Workplace Harassment: An Unacceptable Risk

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Last week I attended a leadership conference hosted by an organization near to my heart, Camp Fire. Camp Fire's mission is to provide opportunities for young people to "find their spark, lift their voices, and discover who they are." During the opening keynote session, Hal Gregersen, Executive Director of the MIT Leadership Center reminded his audience that "assumptions act as blinders," and encouraged leaders to "look for surprises." One approach is to ask the question, "How many things am I dead wrong about?" Gregersen's prompt led me to reflect on the fact that many nonprofit leaders have blinders on when it comes to workplace culture and misconduct. A subtopic within the vast realm of workplace conduct—where there is urgency to remove our blinders and refocus—is sexual harassment in the workplace.

Waking Up to Workplace Harassment

When approached by a reporter about a story on workplace harassment in nonprofits, I instinctively mentioned that in my recent experience with nonprofit teams, anti-harassment policies tend to be a strength, versus a gap. When I shared this observation with an NRMC colleague, she reminded me that during some of our consulting engagements, we've heard stories about conduct that could very well be reported as sexual harassment between colleagues. So perhaps I've been dead wrong about the extent to which inappropriate conduct is occurring in the organizations whose missions I support and admire. Does the shiny surface of a nonprofit distract attention from wrongdoing that may be causing harm to staff? Is misconduct sometimes overlooked, even if the nonprofit condemns harassment in a written policy?

Why and How We Ignore Workplace Harassment

- **That Couldn't Happen Here** – Believing that something "couldn't happen here" has no impact on the likelihood of that event occurring; but, it does reduce the opportunity to root out bad behavior, hold all staff accountable, and create an environment worthy of your mission. Remember that you'll always be blind to something… the fact that you haven't seen misconduct doesn't mean that it isn't happening.
- **Do What I Say (Not What I Do)** – As a parent I've heard that children are more likely to mimic a parent's actions versus complying with a parent's commandments. At NRMC we've heard from many employees that their leader's actions speak loudly, while discordant written policies ring hollow. Nonprofit leaders must live by their policies and personally root out and denounce sexual harassment in the workplace.

- **Too Nice** – In last week's article on social engineering risk, we encouraged readers to be "nicely suspicious" when it comes to handling inquiries and interacting with unknown visitors in the workplace. We reminded you that a pleasant attitude and inquiring mind aren't incompatible traits. Nonprofit team members should all display a willingness to respectfully question whether misconduct is jeopardizing the safety and integrity of the team.

What is Illegal Workplace Harassment?

- *Three Key Federal Laws:* Title VII of the Civil Rights Act of 1964 makes it illegal to base employment decisions on characteristics such as race, color, religion, national origin and sex, and also prohibits harassment against an employee because of these characteristics. The Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination based on an employee's age (40 or older). The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination based on an employee's disability.
- *State Laws:* State-specific laws have expanded federal civil rights protections, such as by including additional protected characteristics, and by lowering the threshold of applicability. Visit this National Conference of State Legislatures webpage for information on the list of protected classes in each state for employment decisions and purposes.

Harassment Facts and Myths

- *Some inappropriate workplace conduct might not be illegal conduct.* To constitute illegal workplace harassment, conduct must create an environment that "would be intimidating, hostile, or offensive to reasonable people." (Source: EEOC)
- *Victims of illegal harassment include, but are not limited to the person harassed in the workplace.* Anyone affected by illegal, offensive conduct is a potential victim of harassment.
- *Any employee is a potential victim* of sexual or other forms of illegal harassment—regardless of their sex, status, sexual orientation or identity. Harassment's costly price tag includes mental and physical harm to the survivor—including consequences that survivors might suffer throughout their lives—as well as economic damage to our society.
- *Illegal harassment negatively impacts all employees* at a nonprofit in the form of poor morale, low productivity, and increased turnover, not to mention financial and reputational harm.
- *Any employee, volunteer or contractor might be a perpetrator* of illegal harassment for which your nonprofit can be held legally and financially liable. If allegations are made, no one should be given a special pass or be considered above suspicion.
- *Illegal harassment may be found even when the victim or victims have not suffered tangible, economic injury*, such as a demotion or termination of employment.
- *Workplace harassment too often goes unreported.* According to a report from the EEOC, common "workplace-based responses" by victims of harassment include avoiding the harasser, denying or downplaying the gravity of the situation, and attempting to "ignore, forget or endure the behavior." The report includes an astonishing statistic: "roughly three out of four individuals who experienced harassment never even talked to a supervisor, manager, or union representative about the harassing conduct." The recent #MeToo movement on social media draws new attention to this issue, including in our office. In recent weeks our team has been sharing and discussing—for the first time—our experiences with workplace harassment at prior jobs.
- *Retaliation is strictly prohibited*. Federal and state anti-harassment laws also prohibit harassment against an employee for filing charges of discrimination, participating in an investigation, or opposing employment practices the employee reasonably believes are illegal or discriminatory. This form of prohibited discrimination is often referred to as illegal retaliation.

Stop Workplace Harassment Before It Harms Your Greatest Asset

- Nonprofit leaders often showcase their staff members as the greatest asset to their missions. If you've ever said, "my staff and volunteers are the heart of this organization," then pledge to stop workplace harassment before your heart is harmed.
- Adopt a broad, clearly written policy that strictly prohibits workplace harassment based on any protected characteristic.
- Review your existing anti-harassment policy to ensure that it is broad (covers any form of illegal harassment) and clear (it make sense on the first read).
- Invite ideas and input about ways to improve your workplace culture, including input on your harassment policy and reporting procedure.

- Investigate all allegations of workplace misconduct, even when you believe that the behavior might be inappropriate, but not illegal. Remember that—like near misses preceding a crisis—inappropriate conduct could later snowball into illegal conduct. Investigating all inappropriate conduct might help you prevent illegal misconduct.
- Update your training program focused on harassment prevention and reporting for employees and managers. Do not design and deliver training that is narrowly focused on avoiding legal liability, and don't use training materials that are so generic that they don't speak to your culture and workplace. Implement training that equips your staff with the skills they need to intervene and reject harassment, should they experience or witness harassing behavior.
- Adopt a *no exemptions* policy when it comes to mandatory anti-harassment training. Don't give senior leaders a pass or assume that anyone is too busy or experienced for this essential training. The desire to skip anti-harassment training directly challenges the values of any nonprofit that prioritizes workplace safety and respect.
- Find out if your state requires periodic training on the prevention of sexual harassment. Connecticut, Maine and California are among the states that require periodic training. In California, employers of 50+ staff must provide two hours of interactive training at least every two years.

Of late, news is teeming with tales of workplace sexual harassment in Hollywood, Silicon Valley, and elsewhere. I've read articles about *bro culture* and other dynamics that perpetuate workplace harassment and misconduct. While it's important to recognize that both men and women are victims of workplace harassment, many American women are now stepping forward to report harassment they have experienced at work. A Nonprofit HR article reminds us that 73% of nonprofit sector employees are women, yet other sources, like this Nonprofit Quarterly article, convey that only 43% of nonprofit board seats—specifically, 33% of board seats in nonprofits with budgets $25 Million and up—are held by women. I assume that the nonprofit sector does not promote bro culture or any gender disparities, but these statistics and recent news stories make me worry that I'm dead wrong. We must all band together to respect and encourage diversity and inclusion in our sector, in order to squash workplace harassment.

Take advantage of the multitude of free and authoritative resources to prevent harassment and address allegations and incidents. These include:

- Report of the Select Task Force on the Study of Harassment in the Workplace, U.S. EEOC
- Nolo's article, Guidelines for Handling Discrimination and Harassment Complaints
- Resources available from your state department of labor or commission on human rights (e.g., New York State Division of Human Rights, Guidance on Sexual Harassment for All Employers in New York State)
- Harassment prevention resources and the employment hotline available from your Directors' & Officers' or Employment Practices Liability provider.

Melanie Lockwood Herman is Executive Director of the Nonprofit Risk Management Center. Melanie welcomes your thoughts about preventing workplace harassment at Melanie@nonprofitrisk.org or 703.777.3504.