

Leadership Post #MeToo: What to Know, Now That #Times Up

Practical Strategies to Inspire and Create Change in the Workplace

Who We Are

Moderator:

Pat Martel, Retired City Manager, City of Daly City & ICMA Past President

Panelists:

Sonia Carvalho, City Attorney, City of Santa Ana

Jim Lewis, City Manager, City of Pismo Beach

Sabra Newby, City Manager, City of Reno, NV



#MeToo, How Did We Get Here?

- ▶ International Movement against sexual assault and harassment, especially related to employment and the workplace
- ▶ Raised public consciousness and provided a collective voice to address these issues
- ▶ Empowered women specifically, but has exposed harassment and assault involving both genders, people of color, LGBT individuals, members of religious minorities, and other underrepresented groups
- ▶ Exposed the “culture of complicity” that often exists in the workplace because individuals are fearful of what might happen to them, to their families or their jobs if they speak up
- ▶ #TimesUp empowerment movement evolved from the need to focus on workplace issues and culture involving fairness, safety, equity, and accountability

This Photo by Unknown Author is licensed under CC BY



This Photo by Unknown Author is licensed under CC BY-NC-ND

It's about the power

#MeToo Won't End Sexual Harassment

Sexual harassment and gender discrimination are still pervasive in the workplace thirty years after the Supreme Court held that workplace harassment is an actionable form of discrimination prohibited by Title VII of the Civil Rights Act of 1964

EEOC Task Force on the Study of Harassment in the Workplace (2016) documents that workplace harassment remains a persistent problem with fully one third of approximately 90,000 charges received by the EEOC in FY 2015 including an allegation of workplace harassment. Statistics indicate that 1 in 3 women and 1 in 10 men experience sexual harassment in the workplace

Over a quarter of women have experienced sexual harassment in the workplace, and of those women, 46 percent say that harassment caused them to leave jobs or switch careers, according to the latest findings from the Marketplace-Edison Research Poll (2018)

The Legal Imperative for Cities to Respond to #MeToo at Every Level

- ▶ Laws in California are intended to protect the workplace and employees from harassment and discrimination in every form, yet workplace harassment often goes unreported
- ▶ Roughly three out of four individuals who experienced harassment never spoke with a supervisor, manager, or union representative about the harassing behavior, according to the EEOC (2016). Common workplace-based responses by those who experience sex-based harassment are to avoid the harasser, deny or downplay the gravity of the situation or attempt to ignore, forget, or endure the behavior.
- ▶ Employees who experience harassment fail to report the harassing behavior or to file a complaint because they fear not being believed, inaction on their claim, blame, or social or professional retaliation (EEOC 2016)

Harassment in the Headlines

- ▶ In 1999, the Los Angeles Times reported a Police Chief was in a hot tub with his dispatchers and the community was rallying outside of a City Council meeting demanding that he be allowed to return to his job. In that case, the City Manager talked the Chief out of it. (LAT 1999)
- ▶ Imagine the reaction today! Times UP!

Harassment in the Headlines 2018

- ▶ She was “repeatedly sexually harassed by the City Manager. These incidents of harassment included extremely offensive insults, being subjected to sexual conversations, being contacted at night and on weekends to discuss personal and sexual matters, an being forced to help the City Manager with his online dating profiles.”
- ▶ She alleged that while she worked as an executive assistant for the City Manager she was sexually harassed, threatened and physically assaulted by him. The lawsuit also alleges that the Mayor and other officials did not intervene even after the City Manager had targeted other female workers. She claimed that she had reported the alleged misconduct to several administrators but nothing was done.

Harassment in the Headlines

- ▶ Woman alleged that City Manager attempted to pressure her into having a sexual relationship with him in exchange for continued public funding of services provided to needy community members. Investigation found the allegations lacked credibility.
- ▶ A city worker said a Council Member sexually harassed her for ore than five years. She said she first reported the harassment claim while nine months pregnant, but she said the City did nothing about it. The City settled the claim for \$850,000.

Harassment in the Headlines

- ▶ An executive assistant reported the Police Chief for sexual harassment to the City Manager. The assistant later alleged the City Manager used “intimidation tactics” to dissuade her from pursuing a complaint against the Chief with the City. In the complaint, the City Manager is also accused of initially “failing to investigate” the sexual harassment.
- ▶ 134 sexual misconduct allegation cases ended with settlements or judgments. In all, the County paid out more than \$36.3 million in claims and \$13.7 million in attorneys fees to resolve these cases

Why Is It Important to Know This?

- ▶ California and Federal law require employers to take affirmative steps to prevent sexual harassment (training, written policies, complaint procedures)
- ▶ You need to know what constitutes sexual harassment so that you can recognize it and avoid it
- ▶ You need to know what procedures to follow if you witness harassment, receive a complaint of harassment or are harassed yourself
- ▶ You need to be familiar with your policy because it can, and usually is, more stringent than the law
- ▶ You need to know the policies and practices-including discipline in the workplace effecting civil liability

Definition of Sexual Harassment

- ▶ Sexual harassment is unsolicited and unwelcome sexual a for sexual advances, requests for sexual favors, and other verbal, physical or visual conduct of a sexual nature where:
 - ▶ Submission is required explicitly or implicitly as a condition of employment (or used as a basis for employment decisions)
 - ▶ Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating a hostile work environment

Inappropriate Actions

- ▶ Unwelcome actions such as the following are inappropriate and, depending on the circumstances, may in and of themselves meet the definition of sexual harassment or contribute to a hostile work environment

Who May Be Liable for Harassment?

- ▶ The employer (for both supervisor and co-worker harassment and 3rd party contractor)
- ▶ The harasser himself or herself
- ▶ A supervisor who is (or should be) aware of harassment and does nothing about it is subject to disciplinary action up to and including termination
- ▶ Bear in mind that policy accountability is often stricter than legal accountability

SB 1300- Boldest Anti-Sexual Harassment Law in the Country

- ▶ Increases potential liability by lowering the burden and standard of proof for plaintiffs to prevail on sexual harassment and other forms of harassment under FEHA
- ▶ Only need to prove reasonable person would find "harassment so altered working conditions as to make it more difficult to do one's job
- ▶ A single incident of harassing conduct can establish a hostile work environment if the conduct has unreasonably interfered with one's job performance or created a hostile or offensive work environment

SB 1300

- ▶ Legal standard for harassment does not vary by workplace-city yard is no different than the planning counter
- ▶ No summary judgment for harassment cases
- ▶ Employers required to protect employees from all forms of harassment including from customers, vendors, contractors and other third parties
- ▶ As a prevailing party a City could recover attorneys' fees and costs and now much harder- only if frivolous or groundless
- ▶ Cannot require signing of a non-disparagement agreement for a bonus or raise, but okay if resolving a lawsuit

Wait to Respond or Prepare?

- ▶ City Managers should take this opportunity to think through how, in this #MeToo era, to position your City in such a manner as to best protect against both new and well known sexual harassment prevention laws and provide a positive environment for employees
- ▶ You can expect employees to be more vocal about actual and perceived sexual or hostile environments
- ▶ How you prepare to respond and how you actually respond to allegations is more important than ever

Prepare, Prepare and Prepare

- ▶ You should calendar a meeting with your HR Director now so you can meet first thing on Monday- it's that important!
- ▶ Review your existing policies and update them
- ▶ Implement your policies and document training and enforcement
- ▶ Implement bystander intervention training, as all actions you take can help with a defense to a lawsuit
- ▶ Assume you, as the City Manager, may face an allegation and outline the in writing- in a policy
- ▶ If a complaint is made against a City Manager, Council Member, Police Chief- who should the complaint go to? Will the person be put on leave? Will there be a written report? Is such a report subject to release?

Organizations and Individuals Can React to #MeToo

- ▶ Organizations and individuals can play a role in moving the #MeToo movement from talk to realistic action
- ▶ Harassment in the workplace won't stop on its own, if it exists. It's on all of us to be a part of the effort to stop workplace harassment
- ▶ We can't be complacent bystanders and expect workplace cultures to change themselves
- ▶ Establishing standards of behavior that requires each of us to ask ourselves and employees, would what I am about to say or do pass the "If it were my kid test"? Would you want a child or other family member dehumanized by belittling, sexist, or other derogatory behavior?

Strategies and Lessons Learned that Can Insure #TimesUp

- ▶ Every organization should start with clear principles and then institute policies to support them
- ▶ Develop workforce training that sets standards for respectful behavior at work, so people understand it right from the start what is expected of them
- ▶ Treat all claims and the people who voice them with seriousness, urgency, and respect
- ▶ Develop an investigative process that protects employees from stigma or retaliation
- ▶ Insure that processes are fairly and consistently in every case, both for victims and those accused
- ▶ Take swift and decisive action when wrongdoing has occurred
- ▶ Make it clear that all employees have a role to play in keeping workplaces safe
- ▶ Enablers and failed gatekeepers are complicit when they stay silent or look the other way



Thank You

Thoughts?? Questions??