

## About Brittany

*Brittany Stevens, a Partner at Phillips & Associates PLLC, is a dedicated advocate for employees who have experienced sexual harassment and retaliation in the workplace. With a focus on employee-side representation, Brittany understands the unique challenges employees face and provides compassionate, empathetic counsel while fighting aggressively for their rights. At Phillips & Associates, the firm is committed to delivering zealous advocacy for those who need it most. Brittany's client-first approach ensures that each person receives the support and legal expertise required to achieve the best possible outcomes in the most difficult circumstances. With a deep passion for justice and an unwavering commitment to her clients, Brittany works tirelessly to hold employers accountable and secure the compensation and protection that employees deserve.*

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## Understanding Sexual Harassment in Today's Workplace: Legal, Psychological, and Corporate Dynamics



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Sexual harassment complaints have taken the news by storm ever since the #MeToo movement spread on social media. This widespread call to action gained momentum when survivors courageously shared their personal experiences of sexual assault and harassment. This movement paved the way for countless people to come forward and share their own story. Their bravery sparked a powerful question: Why complain now? Or more pointedly, why did they not lodge a report at the time it occurred? As a plaintiff-side employment attorney, I am asked this question frequently by defense lawyers. However, there are countless reasons why an employee may choose not to report sexual harassment in real time. This article explores the barriers that prevent employees from reporting such incidents to their employers, particularly within large technological companies, law firms, and C-suite executive environments. It will also examine why harassers often escape accountability and the role of mediation in resolving sexual harassment claims. Understanding these concerns and supporting employees who report sexual harassment can help encourage more individuals to come forward.

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# **No one should have their job threatened or taken from them or receive any negative consequences solely because they are reporting unlawful activity.**

employees feel about reporting sexual harassment. Fortunately for employees, being harassed by a supervisor is per se unlawful under certain statutes and can - and should - be reported.

## **Lack of Awareness & Uncertainty about Outcome**

An employee's uncertainty about the outcome of their sexual harassment complaint often serves as a further barrier for reporting misconduct. Many employees do not trust that their complaints will be handled appropriately and worry that the employer will minimize what they have experienced or fail to address the harassment entirely. There is sometimes a fear that the employer may try to cover up or protect the harasser instead of the individual making the report. Without confidence in the complaint and investigation process, an employee may be too apprehensive to come forward.

The employer should relay confidence to the employee that their concerns will be addressed appropriately and that they will conduct a thorough investigation into their claims. Employers should also reassure employees that they will not be retaliated against for their complaint. Many employees lack knowledge as to their legal rights particularly as it relates to anti-retaliation laws. Reinforcing to the employee that there will be no negative consequences because of their report

adds a level of reassurance that the employee desperately needs at that time. The employer should also explain the steps involved in their investigation and be transparent as to what will happen next. This transparency allows the victim to feel that their complaint is being taken seriously.

Other times there is distrust that their complaint will not be kept confidential, particularly when the harasser is also their supervisor. It is important for employers to maintain confidentiality for the safety and protection of the reporter and to preserve the integrity of the investigation. Additionally, maintaining trust in the investigation and reporting process will encourage other employees to report sexual misconduct and allow witnesses to come forward. Witnesses may be fearful of providing statements if they themselves fear retaliation. It is common for employees who are still employed by the company to not corroborate another colleague's events in fear of suffering an adverse action. Witnesses worry that if they come forward and tell the truth about another's employees' harassment then they are putting a target on their own back. This puts the victims in an unfortunate position because without witness corroboration, many sexual harassment incidents are unsubstantiated. Given all of this, it is important for employers to be cognizant of their employees' trepidation

and concerns so they can try to relieve any unnecessary anxiety about the reporting process itself.

## **Psychological Barriers that Deter Complaints**

There are psychological barriers that deter victims from reporting sexual harassment. Often, sexual harassment in the workplace creates feelings of isolation in the victim. Victims often report feeling a mix of confusion, anger, sadness, and resentment when they are violated without consent. These emotional responses, along with feelings of embarrassment or self-blame, hinders people from reporting. Some are fearful that talking about their harassment may force them to relive the trauma. Even the complaint reporting process is distressing where an employee must provide accounts of sexual harassment or assault to an unfamiliar investigator.

It is clear that society has failed to provide adequate protection for victims after they complain. A look at any news channel yields how unfairly victims are treated when they complain about harassment. Victims are unfairly blamed and made to feel as if they need to automatically prove their accounts with concrete evidence. Often, sexual harassment occurs behind closed doors and not every victim has a paper trail to support their allegations. Testimony is sometimes the only evidence that can be relied on when proving sexual harassment. That is why the power of one's voice becomes crucial in the reporting process and why sexual harassment matters often hinge on credibility. Given this, it is easy to see why reporting sexual harassment is such a daunting experience for many employees.

## **Sexual Harassment in Big Tech Companies and by C-Suite Executives**

It is important to recognize that discrimination does not discriminate – it exists in all employment settings, from small businesses to large tech giants.





The tech industry has faced increased scrutiny regarding sexual harassment particularly within senior leadership and C-suite executives. Several high profile cases within this industry revealed issues of sexual assault involving top executives. This pervasive sexual harassment is fueled by the fast-paced and often male-dominated nature of the industry. Where executive teams are predominantly male, the power imbalance creates a culture where women are made to feel inferior and under increased scrutiny. Tech is also a field where top executives may work closely with lower-level employees. This can foster an intimidating work environment and one where employees may fear retaliation if they report harassment.

Often C-Suite executives act as if they are invincible and that the laws do not apply to them. This mindset perpetuates a toxic culture because employers do not hold their top executives accountable for their actions. Consequently, employees may feel powerless to report sexual harassment fearing that the company will cover up their complaint to protect the reputation and public image of its

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executives. In these incidents, speaking out feels futile particularly if the company has the means to suppress or discredit an employee's complaints.

In these dynamics, victims often report that their complaints go unaddressed. Often, companies are more fearful of losing moneymakers than protecting their employees. It is obvious that the higher the rank and power that a supervisor or manager has, the more likely they can

evade consequences for their actions. These C-suite executives often have unlimited resources and wealth. They are the gatekeepers of power within the organization and have control of business operations. It is completely logical to feel that going up against the "big tech company" could mean career suicide. This mentality fosters a work environment where sexual harassment often runs rampant but goes unchecked. A lack of accountability not only undermines

the integrity of the company but also contributes to a toxic culture of silence. This is one of the primary reasons why sexual harassment is so underreported in corporate America, specifically in the tech sector.

Employment lawyers play an essential role in protecting employees from retaliation and sexual harassment by ensuring that those with less power have a recourse if they report misconduct. When the harasser is a C-suite executive and sexually harassing a lower-level employee, the company may be strictly liable for the sexual harassment. In New York, the law is extremely favorable for employees who are sexually harassed or discriminated. In some cases, particularly if New York City law governs, an employer may be automatically liable for the action of their employees if the harasser is in a supervisory position over the victim. This strict liability standard for supervisors makes sexual harassment claims a lot easier to prove and to resolve because there is no notice needed to the Company to establish liability. Employees may feel more comfortable complaining internally or externally through the assistance of an employment lawyer when they understand these laws.

In other circumstances the individual sexually harassing another employee may be a co-worker. In this situation, the company needs notice before they may be liable for the harassment. If the company had already been put on notice of the same co-worker sexually harassing other individuals, then the company may be liable if they failed to take appropriate remedial measures. Companies need to ensure that the sexual harassment stops once a report is made and failure to do this can result in significant damages to a complainant bringing a claim.

## **Sexual Harassment in Law Firms**

Sexual harassment sadly remains pervasive in the legal field as well. Despite the professional goal of seeking justice and promoting fairness, the field has faced its share of legal backlash. Similarly to big tech companies, there are hierarchical structures in law firms that create vulnerability for junior associates and staff members. Many times, paralegals and associates are staffed under partners who have substantial control over their career paths. The

risk of retaliation such as getting terminated, demoted, or passed over for a promotion, can be enough to prevent junior attorneys from reporting sexual harassment. There is also a prestige that is often associated with the legal profession, and associates may feel that they need to remain silent to preserve their reputation. The ability of a partner at a law firm derailing their professional trajectory creates silence in the legal field. Similar to large tech companies who generate significant profits, law firms are also businesses. There are revenue generating partners who act as if they are not liable under the laws and may use their power to prey on more junior attorneys. Law firms may be protecting these “rainmakers” because of how much business they are bringing into the firm. In these situations, we see law firms not taking victims complaints seriously or minimizing their reports. In some instances, the victim is gaslit into feeling as if they are the problem particularly if the sexual harassment is more subtle. Sexual harassment is any unwanted and inappropriate behavior of a sexual nature that may cause a hostile work environment. It can be a physical assault, inappropriate touching, or sexual advancement but it can also be any





unwelcome gestures, jokes, or comments made to an employee. There is such a large spectrum of what can be deemed sexual harassment, that sometimes individuals who are reporting less overt incidents, are not treated with the same dignity and respect as someone who may be reporting a physical assault. Law firms should not minimize an employee's report of sexual harassment as they have a legal and ethical responsibility to address their complaint and prevent future sexual harassment.

### **Resolving Disputes: The Role of Mediation and Confidential Settlements**

Our firm assists employees who are suffering a hostile environment and who have been sexually harassed or retaliated against. The path to resolution does not always involve a court filing, instead, the parties decide to discuss settlement amongst themselves. Many times, a negotiation takes place between our firm and the company's lawyers in an effort to make our clients whole. If the parties think that resolution is possible, then we may engage a mediator for assistance. A mediation is when both sides sit down with a neutral party to discuss the facts and possible resolution. Resolution is typically monetary relief to compensate the employee for the emotional and physical harm they suffered. Compensation can also be sought if they suffered any monetary consequences such as wage loss, particularly if they lost their job for reporting or had to leave their job because the work environment was intolerable.

There are a plethora of reasons why mediation is a beneficial process for both sides. Many times, mediation takes place before a public lawsuit is filed, and pre-suit mediation can serve as a faster and less stressful alternative to court filing. This can help both parties because once a complaint is filed in court, the complaint



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becomes public. While employers do not always want the reputational harm that may come with a filed complaint against them, employees too have an interest in confidentiality. There is often value in knowing that the underlying facts are not in the public domain particularly if the victim is not yet ready to come forward in the public eye or complain publicly about a known figure such as an executive or other high-profile individual. Mediation is confidential both in terms of what is said during the mediation process but also the negotiations that take place. This confidential process allows the parties to speak freely about their allegations and defenses. The mediation process also gives the parties an opportunity to speak. This is a powerful process for many of our clients who want to feel heard in a setting that is not the courtroom.

**Supervisors hold decision-making power over a subordinate's work environment... The power dynamic can create an environment where a subordinate is afraid to speak up to avoid jeopardizing their career trajectory.**

### **Conclusion**

In summary, there are many challenges facing employees when reporting sexual harassment at the workplace. These challenges occur throughout large and small companies and throughout many different sectors. It is necessary for employers to create a safe working environment by putting in place more effective reporting systems. Employees deserve to feel safe reporting sexual harassment and that their harassers will be held accountable for their actions.

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