#MeToo:
5 Ways to Protect Yourself [Your Company] from Bullying and Sexual Harassment in the Workplace

October 10, 2018
• Intro: Increase in State and Local Laws
  1. Changes to Sexual Harassment Policy
     – Addressing allegations of off duty misconduct
     – Creating an effective sexual harassment training program
  2. Parity in Disciplinary Decisions
     – Creating a no pass environment
     – When firing the accused presents extreme challenges
  3. When and How to Involve a Corporate Board
  4. Preparing For and Dealing With Media Attention
  5. Engaging Independent Counsel
  6. Extra: Other Issues Companies Should Be Thinking About
     - Settlement costs vs. public pressure
     - To have a nondisclosure agreement or not
Increase in City/State Laws: Overview of NYC’s Stop Sexual Harassment Act

• Effective **April 1, 2019**
• Private employers with 15 or more employees (including interns)
• Annual interactive anti-sexual harassment training for all employees
  – Explanation/statement sexual harassment is unlawful locally and state and federal law
  – Unlawful discrimination under state and federal law
  – A description of sexual harassment and examples
  – Internal employer, local, tat processes regarding sexual harassment complaints
Increase in City/State Laws: N.Y.S. Requirements

• Effective October 9, 2018

• Mandates all employers adopt sexual harassment prevention policies and training, which includes:
  – An explanation of sexual harassment
  – Examples of unlawful sexual harassment conduct
  – Information about federal and state statutory provisions regarding sexual harassment and available remedies for victims of sexual harassment
  – Information regarding employees’ rights of redress and all forums for adjudication
  – Conduct and responsibilities of supervisors

• Additional provisions of the law
What, if any, Changes Should Be Made to Your Company’s Sexual Harassment Policy

- Addressing uncomfortable/inappropriate behavior
- Addressing off duty misconduct
  - Social events, non-company sponsored events
  - Domestic violence allegations
- Addressing non-employee misconduct
- Contractors, customers, clients, vendors, etc.
- Creating an effective sexual harassment training program
  - Online/video vs. in-person training
  - Timing – onboarding, annual, semi-annual, amid allegations
How to Achieve Parity in Disciplinary Decisions in the #MeToo Era

- Creating a no pass environment
  - Top down buy-in
  - Disciplinary guidelines
- When firing the accused presents extreme challenges
  - Meaningful disciplinary action
  - Protecting the accuser
#CToo:
View from the Top and When to Involve the Board

- Involving the board
  - Allegations against c-suite members, board members themselves
    - Impact on succession plans as designees are removed
    - Risk of negative publicity
    - Training
- Monetary and Nonmonetary Risks
- Increased ESR activist campaigns around board and executive diversity
  - Building on pre-existing efforts, but now fueled by #MeToo
Preparing for and Handling Media Attention

- Act to protect the brand
- Work with PR on press releases, social media messages
- When to Hire a Risk Management Firm
- Be prepared to be more transparent
  - ALWAYS report back to complainant
  - Importance of thorough investigations
  - Realize the curtain has been lifted
When to Engage Independent Counsel to Investigate Allegations of Sexual Misconduct

• Consider engaging independent counsel when:
  – There is evidence of a pattern or practice of misconduct
  – The conduct at issue involves corporate leadership, a board member, a member of the HR team, or someone with authority over the investigation
  – In-house counsel have legal as well as managerial responsibilities over anyone involved in an investigation, thus raising issues of confidentiality and privilege

• If there are allegations or concerns that the company mishandled past complaints, consider conducting a broader investigation to review:
  – Policies and training
  – Historical responses to allegations of sexual misconduct
  – Corporate culture
Other Considerations for Companies Facing Sexual Misconduct Allegations

• Shareholder Derivative Lawsuits
  – Public companies face the risk that sexual misconduct allegations will negatively affect their stock price, leaving the company vulnerable to shareholder suits

• Nondisclosure Agreements
  – In addition to increased public scrutiny, several states have passed or are considering legislation to limit or ban the use of ndas in sexual harassment-related disputes

• Settlement vs. Public Pressure
  – Weigh the costs of settling claims implicating high-level employees accused of misconduct against the public pressure to deal transparently with serious or entrenched misconduct
Questions
Thank You!