

INVESTIGATIONS OF SEXUAL HARASSMENT ARISE...

Before Relationships

Employers checking out the past behavior of potential hires



During Disputes

Looking into allegedly improper activities relevant to litigation



After Allegations

Conducting investigations when allegations are reported



HOW #MeToo ALLEGATIONS & INVESTIGATIONS HAVE EXPLODED IN THE U.S.

ALLEGATIONS

- Employers now concerned about even consensual relationships between supervisors and subordinates, because of blow-up potential
- Workplace relationships are increasingly ending with a demand for money; and “shakedowns” become part of what needs investigating
- Beyond supervisor-employee harassment, any power relationship can now lead to a claim, including client relationships. (Did the accused have power over the accuser?)
- By the way, “he” and “she” no longer convey the parties, given the number of female-on-male & gay harassment cases
- Conduct outside the workplace, including with non-employees, can trigger investigations by the employer
- The Brett Kavanaugh hearing is playing out across US corporations: A long-ago allegation surfaces when someone’s big promotion is announced.
- Allegations have expanded out from sexual bullying to just bullying.

HOW #MeToo ALLEGATIONS & INVESTIGATIONS HAVE EXPLODED IN THE U.S.

INVESTIGATIONS

- Some employers' reputations have recently suffered for not following up vigorously on allegations. This encourages full investigations.
- Investigations are finding that some opportunists are jumping on the bandwagon with false allegations, but indefensible abuses outnumber untrue finger-pointing by a lot.
- A thorough look at the accuser's and accused's backgrounds often finds a relevant pattern. (The leopard rarely changes his/her spots)
- E-discovery is at least as important in personal as in regulatory investigations. (Almost nobody has the "tradecraft" to keep a harassment or an affair entirely offline.)
- Investigators get clues about who's guilty because they try to cover up (in real time!)
- Misconduct is being found related to the funds used in secret settlements with accusers
- There are corporate cultures caught out by this cultural change who are now having to pay departing woman after departing woman to not sue and keep silent about their experiences
- Thorough, balanced, timely internal investigations are earning praise from courts and the press