

EMPLOYER'S LIABILITY AND THE #ME TOO MOVEMENT

The #Me Too movement was founded in 2006 to empower female survivors of sexual violence. With the addition of a hashtag on social media in 2017, its presence grew exponentially, and it is now recognized as a major force against sexual assault and harassment by increasing awareness, and creating a community of support for survivors.

➔ *Has the #ME Too movement affected employment liability claims?*

Employment Liability refers to a group of exposures including, wrongful termination, discrimination, harassment and retaliation that arise from the employment process. The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate at work or during the employment process because of an individual's personal characteristics, including sex. In New York, employees can also file charges with the New York State Division of Human Rights.

Total charges for all types of discrimination to the EEOC nationwide dropped 6% from 2017 to 2018 with sex-based charges (unfavorable treatment based on a person's sex) decreasing 4%. The decrease in sex-based charges does not show the entire picture; the EEOC reports a 13.6% increase in sexual harassment charges in 2018 as well as a large increase in financial recoveries for victims of sexual harassment. The 7,609 charges for sexual harassment in 2018 was the highest in the past eight years, ending a downward trend that began in 2012.

The New York Environment

The Me Too and other movements are having an effect in New York.

- In 2018, New York bucked the national trend, with a nearly 12% increase in sex-based charges in 2018.
- The State adopted legislation in 2018 mandating sexual harassment training for all employees. Employer policies must include information about federal and state laws, sexual harassment procedures for investigating complaints, preventing retaliation and other items.



- In January, the New York State Legislature passed the Child Victims Act, extending the statute of limitations in civil child sexual abuse cases. This significantly increases the liability for not only perpetrators but their employers, who are viewed as deep pockets defendants, possibly with insurance coverage for claims. Although this law does not involve sexual harassment *per se*, it further highlights the harmful effects of aberrant sex-based behavior.

Employers Liability - Prevention is the Key

Besides the risk of claims and lawsuits, employers face other exposures:

- Lost staff time needed for investigations, depositions and interviews
- Reputational risk
- Uninsured damages – such as fines and penalties
- Negative effect on morale

Employers can take measures to reduce the likelihood of sexual harassment claims.

Recommendations from the EEOC and best practices include:

Ensure that employment decisions are not based on sex	Train staff	Maintain accurate employment records
Respond and stop illegal harassment when it occurs	Promptly respond to employee complaints	Check in with staff – in the office and on jobsites
Make sure supervisors know their responsibilities to prevent and stop harassment	Fairly investigate complaints	Provide equal pay

Sexual harassment and other employment-based claims occur in every industry. Juries are sympathetic to claimants with credible claims and damages and seven-figure verdicts are not uncommon. Developing and implementing a workplace anti-harassment program that trains and engages staff, treats everyone equally and promptly responds to and fairly investigates complaints is the best way of preventing incidents of discrimination and harassment.

The information contained herein is provided to help readers learn about employment practices liability exposures. It is not intended as legal advice, nor does it address every situation, exposure or issue. Please consult with your attorney or other professional before enacting any policy or procedural changes.