

Attorney Bryan Arce on Sexual Harassment



The #MeToo social media movement is in full swing and providing many women and men who have experienced sexual harassment with a platform to raise their concerns. However, in the midst of this movement, there are still many afraid to come forward out of fear of losing their job, fear of derailing their career or fear of losing their resident visa status. We sat down with Attorney Bryan Arce, of New York City's Phillips & Associates for insight into how this silent majority can find a voice.



DM - First things first, what constitutes sexual harassment in the workplace?

Bryan Arce - there are many different actions or comments that can constitute sexual harassment. But at its most basic, sexual harassment consists of unwanted comments or conduct, of a sexual nature, that occur in the context of one's employment. These sexual comments or conduct are offensive enough to create a "hostile work environment". Generally, being asked out once or being told that you are attractive is not sexual harassment. However, it can become sexual harassment if the comments continue over time, especially if they continue after you tell the person making the comments that the comments make you uncomfortable or are unwanted.

DM - After being a victim of sexual harassment, what's the first step?

Bryan Arce - The first step would be to speak with an attorney to better understand your rights and to discuss the possible claims that are applicable to your situation. Every case is different and the right lawyer will be able to discuss the next steps that should, or should not, be taken with respect to your employer in general, management or human resources.

DM - If a victim loses their job as a result of making a sexual harassment complaint, what should they do?

Bryan Arce - Someone who has lost their job in retaliation for complaining of sexual harassment should contact an attorney immediately. Many times, an employee who is fired for retaliatory reasons is given a severance agreement and a minimal amount of time to review it and sign. Usually, a severance agreement will have a provision whereby the employee waives all of his or her rights to file a lawsuit for the sexual harassment and retaliation.

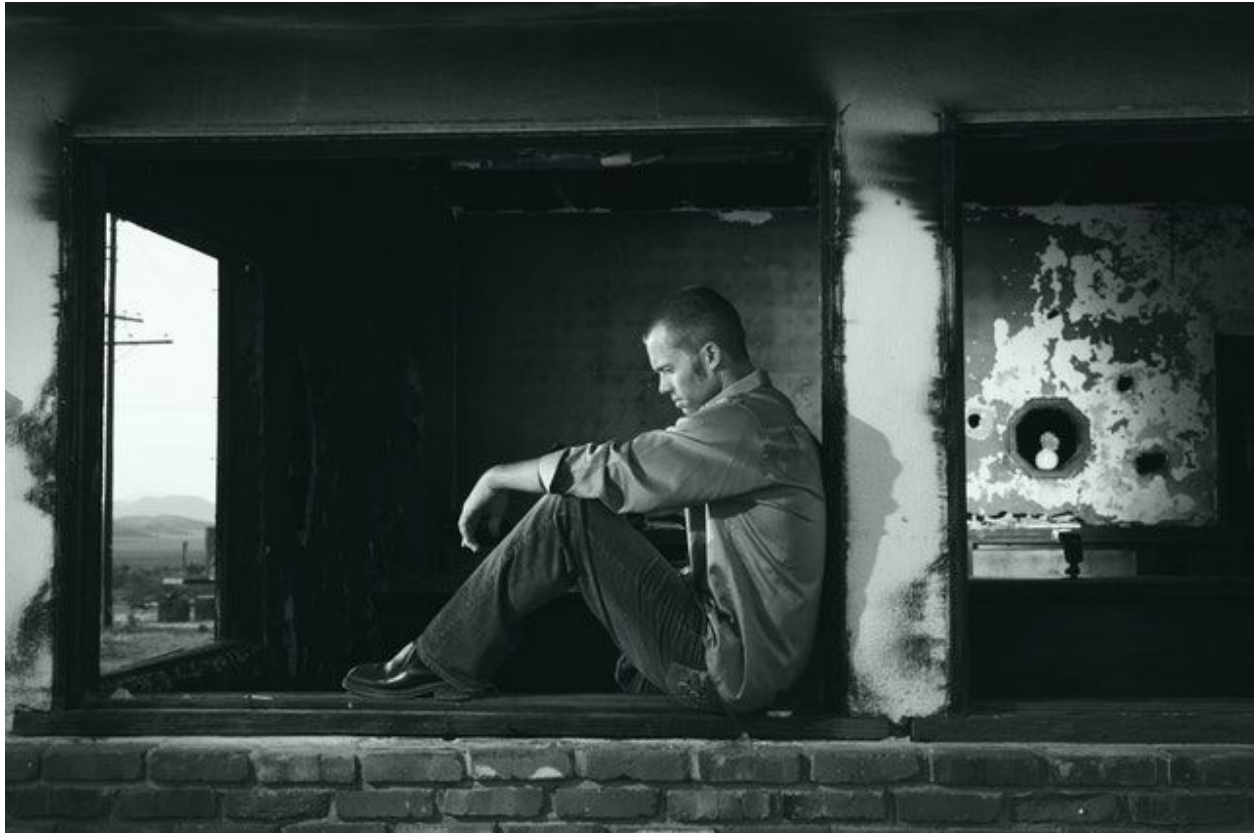
Unfortunately, retaliation, while unlawful, still does happen. The employee is often labeled as a "troublemaker" or "complainer." The employee is also blamed for not "going along" and ruining the previous workplace atmosphere, even if it was riddled with unlawful behavior. Often, the retaliation claim is stronger and easier to prove, than the underlying sexual harassment.

DM - What are your thoughts on the #MeToo movement?

Bryan Arce - The #MeToo movement has removed the shame and embarrassment of being a sexual harassment victim. Besides empowering more women and men to come forward with their claims and hold their employers, or former employers, accountable for the past illegal conduct, #MeToo has made people realize that if they come forward, they will not only not be alone, but may inspire other people to come forward who otherwise would have been reluctant to do so. By coming forward person adds momentum to the movement – fuel to the fire.

DM - As someone who is multilingual, have you had many experiences with representing immigrants in the workplace? If so, do you have any tips on coming forward for workers that may fear for their visa status?

Bryan Arce - I have represented a number of immigrant workers with claims of sexual harassment. Regrettably, many employers believe that this part of the work population is exploitable because of their immigration status. Employers believe that employees will not complain about sexual harassment for fear of retaliation; either losing a job, having a visa revoked or being reported to immigration authorities. However, employees in this situation should contact an attorney who can help guide him or her through the process and the possible next legal moves for protection.



DM - Lastly, do you have any tips for employers to create a safe and comfortable workplace?

Bryan Arce - In order for employers to help foster workplace free of sexual harassment, they should cultivate an atmosphere of mutual respect among all employees, regardless of seniority or titles and regardless of gender. Also, clear policies against sexual harassment should be in place, along with definitive procedures for reporting such harassment. But most importantly, all employees need to be well educated in these policies, and the policies should be enforced equally.

DM - How does a victim of sexual harassment go about finding the right attorney to represent their case?

Bryan Arce - Law firms are a service industry. But having an attorney-client relationship is just that: a relationship. People need to find an attorney with whom they feel comfortable. This is because, as attorneys, we are not only providing legal services but emotional support as well. The emotional part of an employment case is very important to recognize. People tend to spend more time with co-workers than they do at home with family. Many law firms just do not understand this part of the attorney-client relationship.

DM - The legal process can be confusing for those outside of the system, as you well know. What should victims looking for representation be wary of?

Bryan Arce - Victims seeking representation should keep an eye out for firms, or attorneys, that charge an up-front retainer fee or even a fee for an initial consultation. This can be a sign that the attorney does not "believe in the case" enough to work on a contingency fee basis; the attorney would rather be paid up front or as the litigation progresses. In that situation, the attorney may not have the same incentive to maximize the value of a settlement or verdict for that case.

DM - What are the advantages of choosing a large firm over an independent lawyer, if any?

Bryan Arce - Litigation itself is expensive, and a larger firm can fund the costs associated with it. Many smaller firms do not have the financial ability to properly fund those expenses; and therefore, corners may be cut.

Follow the #MeToo hashtag on social media for new developments and stories, and hop over to our [Humans of Downtown](#) section for more influential Downtown New Yorkers.

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