



#MeToo

April 5, 2019

## FY 2018: Sexual Harassment Charges

- EEOC
  - 13.6% increase (i.e., from 6,696 in 2017 to 7,609 in 2018)
- Maine
  - 32% increase (i.e., from 122 in 2017 to 161 in 2018)
- Massachusetts
  - 19% increase (i.e., from 269 in 2017 to 320 in 2018)

# Sexual and Other Unlawful Harassment Policy

- Definitions of sexual and other harassment
- Examples of conduct that violates the policy
- Reporting options
- Investigation process
- Prohibition against retaliation
- Requirement for managers/supervisors to report to HR if they receive a report of harassment
- Requirement for all employees to cooperate with investigations
- Include enforcement agency contact information

## Offensive Conduct

- Consider addressing conduct that falls short of unlawful harassment through a separate policy
- Offensive conduct is not related to a protected characteristic
- Not subject to same legal protections as harassment

# Harassment Training

- Do managers understand their obligation to address harassment if they see it?
- Do managers know what to do when they receive a report of harassment?
  - Prompt, effective action is critical
- Maine requires training for new employees and managers/supervisors
- Massachusetts, Vermont, and Rhode Island encourage but do not require employers to provide training for new employees and managers/supervisors
- CT requires two hours of training for supervisors within 6 months of start of employment
- New York requires training for all employees annually

# Sexual Harassment in NY

- Requires sexual harassment policy that meets specified standards
- Requires annual sexual harassment prevention training for all employees that meets specified standards
- Prohibits mandatory arbitration provisions for sexual harassment claims
- Prohibits confidentiality regarding the underlying facts of sexual harassment claims (unless it is the employee's preference)
- Prohibits preventing or restricting an employee from opposing, disclosing, reporting, or participating in an investigation
- Expands liability for sexual harassment claims to independent contractors and certain other non-employees (e.g., interns)
- Includes posting and notice requirements (in English and Spanish)

# Severe or Pervasive, Objectively and Subjectively Offensive

*Bell v. RC Management* (Sup. Ct. Maine):

- Employee worked a total of 4-5 shifts for McDonald's
- First incident: two co-workers discussed "having sex" at the prom
- Second incident: a co-worker discussed a woman breastfeeding in the restaurant and rubbed his chest in a sexual manner. The supervisor told the employee to "shut up" and the conduct stopped immediately
- Third incident: a co-worker was discussing "how to make babies" and used the word "sperm" during a conversation about evolution and the passing of genetic material
- Employee reported the conduct to management: one co-worker was given written warning and apologized, employee quit before the other employee could apologize
- Court denied summary judgment for the employer, finding that material issues of fact must be resolved by the jury

# Presenter

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