ZERO TOLERANCE
PROGRAM TOOLKIT

Identifying and Combating Sex-Based Harassment in the Legal Profession

ambar.org/zerotolerance
Sex-Based Harassment Threatens the Enrichment of the Profession

While both men and women are affected by sexual harassment, women are disproportionately impacted. Nearly three-quarters of women lawyers feel that workplace harassment is a problem, but these cases are reported less in 2018 than they were in 1992. According to studies and surveys, as many as 50% of female lawyers have reported experiencing sexual harassment in their present or past jobs. This underreporting makes sense when one considers the consequences of coming forward. Many survivors of sexual harassment become ostracized or face retaliation. Facing these prospects, others opt to say nothing.

Sexual harassment hurts everyone involved, discouraging women from remaining in the field of law and taking leadership roles, thereby resulting in a loss of talent.

1. Martha Neil, Hidden Harassment, supra note 9; Eyana J. Smith, Employment Discrimination in the Firm: Does the Legal System Provide Remedies for Women and Minority Members of the Bar?, 6 U. Pa. J. Lab. & Emp. L. 789, 800 (2004) (sexual discrimination also has had the devastating result among lawyers of forcing women to leave the law completely); Grossman, supra note 10. A recent survey of male and female attorneys by The Center for WorkLife Law found that, over the course of a year, 82 percent of women (and 74 percent of men) reported experiencing sexist comments, stories, or jokes at least once; 13 percent of women believed they had lost opportunities because they had rebuffed sexual advances from co-workers or superiors; 27 percent of women reported receiving unwanted romantic or sexual attention, or unwanted attempts to touch them; and 6 percent of women reported feeling bribed or threatened for not engaging in sexual behavior with a work colleague. Joan C. Williams, unpublished study conducted by The Center for WorkLife Law at UC Hastings College of the Law (2016). Note, of course, that women—like men—may not only be victims of harassment, but may engage in it themselves, although it is far less likely.


Defining Sexual Harassment

The EEOC guidelines on sexual harassment define it as, “Unwanted sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature” in which any of the following three conditions are met:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of the individual’s employment;

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such an individual;

3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.6

The following has also been included:

“harassment not involving sexual activity or language may also give rise to Title VII liability … if it is ‘sufficiently patterned or pervasive’ and directed at employees because of their sex”.7

6. 29 C.F.R. § 1604.11(a).

The Zero Tolerance Program Toolkit & How It Works

The Toolkit provides bar associations, law firms, corporate legal departments, and other groups all the materials needed to present a successful program, including program agendas, customizable PowerPoint slides, a library of relevant scenarios for group exercises, program handouts, and a bibliography. With the Toolkit, you can tailor the program to any audience, facilitate discussion of the bystander effect and how to handle instances of abuse, customize the program to the format and time allotted, and offer future reading and learning opportunities. Resources have also been added to assist survivors of sexual harassment/abuse.
The members of the Committee on Sexual Harassment and Gender-Based Bullying volunteered their time and resources to help make this toolkit possible. The following statements are just a few of their reasons why:

“This toolkit is important to me because black women lawyers need to know that their voices will no longer be silenced and that they have every right to speak out against harassment and discrimination as equally as other women in the legal profession.”

“Given that so many acts of sexual aggression happen each year not only in our legal community but in every other industry, I decided to join this project to work with like-minded people to bring this pressing issue to light. My aim is to empower women to openly talk about sexual aggression and voice their concern, teach each other how to cope with being a victim and discuss solutions and hopefully to prevent sexual violence.”

“I am proud to be a woman attorney. I feel that diversity enriches our lives and makes us better lawyers and people. The experiences I have had through women-focused programming in the ABA have enriched me both professionally and personally. I wanted to work on this toolkit to give back to the ABA and my profession. As a mother of two college-age daughters, I cannot just hope that sexual harassment and gender based bullying will be a thing of the past one day. I am committed to do my part to make a difference, not only for myself today, but for the women that will come after me tomorrow.”
“A woman who has not been harassed, in some form, based on her gender does not exist. That’s a bold statement for sure but the problem of gender-based harassment against women is a systemic problem in our society. You might think lawyers and law firms are immune to the problem of sexual harassment, after all, lawyers are highly educated and arguably more aware of the kinds of conduct that could constitute workplace harassment, whether it rises to the level of illegal (e.g. actionable) workplace harassment or merely obnoxious conduct. Not so. Not the case. The materials in this toolkit will assist law firms and lawyers to raise awareness about this systemic problem and provide tools to take steps to eliminate sexual harassment in what should be a law firm workplace that adheres to the highest levels of professional conduct.”

A woman who has not been harassed, in some form, based on her gender does not exist.
Interactive Table of Contents

PROGRAM AGENDA
Sample conference agendas for a 1 1/2 or 2-hour program. Includes format, sequence of presentations, and various segment options.

POWERPOINT SLIDES
A customizable PowerPoint slide deck to use as part of an opening presentation, with notes for the presenter(s) and details on key points.

PROGRAM MATERIALS
PDFs to serve as handouts at the program.

DISCUSSION SCENARIOS
Includes several descriptions of commonplace instances of sexual harassment, gender-based bullying, and/or bystander apathy.

SPEAKERS BUREAU
Potential speakers and panelists.

MARKETING THE PROGRAM
Sample text that can be used to create a marketing flyer.

BIBLIOGRAPHY
Links to articles, reports, and websites that can be referenced for a more in-depth understanding of the issues, to be distributed to speakers in advance of the presentation for background information and to attendees as appropriate.

RESOURCES
Links to reference books and web assistance for individuals and employers.

All materials in this Toolkit are available online at ambar.org/zerotolerance.
Special Thanks to the 2017-2018 Sexual Harassment and Gender-Based Bullying Committee

CO-CHAIRS
Andrea Carlise
Wendi Lazar

COMMITTEE MEMBERS
Robin Runge
Raychelle Tasher
Christina Bost Seaton
Fatima Goss Graves
Veronica Singer
Gregory Chiarello

SUBCOMMITTEE CO-CHAIRS
Gretchen C. Bellamy
Pamela Roberts

SUBCOMMITTEE MEMBERS
Melodie Arian
Kellye Moore
Jennifer Willner

ABA Commission on Women in the Profession Staff
Melissa Wood, Director
Cecilia Boyd, Program Specialist
Bre’Anna Moore-Gordon, Program Associate
Jennifer Sawicz, Marketing Specialist

The Zero Tolerance Program Toolkit is a project of the American Bar Association Commission on Women in the Profession. Contact the Commission staff at abacwp1@americanbar.org.

For more information, visit ambar.org/zerotolerance.
Identifying and Combating Sex-Based Harassment in the Legal Profession