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The Fear of #metoo claims: What clients need to know

Sexual harassment accusations came out against Harvey Weinstein in Oct 2017. Over the next few weeks, over 80 females made accusations of harassment against Weinstein. As a result of these allegations, Weinstein was ousted from his company, and only a few months later, in March 2018, Weinstein's company filed for bankruptcy. In the wake of the Weinstein accusations, over 40 Powerful men have been accused of sexual harassment with painfully embarrassing headlines and dire consequences to their careers as a result. A list of some of the "accusees" include:

- Steve Wynn (CEO)
- James Toback (Director)
- Mark Helperin (Journalist/ABC)
- Michael Oreskes (Editor NPR)
- Kevin Spacey (Actor)
- Ben Affleck (Actor)
- Mario Batali (Celebrity Chef)
- James Franco (Actor)
- Charlie Rose (TV host/ journalist)
- Al Franken (Senator)
- Matt Lauer (NBC News)
- James Levine (NY Met Opera)
- Dustin Hoffman (Actor)
- Jeremy Piven (Actor/Dir.)
- Peter Martins (Dir. of NYC Ballet)
- Charles Dutoit (Conductor London Phil)

With all these hot harassment headlines, employment practices liability has been put back in the lime light. These recent cases highlight the fact that sexual harassment is still alive and well in Hollywood, and far more prevalent in varied industries all across the nation than had been suspected. With this in mind, are these sexual harassment allegations only the tip of the Iceberg? Are the flood gates going to open and are more and more women going to feel empowered to come forward and tell their own stories? The power and momentum of the #metoo movement certainly seems to indicate that there are more allegations to come.

What does this mean for employers? Anyone with skeletons in the closet be wary! Even when the statute of limitations on a civil actions has expired, many alleged victims are lodging complaints against former employers looking for vindication in the media, not in the courtroom. In their minds, destroying the alleged harasser's reputation is more satisfying than a legal victory. So be prepared for the possibility of former employees lodging allegations regarding harassing conduct going back many years.

What should employers do in response to this movement? Consider advising your clients in the wake of Weinstein:

- ✘ Institute new Training Requirements: Better prepare management to identify inappropriate conduct & respond immediately
- ✘ Change/Adjust Reporting Protocols (multiple people, outside chain of command, outside vendor, neutral 3rd Party, Hotline)
- ✘ Reporting should be "SAFE"– Employees should not fear consequences for reporting. Reporting a complaint should not be seen as a career ending move.
- ✘ Workforce should have culture of "calling out" any and all bad behavior when it happens. Everyone has a hand in preventing inappropriate behavior.
- ✘ Review, Update, Redistribute and Reinforce your Sexual Harassment policy.

Client should be prepared in the wake of Weinstein to carefully address any allegations that might arise. Employers should be ready to:

- Show due diligence (sticking your head in the sand no longer works and is not a defense) Training! Document! Promptly address!
- Know that policies only mitigate risk if enforced and enforced equally
- Fear of consequences is a great deterrent – make consequences real (and enforce)
- Use of external 3rd party ombudsman ensures equality and consistency when handling complaints. Consider this in your workplace.

And of course, consider purchasing a robust EPL policy, or increase the limits of your current EPL policy. If you have any questions regarding EPL insurance, acquiring an appropriate EPL Policy or higher limits for existing clients, please do not hesitate to contact your Socius Producer.