



Amy Clem, M.B.A.

ROSE CITY SHRM

**VP OF LEGAL & LEGISLATIVE
AFFAIRS**



“The effect of the #MeToo movement on Human Resources: Defining Sexual Harassment, Harassment, & Bullying in the Workplace”

As HR professionals, we are inundated by employees often regarding complaints of all different shapes and sizes. Many are very serious and others are, let’s face it, an attempt to save a job. Because there is a vast difference between the two extremes, we are tasked with the nearly impossible mission of investigating and determining whether or not a policy or law has been violated, then acting accordingly. I learned several years ago when an employee files a complaint to first go to company policies and local, state, and federal laws to determine whether or not there is the possibility of a violation of policy or law. But, as we all know, there isn’t necessarily a policy for all actions taken by an employee. Therefore, you have to be mindful of the situation, individuals involved, and certain terms and definitions in order to make a judgement call as to whether or not the allegations would constitute a policy violation.

Regarding the current #MeToo movement, questions have begun to arise as to how this is affecting the environment of Human Resources. Dealing with sexual harassment in the workplace is certainly not a new challenge, but with most workplace scenarios, awareness can open the door to an increased volume of complaints and discussion. As I am sure we can all agree, sexual harassment is horrible and should never occur within the workplace, or any place for that matter. That being said, since we live in an imperfect world, we know these type of situations will present themselves, and it is up to HR professionals to deal with them quickly and appropriately in an attempt to stop the behavior and prevent it from happening again in the future. We must investigate, ask questions to both the complainant, defendant, and witnesses, if any were present (which is rare), gather as much information as possible, and take into consideration the character of the individuals, in order to determine if there is more evidence than not that a violation of policy or law has occurred. All while having a non-biased/neutral perception of the situation at hand and allowing due process for all parties involved. To say this is a difficult position to be in would be an understatement.

With many women in society today speaking out against sexual harassment, whether internal or external to the workplace, awareness is on the rise and more females, I believe, are becoming increasingly empowered to speak up and make their complaints known. I personally witnessed this phenomenon several years ago when awareness increased regarding the definition of Title IX offenses and the awareness of mechanisms put in place for students, staff, and faculty to voice their concerns. Complaints rose significantly and in turn, increased the workload for the HR department.

With awareness increasing regarding complaints of harassment, I believe one of the many duties of HR professionals is to ensure several definitions revolving around specific terms are made known in order for proper procedures to be followed.

There have been many times in my professional career in which employees have come to me to file a complaint of “harassment” in the workplace. Through further conversation, I began to realize that the employee was essentially confused regarding the definition of “harassment” as well as “sexual harassment”, and “bullying”. Because the lines can blur regarding these definitions, distinctions have been made below to differentiate between these terms.

Sexual Harassment & Sexual Misconduct:

According to the Equal Employment Opportunity Commission, sexual harassment is: "Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment". Actions tend to fall under a “harassment” category if they are pervasive in nature. Therefore, it is not necessarily considered harassment if one comment is made regarding a woman’s appearance that was inappropriate. Could it be considered harassment? Absolutely. However, it depends on many different factors such as: the situation, the comment itself, whether or not comments of this same nature have been made to others, and so on and so forth.

There is also the category of “sexual misconduct”, which is defined as unwelcome actions of a sexual nature that don’t necessarily fall under the category of “sexual harassment” due to the type of action (indecent exposure, streaking, inappropriate jokes/innuendos, persuasive comments...) and is typically of a lesser nature than felony sexual assault. It is also typically not pervasive or a pattern of the accused.

Sexual misconduct could also be relationships of a sexual nature that are not encouraged, and sometimes prohibited, due to the position and hierarchy of the employees. For example: doctors and patients, teachers and students, and supervisors and subordinates.

This is why having a Consensual Relations policy is crucial in the workplace as it will have strict policies and guidelines that must be followed should any of these types of consensual relationships occur.

Harassment:

In taking a look at harassment in general, these actions do not have to be of a sexual nature. Harassment is, again according to the EEOC, “unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information”. Of course several acts pertaining to harassment and discrimination that all HR professionals must be well versed are: Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA).

Harassment can include offensive jokes, name calling, physical assaults or threats, intimidation, displaying offensive objects or pictures in the workplace, or other similar actions deemed unwelcome to the protected party at hand. Harassment should never be tolerated in the workplace and can lead to the creation of a hostile work environment, which you certainly do not want in your organization.

Bullying:

In regard to bullying, there are many companies currently who have implemented “no bullying” policies in the workplace. The National SHRM chapter even has a template that organizations can use to create a policy (see link below) that defines behavior that constitutes bullying, includes a statement that bullying is not to be tolerated in the workplace, and lists the procedures involved should an incident occur. Bullying can include comments made to an individual, or group of individuals, that could isolate a person in the workplace or hurt them from a mental standpoint. It can also include repeated incidents that intend to intimidate, degrade, or humiliate a person or group of people, including but not limited to, yelling, profanity, and undeserved punishment of an employee.

https://www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/cms_018350.aspx

Depending on the scenario, the situation could escalate to harassment or even the creation of a hostile work environment. Therefore, it is best to ensure the behavior ends immediately.

For many employees though, confusion is created when they believe, due to their supervisor's tone of voice or disapproval of their work product or other factor(s), that they are being bullied. This is not necessarily the case. Yes, there are managers in the world who are just plain mean. And unfortunately, being "mean" isn't against the law. This in and of itself doesn't always equate to being a "bully". But, could it lead to bullying? Certainly. And if the behavior continues to escalate, you might end up with a law suit on your hands for perfectly good reasons. Therefore, stopping the undesirable behavior and implementing appropriate actions efficiently and effectively are a key function for Human Resource professionals.

So what now? What can we as HR professionals do to prevent sexual harassment, harassment, and bullying in the workplace? I believe we first have to train employees and make them aware of these definitions and the laws involved in order to create understanding of not only what behaviors should be avoided, but the consequences if they are exhibited. Then, we must provide ways for complaints to be voiced through comfortable mechanisms, and act quickly when complaints are received to resolve the situation effectively. We also as HR professionals need to handle investigations appropriately and thoroughly and be well versed in the legislation revolving the issues at hand. And last, but certainly not least, we need to be accessible, available, and approachable. Gain the trust of your employees and they will reach out for your feedback, respect your opinion, and have faith in your crucial decision making abilities, even during tough situations that may arise on the job.

When these characteristics align, I believe we can not only exhibit a positive perspective of HR to our employee populations, but we can also continue to support the ongoing need of the existence of HR professionals in the working world.