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Presented by: Caroline Larsen (Shareholder, Phoenix)	-
For Scottsdale Regional Compliance & Ethics Conference	
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G 2017, Oglebre, Deskins, Nash, Smook & Stewart, P.C. 11/25/2017	
Workplace Sexual Harassment in 2017	
Ort THEIR ANGLES	
"The year that sexual	
misconduct became	-
a fireable offense."	
- USA Today	-
Attach I Adain S latin (Stemajor S Stato C) Contribute (Cabatha (C	
Today's Agenda	
I. How did we get here?	
II. What can employers expect and how can you	
best prepare for this emerging "counter- revolution?"	

Why now?



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Tipping point



Chloe Angyal 0 Right now, the HuffPost front page has stories about 9 different men who are accused of sexual assault. It would be 10 but we had to take down Charlie Sheen to make room for Louis C.K. 4,001 Fernoett 18,885 Lines | 0 3 6 0 6 3 2 6 6 3



Why it matters: The speed and sweep of this are unprecedented.

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Culture shift

"Weinstein ripped off a band aid that covered the wounds and scars that so many women still carry in industries that are still predominately male-led, and now that it is off, I think it is time to examine and heal. This is not an act of revenge, but rather an opportunity for social reform. It is an uncomfortable but healthy conversation to be having in a society that understands that he rules of the game have changed."

| Dana Weis, Chief Political Amoynt. | Dana Weis, Chief Political Am "Weinstein ripped off a band aid that

"This is really an extraordinary teaching moment for our nation. We are in an environment where people coming forward, rather than being attacked or villatinized, ...their stories are being accorded gravily. The victim-

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Susan Sarandon O	¥	P rose mogowan O drosemopowan		#4400
Huge respect for (If AshleyJudd and all the women who be their silence for the article on Harvey Weinstein, Brave, 3 16 Pbr - On 7, 2017	roke	The boogle moneter of our waking nightmare has been tops with our flaming sword 0.43 AM - Oct 15, 2017	#METOO	THE TOO
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Posic Perez O drossperatolyn	¥	Patricia Arquetta O ©Patry Francis	#WE.	#ME TOO
And madirespect to all the women like (I) AshloyJudd who forward! #HanveyWeinstein twitter.com/Mark/furfisioht 4:35 Att - Cors. 25:17	came	@AshleyJudd & @rosemogowan Em sure it wasn't easy to- forward but in doing so you helped a lot of others who migh have been heard. 508 EM - On 5 - 2017		
O 14 (7.33 O 308		○ 65 tl 600 ○ 3,170	· 20 8	BY OX
Aulianne Moore O	¥	(A): Alone Milero 0		
Coming forward about sexual abuse and coercion is as and women have nothing to be gained personally by doin to 2 AM - Out 9, 2017		If you've been sexually harassed or assaulted		
○ 77 t3 905 ○ 3.841		write 'me too' as a reply to this tweet.		
Aulianne Moore O	¥	Me too. Suggested by a friend: "If all the women who		
 But through their bravery we move forward as a culture thank them. Stand with @AshleyJud5 @rosemogowsn ar others. 		have been sexually harassed or assaulted wrote 'Me too.' as a status, we might give		
E44 AM - QUE R. 2017 O 74 - 11 648 - C/ 3.082		people a sense of the magnitude of the orablem."		

What to expect...for now

Increased focus on how companies respond to sexual harassment claims:

- (1) Scrutiny of requiring confidentiality when resolving sexual harassment complaints and lawsuits ("silencing victims")
- (2) Companies "covering up" or discouraging employees from coming forward with complaints of sexual harassment
- (3) Companies failing to hold sexual harassers accountable for misconduct

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#1 Increased Scrutiny of Arbitration Agreements

- Murphy v. NLRB
 - Argued in October 2017 and awaiting decision from U.S. Supreme Court
 - Can employees can be forced to waive class or collective actions and individually arbitrate claims?
- · Arbitration Fairness Act of 2017
 - Introduced in Senate by Al Franken
 - Seeks to amend Federal Arbitration Act



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#2 Increased Scrutiny of Confidential Settlements/NDAs California State Senator Connie Leyva: "Secret settlements in sexual assault and related cases can jeopardize the public-including other potential victims-and allow perpetrators to escape justice just because they have the money to pay the cost of the settlements." Legislation may bar confidentiality clauses New York Senator Brad Hoylman, introduced SC6382A "Attempts by employers to compel employees to waive those protections as a condition of employment, particularly pertaining to sexual harassment and discrimination protections, are unconscionable and should be explicitly prohibited in New York as a matter of public policy. Recent high-profile reports of sexual misconduct by powerful executives have highlighted the role nondisclosure agreements play in protecting abusive workplace cultures. Abanta J. Audin I. Berlin I. Biemingham I. Bouton I Charleton Folkador I. Okadeto Folkago I. Okadeto Folkador I. Okadeto Folkador I. Okadeto Folkago Folkador I. Okadeto Folkador I. Okadeto Folkador I. Okadeto Folkador I. Okadeto Folkador I. Sala Folkador I. Sal #3 Increase in EEOC scrutiny ■ Expect sexual harassment complaints to increase on state and federal level ■ EEOC Select Task Force on Study of Harassment in the Workforce reported 162,872 claims of sexual harassment

between 2010 and 2015

Practices for Preventing Harassment"

 EEOC recently issued a notice on its website with detailed instructions for employers on prevention programs: "Promising

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#4 Increase in lawsuits

- 83% of claimants are women, although only 3 out of 4 employees who experience harassment report it.
- Watch for an uptick in lawsuits from alleged harassers.

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What can employers do now?

- (1) Strengthen harassment policies
- (2) Harassment prevention training for <u>all</u> employees
- (3) Remove barriers complaint system
- (4) Involve senior leadership in anti-harassment efforts

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#1 Effective Written Harassment Policy

■ Will you follow a zero tolerance policy?



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#1 Effective Written Harassment Policy ■ Available in multiple ways ■ Describe process for informally sharing concerns about harassment without filing complaint #2 Training ■ "Championed by senior leaders" ■ Provided to employees at every level and all locations ■ Tailored to specific industry and employee workforce ■ Conducted by qualified live trainers Routinely evaluated by audience ■ Explain what information from the victim will aid investigation #2 Training • Focus more on how employees should handle harassment when it happens and use realistic (and current) examples ■ Role play using real examples ■ "Bystander intervention" training ■ Incorporate social media and other forms of communication familiar to your workforce Alasta I Audin I Berlin I Birmingham I Boston I Charleston I Charlesto I Chicago I Cleviand I Columbia I Dallas I Denver I Debot (Matro) I Greenite I Houston I Indianapolis I Judicoo I Kansas Chip Las Vegas I Chodron Lisa Segisias I Mempris I Manco Chip I Marin I Minuslavia I Mirrospois I Montitoren Naturiko I Nave Chesara I New York Chip I Galamon Chip I Chargo Contri P Paris I Philadephin Producti Philadry I Microsoft I Registral (Paris I Securited I San Merchis o Barbo Grando Sestate I St. cash I Toman I Standard I Empai Terotori Tromano I Terotori Terotori Troman I Standard I Registral (Paris I Terotori Terotori

#3 Effective and accessible complaint system

- Well-trained and neutral employees should investigate complaints
- Consider third-party investigator if potential claims of bias or insufficient resources
- Document complaints from intake to resolution
- Maintain confidentiality
- Focus on culture

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#4 Leadership and Accountability

Senior leaders must show their commitment to preventing and responding to harassment. How?

- Allocate sufficient resources to human resources
- Consider organizational reporting changes to neutralize HR
- Recruit and evaluate HR talent based upon their ability to prevent and address harassment
- Regularly evaluate company's response to harassment complaints

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Example: How to handle a PR nightmare...

- Formulate plan in advance of claims becoming public
- Evaluate +/- of proactive vs. reactive strategy
- Have resources available for rapid response capability
- Determine your threshold for damage to your reputation/brand

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Thank You

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