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#metoo, Part Two

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#ME TOO, PART 2
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"Me Too" is a phrase coined in 2006 by activist Tarana Burke to further a social movement against sexual abuse and sexual harassment. The phrase was meant to empower women by breaking the silence and showing empathy to survivors.

The movement was fueled by a succession of allegations against well-known men in the entertainment business and an October 15, 2017 tweet by actress Alyssa Milano saying "*If all the women who have been sexual harassed or assaulted wrote 'Me too' as a status, we might get a sense of the magnitude of the problem.*" Other female celebrities chimed in, as well as millions of women around the world, making #metoo the means to a visible headcount of how many women had survived sexual assault and harassment, including in the workplace. The movement was named Time magazine's "Person of the Year" in 2017 with the subtitle "The Silence Breakers."

While the names and back stories of the accused and their victims, including eye-popping settlement amounts, received a lot of attention there was less attention paid to the reckoning which was going on in legislatures and city councils across the U.S. "Sex sells" when it comes to media coverage and the drafting and enactment of legislation is not sexy. However, both employees and employers need to be aware of these new obligations and rights. Some are aimed at preventing sexual harassment in the workplace, via written anti-harassment policies, displayed posters and training programs. Some are aimed at expanding a victim's recourse after harassment has occurred, by extending limitations periods for filing administrative claims, criminal complaints and civil lawsuits. Some are aimed at dismantling the "sweep it under the rug" culture by banning nondisclosure agreements and jury trial waivers and forcing employers to report incidents to state agencies. Some protect procedural and substantive rights by restricting or eliminating waivers of such rights. Some expand the reach of the law, by changing the definition of covered employers, protected employees or both. Some are industry-specific and aimed at protecting vulnerable employees working alone in hotel guest rooms and restaurant employees whose jobs expose them to bawdy patrons whose uncivil behavior is often fueled by alcohol consumption. The prize for most unique new law may go to the State of Oregon, which allows employers to void managers' "golden parachute" provisions in their employment agreements if they are discharged from employment, following the employer's good faith investigation, for violation of the OR Workplace Fairness Act. Some have a laser-like focus on sexual harassment and sexual assault while others opted to go broader and encompass all protected categories under employment discrimination laws.

This paper provides a compilation of these laws including weblinks to access the forms and information needed to comply with the stated requirements.

MODIFICATION OF CORPORATE TAX LAW

One of the earliest tangible changes in response to #metoo was via the Tax Cuts and Jobs Act (26 USC sec. 162), which amended the tax code, effective December 22, 2017, to disallow deductions for any settlement payment or attorneys' fees "related to sexual harassment or sexual abuse if such settlement or payment is subject to a non-disclosure agreement." This change was meant to reflect Congress' intent that "[c]orporations should not be allowed to write-off workplace sexual misconduct as a normal cost of doing business" if they choose to hide the misconduct via a non-disclosure agreement (aka NDA).

MANDATORY HARASSMENT POLICY OR NOTICE OF EMPLOYEE RIGHTS

CA – Employers must have a written harassment, discrimination and retaliation policy which includes ten required elements. In addition, employers must distribute a fact sheet on sexual harassment. Model facts sheets in English, Chinese, Korean, Spanish, Tagalong and Vietnamese are available at https://www.dfeh.ca.gov/Posters/?openTab=1. The CA Department of Fair Employment Housing notes that either the fact sheet or the poster (also available at this address) can be distributed to employees to satisfy this requirement.

CT – Effective October 1, 2019 employers with three or more employees must post in a prominent place and provide employees a copy of information regarding the illegality of sexual harassment and available remedies within three months of the employee's start date. A sample notice is available at https://portal.ct.gov/-/media/CHRO/Sexual-Harassment-Prevention-Training/Sexual-Harassment-Written-Materials-English.pdf. The employer is to send the information to employees via email with a subject line that includes "Sexual Harassment Policy" or similar words if the employer has provided the employee with an email account or if the employee has provided the employer with a personal email account. If there is no email account, the employer is to post the information on the employer's Internet website, if any. Other means to comply with this requirement is to provide the employee with the link to the CT Commission on Human Rights and Opportunities' website's discussion of this topic, via text message or in writing.

DE – Effective January 1, 2019 employers of four or more employees in DE are to distribute a Sexual Harassment Notice to all new hires upon commencement of employment and to existing employees no later than July 1, 2019. The notice is available at https://dhr.delaware.gov/personnel/neo/documents/sexual-harassment-notice.pdf.

DC – Effective November 1, 2020 the mayor of D.C. is required to create a website communicating employees' rights under various D.C. laws and employers must print copies of the information posted on the website and compile it in a single source, such as a binder. Employers must place the binder in every break room and at every time clock. Employers must also check the website for new information and update the binder each month. The D.C. government can assess a fine of $100 per day that an employer does not comply with the binder requirement.

IL – The Workplace Transparency Act requires restaurants and bars to maintain a written policy on sexual harassment. These employers must also provide industry-specific sexual harassment prevention training addressing specific conduct and explaining individual liability of managers. This training must be available in English and Spanish. See Mandatory Training, below, for a link to the enforcing agency's model harassment training materials.

IL (Chicago) – The "Hands Off Pants On" ordinance requires hotels to have an anti-sexual harassment policy by January 7, 2018 which is designed to protect employees against sexual assault and sexual harassment by hotel guests. The ordinance includes the elements of a complaint policy, such as offers of temporary reassignment of the employee during the offending guest's stay at the hotel and paid time off to file a police report or testify as a witness. A copy of the ordinance is at https://export.amlegal.com/api/export-requests/8cb68697-fb18-4929-9d10-6c03fb106372/download/.

IA – The IA Department of Administrative services is responsible for the distribution of this policy to executive branch agencies, who are required to provide it to new employees at the time of hiring or

Title search: #MeToo, Part 2

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