

## #metoo in the Hospitality Industry

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In 2015, *The Nation* reported that 8 out of 10 hotel workers had been subject to harassment in the workplace.<sup>1</sup> In the wake of the #MeToo movement, this issue has moved to the forefront of our collective social conscience: this is not just a problem for the entertainment industry. According to unpublished EEOC data, between 2005 and 2015, more than 25% of all sexual harassment charges originated from industries dominated by service sector workers, such as hospitality and retail.<sup>2</sup> Of all complaints filed, the accommodation and food services sector was the single leading source of complaints of sexual harassment, comprising 14.2% of all complaints filed.<sup>3</sup>

The Center for American Progress recently released the following figures:

- 2/3 of female and more than 1/2 of male workers reported experiencing sexual harassment by restaurant managers;
- Nearly 80% of women and 70% of men reported sexual harassment by coworkers; and
- 80% of women and 55% of men experienced some form of sexual harassment by customers.<sup>4</sup>

Further exacerbating the problem, unpublished EEOC statistics suggest that in 2016 and 2017, more than 70% of complaints of sexual harassment were accompanied by or followed with complaints of retaliation.<sup>5</sup> Statistics such as these have not gone unnoticed in the #MeToo world. As a result of this renewed attention and broad recognition among the voting public, substantial changes to the legal landscape have begun to appear in the form of new laws and regulations at the local level including the following:

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<sup>1</sup> Michelle Chen, *8 in 10 Hotel Workers Have Been Harassed at Work*, *The Nation*, <https://www.thenation.com/article/8-in-10-hotel-workers-have-been-harassed-at-work/> (last visited Sept. 11, 2018).

<sup>2</sup> Jocelyn Frye, *Not Just the Rich and Famous*, Center for American Progress <https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/> (last visited September 11, 2018).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

- *New York City*: The “Stop Sexual Harassment in New York” law<sup>6</sup> requires annual anti-sexual harassment interactive training for all employers with more than 15 employees. This training must define sexual harassment, the internal complaint process, bystander intervention, and specific responsibilities for managerial and supervisory employees. This law was passed by the City Council on April 11, 2018 and approved by the Mayor May 9, 2018. It goes into effect on April 1, 2019.
- *Chicago*: The “Hands Off Pants On” ordinance<sup>7</sup> requires hotel employers to equip hotel employees assigned to guestrooms or restrooms with a portable “panic button,” implement new anti-sexual assault and harassment policies and procedures, and provide all employees with a current copy of the hotel’s anti-sexual harassment policy (as well as post the policy in a conspicuous area of the hotel where employees can reasonably be expected to see it). Employers in violation of the ordinance are subject to a fine between \$250 to \$500 for each offense, and each day that a particular violation continues constitutes a separate offense.
- *Miami Beach*: The “Protection of Hotel and Hostel Employees from Assault and Sexual Harassment” law<sup>8</sup> requires hotel and hostel employers to provide a “safety” button to certain hotel employees; place a sign outside each guest room door notifying guests of such safety button; and submit an affidavit with their annual BTR renewal stating that they are in compliance with the requirements. In the case of a violation, after an initial warning, employers are subject to a fine of \$500, \$1000, and \$2000 for second, third, and fourth and subsequent violations within a six (6) month period. The ordinance was approved July 25, 2018. The ordinance goes into effect on August 1, 2019.
- *Seattle*: The Hotel Employees Health & Safety Initiative<sup>9</sup> seeks to protect hotel employees from violent assault and sexual harassment. It establishes an internal registry for abusive and harassing guests, permits banning of guests who are accused of sexual assault or harassment under certain circumstances, requires employers to provide panic buttons to their employees working alone in guest rooms free of charge, and protects

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<sup>6</sup> Local Law No. 96 (2018) of City of New York.

<sup>7</sup> Chicago Municipal Code, Section 4-6-180.

<sup>8</sup> Code of the City of Miami Beach, Florida, Section 62-204 *et seq.* (future)

<sup>9</sup> Seattle Municipal Code, Section 4.25.120.

employees who report an act of guest violence against retaliation. This ordinance went into effect on November 30, 2016.<sup>10</sup>

These changes appear to be the beginning of a much larger legal trend. At the state level, Nevada has proposed legislation amending the Nevada Gaming Commission Regulations to require that all Nevada Gaming Licensees implement comprehensive sexual harassment prevention and response plans. This law provides the procedures and methods available for reporting sexual harassment, the procedures licensees will follow while investigating claims, potential consequences for harassment, mandatory annual assessments of policies in place, and procedures to ensure effective education of employees regarding these policies.

Maryland also followed the wave of legislation in passing the “Disclosing Sexual Harassment in the Workplace Act of 2018.” The Act prohibits and nullifies any provision in an employment contract, policy, or agreement that waives any right to make a sexual harassment or retaliation claim. Like Nevada, it sets forth reporting procedures—employers with more than 50 employees are required to submit to the State an annual report of sexual harassment settlements made with employees. The Act is scheduled to take effect on October 1, 2018.

This presentation will help attendees navigate the changing legal landscape of sexual harassment and workplace harassment law. It will examine how to comply with the legal requirements of these new laws, the legal risks posed by sexual harassment complaints, negligent hiring and supervision, and criminal complaints, and how to manage them. We will examine the “5-Star Promise” promoted by the American Hotel & Lodging Association and discuss best practices in the hospitality industry moving forward, including the nationwide roll out of “panic buttons” currently underway by major hotel operators.

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<sup>10</sup> On December 19, 2016, the American Hotel & Lodging Association filed a lawsuit challenging the ordinance. On June 9, 2017, the Superior Court of the State of Washington found in favor of the City of Seattle and upheld the ordinance. This matter is currently on appeal.