

**Labor and Employment Law Alert
March 2018**

**DOJ Announces Initiative to Fight Workplace Sexual
Harassment**

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On February 28, 2018, the Justice Department's Civil Rights Division announced an initiative to eradicate sexual harassment in the public sector workplace: the Sexual Harassment in the Workplace Initiative (SHWI). The U.S. DOJ enforces Title VII of the Civil Rights Act of 1964 against state and local government employers. Title VII prohibits discrimination on the basis of race, color, national origin, sex, and religion; sexual harassment is a form of sex discrimination.

The DOJ's enforcement initiative focuses on (A) enforcement actions; (B) effective remedial measures; and (C) outreach.

With respect to enforcement actions, the DOJ stated its plan to continue to bring sex discrimination claims against state and local government employers *with a renewed emphasis on sexual harassment charges* (emphasis supplied). The DOJ also announced its first enforcement action under the SHWI against the City of Houston Fire Department alleging two female firefighters were subjected to sexual harassment.

With respect to remediation, the DOJ will develop effective remedial measures to hold public sector employers accountable where Title VII violations have been found. Such remedial measures could include modifying existing practices and policies to create harassment-free work environments.

With respect to outreach, the DOJ identified five (5) critical areas:

- (1) Create safe and trusted avenues for employees to report sexual harassment;
- (2) Ensure management support for anti-discrimination policies and procedures;
- (3) Implement accountability measures for timely and effective resolution of sexual harassment complaints;
- (4) Adopt comprehensive anti-sexual harassment policies and procedures that include *regular, tailored, and interactive training* for employees (emphasis supplied); and

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- (5) Provide safeguards against retaliation both for persons who report sexual harassment and those who support them.

Practically speaking, the DOJ’s announcement creates an opportunity for public sector employers to use the #MeToo climate as an opportunity to take a fresh and critical look at policies, procedures and training to determine whether and where modifications are necessary. As the DOJ indicated regarding outreach, “one size fits all” policies, procedures and training is not going to be sufficient. Accordingly, public sector employers would be well-advised to conduct a review of their anti-harassment protocol, implement changes where necessary, and conduct training NOW, before facing an enforcement action brought by the DOJ in accordance with its renewed emphasis on sexual harassment charges.

It is also important to note that private sector employers are not immune from EEOC scrutiny when it comes to workplace harassment. While the DOJ is focusing on the eradication of sexual harassment in the public sector workplace, the EEOC is in the process of “rebooting” sexual harassment prevention efforts in the private workplace. Just over a year ago, the EEOC issued Proposed Enforcement Guidance on Unlawful Harassment. Issuance of the final Enforcement Guidance is expected any time now. Among other things, the Enforcement Guidance provides a reference for EEOC staff for investigation, adjudication and litigation of harassment claims. The issuance of the newly-minted Enforcement Guidance on Unlawful Harassment coupled with the #MeToo climate is likely to produce stepped up enforcement efforts by the EEOC in the private sector workplace.

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If you have any questions about this issue, please contact Nan O’Neill or the attorney responsible for your account, or call (617) 479-5000.

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