



Establishing a #NotMeToo Culture in the Workplace

*Practical Tips for
Lawyers*

Willamette Valley American Inn of Court: Team Hamilton
October 18, 2018



Program Overview

1. Introduction
 - #MeToo and what it means for the office
2. “Hypotheticals”
 - You tell us: Is it sexual harassment?
3. What now?
 - Policy best practices and sexual harassment prevention

Introduction

What #MeToo means for the office

You tell us: Is it sexual harassment?

HYPOTHETICALS

Cast your vote.

A 3D-style graphic of a ballot box, rendered in dark grey and black tones. It features a green slot on the top surface and a blue slot on the front surface. The box is positioned on the right side of the slide, partially overlapping the text 'Cast your vote.'



Hypothetical 1 - Lorena (1)

Six months after **junior associate attorney, Lorena** started working in the domestic relations unit at Real Legal Law LLP, her **supervising attorney, Eddie** **showed romantic interest** in Lorena.

Eddie asked Lorena out “every day,” but she repeatedly declined.

Because of Lorena’s repeated rejections, Eddie **refused to train or help** Lorena with her job duties.

Hypothetical 1 - Lorena (1)(a)

What type of harassment is this?

- Hostile Work Environment
- Quid Pro Quo
- Both Types
- None of the Above, No Harassment

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Quid pro quo means "this for that" in Latin. This terminology describes harassment that typically involves a supervisor giving or withholding employment benefits based upon an employee's willingness to grant sexual favors. (ref. BOLI FAQs)

Hypothetical 1 - Lorena (1)(b)

Would the firm be liable for Eddie's actions?

- Yes
- No
- Only if They Knew of His Actions

Hypothetical 1 - Lorena (1)(b)

Would the firm be liable for Eddie's actions?

- Yes
- No
- Only if They Knew of His Actions

An employer is automatically liable for sexual harassment by a supervisor when a "tangible employment action" occurs in connection with the harassment. A tangible employment action is very broadly defined and need not be negative. Examples include changes in work assignment or schedule, terminations or failure to promote. *OAR 839-005-0030(4)* (ref. BOLI FAQs)



Hypothetical 1 - Lorena (2)

To “get away from” Eddie, Lorena applied for a position with another practice unit on a separate floor. After a year with the firm, Lorena was eventually promoted to associate attorney in the collections unit upstairs.

Previously staffed with all male employees, the collections unit did not have a designated women’s restroom. But, in addition to a designated men’s restroom, it did have a “unisex” restroom. The unisex restroom was vandalized with “pornographic” graffiti that Lorena claimed was directed at her and caused her to have to use the downstairs women’s restroom.

Lorena again complained to the firm’s managing partner. The firm removed the graffiti, but took no further action.

Hypothetical 1 - Lorena (2)

What type of harassment is this?

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A "hostile environment" is a work atmosphere in which a pattern of offensive sexual conduct is involved. The administrative rules describe it as "Any unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile, or offensive working environment." *OAR 839-005-0010(3)(A)*



Hypothetical 1 - Lorena (3)

Franklin, the collections unit supervising attorney, continually **yelled** at Lorena, issued conflicting orders, **threatened** her with termination, and had a reputation of being a “rude bully.”

Lorena again complained to the managing partner.

But the firm, noting Franklin **treated everyone this way**, including the male staff, **took no action** because it felt Franklin’s actions were **not motivated by gender**.

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Hypothetical 1 - Lorena

The Lorena scenario is based on a real case in the 9th Circuit which resulted in a Jury award:

State of Arizona v. ASARCO, No. 11-17484 (9th Cir. 2013)



Hypothetical 2 - Appreciation or Thanks for Nothing?

At Slate Rockhead & Flintstone LLP, law firm **partner Frederick Flintstone** and **associate Elizabeth Rubble** worked together late one evening on an important case. Their interactions were strictly business that evening.

The next day Frederick, thinking it would be funny, had a **dozen red roses** delivered to Elizabeth's office with a note that read "**thanks for last night.**"



Hypothetical 2 - Appreciation or Thanks for Nothing?

Rumors circulated in the office about her and Frederick. The incident resulted in a permanent rift to their working relationship.

Elizabeth felt embarrassed and humiliated which caused Elizabeth to eventually leave the firm and sue for sexual harassment.

Hypothetical 2 - Appreciation or Thanks for Nothing?

Would the firm be legally liable for Frederick's actions?

- Yes
- No
- Need More Facts

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Hypothetical 3 - The IT Specialist

Phillip worked as an IT specialist in the IT Support Program for a large law firm in Oregon.

One day **Phillip** witnessed a **senior partner** making **lewd comments** to a **new associate attorney, CJ**. The senior partner proceeded to **slap** CJ's backside.

The CJ was **visibly uncomfortable**, but did not tell the senior partner to stop.

Hypothetical 3 - The IT Specialist

If you were Phillip what would you do?

- jump in and defend?
- mind his own business?
- report to Managing Partner?



Hypothetical 3 - The IT Specialist

Phillip complained to the **Managing Partner**, who was responsible for HR matters and who supervised the IT Support Program. The Managing Partner agreed to investigate the matter.

Two days later, Phillip was fired due to a “lack of work.” Phillip was surprised by this, as the IT Support Program was actively growing, and he had received two very positive performance appraisals at six months and one year from hire.

Hypothetical 3 - The IT Specialist

Does Philip have a case for retaliation?

- Yes
- No
- No, but he has a case for a hostile work environment

Hypothetical 3 - The IT Specialist

The EEOC says a valid retaliation claim must consist of three elements:

- An employee's participation in a protected activity — generally a complaint of discrimination or harassment.
- An adverse action taken by the employer/manager against the employee.
- A causal connection between the protected activity and adverse action.

<https://www.eeoc.gov/laws/types/retaliation.cfm>

Hypothetical 3 - The IT Specialist

Does Philip have a case for retaliation?

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PRACTICAL APPLICATION



Tips for Lawyers on Establishing Best Practice
Non-discrimination Policies



NON-DISCRIMINATION & HARASSMENT POLICIES

Common Issues

- General statement of legal requirement
- Written for lawyers

Best Practices

- Specific, clear, readable
- Written for employees
- Dignity and respect feature prominently
- “Everyone has the right to . . .”



YOUR OFFICE CULTURE

What's more important than a well-crafted non-discrimination and harassment policy?



Office Culture

- Leadership sets the culture
- Managers are educated on cultural competency and harassment policies
- Staff is trained on the policies
- Emphasize clear and open communication
- Respect and Dignity is the key



Business Considerations (Why is this Important?)

- Loss of productivity
- Reputation of the Firm
- No Employee Loyalty
- Destroys a Culture of Respect
- Employees feel Unappreciated
- Increased Absenteeism
- Can Cost a Firm a Lot of Money
- **It's the Right Thing to Do!**

Resources

- Related Statutes:
 - Federal: [Title VII](#), [Equal Pay Act of 1963](#), [Sexual Harassment CFRs](#), [FMLA](#).
 - Oregon: [ORS 659A et seq.](#), [ORS 652.220](#), [OAR 839-005... et seq.](#)
- Sample Policies:
 - [I.L.O. Sexual Harassment Policy](#), [EEOC Policy Guidance](#),
 - [DAS State HR Policy](#).
- BOLI Resources:
 - [Sexual Harassment FAQ](#), [Equal Pay](#), [Protected Classes](#), [General FAQ](#).
- Articles:
 - [Sexual Harassment Law Firm Sued for Sexual Harassment](#).
 - [Ex-Employees Sue Nike, Alleging Gender Discrimination](#).
- David C. Noland, HRCentral Corp., (800) 574-3282, hrcentral.com