
The 'Me Too' Movement and Its Implications in the Workers' Compensation System

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Me Too in Motion

The 'Me Too' Movement began in 2006 and became a vehicle to support and serve survivors of sexual violence and harassment, particularly Black women and girls from low income communities. The Movement and its mission was recently thrust into the national conversation after the hashtag #MeToo went viral across Twitter. Countless survivors shared their stories of sexual violence, in all of its many shapes and forms. As more stories were shared, from celebrities to students to waitresses, survivors began to feel empowered to share their own experiences of sexual violence and sexual harassment. Through its viral resurgence, the 'Me Too' Movement sparked a national dialogue about sexual harassment in the workplace, as several powerful executives and celebrities were accused of and found to have committed egregious acts of sexual harassment at work. A reckoning, of sorts, was beginning to take place. The

issue of workplace sexual harassment, once too taboo to speak of, was gracing every headline and changing the workplace for employers and employees, alike.

Impact on Employers

Concern grew from employers in every industry about their own vulnerability to accusations of sexual harassment in the workplace. Employers were confronted with questions about what they should do to prevent sexual harassment at work and what steps they should take when an accusation was made. When an employee alleges sexual harassment at work, she or he may seek redress through Title VII and similar state statutes, tort action, or perhaps even a workers' compensation claim. An employee might seek redress under the Workers' Compensation Act if the employee experienced a loss of wages due to a psychological injury sustained as a result of sexual harassment, which she alleges arose out and in the course of her employment.

Sexual Harassment and Workers' Compensation

In the context of workers' compensation, the types of injuries that claimants typically allege that they sustained as a result of workplace sexual harassment are mental injuries. Mental injuries are compensable under the North Carolina Workers' Compensation Act if the employee proves that the mental injury or illness was due to stresses different than those borne by the general public. *Pitillo v. N.C. Dep't of Envt. Health & Natural Res.*, 151 N.C. App. 641 (2002). The Court of Appeals has held that sexual harassment, however, "is not a risk to which an employee is exposed because of the nature of the employment but is a risk to which the employee could equally be exposed outside the employment," and therefore an emotional injury sustained as a result of sexual harassment in the workplace is generally not compensable. *Hogan v. Forsyth Country Club Co.*, 79 N.C. App. 483, 494, 340 S.E.2d 116, 123 (1986); *see also Sisk v. Tar Heel Capital Corp.*, 166 N.C. App. 631, 603 S.E.2d 564 (2004).

However, mental injuries caused by the negligent mishandling of harassment complaints or investigations, negligent hiring, negligent supervision, or negligent retention are more likely to be deemed compensable under the Workers' Compensation Act. *See Shaw v. Goodyear Tire & Rubber Co.*, 225 N.C. App. 90, 104, 737 S.E.2d 168, 178 (2013) (holding that "[p]laintiff's injury was caused by an *accident* as defendant's mishandling of her complaint was an unlooked for and untoward event which is not expected or designed by the injured employee"). Accordingly, when an allegation of sexual harassment occurs at work and an employee files a workers' compensation claim alleging that she or he suffered from a mental or emotional injury, compensability will likely depend upon whether the plaintiff alleges that her mental or emotional injury was the result of the sexual harassment or the employer's negligent mishandling of the sexual harassment complaint.

How Can Employers Protect Themselves?

In the wake of the viral resurgence of the 'Me Too' Movement, the spotlight is on employers to prevent and properly address sexual harassment in the workplace. While protecting employees is the primary goal in these efforts, preventing and properly addressing claims of sexual harassment also protects the employer. Employers can protect themselves by creating a workplace culture that does not tolerate sexual harassment and by objectively evaluating any complaint of sexual harassment that arises. In order to create a culture that does not tolerate sexual harassment, employers must take seriously any complaints and ensure that all employees understand what is expected of them. Such expectations can be set by holding workshops and trainings that clearly delineate behaviors that are deemed unacceptable. Additionally, employers are encouraged to develop well-defined policies that outline to whom employees should report claims of sexual harassment and how such claims will be investigated. Importantly, employers must ensure that said protocol is consistently followed without exception. These cultural and policy changes can go a long way toward preventing sexual harassment and maintaining a safe and productive work environment.

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About Young Moore

Young Moore is a civil law firm in Raleigh, North Carolina representing clients in a variety of litigation and transactional matters. Firm attorneys have extensive experience in the following areas: business law, real estate, estates and trusts, litigation, construction, retail and hospitality, trucking & transportation, insurance law and regulation, health care, workers' compensation, and administrative law.

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