

TUESDAY, FEBRUARY 16, 2020

3 P.M. – 4 P.M. ET

Raising the Bar: Deploying Artificial Intelligence and Other Data Analytics Tools to Boost Workplace Harassment Prevention Efforts

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SCOPE AND USAGE OF THE INFORMATION

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THE INSTITUTE FOR WORKPLACE EQUALITY

- Employer Membership Association, formed to assist the contractor community in responding to rapidly changing compliance challenges.
- The Institute members, its Co-Chairs, leaders, and faculty are deeply committed to working with OFCCP to effectuate nondiscrimination and affirmative action in the American workplace.
- The Institute provides national training programs and webinars addressing the latest EEOC and OFCCP developments and strategies for effective compliance.
- For more information on The Institute, visit:
www.theinstitute4workplaceequality.org

INSTITUTE MEMBERSHIP OFFERS MANY BENEFITS

- Our leadership team has unique insights, access, and regularly interacts with OFCCP and EEOC national and regional leadership. As of August 10, 2020, we have signed an MOU with the OFCCP.
- We are collaborative and keep employers current and connected to what is happening in Washington, D.C.
- We have a well-established faculty made up of Nationally renowned experts from many firms
 - Our distinguished leaders are comprised of leading EEO attorneys, practitioners, and statisticians from top law firms and consulting practices on EEO/AA
 - Our faculty and partners have a breadth of knowledge and expertise across all industries, including: Defense/Aerospace, Financial services, Food Services, Healthcare, Higher education, Hospitality , Pharmaceutical, Tech *and more*
- Advisory Board members are senior leaders in their organizations, and have broad experience and expertise in the areas of EEO, diversity and inclusion, OFCCP compliance, compensation, and related matters

INSTITUTE MEMBERSHIP OFFERS MANY BENEFITS – CONT.

- We write white papers addressing our members compliance concerns and priorities
- Provide opportunities for our members to collaborate and attend brainstorming sessions with OFCCP
- Semiannual meetings with Institute Advisory Board with OFCCP Director and National leadership
- Monthly member's only roundtables on cutting edge issues
 - Examples:
 - Changing OFCCP enforcement priorities
 - EEO legal developments
 - EEO-1 pay data reporting challenges
 - Quickly growing patchwork of pay equity laws in the U.S. and abroad
- Practical key takeaways summarized after each call so that members can share updates easily within their organizations

AGENDA

- **Examine** ongoing impact of Me, Too, COVID-19, and Social Justice Movements on Corporate Anti-Harassment Awareness
 - What's changed and what's largely remained the same?

AGENDA

- **Review and Analyze** the latest data on workplace harassment
 - Who's being impacted, and how?
 - In what ways has COVID-19 –
 - Exacerbated harassment risks
 - Hindered proactive prevention

AGENDA

- **Identify creative and powerful ways of using data to:**
 - Anticipate and prevent conditions that can breed workplace harassment
 - Troubleshoot potential problem areas within your organization
 - Inform corporate harassment prevention and corrective efforts
 - Promote and fuel Diversity, Equity and Inclusion (DEI) efforts

SETTING THE STAGE

TRADITIONAL APPROACHES TO WORKPLACE HARASSMENT: LIFE BEFORE #ME, TOO

- Outsized focus on sexual harassment
 - Less emphasis, if any, on other forms of harassment
- Little pressure to go beyond basic compliance
 - Investigating complaints
 - Focusing on fixing problems
- Victim reticence to report

TRADITIONAL APPROACHES TO WORKPLACE HARASSMENT: LIFE BEFORE #ME, TOO

From Me, Too to COVID-19 and Beyond: A Timeline

- June 2016: EEOC Harassment Task Force Co-Chair's Report
- November 2016: Presidential Election
- August 2017: Charlottesville
- October 2017: Weinstein Scandal and global expansion of #me, too movement
- March 2020: COVID-19 declared a global pandemic

TRADITIONAL APPROACHES TO WORKPLACE HARASSMENT: LIFE BEFORE #ME, TOO

A Timeline (cont'd.)

- May 2020:
 - Killing of George Floyd
 - Black Lives Matter Racial Justice Protests
- June 2020: *Bostock* Decision
- November 2020: Presidential Election
- January 2021:
 - Capitol Hill Insurrection
 - Second Trump Impeachment
 - Inauguration of President Biden

IMPACT ON ATTITUDES TOWARDS HARASSMENT AND OTHER BIAS AT WORK

- Corporate awareness of culture and bias issues
 - Impact on harassment prevention efforts
- Demands for accountability
 - Internal
 - External
- Desire to lead
- Heightened legal risk
- Complicating factors
 - Ongoing impact of pandemic
 - Coarsened social and political discourse

KEY DATA POINTS

PERCENTAGE OF WORKERS WHO NEVER COMPLAIN FORMALLY OF HARASSMENT

94%

Source: EEOC Select Task Force Report

EEOC CHARGE STATISTICS – FY 2019

- Total # of charges filed with the EEOC in FY 2019: **72,675**
- # charges filed alleging **harassment**: **26,221**
- # charges filed alleging **sex-based harassment** (including sexual harassment): **12,739**
- # charges filed alleging **race-based harassment**: **8,682**
- # charges filed alleging **sexual harassment**: **7,514**
- No data breaking down # of charges filed alleging **age-, disability-, religion- or national origin-** based harassment
 - # charges alleging some form of harassment other than sexual harassment: **21,191**

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EEOC FY 2020 PERFORMANCE REPORT

- Published on January 19
- Previews FY 2020 charge and enforcement data
- Reports a **decline** in charge filings from **72,675** to **67,448**

INCIDENTS OF **SEXUAL HARASSMENT** AND ASSAULT POST-ME, TOO

Source: Center for Talent Innovation

Percentage of **women** reporting being **sexually harassed** at work by race/ethnicity

- White: 37%
- Latina: 37%
- Black : 25%
- Asian: 23%

Percentage of **men** reporting being **sexually harassed** at work by race/ethnicity

- Black : 21%
- Latina: 13%
- Asian: 13%
- White: 13%

INCIDENTS OF SEXUAL HARASSMENT AND **ASSAULT** POST-ME, TOO

Source: Center for Talent Innovation

Percentage of **women** reporting being **sexually assaulted** at work by race/ethnicity

- Black : 7%
- Latina: 6%
- Asian: 6%
- White: 6%

Percentage of **men** reporting being **sexually assaulted** at work by race/ethnicity

- Black : 7%
- Latina: 7%
- Asian: 6%
- White: 4%

INCIDENTS OF SEXUAL HARASSMENT AND ASSAULT POST-ME, TOO

Source: Center for Talent Innovation

**Percentage of
LGBTQ+ men
reporting being
sexually
harassed at work**

23%

9% reported being
assaulted

**Percentage of
LGBTQ+ women
reporting being
sexually
harassed at work**

43%

10% reported being
assaulted

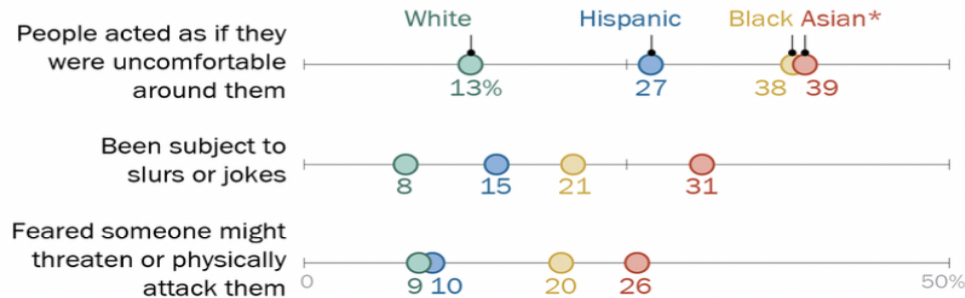
DATA ON OTHER WORKPLACE HARASSMENT

- **27%** of respondents reported being subjected to workplace harassment because of age (Source: Seniorliving.org)
- **53%** of LGBTQ survey respondents reported hearing anti-gay or anti-lesbian jokes at work (Source: Human Rights Campaign/HRC Foundation)
- Other types of workplace harassment are under-researched, but are occurring too frequently
 - Disability, religion, intersectionality

RACIAL AND ETHNIC INCIVILITY/HARASSMENT POST-COVID

Asian and Black Americans more likely than other groups to report negative experiences because of their race or ethnicity since the coronavirus outbreak

% saying each of the following has happened to them because of their race or ethnicity since the coronavirus outbreak



% saying they _____ because of their race or ethnicity a great deal or a fair amount



*Asian adults were interviewed in English only.

Note: White, Black and Asian adults include those who report being only one race and are not Hispanic. Hispanics are of any race.

Source: Survey of U.S. adults conducted June 4-10, 2020.

"Many Black and Asian Americans Say They Have Experienced Discrimination Amid the COVID-19 Outbreak"

PEW RESEARCH CENTER

LEGAL AND PRACTICAL CONSEQUENCES: DOLLARS AND CENTS

- The costs to defend a harassment lawsuit can be significant
- Studies has shown a correlation between sexual harassment events and decline in company stock performance and/or shareholder dissatisfaction
 - 21th Century Fox \$90 million shareholder suit settlement
- Abusive workplace conduct estimated to cost U.S. businesses billions in lost productivity, turnover, and absenteeism each year

WHAT IS THIS TELLING US?

- Workplace harassment remains a problem, and is not limited to sexual harassment
- Race harassment EEOC charges outpaced sexual harassment filings in FY 2019
- Race bias continues to outpace sex discrimination generally
- Rates of sexual harassment – the most studied form – have not significantly declined, even post-Me, Too

WHAT IS THIS TELLING US?

- The COVID-19 pandemic has created new and/or exacerbated existing areas of harassment risk
- New LGBT workplace rights create a potential challenge – and real opportunity
- Costs to businesses of noncompliance continue to rise

DATA-DRIVEN EEO COMPLIANCE STRATEGIES

WHY EXAMINE THE DATA?

- Organizations depend on having data on all aspect of their business operations to ensure success.
- This data driven approach can also be applied to address workplace harassment and discrimination.

WHAT DATA TO COLLECT

- Climate, Employee Engagement, and Exit Surveys
 - These can reveal valuable insights as to how the employees see the company
 - Allow companies to compare employee concerns to statistics found at EEOC or other outside groups
 - Provides opportunity to get ahead of potential systemic issues

WHAT DATA TO COLLECT

- Employee complaints
 - Are their patterns in the type of -
 - Allegations
 - Accused/bad actor
 - Department
 - Location
 - Are you seeing a spike following certain company events? Or after a recent hire?

WHAT DATA TO COLLECT

- Attrition rates
- Outside Studies
- EEOC/FEPA charge activity

HOW TO (PROPERLY) USE DATA TOOLS TO PREDICT AND PREVENT ISSUES

- Use of data analytics and AI tools are becoming more commonly used to help predict where harassment will most likely occur and highlight patterns
- Data can be used to target action-oriented programs and training

HOW TO (PROPERLY) USE DATA TOOLS TO PREDICT AND PREVENT ISSUES

- Improper use can create EEO risk
 - Urban Institute Article by Jenny Yang (July 23, 2020): <https://www.urban.org/urban-wire/new-civil-rights-principles-mark-first-step-make-ai-hiring-more-equitable>
 - *Civil Rights Principles*: <https://civilrights.org/resource/civil-rights-principles-for-hiring-assessment-technologies/>
- AI a front-burner issue for enforcement heads
 - Yang letter to Congress: https://www.urban.org/sites/default/files/publication/102428/creating-a-future-where-everyone-can-succeed-letter-to-the-house-committee-on-education-and-labor_o.pdf

RISKS VS. REWARDS

- Always going to be a concern about collecting data on internal harassment and discrimination complaints
 - Knowledge is power – unless you sit on it
- Most companies view the benefits far outweigh the risk

RISKS VS. REWARDS

- Goal - to keep the best and the brightest employees
 - Ensuring an environment free from harassment and discrimination where all feel valued and included is part of path to success
- Data collection on internal reports of harassing behavior provides opportunities for improvement and may assist in mitigating legal risk by identifying a potential problem before it escalates

UTILIZING DATA TECHNIQUES TO DRIVE DEI RESULTS



USING DATA TO SUPPORT WORKPLACE CULTURE AND DE&I EFFORTS

- As key component of organizational culture strategy
- As a recruitment and retention tool
- As a means of enhancing management accountability
- As a jumping-off point to other innovative DE&I strategies

USING DATA TO SUPPORT WORKPLACE CULTURE AND DE&I EFFORTS

“Workplaces that go beyond inclusive policies to truly cultivate climates of inclusion are a win-win for employers.”

--Mary Beth Maxwell, Senior Vice President for Programs, Research and Training, Human Rights

Campaign Foundation

Source: HRC Foundation Report, *A Workplace Divided: Understanding the Climate for LGBTQ Workers Nationwide* (2018)

USING DATA TO SUPPORT WORKPLACE CULTURE AND DE&I EFFORTS

“...[C]ompanies and workgroups with the lowest prevalence of sex-based harassment are those with the greatest gender balance in terms of workplace composition.

Importantly, companies with more diverse leadership in terms of both gender and racial composition also tend to outperform others in their industry, a phenomenon called the diversity dividend.”

Source: International Center for Research on Women, *The Costs of Sex-based Harassment to Businesses: An In-Depth Look at the Workplace.*

WRAP UP & THANK YOU

CHRIS GOKTURK

Chris Gokturk assists companies in understanding and mitigating their affirmative action and systemic discrimination risks, particularly in the areas of talent acquisition, compensation, performance management, as well as workforce planning and restructuring. Chris has more than 20 years of professional experience in compliance, enterprise risk management, and statistics. She has helped clients across all major industry groups develop, implement, and defend compliant affirmative action programs.

Chris provides a broad array of services, including:

- Preparing fully compliant, data-driven affirmative action programs
- Managing all phases of the Labor Department's Office of Federal Contract Compliance Programs (OFCCP) compliance evaluation process
- Conducting rigorous self-critical analyses of compensation data
- Designing and executing statistical analyses of employment transactions data
- Developing legally defensible diversity and inclusion metrics
- Assessing organizational compliance with talent acquisition requirements
- Assisting in implementation and evaluation of applicant tracking, HRIS and Artificial intelligence tools

She is a frequent speaker and trainer on pay equity and the requirements enforced by the OFCCP.

RAE VANN

Rae Vann represents and advises employers on all major federal, state, and local employment laws, including Title VII of the Civil Rights Act of 1964, Executive Order 11246, the Americans with Disabilities Act (ADA), the Rehabilitation Act, the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA), the Age Discrimination in Employment Act (ADEA), the Equal Pay Act (EPA), the Genetic Information Nondiscrimination Act (GINA), and the Family and Medical Leave Act (FMLA). Rae has more than 25 years of experience representing and advising corporate clients on workplace compliance matters. She provides counsel to businesses on mitigating individual and systemic discrimination risks, establishing effective alternative dispute resolution procedures, conducting thorough and effective workplace harassment and other misconduct investigations, and other labor and employment matters. Her experience includes:

- Conducting effective investigations of alleged unlawful harassment, discrimination, and retaliation.
- Advising employers on defending charges of discrimination before the EEOC and state and local fair employment practices agencies.
- Advising federal contractors on OFCCP-enforced affirmative action obligations and representing them in agency-initiated compliance evaluations.
- Analyzing and distilling significant employment-related developments within the judicial, executive, and legislative branches.
- Performing self-critical analyses and internal audits of employment policies and practices for clients.
- Developing policies and procedures to ensure compliance with labor and employment law requirements.

Rae previously served for more than a decade as the senior vice president and general counsel of the Center for Workplace Compliance, the preeminent national employer association formerly known as the Equal Employment Advisory Council (EEAC). There, she advocated for the development of sound workplace policy in the courts and before federal regulatory agencies, including authoring numerous amicus curiae briefs with the U.S. Supreme Court and federal courts of appeals. Rae also authored comments and testified before the U.S. Congress and the EEOC on a range of equal employment opportunity and workplace compliance matters. As a member of the EEOC's Select Task Force on the Study of Harassment in the Workplace, Rae helped guide development of a detailed set of recommendations to help employers prevent workplace harassment. The recommendations were released in June 2016, ahead of the international #MeToo movement. Rae is a nationally recognized speaker and author on labor and employment issues. Her thought leadership has been featured in media including the *Wall Street Journal*, *Bloomberg Law*, *Law360*, *National Law Journal*, *National Public Radio*, *PBS NewsHour*, *Politico*, and *Reuters*.