

## Joint Task Force on Sexual Harassment



FEBRUARY 2018 • NO. 1

### Sexual Harassment Law in 2018

*This client alert details how to effectively prevent and respond to sexual harassment allegations in this era of #MeToo.*

As the breaking news tells us every day, we are in a transformative time when it comes to how harassment is reported and handled in the workplace. From Hollywood to Rockefeller Center, and everywhere in-between, employers must be prepared. Blank Rome's unique multi-disciplinary approach includes highly-skilled lawyers from our Labor & Employment, Insurance Recovery, White Collar Defense & Investigations, and SEC practice groups. We represent companies, boards of directors, senior executives, and individuals, including public officials, who confront a wide range of harassment allegations. We also help companies develop and update their current policies and procedures to help prevent—or at least mitigate—any harassment issues that may arise.

Below are action items employers should consider for effectively preventing and responding to harassment claims.

#### REVIEW INSURANCE, COMPANY POLICIES, AND COMPLAINT PROCEDURES

- Review your insurance policies: Is there coverage for the entity? For employees? Third parties? What are the limits?
- Do policies fit your current business model?
- There may be coverage even if the accused employee is a senior executive and/or the company has been sued for punitive damages.
- Do reporting channels really work?

#### COMMUNICATE CULTURE CHANGES AND EXPECTATIONS

- Zero tolerance means zero tolerance.
- No complaint is too small and do not look the other way based on the status of the accused.
- Promote consistent treatment.
- Set guidelines for social events.
- Consider an “absolutely no dating at work” policy.

## ADDITIONAL LEGAL CONSIDERATIONS

- Do not issue non-disclosure agreements without speaking to legal.
- Do you need separate counsel for conflicts or executive employees?
- Develop a public relations strategy—do not wait until a crisis hits to come up with a plan.

## CRIMINAL IMPLICATIONS

- Conduct may trigger criminal charges; structure investigation not to impede; every employee is a potential witness.
- Consult outside counsel as to whether misconduct should be reported to prosecutors.
- Determine whether to waive privilege to aid in the criminal investigation, including the release of report to the prosecution.

## CONDUCTING INVESTIGATIONS

- Create investigatory protocols with assistance from legal.
- Use sophisticated and well-trained interviewers.
- Consider confidentiality and privilege issues (attorney-client and work product).
- Check documents—don't just trust verbal statements.

## PUBLIC REPORTING REQUIREMENTS

- Public companies need to be proactive and forward-thinking on disclosure obligations when involving director, executive officer, or key employee sexual misconduct.
- Proactively protect against shareholder derivative actions.
- Keep C-suite and board of directors in the know.

For more information on how Blank Rome can help you or your business confront harassment issues that may arise, please contact:

**Scott F. Cooper**  
Co-Chair, Labor & Employment  
215.569.5487 | [cooper@blankrome.com](mailto:cooper@blankrome.com)

**Brooke T. Iley**  
Co-Chair, Labor & Employment  
202.772.5816 | [iley@blankrome.com](mailto:iley@blankrome.com)

**Yelena M. Barychev**  
Partner, Corporate, M&A and Securities  
215.569.5737 | [barychev@blankrome.com](mailto:barychev@blankrome.com)

**Linda Kornfeld**  
Vice-Chair, Insurance Recovery  
424.239.3859 | [lkornfeld@blankrome.com](mailto:lkornfeld@blankrome.com)

**Mark M. Lee**  
Partner, White Collar Defense & Investigation  
215.569.5536 | [mmlee@blankrome.com](mailto:mmlee@blankrome.com)

**Jared Zola**  
Partner, Insurance Recovery  
212.885.5209 | [jzola@blankrome.com](mailto:jzola@blankrome.com)