns. Again, your department’s ability to do this will depend on what is handled at a departmental level, or your HR department may be willing to do this tracking.

Keep in-house metrics by (1) individual supervisor; (2) department, if your in-house department is large enough to have its own departments; and (3) country, if relevant.

2. Implement Bias Interrupters

All bias interrupters should apply both to written materials and in meetings, where relevant.

Because in-house departments are all different and vary in size and structure, not all interrupters will be relevant. Depending on how much of the hiring process is done by the in-house department versus HR, some of the interrupters may be more feasible than others. Consider this a menu.

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Hiring Worksheet,” available online at BiasInterrupters.org, which summarizes hundreds of studies.

A. Empower and Appoint

- **Empower people involved in the hiring process to spot and interrupt bias.** Use the “Identifying Bias in Hiring Worksheet,” available online at BiasInterrupters.org, and distribute this to anyone involved in hiring.
- **Appoint bias interrupters.** Provide HR professionals or team members with special training to spot bias and involve them at every step of the hiring process. Training is available at BiasInterrupters.org.

B. Tips to Help You Assemble a Diverse Pool

- **If your department hires by referral, keep track of the candidate flow from referrals.** Hiring from current employees’ social networks may well replicate lack of diversity if your department is not diverse. If your analysis finds that referrals consistently provide majority candidates, consider limiting referrals or balance referral hiring with more targeted outreach to ensure a diverse candidate pool.
- **Recruit where diverse candidates are.** If your department handles recruiting, make sure to reach out to diverse candidates where they are. Identify law job fairs, affinity networks, conferences, and training programs aimed at women and people of color and send recruiters. If your department does not do recruiting, consider asking the people in charge to do more targeted recruitment.
- **If recruitment happens mostly at law schools, consider candidates from multi-tier schools.** Don’t limit your search to candidates from Ivy League and top-tier schools. This practice favors majority candidates from elite backgrounds and hurts people of color and professionals from nonprofessional backgrounds (class migrants).⁵² If another department handles recruiting, let them know that your department would like to consider candidates from a broader range of law schools.
- **If your department writes its own job postings, make sure you are not using language that has been shown to decrease the number of women applicants** (words such as *competitive* or *ambitious*). If HR is in charge of the job postings, suggest that they review job posts in the same way. Tech companies such as Textio and Unitive can help.

- **Insist on a diverse pool.** If HR creates a pool for your department, tell them that you expect the pool to be diverse. One study found the odds of hiring a woman were 79 times greater if there were at least two women in the finalist pool; the odds of hiring a person of color were 194 times greater.⁵³ If HR does not present a diverse pool, try to figure out where the lack of diversity is coming from. Is HR weeding out the diverse candidates, or are the jobs not attracting diverse candidates?

C. Interrupting Bias While Reviewing Resumes

If your in-house department conducts the initial resume screening, use the following bias interrupters. If HR does the initial screening, encourage them to implement the following tips to ensure that your department receives the most qualified candidates.

- **Distribute the “Identifying Bias in Hiring Worksheet” before resumes are reviewed** (available at BiasInterrupters.org) so reviewers are aware of the common forms of bias that can affect the hiring process.
- **If candidates’ resumes are reviewed by your department, commit to what qualifications are important—and require accountability.** When qualifications are waived for a specific candidate, require an explanation of why the qualification at issue is no longer important—and keep track to see for whom requirements are waived.⁵⁴ If HR reviews the resumes, give HR a clear list of the qualifications your department is seeking.
- **Establish clear grading rubrics and ensure that all resumes are graded on the same scale.** If possible, have each resume reviewed by two different people and average the scores. If HR reviews resumes, encourage them to review resumes based on the rubric that you provide to them.
- **Remove extracurricular activities from resumes.** Including extracurricular activities on resumes can favor elite majority candidates.⁵⁵ Remove extracurriculars from resumes before you review them or ask HR to do this.
- **Watch out for Maternal Wall bias.** Mothers are 79% less likely to be hired than an identical candidate without children.⁵⁶ Train people who review resumes not to make inferences about whether someone is committed to the job due to parental status. Instruct them not to count “gaps in a resume” as an automatic negative. If HR reviews resumes, ask them to do the same.
- **Try using “blind auditions.”** If women and candidates of color are dropping out of the pool at the resume review stage, consider removing demographic information from resumes before review—or ask HR to do it.

D. Controlling Bias in the Interview Process

- **Ask the same questions to every person you interview.** Come up with a set list of questions you will ask each candidate and ask them in the same order to each person. Ask questions that are directly relevant to the job for which the candidate is applying.⁵⁷
- **Ask performance-based, work-relevant questions.** Performance-based questions, or behavioral interview questions (“Tell me about a time you had too many things to do and had to prioritize.”), are a strong predictor of how successful a

- candidate will be on the job.⁵⁸ Ask questions that are directly relevant to situations that arise in your department.
- **Require a work sample.** If applicable, ask candidates to demonstrate the skills they will need on the job (e.g., ask candidates to write an advisory letter to the sales team about a new product.)
 - **Standardize the interview evaluation process.** Develop a consistent rating scale for candidates' answers and work samples. Each rating should be backed up with evidence. Average the scores granted on each relevant criterion and discount outliers.⁵⁹
 - **Try behavioral interviewing.**⁶⁰ Ask questions that reveal how candidates have dealt with prior work experiences. Research shows that structured behavioral interviews can more accurately predict the future performance of a candidate than unstructured interviews.⁶¹ Instead of asking "How do you deal with problems with your manager?" say "Describe for me a conflict you had at work with your manager." When evaluating answers, a good model to follow is STAR⁶²: the candidate should describe the Situation faced, the Task handled, the Action taken to deal with the situation, and the Result.
 - **If you use culture fit, do so carefully.** Using culture fit as a hiring criterion can thwart diversity efforts.⁶³ Culture fit ("Would I like to get stuck in an airport with this candidate?") can be a powerful force for reproducing the current makeup of the organization when it's misused.⁶⁴ Questions about sports and hobbies may feel exclusionary to women and to class migrants who did not grow up playing golf or listening to classical music. If culture fit is a criterion for hiring, provide a specific work-relevant definition. Google's work-relevant definition of culture fit is a helpful starting point.⁶⁵
 - **Ask directly about "gaps in a resume."** Women fare better in interviews when they are able to provide information up front rather than having to avoid the issue.⁶⁶ Instruct your interviewing team to give, in a neutral and nonjudgmental fashion, candidates the opportunity to explain gaps in their resumes.
 - **Be transparent to applicants about what you're seeking.** Provide candidates and interviewers with a handout that explains to everyone what's expected from candidates in an interview. Distribute it to candidates and interviewers for review so everyone is on the same page about what your in-house department is seeking. An example "Interview Protocol Sheet" is available at BiasInterrupters.org.
 - **Don't ask candidates about prior salary.** Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap.⁶⁷ (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.⁶⁸)

3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don't see change,** you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the hiring process.
- **Use an iterative process** until your metrics improve.

Interrupting Bias in Assignments

Tools for In-House Departments

The Challenge

Diversity at the top can only occur when diverse employees at all levels of the organization have access to assignments that let them take risks and develop new skills. A level playing field requires that both the glamour work (career-enhancing assignments) and the office housework (the less high-profile and back-office work) are distributed fairly. If your department uses an informal “hey, you!” assignment system to distribute assignments, you may end up inadvertently distributing assignments in an inequitable fashion.

If women and people of color keep getting stuck with the same low-profile assignments, they will be more likely to be dissatisfied and to search for opportunities elsewhere.⁶⁹

The Solution: A Three-Step Approach

Fair allocation of the glamour work and the office housework are two separate problems. Some in-house departments will want to solve the office housework problem before tackling the glamour work; others will want to address both problems simultaneously. This will depend on the size of your in-house department and how work is currently assigned.

1. Use Metrics

A. Identify and Track

For each metric, examine:

- What is the office housework and glamour work in your department?
- Who is doing what and for how long?
- Are there demographic patterns that indicate gender and/or racial bias at play?

Important metrics to analyze:

1. Distribute an office housework survey to members of your department to find out who is doing the office housework and how much of their time it requires. Create your own survey or use ours, available at BiasInterrupters.org.
2. Convene relevant managers (and anyone else who distributes assignments) to identify what is the glamour work and what is the lower-profile work in the department. Worksheets and protocols to help you are available online at BiasInterrupters.org.

3. Once you have identified what the glamour work is in your department, ask managers to report which employees have been doing the glamour work. Worksheets are also available at BiasInterrupters.org.

B. Analyze Metrics

Analyze office housework survey results and glamour worksheets for demographic patterns, dividing employees into (1) majority men, majority women, men of color, and women of color, (2) parents who have just returned from parental leave, (3) professionals working part-time or flexible schedules, and (4) any other underrepresented group that your organization tracks (e.g., veterans, LGBTQ people, individuals with disabilities). (This will also depend on the size of your in-house department. If there are only one or two people in a category, the metric won't be scientifically viable.)

- Who is doing the office housework?
- Who is doing the glamour work?
- Who is doing the low-profile work?
- Create and analyze metrics by individual supervisor.

2. Implement Bias Interrupters

Because every in-house department is different and varies so much in size and structure, not all interrupters will be relevant. Depending on how much of the hiring process is done by the in-house department versus HR, some of the interrupters may be more feasible than others. Consider this a menu.

A. Office Housework Interrupters

- **Don't ask for volunteers.** Women are more likely to volunteer because they are under subtle but powerful pressures to do so.⁷⁰
- **Hold everyone equally accountable.** "I give it to women because they do it well—men don't." This dynamic reflects an environment in which men suffer few consequences for doing a poor job on less glamorous assignments and women who do the same are faulted as "not being team players."
- **Use admins.** Assign office housework tasks (e.g., planning birthday parties, scheduling meetings, ordering lunch) to admins if your department has enough admin support to do so.
- **Establish a rotation.** A rotation is helpful for many administrative tasks (e.g., taking notes, scheduling meetings). Rotating housework tasks (e.g., ordering lunch and planning parties) is also an option if admins are unavailable, making it a good option for in-house departments.
- **Shadowing.** Another option in larger departments is to assign a more junior person to shadow someone more senior—and to do administrative tasks such as taking notes.

B. Glamour Work Interrupters

- **Value what's valuable.** If your department values such things as mentoring and committee work (such as serving on the Diversity Initiative), make sure these things are valued when the time comes for promotions and raises. Sometimes

companies say they highly value this kind of work—but they don’t. Mixed messages of this kind will negatively affect women and people of color. If your department doesn’t have complete control over promotions and raises, work with relevant departments to ensure that communicated values are being rewarded appropriately. When members of your in-house department take on diversity work, make sure they have suitable staff support.

- **Announce your goals of equitable assignments.** Gather your team (or the members of your team who distribute assignments) to introduce the bias interrupters initiative and set expectations. Key talking points for the roll-out meeting are available online at BiasInterrupters.org.
- **Provide a bounceback.** If your metrics reveal that some members of your department distribute assignments inequitably, hold a bounceback meeting. Help the person in question think through why he or she assigns glamour work to certain people or certain types of people. Work with the person to figure out whether (1) the available pool for glamour work assignments is diverse but is not being tapped fully or whether (2) only a few people have the requisite skills for glamour work assignments. Use the “Responses to Common Pushback” and “Identifying Bias in Assignments” worksheets (available at www.BiasInterrupters.org) to prepare for bounceback meetings.

If a diverse pool has the requisite skills . . .

- **Implement a rotation.** Set up a system where plum assignments are rotated between qualified employees.
- **Formalize the pool.** Write down the list of people with the requisite skills and make it visible to whomever distributes assignments. Suggest or require anyone handing out plum assignments to review the list of qualified legal professionals before making a decision. Sometimes just being reminded of the pool can help.
- **Institute accountability.** Require people handing out assignments to keep track of who gets plum assignments. Research shows that accountability matters.⁷¹

If the pool is not diverse . . .

- **Revisit your assumptions.** Can only one (or very few) employees handle this type of assignment, or is it just that you feel more comfortable working with those few people?
- **Revisit how the pool was assembled.** When access to career-enhancing assignments depends on “go-getters” who ask for them, women, people of color, and class migrants may be disadvantaged because self-promotion is less acceptable to them or less accepted when they do it.

If these suggestions aren’t relevant or don’t solve your problem, then it’s time to **expand the pool**. Small in-house departments may have to find creative ways to do this.

- **Development plan.** For the attorneys or other legal professionals who aren’t yet able to handle the plum assignments, what skills would they need to be eligible? Identify those skills and institute a development plan.

- **Succession planning.** Remember that having “bench strength” is important so that your department won’t be left scrambling if someone unexpectedly leaves the company.
- **Leverage existing HR policies.** If your company has a Talent Development Committee or professional development resources, use this resource to help your legal professionals develop the skills they need to handle plum assignments.
- **Shadowing.** Have a more junior person shadow a more experienced person during a high-profile assignment.
- **Mentoring.** Establish a mentoring program to help a broader range of junior people gain access to valued skills.

If you can’t expand your pool, reframe the assignment. Can you break up the assignment into discrete pieces so more people can participate and get the experiences they need?

If nothing else works, consider a formal assignment system.

3. Repeat as Needed

- **Return to your metrics.** Did the bias interrupters produce change?
- **If you still don’t have a fair allocation of high- and low-profile work,** you may need to implement stronger bias interrupters or consider moving to a formal assignment system.
- **Use an iterative process** until your metrics improve.

Interrupting Bias in Performance Evaluations

Tools for In-House Departments

The Challenge

Bias in performance evaluations has been well documented for decades.⁷²

In one study, law firm partners were asked to evaluate a memo by a third-year associate. Half the partners were told the associate was black; the other half were told the identical memo was written by a white associate. The partners found 41% more errors in the memo they believed was written by a black associate as compared with a white associate.⁷³ Overall rankings also differed by race. Partners graded the white author as having “potential” and being “generally good,” whereas they graded the black author as “average at best.”

The problem isn’t limited to law firms. One informal study in tech revealed that 66% of women’s performance reviews but only 1% of men’s reviews contained negative personality criticism.⁷⁴ Bias in the evaluation process stretches across industries.

The Solution: A Three-Step Approach

1. Use Metrics

For in-house departments, some metrics may be possible to track; others may require HR or can only be tracked company-wide. Depending on the structure and size of your department, identify which metrics you are able to track.

For each metric, examine:

- Do patterned differences exist between majority men, majority women, men of color, and women of color? Include any other underrepresented group that your company tracks, such as veterans, LGBTQ people, or individuals with disabilities.
- Do patterned differences exist for parents after they return from leave or for employees who reduce their hours?
- Do patterned differences exist between full-time and part-time lawyers and other legal professionals?

Important metrics to analyze:

- Do your performance evaluations show consistent disparities by demographic group?
- Do women’s ratings fall after they have children? Do ratings fall after professionals take parental leave or adopt flexible work arrangements?

- Do the same performance ratings result in different promotion or compensation rates for different groups?

Keep in-house metrics by (1) individual supervisor; (2) department, if your in-house department is large enough to have its own departments; and (3) country, if relevant.

2. Implement Bias Interrupters

All bias interrupters should apply both to written materials and in meetings, where relevant.

Because in-house departments vary so much in size and structure, not all interrupters will be relevant to every company. Also, some interrupters will not be feasible, depending on how much of the hiring process is done by the in-house department versus HR. Consider this as a menu.

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Performance Evaluations Worksheet,” available online at BiasInterrupters.org, which summarizes hundreds of studies.

A. Empower and Appoint

- **Empower people involved in the evaluation process to spot and interrupt bias.** Use the “Identifying Bias in Performance Evaluations Worksheet,” available at BiasInterrupters.org, and distribute it to those involved in the evaluation process.
- **Appoint bias interrupters.** Provide HR professionals or team members with special training to spot bias and involve them at every step of the performance evaluation process. Training is available at BiasInterrupters.org.

B. Tips for Tweaking the Evaluation Form

Many in-house departments do not have control over their performance evaluation forms, so some of these suggestions will not be feasible.

- **Begin with clear and specific performance criteria directly related to job requirements.** Try “He is able to write clear memos to leadership that accurately portray the legal situations at hand” instead of “He writes well.”
- **Instruct reviewers to provide evidence to justify their rating and hold them accountable.** Global ratings, with no specifics to back them up, are a recipe for bias and do not provide constructive advice to the employee being reviewed.
- **Ensure that the evidence is from the evaluation period.** The evaluation form should make it clear that a mistake an employee made two years ago isn’t acceptable evidence for a poor rating today.
- **Separate discussions of potential and performance.** There is a tendency for majority men to be judged on potential and others to be judged on performance.
- **Separate personality issues from skill sets.** A narrower range of behavior often is accepted from women and people of color than from majority men.

C. Tips for Tweaking the Evaluation Process

- **Help everyone effectively advocate for themselves.** Distribute the “Writing an Effective Self-Evaluation,” available online at BiasInterrupters.org.
- **If the evaluation process requires self-promotion, offer alternatives.** Set up more formal systems for sharing successes within your in-house department, such as a monthly e-mail that lists employees’ accomplishments.
- **Provide a bounceback.** If possible, ask HR for an analysis (or do your own) to ensure that individual supervisors’ reviews do not show bias toward or against any particular group. If they do, hold a meeting with that supervisor to help the person in question think through why certain types of people are getting lower performance evaluations. Work with the supervisor to figure out whether (1) the individuals in question are having performance problems and should be put on Performance Improvement Plans or whether (2) the supervisor should reexamine how employees are being evaluated.
- **Have bias interrupters play an active role.** If your in-house department holds calibration meetings, make sure there is a bias interrupter in the room to spot and correct any instances of bias. If a bias interrupter can’t be in the room, have participants read the “Identifying Bias in Performance Evaluations Worksheet” before they meet, available online at BiasInterrupters.org.
- **Don’t eliminate your performance appraisal system.** To the extent that you have a say in the HR operations in your company, encourage your company not to eliminate formal performance appraisal systems. Informal, on the fly performance evaluation systems are becoming more popular, but they have a tendency to reproduce patterns of bias.

3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don’t see change,** you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the performance evaluation process.
- **Use an iterative process** until your metrics improve.

Interrupting Bias in Compensation

Tools for In-House Departments

The Challenge

The in-house gender pay gap has not been well studied, but a 2017 report from the Association of Corporate Counsel described a “dramatic” gender pay disparity based on a survey taken by 1,800 in-house counsel. The report found that there is a higher proportion of men in six of seven salary bands above \$199,000—yet only 8% of male respondents believed that a pay gap existed.⁷⁵

Interrupting bias in compensation for in-house departments can be tricky because decisions and policies around compensation typically are made at the company level, but there are steps your department can take to begin to address the problem.

The Solution

The following recommendations can be implemented at the departmental level to reduce bias in compensation.

- **Communicate your organization’s compensation strategy.** If only those “in the know” understand what’s really valued, that will only benefit a small in group.
- **When hiring, don’t ask candidates about prior salary.** Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap.⁷⁶ (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.⁷⁷)
- **Read and distribute the “Identifying Bias in Compensation Worksheet” to anyone involved in compensation decisions in your department** (available online at BiasInterrupters.org).
- **Obtain surveys and benchmarking data at regular intervals.** Assess whether compensation in your in-house department is competitive with the relevant market. SHRM and similar organizations provide guidance to help you choose reputable compensation surveys and benchmarking data. Typically these data are behind a pay wall.
- **Encourage HR to implement pay equity audits under the direction of the legal department or outside lawyers to maximize the chance that the data collected is not discoverable under attorney–client privilege.**
- **When pay disparity is discovered, work with HR or the equivalent department to address the disparity within a reasonable period of time.**
- **Institute a low-risk way people can get help in disputes over compensation.** Set up a way to settle disputes over compensation that lawyers and legal professionals can use without raising eyebrows.

Best Practice: Sponsorship

Based on Ricardo Anzaldua's MetLife Sponsorship Program

These Best Practice recommendations are based on conversations with Ricardo Anzaldua, GC of MetLife, who implemented a similar program in his department.

Identify top talent. Create a system that controls for unconscious bias to identify top talent (including nondiverse talent) to defeat arguments that the program is designed to unfairly advantage or disadvantage particular groups. To identify top talent early, MetLife used existing talent-identifying tools and introduced survey techniques to control for unconscious bias. Make sure that your system:

- Draws input from many different sources (not just managers; also include clients, peers, subordinates, etc.)
- Seeks assessments of both performance and potential from varying perspectives

Pair each top-talent candidate with a trained senior-level sponsor who is held accountable.

- Tie effective sponsorship with manager performance evaluations, compensation, and ability to be promoted.
- To ensure that sponsorship does not come to be regarded as a risk of being considered a poor performer with little reward, either (1) enlist *all* officer-level managers to be sponsors or (2) create upside rewards available only to effective sponsors. (Note: enlisting all managers to be sponsors is simpler and helps get buy-in to the program.)
- Create and inculcate leadership competencies for managers that they can also use to advance.
- All top talent should be paired with sponsors, but pair diverse top-talent candidates with senior management.
- Make sure each protégé has a *mentor* (preferably not the sponsor).

Develop goals and milestones for protégés.

- Each sponsor-protégé pair creates a mutually agreed-upon career goal that can be accomplished in three to five years.
- Each sponsor creates a development plan that includes milestones along the way (opportunities and experiences needed to accomplish the career goal). Milestones may include presentations, managing/leading a team, communication training, leading a significant project (e.g., transaction, litigation, regulatory examination), and executive presence coaching.

Create action learning teams (ALTs).

- Create small teams of protégés and sponsors (pair sponsors with different groups of protégés).
- Give ALTs senior-management-level problems and task them with formulating, in three to six months, written proposals to solve the issues, including how to involve non-legal resources.
- Bring in SMEs to facilitate the more technical aspects of specific problems.
- At various points in the process, ALTs should brief senior management on the status of their work.

Bake sponsorship and ALTs into existing talent development systems, performance evaluations systems, and HR processes.

Endnotes

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About the ABA Commission on Women in the Profession

As a national voice for women lawyers, the ABA Commission on Women in the Profession forges a new and better profession that ensures that women have equal opportunities for professional growth and advancement commensurate with their male counterparts. It was created in 1987 to assess the status of women in the legal profession and to identify barriers to their advancement. Hillary Rodham Clinton, the first chair of the commission, issued a groundbreaking report in 1988 showing that women lawyers were not advancing at a satisfactory rate.

Now entering its fourth decade, the commission not only reports the challenges that women lawyers face, it also brings about positive change in the legal workplace through such efforts as its Grit Project, Women of Color Research Initiative, Bias Interrupters Project, and the Margaret Brent Women Lawyers of Achievement Awards. Drawing upon the expertise and diverse backgrounds of its 12 members, who are appointed by the ABA president, the commission develops programs, policies, and publications to advance and assist women lawyers in public and private practice, the judiciary, and academia.

For more information, visit www.americanbar.org/women.

About the Minority Corporate Counsel Association (MCCA)

The preeminent voice on diversity and inclusion issues in the legal profession, MCCA is committed to advancing the hiring, retention and promotion of diverse lawyers in law departments and law firms by providing research, best practices, professional development and training, and pipeline initiatives.

MCCA's groundbreaking research and innovative training and professional development programs highlight best practices and identify the most significant diversity and inclusion challenges facing the legal community. MCCA takes an inclusive approach to the definition of "diversity" including race and ethnicity, gender, sexual orientation, disability status and generational differences.

Since MCCA's founding 20 years ago, it has been recognized and honored by the Association of Corporate Counsel, the National LGBT Bar Association, the National Minority Business Council, Inc. and the U.S. Equal Employment Opportunity Commission, among others. MCCA's vision, "To make the next generation of legal leaders as diverse as the world we live in," is what drives the organization and our passionate and committed partners.

For more information, visit www.mcca.com.

**EEOC Select Task Force on the
Study of Harassment in the Workplace**

**Report of Co-Chairs Chai R. Feldblum
& Victoria A. Lipnic**

**[https://www.eeoc.gov/eeoc/task
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Management report**

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<https://www.youtube.com/watch?v=sL7LwBsV9bM&index=6&list=UUiM0HJ0MCFIGhxj2Hys0d5A>

Faculty Biographies

(In Alphabetical Order)



Yasmin Dwedar, Esq.
Consumer Complaint and Driver Protection &
Special Projects Units
ydwedar@yahoo.com

Yasmin Dwedar, a Muslim-American Attorney of Egyptian and Filipino descent, currently serves as Senior Supervising Attorney of the Driver Protection Unit at the New York City Taxi and Limousine Commission ("TLC"). Prior to TLC, Ms. Dwedar clerked for the Honorable Analisa Torres in New York State Supreme Court and the United States District Court for the Southern District of New York and served as the first Muslim Assistant District Attorney appointed to serve Kings county under District Attorney Ken Thompson. Ms. Dwedar serves on the Boards of the New York State Bar Association and New York Women's Bar Association Diversity and Inclusion Committees, the Muslim Bar Association of New York, and the Network of Bar Leaders. She also founded and served as President of the Arab American Bar Association. Ms. Dwedar was recognized for her work in Crain's New York Business Top 100 Women Lawyers in New York City for 2018. Her personal story of being barred from participating in student government as a Muslim-American high school student inspired her legal career and was featured in Moustafa Bayoumi's classic book, "How Does It Feel to Be a Problem: Being Young and Arab in America."



Sheryl Galler, Esq.
Law Office of Sheryl B. Galler
275 W. 96th Street, Suite 7P
New York, NY 10025
sbgesq@yahoo.com
(917) 991-0995



Sheryl Galler has many years of experience handling employment and commercial matters for domestic and international clients. Her practice currently focuses on employment law and includes negotiating and drafting employment, severance and non-competition agreements, drafting employee handbooks and helping clients develop and implement employment policies. She also conducts internal investigations of discrimination and harassment claims, and counsels clients on a wide range of employment law and compliance matters.

Ms. Galler is a 1993 graduate of the Columbia University School of Law, where she was a Harlan Fiske Stone Scholar. She received her B.A. in Political Science from Columbia University, summa cum laude, Phi Beta Kappa. She is admitted to the bar in New York State, the U.S Court of Appeals, Second Circuit and the Southern and Eastern Districts of the U.S. District Court.

Ms. Galler is a member of the Executive Committees of the New York State Bar Association's Labor & Employment Law Section and Women in Law Section. She has chaired panels and presented continuing legal education courses for both the Labor & Employment Section and the Women in Law Section. She is the author of "Know New York State's New Paid Family Leave Benefits Law," published in the May 2017 edition of the New York State Bar Association Journal.



Jellisa Joseph, Esq.
City of Albany
24 Eagle Street
Albany, NY 12207
jjoseph@albanyny.gov
(518) 434-5284

Jellisa Joseph, Esq. is currently serving as the Chief Diversity Officer for the City of Albany, New York. She has previously served as an Assistant Corporation Counsel for the City of Albany and as an Assistant District Attorney for Kings County (Brooklyn) in New York City. Ms. Joseph has been a member of the New York State Bar Association since 2014 and is a graduate of the Albany Law School.

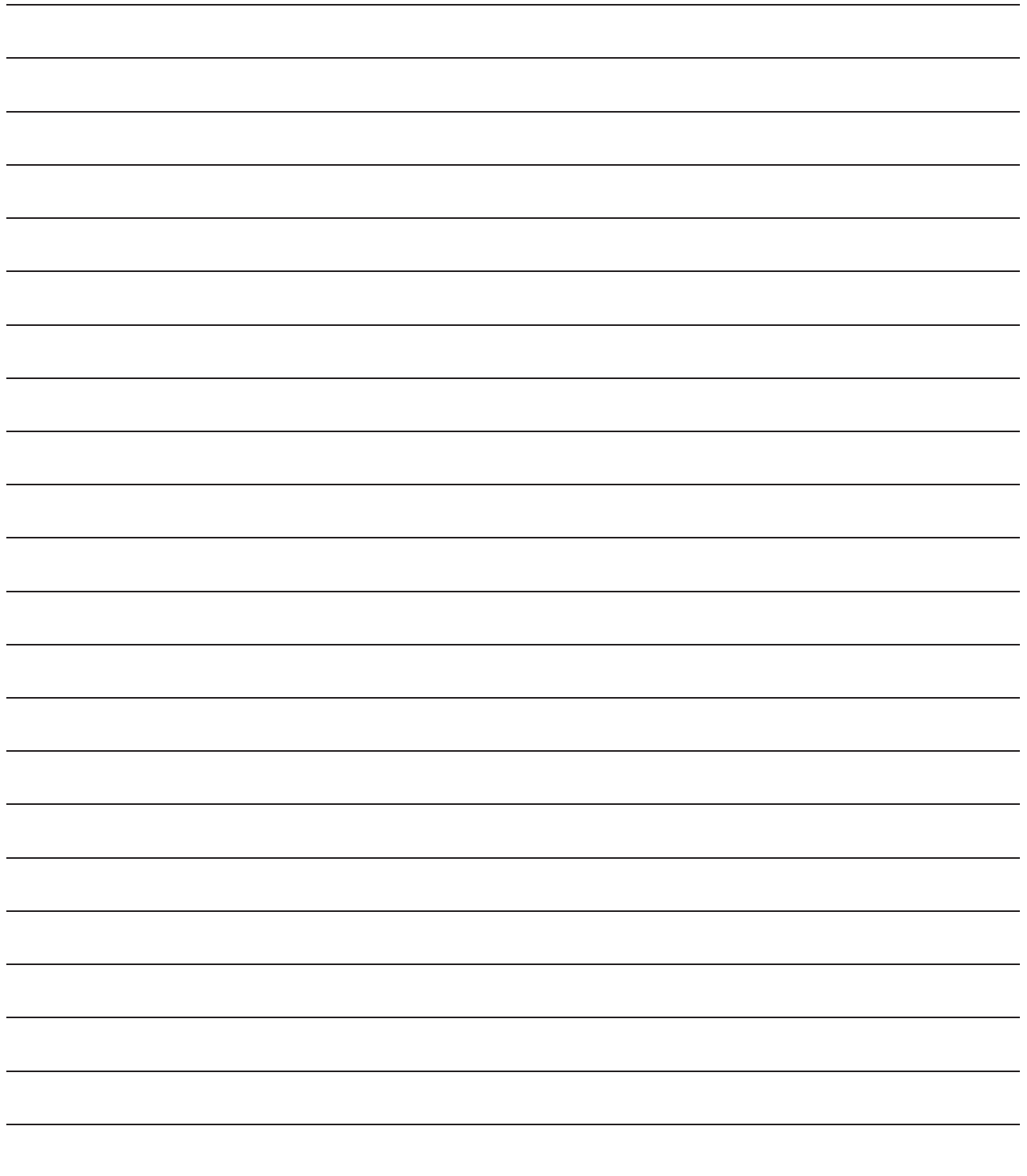


Serena Joyce White-Lake, Esq.
NYS Office of Children and Family Services
52 Washington Street
Rensselaer, NY 12144
senwhite@gmail.com
(518) 402-3065



Serena Joyce White-Lake formerly clerked for the New York State Court of Appeals. She now works as an Assistant Counsel for the New York State Office of Children and Family Services, where she analyzes complaints of workplace discrimination including sexual harassment filed by and against employees.

Serena also serves on the boards of directors for the African American Cultural Center for the Capital Region, Capital CarShare, and the City of Albany's Board of Zoning Appeals. Additionally, Serena works as Director of Strategic Partnerships for Tinker and Fiddle, a STEAM (Science, Technology, Engineering, Art, and Math) education company that encourages underrepresented youth to learn and apply technology through creative exploration and problem solving.



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