

POLICY BRIEF | VISITING SCHOLAR SERIES

SEXUAL HARASSMENT IN THE POST-WEINSTEIN WORLD

By: Professor Joanna Grossman

Dr. Joanna Grossman spoke on October 30, 2018 at Tower Center sponsored event, “Sexual Harassment in the Post-Weinstein World.”

The #MeToo Movement of 2017, in which millions of women shared on social media that they had been victims of sexual harassment or assault, led to the downfall of over 200 high-profile men. But has anything really changed?

Employers have always treated sexual harassment like a legal problem. They manage risk of harassment liability like the risk of a fire or a workman’s compensation claim. Employers turn to policies, procedures, and training as the means of preventing and responding to sexual harassment because those are the things that courts reward when assessing liability. These measures, however, neither demonstrably reduce the likelihood of harassment, nor guarantee an effective corrective response.

The #MeToo movement has caused the landscape to shift. Employers and other institutions must now assess the risk of harm from public disclosure—and shaming—of sexual harassment problems separate and apart from lawsuits. For a typical employer, the damage from a high-profile outing on social media or in the newspaper would dwarf the damage from a lost civil rights arbitration or lawsuit, or the cost of a secret settlement. As Catharine MacKinnon observed in a recent New York Times editorial, “[T]he #MeToo movement is accomplishing what sexual harassment law to date has not.”

Sexual harassment remains prevalent, despite decades of efforts to stop it. A 2016 report of an EEOC Task Force found that 60 percent of American women surveyed reported having experienced sex-based harassment. Harassment often occurs in tandem with sexist remarks and hostility, and the majority of bullies are also men. There are many obstacles to change in the sexual harassment context. Policies and procedures are not self-executing. A core problem is that the typical employer’s approach to preventing and correcting harassment relies on victim reporting—a system endorsed and incentivized by the Supreme Court in a series of cases about sexual harassment liability. But most harassment victims do not report; it is their least likely course of action. Women who do not report harassment cite futility—the belief that nothing will be done to fix the situation—and the fear of retaliation as their primary reasons for keeping quiet. When a woman makes this calculation and concludes that the benefits of reporting are outweighed by the costs, she is often right. Studies show that discrimination victims who file formal complaints end up worse off than those who don’t.

#MeToo has made it easier for women to come forward and increased the chance that they will be believed. But it has also triggered a backlash that results in even greater rates of gender sidelining—where men limit unstructured contact with women at work. This is actionable discrimination, but hard to prove; it can be devastating to a woman’s career, especially in professional settings when success often depends on networking, mentoring, and interpersonal relationships.

Will #MeToo result in lasting change for working women?

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Questions? Reach out to Professor Grossman at:

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