

How Does a Woman Apply the “Me Too Movement” to Her Own Workplace?

As the "Me Too Movement" swept across the country, I said to myself, "It's about time!"

And I knew it was "about time" because I have been seeing women in my office for the last 25 years complaining about the misogyny (prejudice against women) and sexual harassment they were experiencing in their workplaces, and, despite bringing many cases, men are still not getting it, and their unwanted behavior is still pervasive.

I am handling case after case for women who are encountering men at work who either (1) want to sexually harass them or (2) to pay them less money for the same work accomplished by their male co-employees or (3) to advance their male colleagues up the ladder at a more rapid rate despite their equal performance - or (4) to inflict upon them some combination of all three.

The pattern is often the same when they finally come to me, usually only after they are out of a job and the damage has been done - file a Charge of Discrimination with the federal Equal Employment Opportunity Commission (EEOC) or the State's labor rights agency, and, if a quick resolution can't be achieved, file a lawsuit and go through even more stress.

When I recently learned that my son's fiance had been experiencing mistreatment in her workplace and was forced to quit because she could no longer deal with the emotional distress, it dawned on me that my own family members, and likely other women struggling in their workplaces, have always been lacking critical information about how to deal with workplace gender discrimination when it arose because they have never been taught how to identify it, much less what to do about it - not taught at home, not taught in school and certainly not informed at work.

While helping other women deal with such issues (usually only after their situations had already deteriorated to a point of no return), I had not shared with my own immediate family how to respond to workplace gender discrimination when it arose.

In retrospect, virtually all of the women who have come to me for legal assistance have been woefully uneducated about what to do when confronted with sexual harassment or gender discrimination on the job - and most of them had already been forced by the stress to quit.

What could I have told my son's fiance when she started her job that could have made a difference - that could have helped her to save her job and, at the same time, call the misogyny or sexual harassment to account?

1. Understand your workplace rights.

Know that there are federal and state laws that prohibit employers or supervisors or co-workers (who are wrongfully enabled by employers or supervisors) from treating

employees with disrespect, or differently than other employees, because of their **race, gender, national origin, age and/or disability or serious medical condition**, and that such mistreatment predictably causes emotional, physical and/or financial harm. ("Gender discrimination" is generally defined as being treated differently in your workplace than the men are, to include being disparately treated in terms of pay and promotion. "Gender discrimination" also includes "sexual harassment," which is defined as "behavior characterized by the making of unwelcome and inappropriate sexual remarks or physical advances in a workplace or other professional environment.")

2. **The offensive behavior must be "unwelcome."**

In our male-dominated culture, women quickly learn that they must be extremely careful when to draw the line between acceptable and unacceptable behavior, and because women are made to feel that, if they want to keep their jobs (much less to advance in rank or pay), they have to tolerate a threshold level of misogyny. The law, however, makes any unacceptable behavior not only intolerable, but also illegal. So, what to do?

Do not send any signal to the offending male that his unacceptable behavior is somehow "acceptable." Oftentimes, a woman will smile or laugh off or appear to tolerate offensive comments or advances, simply because they do not know what to do. When a woman, in the face of misogyny, sends any signal that can be interpreted to mean that the conduct is "okay" or, although borderline, is somehow "acceptable" to any degree and therefore deserving of being repeated or escalated, she will soon find herself in an unending spiral of advances by men who will naturally sense an "opening."

Instead, you must make it "**clear from the beginning**" by communicating that the offensive comment or verbal sexual advance "**is not acceptable because it has gained no traction with you whatsoever.**" This "communication" requires considerable skill, as an overt rejection of a man's "manhood" can easily morph into the other end of the discrimination rainbow for the woman - retaliation: no promotions, no equal pay, no raises. Just **do not give the sexual comment or overture any energy** - via an uncomfortable smile or nervous laughter, or any other potential indicator of acquiescence to the behavior. Immediately pivot to the next subject of conversation, making it clear that the offensive comment is undeserving of a response or further engagement.

If the comment is particularly insensitive or if a sexual advance or physical touching is involved, immediately suspend the interaction in a way that clearly signals your shock and disgust. This can be accomplished verbally or with body language. You can say, "Please don't do that," feigning surprise that the man would want to lose your respect and be perceived as anything but a complete gentleman. Clearly provide him with an opportunity to be his "more noble self."

3. **Skillfully document "unwelcome" behavior.** In most of my cases, the men simply deny that their misconduct ever occurred or that it "was not that bad" or that there was a "misunderstanding" on the part of the woman. A good way to thwart these habitual "defenses" for their behavior is to follow up the encounter or conversation with an email

or text which pushes back by describing the offensive conduct or quotes the offensive remark, for example, "I felt uncomfortable yesterday when you put your hand on my back," or "Please don't call me "gorgeous" anymore." If the perpetrator does not immediately write back and dispute your characterization of what happened, **then he is deemed to have admitted that your recollection of the event is correct.** And also never participate in written, or verbal, "banter" with a perpetrator in an effort to appease him or to change the subject – it will only make it worse.

4. If the perpetrator does not immediately cease his offensive behavior, report it to his immediate supervisor. Again, be skillful, and do it in writing. Send a semi-innocuous email describing the behavior and requesting intervention. Stay factual, do not embellish and do not demand any specific retribution or punishment, unless the behavior includes physical touching or is repetitive. Remember, you are not a "b****" because you make a complaint. **You are legally entitled to report unwanted sexual behavior without suffering any adverse consequence.**

5. A "protected complaint" will help insulate you from retaliation. When you complain to your chain of command about unwanted sexual overtures, physical or verbal, or about sexual discrimination, your complaint is "protected," which means that any retaliation directed against you by your supervisors or by management **because you make a protected complaint** is, in and of itself, an illegal violation of anti-discrimination laws. In other words, you cannot be retaliated against for making a protected complaint, for such retaliation is deemed to be a **separate and distinct** violation of anti-discrimination law. That is why you do not want to remain silent in the face of sexual harassment or discrimination and hope that by not making "waves" the harassment will somehow stop and you won't be labeled a "complainer" and potentially lose your job or not be considered for promotion. **A "protected complaint" protects your job.**

6. Be the perfect employee; do not provide your employer with a "legitimate, good faith business reason" to terminate you. At all times during your employment, and especially during the period when you are enduring illegal discrimination, be the perfect employee - always on time, doing your job to the best of your ability and never insubordinate (unless, of course, your "insubordination" is your refusal to submit to illegal acts of discrimination). If you instead provide your employer with a legitimate, good faith business reason to terminate you (being late, insubordinate, etc.), then, even if you were actually discriminated against, your claim for wrongful or forced termination may not survive. **Don't give your employer a "pretext" ("a reason given in justification of a course of action that is not the real reason") to terminate you.**

7. Immediately Contact a lawyer for advice when the discrimination starts. A lawyer trained in employment discrimination law can advise people how to skillfully manage their response to workplace discrimination **in real time**, which, on some occasions, can enable the beleaguered employee to diffuse the situation and/or avoid termination.

Women in all of our workplaces across the country, in every community, rich or poor, and of whatever race or religion, need to understand that they really do have tangible legal rights and that they need to know how to skillfully exercise them and hold men accountable if there is any hope for an end to misogyny in our lifetime. **"Me Too"** must also include **"And We Now Know."**

Merit Bennett

New Mexico Office:

460 St. Michael's Drive, Suite 703

Santa Fe, New Mexico 87505

Phone: (505) 983-9834

Fax: (505) 983-9836

Hawai'i Office:

1050 Bishop Street, Ste. 302

Honolulu, Hawai'i 96813

Colorado Office:

1624 Market Street, Suite 226 #19008

Denver, Colorado 80202-2523

[*www.thebennettlawgroup.com*](http://www.thebennettlawgroup.com)