

An Interview With...

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Sexual harassment is an ongoing issue in the workplace and it has been an issue well before the #MeToo movement started. As a plaintiff side employment lawyer, Brittany Alexandra Stevens represents individuals who have been sexually harassed at their place of employment or at a place of a public accommodation, such as a doctor's office, amusement park, or a store. Following on from their previous article, Brittany expands on how to tackle sexual harassment cases.

Sexual harassment is a form of gender discrimination and can be unlawful under Title VII of the Civil Rights Act of 1964, as well as under State or City laws. Sexual harassment can occur in many forms. For example, sexual harassment can be physical touching of one's body parts, verbal harassment that is sexual in nature, or requests for sexual favors. The individual who is harassing an employee can be a male or female, or a supervisor or a co-worker. In New York, regardless of who the harasser is, sexual harassment must be unwelcomed and must rise above a petty slight or trivial inconvenience.¹

The #MeToo movement has certainly sparked a lot of debate and discussion that will hopefully have a positive impact on the lives of many employees. As a plaintiff side employment lawyer, I would not necessarily say that more employees are calling our firm for consultations about current incidents of sexual harassment, but rather more individuals are calling about prior acts of sexual harassment. Individuals are finally

speaking out about unlawful conduct that may have taken place a while ago, but realize now that it is okay to complain about unfairness in the workplace and that their stories should not be silenced in fear of a possible backlash.

What are three key things you must remember when tackling a sexual harassment case?

1. Having Compassion

Being subjected to sexual harassment often has devastating effects to an individual, which can cause both physical and emotional distress. We understand that most people go to work and expect to feel safe and protected and when another employee crosses the line, it can cause an enormous amount of uneasiness and discomfort. Sometimes in extremely egregious sexual harassment matters, clients develop physical ailments that require medical attention. More frequently, clients become emotionally distressed by the sexual harassment. While we are not medically trained, having

compassion and understanding of what the client is going through is an important part of practicing law. As lawyers, we are also in the service industry. Customer service is a vital part of our job and we can only advocate effectively for our clients if we understand the emotional suffering our clients endure during these difficult times of their lives.

2. Detailed Approach: Every Case is Different

There is no cookie cutter equation as to how to handle a sexual harassment case. Each case is unique and requires us to take a different detailed approach to achieve the best results for our clients. Each client that walks through our door gets a detailed assessment of their case from day one. It is important to remember that each client has a different story to tell and it would be a disservice to our clients to treat each case the same. Besides the obvious notion that each case has different facts, each client also has different needs. Some clients are more affected than others. Some clients want to be involved in the day to day operations of their case, while other clients prefer to take more of a back seat. Whatever the case may be, we ensure that our clients get the quality representation that they deserve.

3. If we could get our clients, the moon and the stars, we would.

As lawyers we cannot take back what happened when someone is sexually harassed and there is never any amount of money that can ever fully make a plaintiff whole again. What we strive for is to try and recover as much value as we can to make the employee as whole as possible. Most of the time the recovery is monetary. However, many times we are able to get our clients non-monetary things such as a transfer, reference letters, or counseling. A plaintiff is typically able to recover lost wages, emotional distress damages, attorneys' fees, costs, or punitive damages. Using our detailed approach to each case, we try to obtain the maximum value for our clients.

What are some of the hurdles of proving sexual harassment?

Often clients come to us and say that they have been sexually harassed, but they do not have any evidence to prove it. The reality is that often, an individual who sexually harasses another individual will not do so in an open forum. When this happens, the individual's testimony becomes evidence and the jury is left to decide the merits of the case based on the individual's credibility. Credibility is key and often cases are won or lost based on the credibility of the plaintiff or the defendants.

It is important to remember however, that the plaintiffs bear the burden of proving their case. Therefore, the plaintiffs still need to establish that they were sexually harassed and that the corporate entity and/or the individual defendants should bear liability for the sexual harassment. Sometimes proving sexual harassment can be done by providing direct evidence. For example, sometimes plaintiffs can prove sexual harassment by showing sexually harassing text messages, emails, pictures, or recordings. When plaintiffs have such evidence, it often makes it easier to prove the sexual harassment.

When is best to file a lawsuit for sexual harassment? What is the best method of tackling sexual harassment?

Often individuals are afraid to come forward because litigation is such a daunting experience. It is important to know that before a complaint gets filed in court and becomes a public document, attorneys can try to remedy the situation. This is particularly important for individuals who still work in a place where they are being subjected to sexual harassment. Having an attorney step in at this point can be lifechanging, especially if an attorney can get that employee out of harms way.

Often cases are mediated before a case is filed in court and mediation can be very helpful in sexual harassment cases. We typically mediate through private mediators. Mediations are a confidential process where both sides talk to a neutral third party about their allegations or defenses. Not only can this be therapeutic for a plaintiff, but it also allows the attorneys to work together to resolve the matter potentially before filing in court.

If mediation proves to be unsuccessful or our firm determines that filing the case is the best option for our clients, then we file the complaint in court. At this time the case is litigated in the justice system and we continue to advocate for our client in court.

Retaliation is Unlawful

A lot of times employees do not come forward about the harassment in fear of retaliation. This is usually because an employer holds a lot of power on an individual's career trajectory. Employees are often afraid of being terminated, transferred, losing out on a promotion, or having their complaint become publicized around the office. Sometimes employees are afraid of looking like troublemakers or developing unfavorable reputations. To many of us, our careers are one of the most important things in our lives, other than family. To know that an employer can take that away from us is terrifying. These threats often have chilling effects that keep individuals from complaining about harassment.

However, it is unlawful for an employer to take an adverse action against an employee for complaining about sexual harassment. An adverse employment action can be a termination, a demotion in pay, or a failure to promote. The reason behind this law, is that employees are encouraged to complain about sexual harassment or other forms of discrimination and should not be retaliated against for making that complaint. This right

to complain is a protected activity under the law and is one of the most sacred rights we have as employees.

It happens more often than we would like, where we see that an employee complains of sexual harassment and suffers retaliation. In fact, retaliation is the most frequently alleged basis of discrimination in the Equal Employment Opportunity Commission. When this happens, the emotional distress can be heightened. Sometimes the employee not only has to deal with the distress of getting sexually harassed but now must cope with losing their job or other possible ramifications from complaining. **LM**

Brittany A. Stevens

Ms. Stevens is a passionate litigator who believes strongly in civil rights and fairness throughout the work environment. In 2018, Ms. Stevens was recognized as a "Rising Star" by New York Super Lawyers for her contributions in employment discrimination. Ms. Stevens has also been recognized as a 2018 "Best Attorney" by both the Best Attorneys of America Association and by the American Institute of Legal Counsel. Most notably, Ms. Stevens has been added as a member of the "Million Dollar Advocates Forum" where she is recognized as a top trial lawyer in America. The Million Dollar Advocates Forum is recognized as one of the most prestigious groups of trial lawyers across America.

¹This is the standard in New York City. Each state or city has a different standard of proving a hostile work environment based on gender.