

A pineapple with its green crown sits in a field of vibrant green grass. The background is a clear blue sky with soft, white clouds. A white rectangular box with a dark teal border is centered over the image, containing the event title.

# THE HOSPITALITY LAW CONFERENCE: SERIES 2.0

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*Preventing and Responding to  
Harassment in the Hospitality Industry*

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**THE H<sup>HL</sup>OSPITALITY LAW**  
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# EEOC Numbers are Up – Again

- FY 2016
- 97,443 charges filed
- (6.5% increase over 2015)
- 585,000 calls to its toll-free number
- 160,000 pre-charge inquiries
- EEOC sees as reflecting significant public demand for its services



# Employers React to #MeToo Sexual Harassment Fallout

- The sexual harassment scandal that started in Hollywood and quickly spread to all corners of the country caused all employers to rethink their approach to training and compliance.



# #MeToo

- The publicity has revealed organizational cultures that have permitted systemic and pervasive harassment
- Time to examine your culture to ensure workplace free from harassment and does not embolden your employees to engage in unprofessional and hurtful behavior



# National Survey

- According to a 2015 Huffington Post survey:
  - Of 2,235 female employees – 1 in 3 had experienced sexual harassment at work
  - 42% of women in the food service and hospitality industry reported sexual harassment
  - Highest of any field



# UNITE Here Local 1 Survey – Chicago – April 2016

- Surveyed 500 female hotel and casino workers
- 58% of hotel workers and 77% of casino workers reported that they have been sexually harassed by a guest
- Only 33% reported harassment to a supervisor
- 43% said they knew someone who had reported and nothing changed
- 19% said they had received training from their employer on how to deal with sexual harassment by guests
- Of those that reported – 38% said they felt satisfied with the employer's response





# Reported Behavior

- Guests naked when they answered the door, exposed themselves or flashed
- Unwanted sexually suggestive looks or gestures
- Unwelcome sexual comment, joke or question
- Leaned over or cornered
- Pressured for a date or sexual favors
- Touched or tried to touch (kissing, grabbing, pinching, groping)
- Showed sexual picture or text
- Other unwanted sexual advances or harassment



# Harassment in the Hospitality Industry

- Government agencies believe industry has serious harassment problems
- In 2016 – 5,431 sexual harassment complaints filed by women
- Of the 2,036 claims that listed an industry – 12.5% came from hotel and food service industry
  - *More than any other category*



# Harassment in the Hospitality Industry

- Industry employs vulnerable employees
  - Foreign workers
    - According to National Restaurant Association – nearly 25% of restaurant employees are foreign-born v. 19% for the overall economy
  - Young workers



# Harassment – EEOC Task Force Findings

- A “jaw-dropping” moment – 30 years of corporate training has had little effect on preventing workplace harassment
- Of 90,000+ charges against employers – 1/3 related to harassment
- EEOC says 90% of harassment victims never file a legal complaint
- FY 2016 – EEOC recovered \$164.5 million for workers alleging harassment



# Key Findings

- Leadership and Accountability are critical (climate surveys, assess risk factors, hold front line and mid-level managers responsible for preventing and responding)
- Review policies and procedures (multi-faceted reporting procedures, anti-retaliation provisions, periodically “test” the reporting system)
- Training must change – too focused on avoiding legal liability
- EEOC will:
  - Launch an “It’s on Us” campaign (originally developed to reduce sexual violence in educational settings)
  - Outreach to Youth@Work



# Proposed Responses

- Restaurant Opportunities Center United (“ROC”) says the tipped minimum wage is a “primary driver of sexual harassment.”
- HERE advocating for:
  - mandatory panic buttons for housekeepers
  - banning guests who have sexually harassed employees



# Proposed Responses

- Tax reform law eliminates the ability of a business to take a tax deduction for any sexual harassment settlement that contains a confidentiality provision or a nondisclosure agreement.
- Bi-partisan introduced in Congress to exclude sexual harassment and gender bias claims from arbitration agreements.



# 5 Steps to Address Growing Sexual Harassment Concerns





# Step 1 - Make sure your policies match modern standards

- Zero tolerance for harassment in any form
- Provide examples
- Meaningful reporting procedure
- Several avenues to report
- No retaliation



## Step 2 - Disseminate your policies in a thoughtful way

- Onboarding process – with a discussion about the Company’s culture and expectations
- Periodic distribution to employees and re-acknowledgment
- Distributed by a high level (if not the highest level) executive



## Step 3 - Train your managers to address issues and avoid common mistakes

- Annual training for managers – strict liability standard likely
- Set the tone in your department
- Do not wait for complaints
- Do not ignore what you believe to be “harmless personal idiosyncrasies”



# Manager's Survival Guide

- Keep your personal feelings to yourself.
- Do not ever tell a joke or story involving race, age, sex, religion, ethnicity, national origin, sexual orientation, etc. at work.
- Do not let your subordinates do it either.
- Do not socialize with subordinates.
- Never allow subordinates to dress inappropriately or act inappropriately at work.



# Manager's Survival Guide

- Never touch a subordinate for any reason. Pats, kisses, hugs, back rubs, and other horseplay can easily give rise to civil as well as criminal liability.
- Do not send or forward offensive e-mails.
- Never call an employee "honey", "baby" or any other offensive or demeaning nickname.
- Never call any employee by any sort of ethnic or racial nickname.



# Manager's Survival Guide

- Be careful about how you compliment employees.
- Carefully decide if you want to “friend” your subordinates on social networking sites.
- Never ignore rumors of harassment problems or second-hand complaints about problems in other departments.
- Never agree to keep a subordinate's complaint “just between us.”



# Manager's Survival Guide

- Do not tell a complaining employee to work it out with the accused.
- Do not ask the complaining employee what they want you to do about the situation.
- Take every complaint seriously.
- Report every actual or potential violation of the EEO or no harassment policy to Human Resources right away.



## Step 4 - Promptly investigate any issues raised

- Immediate action – prioritize these complaints
- HR should take the lead with guidance from legal
- No standard approach – but:
  - Try to obtain written report from victim
  - Interview relevant witnesses (including those who can provide insight into working relationship)
  - Obtain e-mails, texts, documents, photos
  - Make a clear record – notes are likely discoverable
  - Don't ignore older complaints





## Step 5 - Consistently enforce your standards

- If your policy is toothless, employees will lose respect and be dissuaded from reporting other misconduct
- Take action to ensure the behavior is not reasonably likely to occur again





Questions?



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