


Learning Objectives

- Overview of the #MeToo Movement
- #MeToo in Healthcare
- Legal and Compliance Impact of Allegations and Investigations
- How to Educate and Change Your Organization's Culture

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A slide with a dark, textured, splattered background on the left side. The text "Learning Objectives" is written in a white, sans-serif font. To the right of this background, there is a bulleted list of four items. The slide number "2" is in the bottom right corner.




What is #MeToo?

'Me Too' became the way to succinctly and powerfully connect with other people and give people permission to start their journey to heal.

Tarana Burke, Founder of MeToo

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What is #MeToo?

- Originally coined by Tarana Burke in 2006 as a way to help victims of sexual harassment and assault. ¹
- October 10, 2017 – The *New Yorker* magazine published the first of a series of articles by Ronan Farrow where numerous women accused Harvey Weinstein of rape, sexual assault, and sexual harassment –Mr. Weinstein denied the charges of sexual assault and rape
- October 15, 2017 – Alyssa Milano tweeted “If you’ve been sexually harassed or assaulted write ‘me too’ as a reply to this tweet.”
- Thousands responded, reposted and thousands more responded **#MeToo**
 - In one year, 19 million people had responded *MeToo*

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Timeline of #MeToo

- **Oct. 18, 2017** Olympic gymnast McKayla Maroney tweets that she was sexually assaulted by former team doctor Lawrence G. Nassar, who recently has been sentenced to 60 years in federal prison on child pornography charges.
- Oct. 29, 2017 The first accusation against Kevin Spacey lands, with Anthony Rapp claiming that Spacey made sexual advances toward him when he was 14.
- Nov. 9, 2017 WaPo first publishes investigative piece about Republican Senate nominee Roy Moore's alleged history of preying upon underage girls. He was defeated for the Senate seat.
- Nov. 10, 2017 Louis C.K. confirms Nov. 9 NYT report about several women who accused him of sexual misconduct: "These stories are true."
- **Nov. 29, 2017** The "Today" show opens with a stunning revelation that co-host Matt Lauer had been fired after NBC received detailed allegations about the anchorman's sexual misconduct.
- Nov. 30, 2017 Russell Simmons steps down from his companies after writer Jenny Lumet accuses him of sexual assault in The Hollywood Reporter. Nov. 30, 2017 Garrison Keillor is fired from Minnesota Public Radio after accusations of sexual misconduct.
- **Dec. 7, 2017** At the urging of his party, U.S. Sen. Al Franken, D-Minn., says he'll resign from Congress amid sexual misconduct allegations.

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Timeline of #MeToo

- Dec. 11, 2017 Mario Batali goes on leave from his show and restaurants after four women allege sexual harassment. He offers an apology and says the behavior described in the accusations does "match up" with his actions.
- **Dec. 20, 2017** The Los Angeles Times breaks the story of seven men accusing successful theater prodigy Gary Goddard of molesting or attempting to molest them as boys. The news followed a November essay written by actor Anthony Edwards, in which he made similar claims.
- Jan. 11, 2018 In interviews with The Los Angeles Times, five women accused Franco, 39, of behavior they found to be inappropriate or sexually exploitative.
- Feb. 6, 2018 Country music star Vince Gill showcased a personal song about sexual abuse at Nashville's Country Radio Seminar. "We're living in a time right now when finally people are having the courage to speak out about being abused," Gill said, sharing his own experience with sexual assault in the seventh grade.
- Feb. 3, 2018 In a New York Times article, actress Uma Thurman accused disgraced movie mogul Harvey Weinstein of forcing himself on her sexually years ago in a London hotel room. Thurman also said that during filming, "Kill Bill" director Quentin Tarantino coerced her into driving a car she believed was faulty, and spit in her face and choked her in scenes where other people are seen doing it on screen.

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Timeline of #MeToo

- **March 12, 2018** James Levine, whose 46-year career at the Metropolitan Opera established him as a towering figure in classical music, was fired by the company after an investigation found evidence of sexual abuse and harassment.
- **March 19, 2018** Fortune magazine publishes an article detailing the accounts of two women who say Tronc chairman and investor Michael Ferro made unwanted sexual advances toward them in 2013 and 2016 during separate business meetings. Ferro retired from the board of Tronc the same day.
- **March 27, 2018** The sexual abuse scandal at Michigan State University widened when authorities charged a former dean with failing to protect patients from sports doctor Larry Nassar, along with sexually harassing female students and pressuring them for nude selfies.
- **April 6, 2018** NowThis News released a video of author and motivational speaker Tony Robbins denouncing the #MeToo movement, saying it amounts to little more than women trying to gain "significance" by claiming "victimhood." The comments were made during an event in March.
- **April 26, 2018** A woman who worked as a war correspondent for NBC News said Tom Brokaw groped her, twice tried to forcibly kiss her and made inappropriate overtures attempting to have an affair.
- **April 26, 2018** Bill Cosby was convicted of drugging and molesting a woman in the first big celebrity trial of the #MeToo era. **Sept. 25, 2018** At age 81, Bill Cosby was sentenced to three to 10 years behind bars for drugging and sexually assaulting a woman at his gated estate.

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Timeline of #MeToo

- **May 24, 2018** Morgan Freeman has issued an apology for making women feel "uneasy," following a CNN report in which eight women alleged that he sexually harassed them or made inappropriate remarks.
- **May 25, 2018** Harvey Weinstein turned himself in to New York authorities after being charged with rape in the first and third degrees, as well as criminal sexual act in the first degree for forcible sexual acts against two women in 2013 and 2004.
- **Sept 9, 2018** CBS Chief Les Moonves resigned just hours after six more women accused the veteran television executive of sexual misconduct.
- **Sept. 16, 2018** Christine Blasey Ford, currently a professor at Palo Alto University, accused Supreme Court nominee Brett Kavanaugh of sexual assault for an incident that occurred while the two attended separate high schools in Bethesda, Md. Ford originally sent her story via letter to two California lawmakers, requesting anonymity. Ford revealed her identity in a Sept. 16 Washington Post article and has offered to testify about the incident to the Senate Judiciary Committee, pending an FBI investigation. Kavanaugh has denied the accusations. Weeks later, Kavanaugh was sworn in as the 114th justice of the U.S. Supreme Court.
- **Dec. 2, 2018** Fox Entertainment Group and the producers of the television series "Cosmos" say they are investigating celebrity astrophysicist Neil deGrasse Tyson after multiple women accused him of sexual harassment and assault.

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Timeline of #MeToo

- **Dec. 5, 2018** The New York Times reports that an internal investigation of former CBS chief Les Moonves has turned up more evidence of sexual misconduct as well as lying and destruction of evidence, throwing into jeopardy his \$120 million severance package.
- Jan. 3, 2019 Lifetime network airs a six-episode docuseries that explores the abuse allegations against Chicago R&B superstar R. Kelly.
- Jan. 23, 2019 An article published Wednesday online in the Atlantic contains new allegations against "X-Men" Director Bryan Singer, including accounts from anonymous men who say they had sex with Singer when they were minors.
- Feb. 13, 2019 A New York Times report says seven women have claimed singer-songwriter Ryan Adams offered to help them with their music careers but then turned things sexual, and he sometimes became emotional and verbally abusive.
- **Feb. 22, 2019** R&B superstar R. Kelly is charged with 10 counts of aggravated criminal sexual abuse, court records show, about 10 years after being acquitted on charges of child pornography.

As reported by the Chicago Tribune, "#MeToo: A timeline of events", February 22, 2019

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Healthcare
Doesn't Have
This Problem,
Right?

WRONG!!!

- As reported in *Healthcare Deep Dive*, January 31, 2018²,
 - A former cafeteria worker is suing the University of Kansas Hospital Authority alleging the HR department did nothing to stop a co-worker's workplace sexual harassment.
 - The NYC Health & Hospitals Corporation faces a broad discrimination lawsuit including charges of lewd comments by a senior official.
 - A respiratory therapist in Quebec filed a \$360,000 lawsuit against a hospital anesthesiologist for failure to address allegations of sexual harassment.

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#MeToo in Healthcare

- According to a *Medscape*³ report from July 2018, more than 10% of nurses, nurse practitioners, and physician assistants reported sexual harassment within the last 3 years, with **33% of nurses reporting harassment by a physician.**
 - To determine how nurses, NPs and PAs experienced sexual harassment, Medscape gathered data from over 6,200 U.S. physicians and clinicians.
 - Medscape asked respondents about specific harassing behavior they have experienced or witnessed, where it occurred and how their workplace responded.
 - The report aims to describe the current state of sexual misconduct in healthcare by asking about instances that happened within the last three years, rather than instances of harassment over a professional's entire career.

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#MeToo in Healthcare

- The Medscape Survey results:
 - 14% of respondents witnessed sexual abuse, harassment or misconduct in the workplace. Only 1% of nurses, NPs and PAs were accused of sexual harassment.
 - The most common kind of harassment involved sexual comments, leering or commenting on body parts or anatomy (64%); deliberately and repeatedly invading personal space (62%); and unwanted groping, patting and other forms of inappropriate touching (51%).
 - **Among nurses and NPs, 33% said they experienced harassment from physicians, and nearly half (48%) said harassment came from "others," which included administrators, healthcare related personnel and patients.**

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#MeToo in Healthcare

- The Medscape Survey³ results:
 - 44% of nurses, PAs and NPs said the perpetrator was in a subordinate position to them, while 30% said the perpetrator was a peer, and 25% said they were a superior.
 - Patient care units (35%) and hallways (27%) were some of the most common places harassment or abuse occurred. Nurses, NPs and PAs also noted harassment incidents
 - About one quarter of the incidents reported resulted in an investigation, while 74% of those who experienced sexual harassment and reported it said no action was taken.

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#MeToo in Healthcare

- What Makes the Healthcare Industry so Vulnerable to Sexual Assault and Sexual Harassment Claims?
 - High prevalence of women employed in healthcare, but leadership is predominantly male, so power balance is skewed
 - Females make up 77% of overall workforce, but Only 23% of leadership are female
 - Female leaders are most often relegated to Chief Nursing Officers, VP Human Resources, or Legal (Statistics, article by Trish Joyce, www.healthcareers.com, Apr 24, 2018)
 - Due to the nature of the industry, healthcare as a whole functions as a bureaucratic organization, or a top down structure, which also points to more opportunities of sexual harassment or assault.
 - Remember sexual assault and sexual harassment are less about sex and more about POWER

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Legal & Compliance Impact of Allegations & Investigations

- **Laws that Deal with Sexual Assault or Harassment⁵:**

- **Civil Rights Act of 1964: Title VII (Equal Employment Opportunities):** The Civil Rights Act of 1964 protects individuals against discrimination in many different areas. Title VII prohibits employee discrimination or harassment based on sex, race, color, religion, and national origin (including limited English proficiency)
- **Equal Pay Act of 1963 (EPA):** The EPA requires that employers pay all employees equally for equal work, regardless of whether the employees are male or female.
- **Family and Medical Leave Act (FMLA):** The FMLA gives employees the right to take time off from work in order to care for a newborn (or recently adopted) child, or to look after an ill family member.
- **Section 1557 of Affordable Care Act of 2010 (ACA):** Section 1557 is the nondiscrimination provision of the Affordable Care Act (ACA). The law prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities.

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Sexual Harassment / Assault Definitions⁶

- **Definitions:**

- **Workplace violence** - A spectrum of behavior that including overt acts of violence, threats, and other conduct—that generates a reasonable concern for safety from violence, where a nexus exists between the behavior and the physical safety of employees and others (such as customers, clients, and business associates) on-site or off-site, when related to the organization. This includes harassment, assault, domestic violence, stalking and bullying.
- **Quid Pro Quo Sexual Harassment** - Employment status and decisions are made and dependent on an employee providing sexual favors. These decisions include firing, hiring, and granting promotions or raises in exchange for sexual favors.
- **Hostile Work Environment** - Refers to a workplace that makes the employee so uncomfortable that it affects their work or ability to do their job. One example crude, sexual jokes at the employee's expense.
- **Sexual Assault** - Means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.
- **Stalking** - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

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Potential Impact on Victim / Staff⁷

- **Victim**

- Emotional Well-Being
- Physical Health
- Financial Challenges
- Global Consequences

- **Staff**

- Ripple effect on Emotional Well Being
- Turnover
- Low Morale
- Market Impact

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Sexual Harassment Investigations -- Human Resources Is Your Best Friend

- We will focus on Sexual Harassment vs. Sexual Assault, as Sexual Assault is considered a violent crime and should involve law enforcement.
- Turn to Human Resources for Allegations of Sexual Harassment
- Together Develop an Investigative Plan
- Contact Legal Counsel (either Inside or Outside)
- The Investigation is on a Need to Know basis to protect both the Accuser and the Accused.

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Best Practices for Conducting an Investigation⁸

1. Before doing anything towards the investigation, develop an ***Investigative Plan***:
 - Determine the Scope of the Investigation
 - Determine Who will Investigate – Internal or External
 - Determine What Evidence Needs to be Collected
 - Determine Who Will be Interviewed
2. **Stay Neutral**
 - Beware of looking at the parties as “Victim” and “Harasser” – that could taint the investigation

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Best Practices for Conducting an Investigation

3. **Basic Steps of Investigation –**

- Prepare interview questions in advance.
- Gather evidence that might support or negate the complaint.
- Check past performance evaluations and prior complaints.
- Document every step.
- Encourage confidentiality.

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Best Practices for Conducting an Investigation⁹

Sample Questions

. Questions to Ask the Complainant:

- Who, what, when, where, and how: Who committed the alleged harassment? What exactly occurred or was said? When did it occur and is it still ongoing? Where did it occur? How often did it occur? How did it affect you?
- How did you react? What response did you make when the incident(s) occurred or afterwards?
- How did the harassment affect you? Has your job been affected in any way?
- Are there any persons who have relevant information? Was anyone present when the alleged harassment occurred? Did you tell anyone about it? Did anyone see you immediately after episodes of alleged harassment?
- Did the person who harassed you harass anyone else? Do you know whether anyone complained about harassment by that person?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- How would you like to see the situation resolved?
- Do you know of any other relevant information?

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Best Practices for Conducting an Investigation⁹

Sample Questions

. Questions to Ask the Alleged Harasser:

- What is your response to the allegations?
- If the harasser claims that the allegations are false, ask why the complainant might lie.
- Are there any persons who have relevant information?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- Do you know of any other relevant information?
- How would you like to see the situation resolved?
- Do you know of any other relevant information?

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Best Practices for Conducting an Investigation⁹

Sample Questions

. Questions to Ask the Third Parties:

- What did you see or hear? When did this occur? Describe the alleged harasser's behavior toward the complainant and toward others in the workplace.
- What did the complainant tell you? When did s/he tell you this?
- Do you know of any other relevant information?
- Are there other persons who have relevant information

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Best Practices for Conducting an Investigation

4. Make A Decision

- Was company policy violated or did inappropriate conduct occur?
- Don't jump to conclusions regarding "demeanor" of accused.
- EEOC guidelines for Credibility
 - Inherent Plausibility
 - Demeanor
 - Motive to falsify
 - Collaboration
 - Past record
- Preponderance of Evidence is standard, not beyond a reasonable doubt.
- *Is it more likely than not that the event occurred?*

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Best Practices for Conducting an Investigation

5. Write A Report

- While EEOC recommends a prompt investigation, don't speed through so you can quickly get to a resolution.
- The written report should document the investigation process, findings, recommendations and any disciplinary action imposed, as well as any corrective and preventive action.
- If corrective actions are required make sure
 - Take immediate and appropriate corrective actions, which can range from written warnings to termination of employment
 - Treat all levels of employees with the same standard for similar conduct violations

6. Follow Up

- Check back with that employee regularly to ensure that no further harassment has occurred and that there has been no retaliation, which could trigger additional liability.
- That follow-up shows the person who made the complaint that Compliance and HR took the complaint seriously.

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How to Educate and Change Your Organization's Culture

- How Do We Facilitate a Change to Our Organization's Culture
 - What Has the #MeToo Movement Taught Compliance?
 - Culture and Integrity at the Top

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What Has the #MeToo Movement Taught Compliance?¹⁰

- **Employees are More Empowered to Demand a Harassment Free Workplace**

- Most prefer to report issues internally, but
- WARNING-If issues are ignored, employees will go to Social Media outlets and share their allegations.

- **Young People are Making Discrimination and Sexual Harassment a Board Issue**

- Millennials and Generation Z demand civility in the workplace and seek change through social activism.
- If Compliance and/or HR staff don't respond timely and appropriately, they not afraid to take issues to the Board.

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What Has the #MeToo Movement Taught Compliance?⁵

- **There are 4 Roles to Address for the Prevention of Sexual Harassment**

- Perpetrators: must be held accountable for their actions and their behavior must be appropriately addressed. If not, the interpretation will be that harassment is implicitly tolerated because there are no consequences.
- Targets: must be supported, never retaliated against or prejudged.
- Bystanders: should feel a sense of ownership for workplace culture and be empowered to step in and speak up.
- Leadership: must model the culture they expect and their employees deserve.

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What Has the #MeToo Movement Taught Compliance?

- **Neglect of Power can be As Bad as Abuse of Power**

- **Neglect of power** is a very real issue when it comes to career executives. People of integrity can forget what it's like to be powerless and it comes across as a **Lack of Empathy**.
- The Board of Directors need processes in place to provide them with insight on the day to day cultural aspects of their organization.
- This can be accomplished by direct reporting of Compliance, Internal Audit and Human Resources to the Board at least once a year at a minimum or optimally once a quarter.
- *"Empathy requires exposure; trust requires visibility".⁶* How the Board is seen outside the Boardroom can change employee's view of the culture of the organization.

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What Has the #MeToo Movement Taught Compliance?

- **Environments that permit harassment, stifle performance.**

- The best corporate decision-making processes pull from a variety of ideas, experiences and perspectives.
- Sexual harassment is anti-inclusiveness and creates workplace cultures and group environments where individuals and new ideas are shut down explicitly or implicitly.
- When you reject harassment and other types of discrimination, there's a healthy sense of self knowing that you've treated others as you'd like to be treated and that you've contributed to your company's integrity.⁷

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Tone at the Top Matters¹¹


- **Don't** merely file away allegations of sexual harassment when they come up.
- **Don't** make excuses for alleged perpetrators.
- **Don't** wait until problems become public to investigate corporate culture.
- **Don't** presume inequality and discrimination are systemic issues outside of your control.
- **Don't** ignore data that indicate a lack of diversity among employees.
- **Don't** assume that employee and contractor conditions don't matter to customers.
- **Don't** treat real and destructive problems as a joke.

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The Culture and Integrity at the Top, Middle and Bottom

- **Actions at the Top Matter** - Leadership sets the tone for the organizational culture. But Leadership must follow through on what they say with the same actions or the middle and bottom read "between the lines" and morale takes a nosedive.
- **Developing an Anti-Harassment Culture is a Ongoing Commitment.**
- It boils down to treating others as you expect and want to be treated and everyone is equal – ***The Golden Rule.***

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Questions?

- I'd like to close with a video from a sexual assault survivor. This may be triggering for those who have suffered sexual violence. Please do not feel obligated to watch.¹²
- [video://youtu.be/cJ_SO6oxY_8](https://youtu.be/cJ_SO6oxY_8)

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Resources

1. <https://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htmistory.html>
2. <https://www.healthcarediver.com/news/from-med-school-to-practice-sexual-harassment-in-healthcare/515061/>
3. <https://www.medscape.com/viewarticle/898632>
4. www.healthcareers.com, Apr 24, 2018
5. <https://fairgodboss.com/career-topics/sexual-harassment-laws>
6. <https://www.justice.gov/ovw/sexual-assault>
<https://hrdailyadvisor.blr.com/2013/12/27/4-types-of-workplace-violence/>
7. <https://everfi.com/insights/blog/the-effects-of-sexual-harassment-in-the-workplace/>
8. <https://www.shrm.org/hr-today/news/hr-magazine/0218/pages/how-to-investigate-sexual-harassment-allegations.aspx>
<https://www.shrm.org/resourcesandtools/tools-and-samples/how-to-guides/pages/howtoconductaninvestigation.aspx>
9. <https://www.kantola.com/userfiles/eeoc-questions.pdf>
10. <https://www.navexglobal.com/blog/article/7-things-the-metoo-movement-has-taught-compliance/>
11. <https://www.compli.com/blog/toner-at-the-top-sexual-harassment/>
12. https://www.youtube.com/watch?v=cJ_SO6oxY_8&feature=youtu.be

Other Resources

1. <http://oijn.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/tablesOfContents/Vol-24-2019/No1-Jan-2019/OS-Sexual-Harassment-in-Healthcare.html>
2. <https://www.navexglobal.com/blog/article/another-way-sexual-harassment-is-pernicious-vcdethics/>
3. <https://www.bizjournals.com/houston/news/2018/09/25/7-best-practices-for-employers-conducting-a-sexual.html>

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