

# #METOO AND THE CORNER OFFICE

The Credit Union CEO's (or Regulator's) Role in  
Preparing for and Responding to  
Sexual Harassment Claims

NASCUS Summit  
August 15, 2019

# Recent Developments

- Allegations across industries
- Social media movement
- Quick reactions – terminations, litigation
- Non-Disclosure Agreements (NDAs) under fire
- Legislative efforts
- More activity by management and Boards



# #MeToo: The Data

# Nearly Half of Working Women: “Me Too”

- 48% of employed women personally experienced unwelcome sexual advance, or verbal or physical harassment at work
- 67% of Americans believe sexual harassment happens in most workplaces
- 8 in 10 women **now** more likely to speak out

Source: **October 2017** NBC News/Wall Street Journal Poll



# Male Workers Weigh In

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- 62% of men: sexual harassment is widespread
- 41% of employed men personally witnessed mistreatment of women in workplace
- 44% of men: recent stories about sexual harassment changed their views about how women are treated

Source: **October 2017** NBC News/Wall Street Journal Poll

# Groups Most Likely Harassed


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- Assumption: women in lower-level positions more at risk
- One study disagrees; harassment reported:
  - All women: 35%
  - Senior-level women: 55%
  - Lesbian women: 48%
  - Women in technical roles: 45%
  - Women of color: 30%
- Explanation: women who don't conform to traditional feminine expectations more often targeted

Source: **2018** McKinsey&Company / *Lean In Women in the Workplace*

# Reporting of Sexual Harassment

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- 11% of non-management employees experienced sexual harassment in past 12 months
  - Of those, 76% did not report it fear of retaliation or belief that nothing would change

Source: **February 2018** – Society for Human Resources Management

# Reporting of Sexual Harassment – More Detail

Attitude Toward Reporting	Men	Women
Pointless	1%	3%
Risky	2%	5%
Uncertain	12%	22%
Helpful	15%	18%
Effective	70%	52%

Source: **2018** McKinsey&Company / Lean In *Women in the Workplace*



# Reporting of Harassment – Latest Data

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- Reports of harassment increased
  - 2016-2018: 18% increase
  - 2017-2018: 8.5% increase
- 1.4 reports per 100 employees
- Proportion of contacts just inquiring dropped to 15%
- Substantiated reports: 42%
  - Anonymous reports: 38%
  - Named reports: 50%

Source: **April 2019** NAVEX Global 2019 Ethics & Compliance Benchmark Report

# Corporate Boards Lag Behind

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- 77%: not discussed accusations of sexually inappropriate behavior and/or sexism in the workplace
- 83%: no recent evaluation of risks regarding sexual harassment or sexist behavior at workplace
- 88%: no plan for addressing harassment/sexism
- 19%: discussed risks/rewards of company culture that encourages drinking or partying at work

Source: **October 2017** *Medium and Qualtrics*

# WHY Boards Lag Behind

- Not a problem at our organization
- We're focusing on other issues
- It's not a Board-level issue
- Uncomfortable to raise the issue in Board meeting
- Board members mostly men

Source: **October 2017** *Medium and Qualtrics*



# Litigation Impact

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- EEOC filings for sexual harassment substantially increased – 12% in the past fiscal year
- Private lawsuits and demand letters on the rise



# #MeToo: The Law

# Harassment Fundamentals

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- Harassment is a form of discrimination under federal, state and local law
- Unwelcome and offensive verbal, visual or physical conduct *based on a worker's protected status* (race, religion, national origin, disability, gender, etc.)
- Examples
  - Derogatory comments, verbal taunting, slurs, aggressive physical action
  - Inappropriate jokes, pictures, cartoons, screen savers, pranks, innuendo


# Sexual Harassment – Two Kinds



- Quid Pro Quo
  - “This for that”
  - Job/benefits conditioned on sexual favors
  - Usually committed by manager or supervisor
- Hostile Work Environment
  - Unwelcome, offensive sexual behavior
  - Offensive to reasonable person
  - Severe or pervasive

# Examples of Quid Pro Quo Sexual Harassment


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- Demanding sexual favors in exchange for promotion or raise
  - Disciplining subordinate who ends romantic relationship
  - Changing performance expectations after subordinate refuses persistent requests for dates
  - Excluding employee who resists sexual advances from participating in group, committee, or opportunity
  - Rewarding subordinate who accedes to sexual pressure




# Examples of Hostile Environment Sexual Harassment

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- Sexual jokes or teasing
  - Comments about body parts or sex life
  - Suggestive pictures, calendars, screen savers, graphics
  - Leering, stares, sexual gestures
  - Lewd emails or texts (written or forwarded)
  - Uninvited and persistent letters, phone calls or gifts
  - Uninvited touching, brushes, pats, hugs, pinches
  - One incident of sexual assault

# Important Facts about Sexual Harassment

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- Need not be intentional or directed at particular person
  - Eye of the beholder/“reasonable person” standard
  - Failure to complain is NOT consent
  - Same-gender harassment
  - Offenders need not be supervisors; co-workers and non-employees can harass
  - Harassment claims and policies apply outside workplace – ***even at conferences***

#MeToo:  
Responding to Report of  
Harassment

# If CEO Is Approached By Employee

- Know the policy
- Be prepared to receive concerns/complaints
- Make reported concerns a top priority
- Maintain professionalism
- Understand confidentiality



# If CEO is Approached (con't)

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- Talk privately, but do not promise blanket confidentiality
  - “To the extent reasonably possible...”
  - Limit to “need to know”
- Don’t jump to conclusions or defend anyone’s position
- Assure employee that retaliation is prohibited
- IMMEDIATELY inform HR and legal counsel
- Do nothing more unless advised to do so – do not conduct own investigation, or speak with accused or witnesses

# CEO Response to Complaint or Report

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- Gather limited number of insiders (HR, legal, crisis communication)
- Selected decisions and considerations
  - Decide whether and what to investigate
  - Select inside or outside investigator
  - Maintain privilege (limiting emails and conversations with non-lawyers, including with investigator)
  - Determine messaging and publicity; early on, close to the vest
  - Determine when and how to advise the Board – remember privilege

# CEO Response Post-Investigation

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- Investigation report
  - Verbal or written?
  - Who sees it?
- If not substantiated
  - Careful communication with accused, accuser and witnesses
  - Unless malicious, no sanction against accuser
  - Determine publicity

# CEO Response Post-Investigation (con't)


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- If substantiated
  - Promptly determine and implement management response
  - Can employee be retained? Possible sanctions, training, coaching
  - Disclosure to victim, witnesses, other employees?
- If termination
  - Consider package
  - Disclosures to victim, witnesses and rest of workforce?



# CEO Response Post-Investigation (con't)

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- Regardless of outcome
    - Disclosure to Board
    - Self-audit (privileged)
    - Special attention to work group; possibly outside experts

# #MeToo: Preventive Strategies

# Harassment Prevention: HR 101

1. Develop policies/procedures
2. Create clear, accessible complaint/report process
3. Communicate and enforce policies, procedures
4. Train workforce – top to bottom
5. Investigate complaints/concerns – promptly, impartially, thoroughly
6. Take prompt, effective remedial action; document
7. Protect against retaliation
8. Monitor workplace




# Preventive Strategies for CEO

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- Increase diversity of senior management
    - Gender and minority status
    - Experience in institutions with successful HR practices
    - Hiring and retention focus
  - Set “tone at the top” – attention to culture
    - Protect the less powerful
    - Insist on equality and mutual respect
    - Require mentoring


# Preventive Strategies for CEO (con't)

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- Designate internal executive to study CU's gender and minority issues and workplace culture, recommend changes, and report directly to CEO
  - Maintain access to outside consultants
  - Consider HR and diversity performance in reviews and compensation
  - Communicate with staff, potentially other stakeholders

# Board Preventive Strategies

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- Increase Board diversity
    - Demographic
    - Experience in other successful institutions
    - Some with HR strength
    - Due diligence of candidates
  - Train all Board members
  - Ask tough questions of CEO and senior staff

# Board Preventive Strategies (con't)

- Consider CEO's HR success in reviews and compensation
- Ensure Board access to independent legal counsel, other experts
- Communication
  - Staff, potentially other stakeholders
  - Board policy or bylaw?



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