

Robinson+Cole

# Manufacturing Law Group

**Roundtable Discussion**

March 1, 2018



Robinson+Cole

# Sexual Harassment Involving and Impacting Executives

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## Please Note

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This roundtable is designed to provide accurate information about the subject matter. However, it only provides general information and does not constitute legal advice. No attorney-client relationship has been created. If legal advice or other assistance is required, let us know directly.

# Preliminary Considerations

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- This platform should not be used for activities prohibited by antitrust law.
- Avoid discussions leading to a restriction, or coordination, of competition between or among attendees.
- Attendees should not share information, have discussions and/or make arrangements on, among other things, pricing, market conduct, terms of sale, individual manufacturing costs and costs of sale, output, or supplier or customer relations/allocation.

# Topics

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- Sexual Harassment in the News
- EEOC Statistics - 2017
- Common Missteps
- Good Practices
- Investigating Sexual Harassment Issues
- Special Issues
  - Romance Involving the Executive Team
  - Electronic Communications
- Questions

#metoo



# Sexual Harassment in the News

#metoo

- #MeToo and Time's Up Movements
- Celebrities, Politicians, Businesspeople, etc.
- News and Social Media
- Impact on Workplace, Brand, and Reputation
- Backlash Against Women in Workplace
- Changes in Pay Equity/Salary History Laws
- State/Federal Law Changes Proposed



Harvey Weinstein and Heather Graham at a film party in 1999

The Boogie Nights actress told **Variety** she was once propositioned by Weinstein in the early 2000s when she met him to discuss being cast in one of his movies.

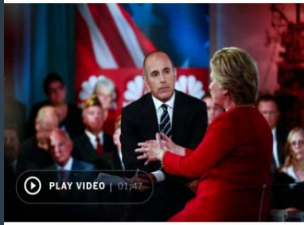
She alleges he tried to force himself on her and told her his wife would have been fine with it.

"He could sleep with whomever he wanted when he was out of town. I walked out of the meeting feeling uneasy.

"There was no explicit mention that to star in one of those films I had to sleep with him, but the subtext was there."

### NBC Fires Matt Lauer, the Face of 'Today'

By ELLEN GABLER, JIM RUTENBERG, MICHAEL M. GRYNBAUM and RACHEL ABRAMS  
November 29, 2017



**PLAY VIDEO** 01:47

#### Matt Lauer's Rise and Fall at 'Today'

The NBC host Matt Lauer has been fired over a sexual harassment allegation. He was one of the network's highest paid hosts.

By CHRIS CIBELLO on November 29, 2017. Photo by Doug Mills/The New York Times.

### Celebrity chef Mario Batali accused of sexual misconduct, steps away from restaurant empire




LANE TURNER/GLOBE STAFF

Celebrity chef Mario Batali spoke at his Eataly food court and stores in the Prudential Center in 2016.

### Eight women say Charlie Rose sexually harassed them – with nudity, groping and lewd calls

By Irin Carmon, Amy Brittain  
November 20, 2017 at 6:34 PM



Charlie Rose accused of making unwanted sexual advances

▶ 3:42

### Mass Firings at Uber as Sexual Harassment Scandal Grows

More than 20 employees are out after an investigation of 215 human-resources claims.

By MATA KOSOFF | JUNE 6, 2017 5:22 PM



# EEOC Statistics - 2017



U.S. Equal Employment Opportunity Commission

- EEOC Charges (1997): 80,680
- EEOC Charges (2017): 84,254

- Sex Discrimination Claims (1997): 30.7%
- Sex Discrimination Claims (2017): 30.4%

*Will these numbers spike this year given the #MeToo movement and social awareness involving sexual harassment?*

- Retaliation Claims Involving Title VII (1997): 20.3%
- Retaliation Claims Involving Title VII (2017): 38%

*Note: Even if the underlying charge is determined to lack merit, a retaliation claim can still prevail.*

# Common Missteps in Handling Complaints

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What are some of the common missteps that companies are making in handling sexual harassment complaints?



Hint: We have seen many of these missteps made by large companies in the news lately . . .

# Common Missteps in Handling Complaints



## 1. Failing to take complaints seriously

- “We all know he’s just like that. He doesn’t mean anything by it.”
- “It was just an informal comment; it wasn’t a formal complaint”

## 2. Overreacting to complaint without performing an investigation

- Firing CEO within 24 hours after the complaint was made
- Transferring VP after receiving complaint against him/her

## 3. Not interviewing respondent (alleged harasser)

- “Our stakeholders expect swift action so we fired him immediately.”

# Common Missteps in Handling Complaints



4. Allowing biases to impact investigation/response
  - “She put herself in that position by working closely with him and leading him on.”
5. Not following company policies
6. Not protecting employees from retaliation
  - “The manager told HR he fired her for performance issues, unrelated to her complaint. We believed him.”
  - “We can’t control the fact that other employees know he complained about her and as a result, have decided not to speak to him.”
7. Failing to communicate (or respectfully communicate) with the complainant/respondent
  - Closure is important for complainants and respondents

# Good Practices for Preventing Sexual Harassment



1. Review process by which the sexual harassment policy and complaint procedure are communicated to employees
  - Communicated in-person at orientation v. noted in the handbook
  - Method of communication conveys level of importance of policy
2. Train executives, board members, supervisors, and employees
  - Sexual harassment, professionalism, etiquette, ethics
3. Consider conducting study on company culture
4. Revise and, if necessary, update policies, practices, procedures, and workplace postings

# Good Practices for Preventing Sexual Harassment



5. Engage outside counsel for advice for complex issues
6. Avoid overreacting to complaints
  - For example, use administrative leave rather than taking immediate disciplinary action
7. Engage board in the complaint process/resolution
8. Review policies to ensure that action is taken consistent with those policies
9. *Ensure that HR is empowered to implement and maintain respectful/professional workplace policies/program and are fully supported by the executive team*

# Investigating Sexual Harassment



- Internal v. external investigator
- Maintaining attorney-client privilege
- Confidentiality
- Interviewing complainant, respondent, and witnesses
- Making credibility determinations
- Rendering recommendations and findings
- Determining policy violations
- Taking disciplinary or remedial action

# Special Issues – Romance Involving the Executive Team



- According to a survey conducted earlier this year by Fierce, Inc. (“Office Love & Friendship”) quoted by the Society for Human Resource Management, of 1,000 participants:
  - 25% of participants said they’d had a workplace romance and of that,
    - 40% were top-level people, such as owners and executives
    - 26% were middle-level managers
    - 25% were intermediate-level workers
    - The remainder were lower-level employees
  - 20% of the participants said they’ve observed relationships at work that they considered to be inappropriate

# Special Issues – Romance Involving the Executive Team



- Consider implementing a romance/relationship in the workplace policy
  - No relationships v. no relationships between supervisors/direct reports
  - Duty to notify
  - Love contract
  - Transferring/reassigning employees in a relationship
- Consider including “romance/relationship in the workplace” policy in board member policies, such as conflicts of interest/conduct
- Treat employees the same regardless of position/level
- Address relationships that begin to impact the workplace
- Executives and board members should avoid close personal relationships with employees
  - Avoid appearance of impropriety and favoritism.

# Special Issues – Electronic Communications

- Conduct/communications can now be recorded in some form and used as evidence of unlawful conduct

- Screen shots
- Video
- Text Messages
- Social Media
- Email



Let's Go Digital

- Workplace surveillance and monitoring
- Electronic communications policies





# Thank You

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