

Don't Let It Happen to #YouToo: A Study of the #MeToo and TimesUp Movements' Impact on Public Safety Agencies

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#MeToo Era

Ushered In October 15, 2017



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Follow

If you've been sexually harassed or assaulted write 'me too' as a reply to this tweet.

Me too.

Suggested by a friend: "If all the women who have been sexually harassed or assaulted wrote 'Me too.' as a status, we might give people a sense of the magnitude of the problem."

1:21 PM - 15 Oct 2017

17,148 Retweets 34,596 Likes



Notable Incidents of Harassment Since #MeToo



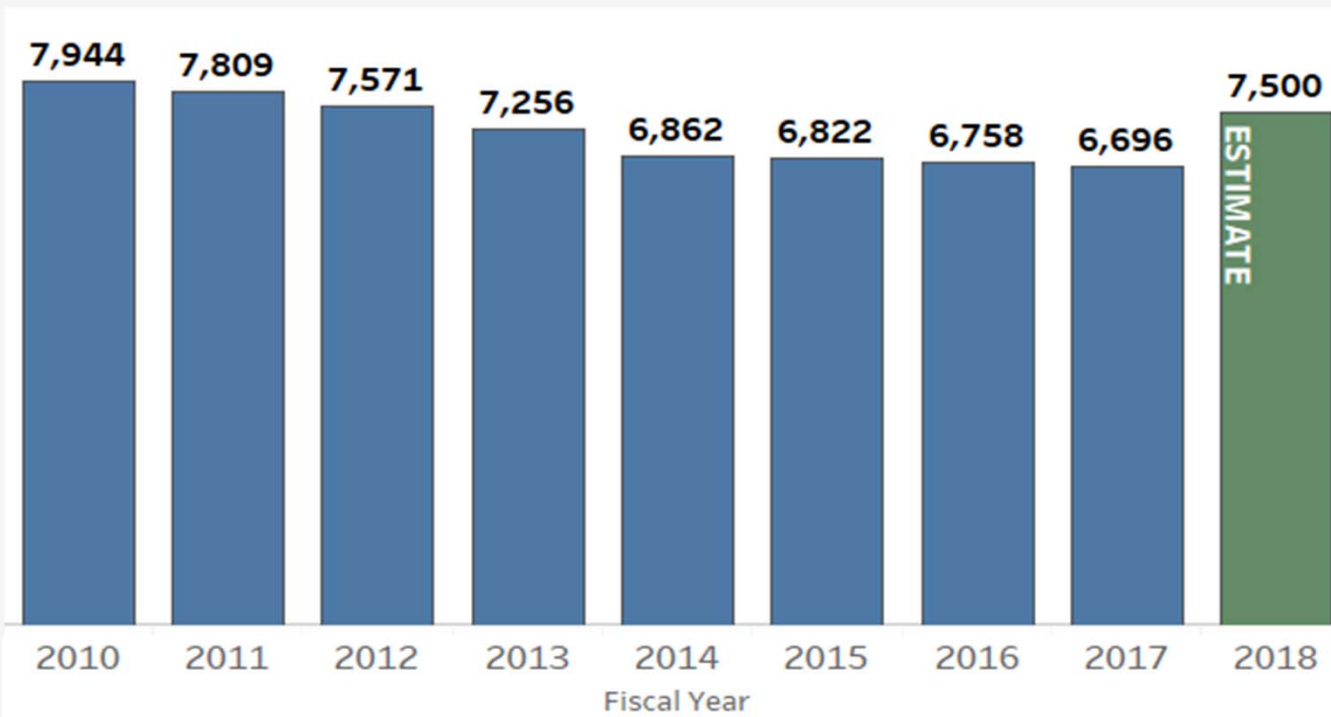
Harassment Happens

- A survey conducted by a nonprofit called Stop Street Harassment reports that 81% of women and 43% of men had experienced some form of sexual harassment during their lifetime.

Sexual Harassment Reported to the EEOC

EEOC Charges Of Sexual Harassment Climb

For the first time this decade, the U.S. Equal Employment Opportunity Commission had an increase in sexual harassment complaints.



Source: U.S. Equal Employment Opportunity Commission

Action by the EEOC in 2018

41

sexual harassment lawsuits were filed in fiscal year 2018, a 50 percent increase from FY2017.

Reports to the EEOC in 2018

- EEOC reports 12% increase in the number of sexual harassment complaints filed from the prior year
- EEOC on #MeToo: “We are at a transformative moment in our history, and the EEOC will be part of making that history.” – EEOC Commissioner, 10/4/18
- EEOC has a harassment prevention action team and has developed “respectful workplaces” training

Purpose of the #MeToo Movement

- 2006: To empower women through empathy
- 2017: To reveal sexual harassment
- Reaction to prevalence of sexual violence
- To help society understand the magnitude of the problem
- Believe the stories of women and men who have been subjected to sexual violence

#TimesUp Era

Ushered in January 1, 2018

- Purpose: to support those who have less access to media platforms and funds to speak up about sexual harassment and sexual assault
 - Legal defense fund established
 - Advocate for legislation to punish companies that tolerate harassment
 - Gender parity

Backlash to #MeToo and #TimesUp

- Guilt assumed without due process
- Undefined or unclear purpose
- Re-traumatizing victims
- Lack of diversity

California Legislature Responds to #MeToo and #TimesUp

AB 2770 – Privileged Communications for Employee Sexual Harassment Complaints

- Civil Code 47 provides employers defense to defamation for factual information provided for current and former employees to prospective employers
- AB 2770 expands this privilege as follows:
 - Complaints of sexual harassment made by an employee without malice to an employer based on credible evidence
 - Communications without malice between an employer and interested persons regarding sexual harassment complaint, and/or whether employer would rehire based on determination of employee engaged in sexual harassment

New Laws to Impact Settlement Agreement Confidentiality

- **AB 3109**
 - Prohibits contract or settlement agreement entered into **after January 1, 2019** from limiting or waiving right to testify concerning alleged criminal conduct or sexual harassment
- **SB 820**
 - Prohibits settlement agreements entered into **after January 1, 2019** from containing confidentiality provisions related to allegations of sexual harassment
- **SB 1300**
 - Prohibits confidentiality agreement or non-disparagement agreement as condition of employment. Also prohibits waiver of FEHA claims unless voluntarily negotiated

SB 1300 – Multiple Changes to FEHA Discrimination/Harassment Laws

- Amends FEHA Discrimination/Harassment Laws
 - “Severe or pervasive” legal standard rejected and single incident of harassment can create liability
 - No variance in liability for harassment based on work environment
 - Establishes legislature’s intent that harassment claims are rarely appropriate for summary judgment
 - Limits employer’s ability to recover attorney’s fees
 - Option for employers to provide bystander intervention training

SB 1343 – Expansion of Training

- Expands harassment training requirements to nonsupervisory employees **by January 1, 2020:**
 - Requires one (1) hour of harassment training for nonsupervisory employees every two (2) years
 - Trainings must be provided to nonsupervisory employees within six (6) months of hire
- Seasonal/temporary employees (hired to work less than six (6) months) – **beginning January 1, 2020:**
 - Requires one (1) hour of harassment training within 30 calendar days of hire or first 100 hours worked, whichever comes first

What is Sexual Harassment?

Quid Pro Quo

PREVENTION THROUGH KNOWLEDGE



Hostile Work Environment

Elements of “Environmental” Harassment:

- Protected classification
- Physical, verbal, or visual conduct
- Objectively and subjectively offensive (unwelcome)
- Severe **or** pervasive
 - MSJ will be more difficult after SB 1300
- Unreasonably interferes with work

Gray/Borderline Areas

- “Private” and “consensual” relationships between supervisors and subordinates?
(***Warning:*** Not for long!)
- Off-duty conduct
- Invitations to lunch, drinks or dinner
- References to appearance or dress
- “Casual” touching of non-intimate parts of the body

How to Handle Complaints of Harassment

Not Like This



Have a Good Policy

- Have a clear Complaint Reporting Process
- An anti-harassment policy and complaint procedure should contain, at a minimum, the following elements:
 - A clear explanation of prohibited conduct;
 - Assurance that employees who make complaints of harassment or provide information related to such complaints will be protected against retaliation;
 - A clearly described complaint process that provides accessible avenues of complaint;
 - Assurance that the employer will protect the confidentiality of harassment complaints to the extent possible;
 - A complaint process that provides a prompt, thorough, and impartial

Conduct Prompt & Thorough Investigation

Investigative Duties

- Legal duty to conduct investigation
 - Regardless of subject
 - Regardless of complainant's cooperation
- Authority to conduct investigation
 - From Council or Board

How to Prepare for Investigation?

Retaining the Investigator

- Attorney investigator
 - Attorney-client privilege
 - Work-product doctrine
- Private investigator
 - Cost efficient
- Appointing/hiring investigator
 - City Manager or Legislative Body?

What is the Investigative Process?

Investigative Process

- Coordinates with criminal investigation
- Gathering facts
 - Documentary and physical evidence
 - Interviews (Multiple)
- Evaluating facts
- Reporting
- Rules applicable to investigation

What Happens After Investigation?

Corrective Actions

- Remedial measures
 - Discipline of subject
 - Making Complainant whole
 - Restoration of leave?
 - Apology by harasser?
 - Monitor workplace
 - Training of supervisors
 - Revise policies to address the misconduct
- Protect against retaliation

Opportunity for Cultural Change

Key Way to Reduce Incidents of Harassment

- Recruit more women
- Workplace defined by civility, professionalism, and respect
- Never play favorites
- Report all complaints immediately
- Take all complaints seriously
- Monitor the workplace
- Follow the agency's policy
- Be a good role model!

Thank You!

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