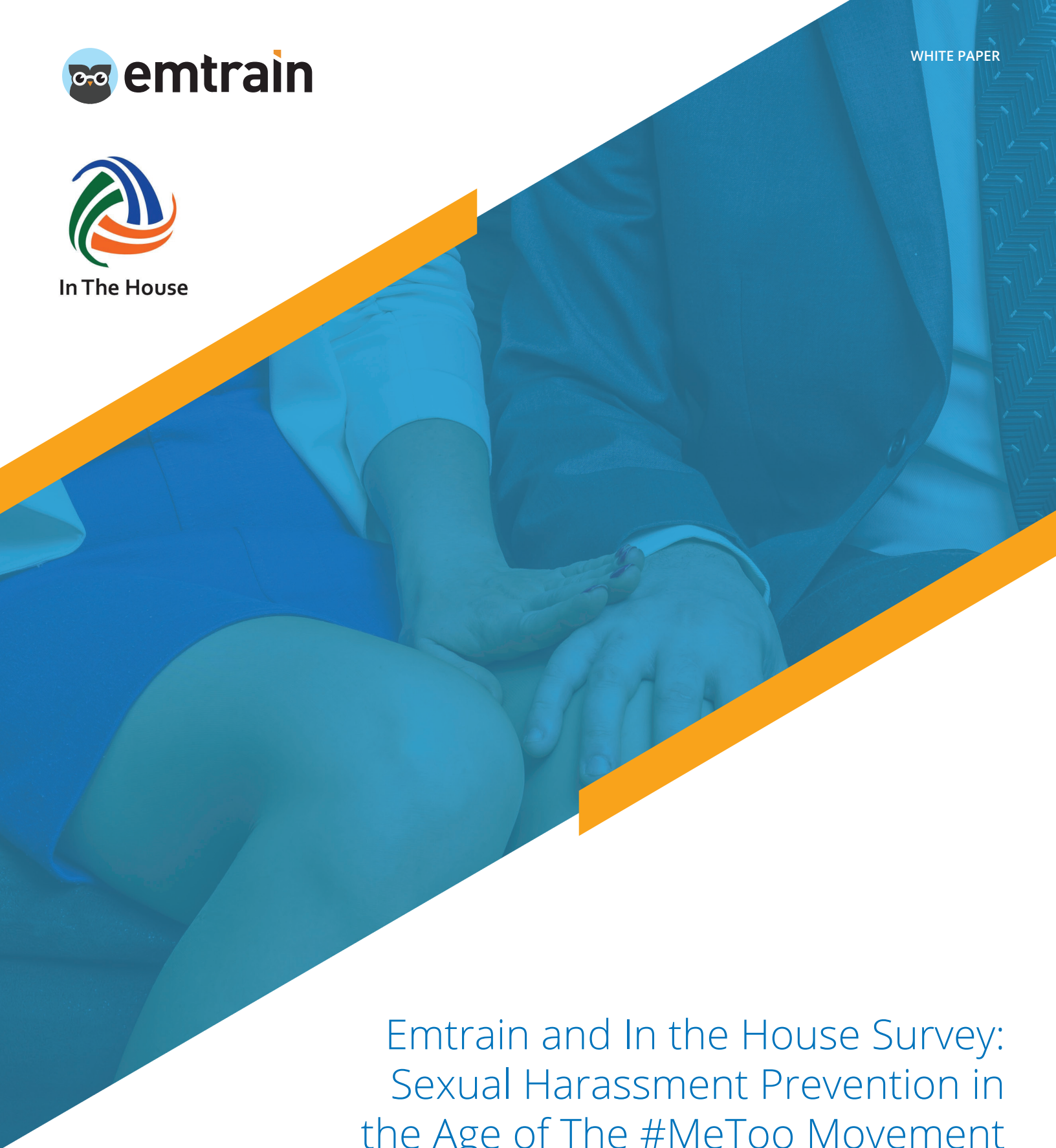




In The House



Emtrain and In the House Survey: Sexual Harassment Prevention in the Age of The #MeToo Movement

A special report on how in-house counsel can become key
players to prevent sexual harassment in the workplace



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About the Survey

Federal and state legislation to stop employment discrimination on the basis of race, ethnicity, religion, skin color, and gender has been on the books since the 1960s. Over time, historical events and lawsuits have shaped the evolution of sexual harassment law, with the #MeToo movement being the most recent example of one such historic, watershed moment.

Beginning in the fall of 2017, the #MeToo movement dramatically changed the national conversation about sexual harassment. It exposed sexually-charged misconduct in the workplace and uncovered egregious behavior by highly influential men across many professions. It also shined a light on the shocking culture of complicity at corporations that enabled these predators. The movement underscored the fundamental flaws in the way that many companies deal with sexual harassment: by routinely following policies that look the other way instead of addressing problems proactively.

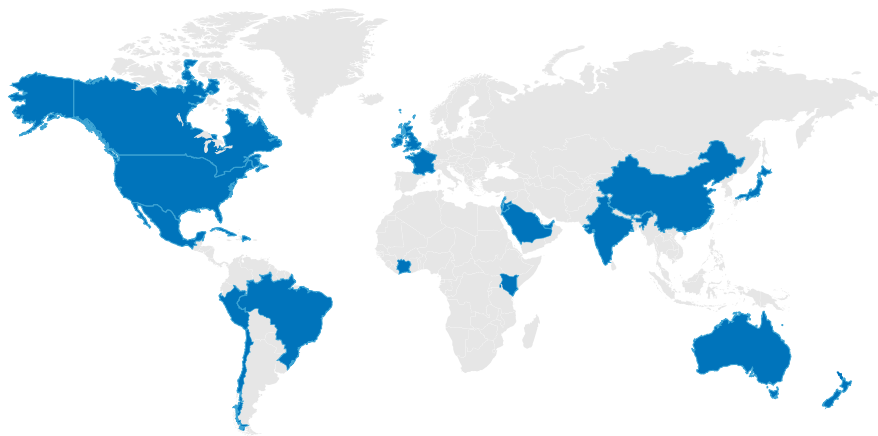
In light of the #MeToo and the subsequent Time's Up movements that came out of Hollywood, we surveyed the opinions of in-house counsel on sexual harassment in the workplace. This cross-sectional survey is the first of its kind to investigate this topic, looking at the prevalence of harassment in the workplace, preventative measures, best practices, and future plans from the viewpoint of in-house counsel—the individuals that are in the trenches daily dealing with sexual harassment allegations and prevention. Our findings might just surprise you.

Survey Demographics

There was significant interest in this survey among in-house counsel, which garnered more than 400 comments.

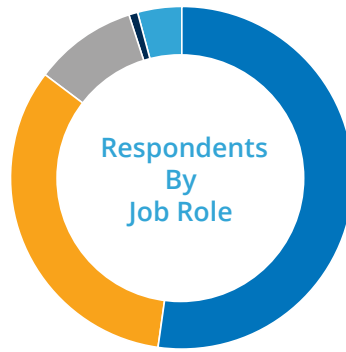
Slightly more women (54%) than men (44%) participated in this survey. The respondents represented a wide range of companies, both foreign and domestic, from those with more than 10,000 employees (25%) to those with fewer than 100 employees (18%). Respondents came from many different industries, including telecommunications, technology, internet, and electronics (17%); healthcare and pharmaceuticals (12%); and finance and financial services (11%) industries.

Respondants Represented Global Participation



Approximately one-third of respondents were senior in-house counselors, while the rest were mid-level or junior counselors. Most respondents (43%) worked in a small legal department (2-9 people), while 24% were the sole attorney in their department, and only 12% worked with a large legal staff of 25-99 people.

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Sexual harassment training can be an effective method to prevent misconduct, but only if the training itself is well designed.
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- General Counsel/Chief Legal Officer
- Senior Legal (Assistant or Deputy GC Level)
- Mid-Level Legal
- Junior Legal
- Other



- 250+ Legal Staff
- 100-249 Legal Staff
- 25-99 Legal Staff
- 10-24 Legal Staff
- 2-9 Legal Staff
- I am the sole in-house lawyer
- Not Sure

Executive Summary

Current snapshot of sexual harassment in your workplace:

We asked participants to rate the current health of their corporate culture and harassment reports in their workplace. Surprisingly, most respondents (72%) gave their organizations very positive ratings. This directly contradicted the fact that few respondents (less than 36%) said that their employees actually felt comfortable reporting workplace misconduct when it occurred. Together, these results point to a lack of knowledge about workplace misconduct, not a lack of misconduct itself—highlighting the culture of complicity that is pervasive in many companies.

Organizational efforts to prevent misconduct:

- a. Current available training: Sexual harassment training can be an effective method to prevent misconduct, but only if the training itself is well designed. Unfortunately, poor training is par for the course. Less than one-quarter of respondents described their company's training as "extremely" or "very" effective. Most training programs failed to go beyond mere legal jargon and procedures to offer real-life examples and practical advice. To top it off, executives were less likely to receive training than other managers and employees, diminishing the importance of such training in the eyes of subordinates.
- b. Complaint mechanisms and effectiveness: Although most respondents had faith that their company's reporting procedures were "fair and effective," a significantly low percentage (36%) reported that their employees felt comfortable making misconduct complaints. The disconnect between the perceived effectiveness of reporting systems and the reluctance of employees to report complaints speaks to a corporate culture that discourages acknowledgement of misconduct. The fact that so many were reluctant to use supposedly "fair and effective" reporting systems highlights an important organizational blind spot—ignoring invisible barriers to reporting sexual harassment in the workplace such as fear of retaliation and professional repercussions.
- c. Tools for early intervention and resolution: Less than one-third of respondents felt that their employees and managers were given the proper tools to encourage early intervention and resolution of sexual harassment allegations. Failing to provide employees and managers with these valuable communication tools perpetuates a negative cycle in which bad behavior escalates because there is no procedure for early resolution, investigators are frustrated by the lack of early communication, and employee mistrust in the process is reinforced so that they are less likely to report future problems at an early stage.

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Complaint resolution methods:

This topic featured some of the most surprising results. While most respondents (87%) thought that investigation procedures in their company were “fair, timely and thorough,” far fewer (42%) thought that these investigations were conducted by well-trained professionals. Even more revealing, only 56% believed there was an equal response to employees at all levels, regardless of the seniority or power of the person engaged in misconduct. This highlights a significant organizational blind spot where respondents were aware of specific weaknesses in resolution procedures—namely, unqualified investigators and unequal discipline based on positions of power—but reported that the resolution procedures were fair overall. This disconnect between reality and perception showcases the pervasive problem of corporate complicity brought to light by the #MeToo movement.

The gender divide:

Survey responses diverged greatly between female and male participants across the board. The most telling differences in perception were related to the current state of the workplace in terms of sexual harassment, which women rated as significantly poorer than men, and the effectiveness of companies’ reporting, investigation, and resolution practices, which more than three times as many women than men rated as ineffective. Women’s personal experiences related to unfair handling of misconduct allegations were even more telling, in addition to their repeated description of their industry or company as being male dominated.

Future plans to address this issue:

Despite the issues identified in this report and the ongoing public discussion of these problems, the majority of respondents (69%) said their company had no intentions of making changes to their current reporting and resolution practices or would only modestly increase their efforts to prevent, respond, and resolve sexual harassment issues. A non-response is unacceptable given the clear shortcomings in the sexual harassment training, reporting, and resolution systems.

Where to go from here:

Based on our findings, we offer five recommendations to address many of the problems brought to light in this survey and in the broader #MeToo movement, including: embracing complaints, establishing early response procedures, implementing effective training for everyone, developing stronger investigation and resolution procedures that ensure fair and equal discipline for all misconduct, and creating an intentional plan to increase the number of women in leadership.

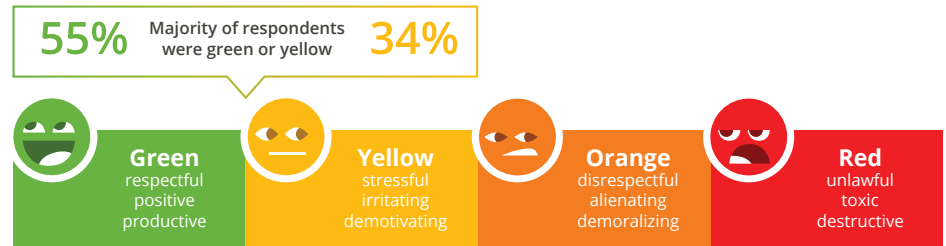
Current Snapshot of Sexual Harassment in Your Workplace

We began by asking in-house counsel about the status of their current workplace as it related to sexual harassment. The results were surprising.

Nearly three-quarters—72% of in-house counsel—reported that sexual harassment was either “rare” or “non-existent” in their workplace. Similarly, when asked to rate their workplace based on [Emtrain's Workplace Color Spectrum](#), the great majority of respondents said their workplace was either green (55%) or yellow (34%), indicating that there were only minor misconduct problems, if any, in their workplace.

At first blush, these data sound like great news: the majority of workplaces were *reportedly* free of sexual harassment and most workers reportedly experienced only respectful, positive, and productive behavior from coworkers.

Workplace Rating Using Emtrain's Workplace Color Spectrum



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Sexual harassment prevention training is critical to prevent harassment in the workplace.
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Digging deeper, however, these data seem to contradict other findings within this study itself—as well as those in recent reports from the [Pew Research Center](#) and the [EEOC](#)—all of which indicate that most women have experienced sexual harassment in their workplace. In fact, this generally positive feedback about the *perceived* environment in the workplace might actually result from a lack of *knowledge* about misconduct rather than a lack of such misconduct itself. As discussed in further detail below, such an interpretation is supported by a telling disparity between the data provided by male and female respondents in our survey.

Indeed, the comments from several survey respondents acknowledged this likely gap between perception and reality, with one counselor admitting that it's “highly likely [misconduct] is significantly underreported.” Another stated that “Retribution prevents [misconduct] from coming out so [it's] realistically unknown how prevalent” such behavior is.

Such gaps can cause organizational blind spots which, if not addressed proactively, can lead to unconstrained misconduct by individuals who are not held accountable for their behavior by colleagues and company policy. The good news is that in-house counsel—in partnership with HR professionals and well-designed training programs—are well-positioned to contribute meaningfully to eliminating such blind spots and, by extension, materially reducing such misconduct itself.

Prevention Through Training

Sexual harassment prevention training is critical to prevent harassment in the workplace. But not all training is created equal. A well-designed training program with nuanced, realistic examples of workplace behavior and practical solutions has been shown to positively impact workplace conduct, according to the [2016 EEOC Special Task Force Report](#).

Unfortunately, only 24% of survey respondents rated their harassment prevention training as “extremely” or “very” effective.

This is likely due to the content and delivery of the sexual harassment training itself. Almost all training included the legal obligations and definitions of harassment (81%), the need for a respectful workplace (87%), and a description of behaviors that constitute unlawful harassment (91%). However, fewer trainings included the realistic examples and practical solutions that have been shown to be most effective at combatting misconduct, such as:

- Illustrations of poor behavior that could escalate to become unlawful harassment (62%)
- Communication skills (59%)
- Diversity and inclusion (56%)
- Polling questions or quizzes to test understanding (52%)
- Conflict resolution (37%)

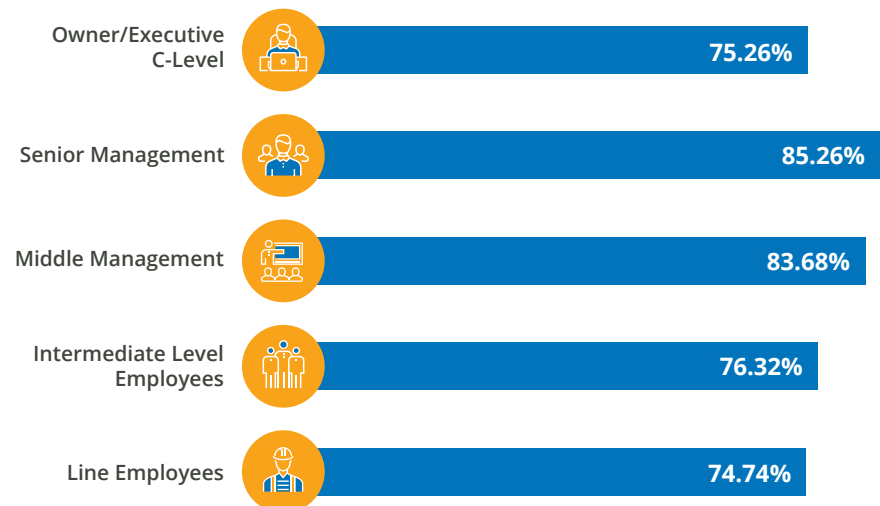
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Sexual harassment prevention training isn't the only method available to combat workplace misconduct.
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- Unconscious/implicit bias (34%)
- A way for employees to communicate their view that behavior is appropriate, inappropriate, or demeaning (28%)

The failure to include these extremely relevant and critical subtopics indicates that many organizations are not offering employees much beyond one-time training, rather than designing a comprehensive training program that gets to the heart of the factors contributing to sexual harassment in the workplace. Research has shown that an in-depth training *program* offering multiple tools to reinforce learned skills is far more effective than only deploying a one-time course. Given that much of the harassment and bias that employees experience is nuanced, effectively teaching individuals how to identify and prevent such behavior should be an ongoing learning process in which the entire organization is invested.

In addition to providing ineffective training, we found that fewer business owners and senior executives completed the training (75%) compared to middle management (84-85%). The absence of executive buy-in for training programs is extremely concerning since efforts to stop workplace misconduct should come from the top, as research tells us.

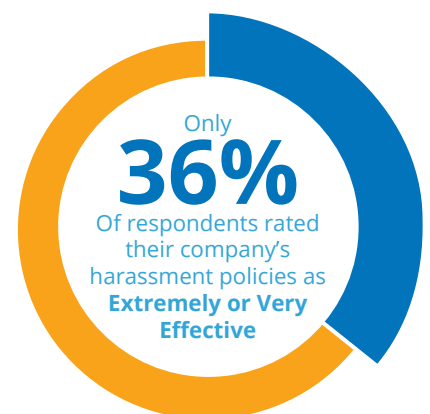
Breakdown of Employees that Participate in Training



By focusing more on legal issues than on practical, real-life work scenarios, corporations are largely providing training that, unfortunately, has been proven to be ineffective. Add to that the fact that a significant percentage of executives (25%) and line employees (25%) aren't receiving any training at all, and you have a recipe for organizational blind spots.

Prevention Through Early Resolution and Reliable Reporting

Sexual harassment prevention training is only one of several communications tools available to combat workplace misconduct. However, we found that additional communication tools that can lead to *early* resolution of misconduct issues are rarely used—another concerning result. Only 31% of respondents agreed that their company gave employees and managers effective tools and resources to resolve sexual harassment issues. Overall, only 36% rated the effectiveness of their harassment reporting, investigation, and resolution practices as “extremely” or “very” effective.



These numbers point to the fact that many employees and managers are not given any tools to stop problem behavior in its *initial* stages. This lack of early response mechanisms to guide the in-house response to sexual harassment allegations is concerning. Professionals in the legal and HR departments may fear that such early intervention can make matters worse; however, failing to act can be more damaging—to both employees and the organization. In fact, the failure to communicate that a behavior is offensive *before* allowing it to escalate to unlawful harassment is often part of the legal defense in harassment lawsuits.

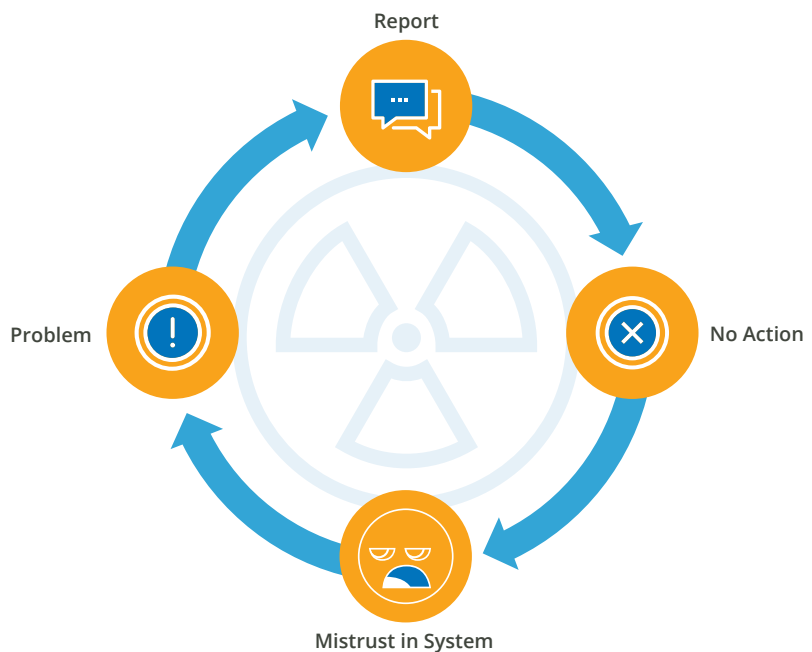
Even if there are reliable reporting systems in place, employees may not feel comfortable lodging complaints. Notably, less than 36% of in-house counsel surveyed believed that their employees were comfortable reporting harassment they experienced, and only 33% believed their employees were comfortable reporting harassment directed at others that they had witnessed. One respondent said, “Second-hand stories indicate that employees tend to avoid reporting incidents since they do not trust the process to be fair.”

In summary, there appears to be a significant disconnect between the generally “positive” workplace environment that many reported in this survey and the obvious discomfort many experience with reporting harassment against themselves or others. If employees do not feel empowered and comfortable reporting misconduct, it gives the impression that no misconduct is happening. But that’s clearly not the case. Companies often point to small numbers of harassment complaints as an indicator that their prevention efforts have been successful. In reality, research shows that low numbers of complaints are often a sign that employees aren’t lodging complaints for fear of retaliation, being labelled a complainer, or out of a sense of futility.

Ultimately, the failure to provide employees and managers with valuable early communication tools perpetuates a negative cycle. In this cycle, bad behavior is allowed to escalate due to a lack of early resolution mechanisms, investigators are frustrated by the lack of early communication about misconduct, and employees’ mistrust in the system thereby seems to be confirmed.

As one respondent reported: “The management seems to turn a blind eye to the harassment issues by pushing them under the rug, thereby discouraging the employees from coming forward.”

Lack of Early Communication Tools Perpetuates a Negative Cycle



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If employees do not feel empowered and comfortable reporting misconduct, it gives the impression that no misconduct is happening.

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Simply put: men and women do not see eye-to-eye when it comes to the presence of sexual harassment.

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Investigating and Fixing Problems: How Well Do You Fare?

Despite a reluctance to report misconduct, most respondents expressed faith in their company's investigation and resolution procedures. 83% of respondents believed there was a “fair and effective” reporting procedure for harassment victims and 87% believed the investigation procedures were “fair, timely and thorough.”

Again, these high numbers don't square well with other findings in this survey. Only 42% of in-house counsel surveyed described their investigators as “well-trained investigation professionals”—suggesting that the majority of those performing sexual harassment investigations are not trained appropriately. Only about half (52%) believed the procedures for implementing solutions were effective if misconduct was found, or that there was effective communication with all parties during and after investigations (56%). Finally, and perhaps most importantly, only 56% believed there was an “even-handed response to employees at all levels,” regardless of the seniority or power of the person engaged in misconduct.

Investigation Procedure Effectiveness vs. Investigator Preparedness



Reporting Procedure Effectiveness vs. Even-handed Responses



This final statistic is incredibly important in light of the #MeToo movement, which has showcased the double victimization that occurs when a company knows about misconduct by high-powered employees and, either purposefully or due to lack of operational controls, ends up “looking the other way.” In particular, we found a significant disparity between the high level of faith reported by in-house counsel in their companies' investigation and solution procedures (83% and 87%, respectively), compared to the lower level of faith in impartial, fair resolutions regardless of seniority (56%). These findings highlight the organizational blind spots that continue to plague companies as they try to address these issues. In other words, resolutions should not be considered fair 87% of the time if those *same investigations* favor senior management 44% of the time.

The Gender Divide

We cannot overlook the significance of gender when it comes to a survey on sexual harassment prevention. The differences in responses between men and women participants in this survey were quite telling, revealing a gender divide that appears to lie at the heart of this important workplace issue. Simply put: men and women do not see eye-to-eye when it comes to the presence of sexual harassment. Female versus male responses diverged on a significant percentage of questions in the survey.

While zero men perceived sexual harassment as being “very prevalent” at their company, 3% of women did. At the other end of the spectrum, while 23% of men

said sexual harassment was “non-existent” in their organization, less than half as many—only 10%—of women believed this was the case. Similarly, 12% of women ranked their workplace as orange or red on the Workplace Color Spectrum (less than ideal) in terms of sexual harassment compared to only 5% of men. These striking contrasts in how men and women perceive sexual harassment was illuminated by two divergent comments:

- **Male respondent:** “The male owner of the company would sometimes have consensual sexual relations with female employees who worked for the company. The women did not object to these affairs, and there were no overt threats if the women refused sexual advances.”
- **Female respondent:** “Women are scared to reject men because they think it can impact their job.”

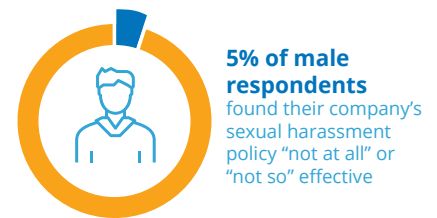
It is clear here that certain sexual behavior by men towards women often does not register the same between genders. *Something* must be causing these differing perceptions—perhaps a lingering old boys’ network that is still capable of “looking the other way.” Regardless of the cause, all in-house lawyers—regardless of gender—should want to be part of the solution.

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¹Source: Pew Research Center Study

With respect to the effectiveness of companies’ reporting, investigation, and resolution practices, 19% of women found them “not at all” or “not so” effective, far fewer men—only 5%—found this to be the case. Even more telling were the personal experiences shared by women regarding companies’ lack of even-handedness in dealing with misconduct (63% of men reported handling of misconduct as “fair” versus only 48% of



women). One woman shared a particularly startling story: “When I reported behavior [involving] 4.5 years’ worth of incidents, the investigation took less than 24 hours, I was put on a PIP [performance improvement plan], then laid off the next week with NO SEVERANCE. And, this [was in] big oil.”

Many more women (27%) as compared to men (12%) reported that employees *did not* feel comfortable reporting misconduct directed at themselves. Once again, the discrepancy in perception between men and women is hard to dismiss.

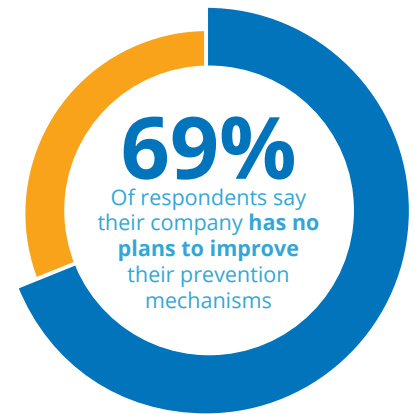
One reason for this gendered divide in responses may also be related to the fact that so many women pointed to working in male-dominated industries or companies. In fact, several comments from male respondents indicated that they chose to respond to the survey because they have seen no issues related to sexual

harassment—now or in the past. This is in stark contrast to numerous comments made by female respondents pointing both to the problem at the company-level *and also* sharing their own personal stories of misconduct where their company leaders looked the other way. These personal experiences, of both men and women, clearly suggests differing “filters” through which men and women view the pervasiveness of this issue.

Future Plans

With the intense media scrutiny related to the #MeToo movement, now is the ideal time to critique and identify areas where improvements can be made in corporate reporting and resolution procedures for sexual harassment allegations.

Despite the clear problems uncovered in our survey findings—and in ongoing public discussion—fully 69% of in-house counsel said their companies had no intention of making changes to their current reporting and resolution practices or would only modestly increase their efforts to prevent, respond, and resolve such issues.



This non-response in light of such pervasive problems is unacceptable, yet unfortunately all too common. According to a recent [survey from the Boardlist and Qualtrics](#), 57% of directors polled at both public and private companies hadn't had a *single discussion* with their board about the #MeToo movement. These numbers are all the more concerning when considering the fact that women are unrepresented, or at least underrepresented, on many of these boards. In light of the troubling gender divide in responses to our survey, it's clear that including women in these discussions is critical in order to bring about lasting change.

Ignoring obvious issues related to the reporting, investigation, and resolution of sexual harassment within a company is not only concerning, it is extremely damaging to companies and their employees. The #MeToo movement has demonstrated that allowing these issues to continue can and will result in serious consequences, not only for the individuals who engaged in misconduct, but for the companies that refuse to address that misconduct appropriately.

Where to Go From Here

The writing on the wall is clear: things need to change. What can you do to improve your company's sexual harassment prevention and resolution procedures and avoid a culture of complicity? We've outlined some action steps to point you in the right direction.

Action Step 1: Embrace complaints.

Complaints are an opportunity to improve the workplace. Remember, you can't fix what you don't know. Judging your company solely on low numbers of reported misconduct complaints can be very misleading because this is often an indicator of insufficient reporting, not a lack of misconduct. Implementing a more robust complaint mechanism would start a healthy complaint-investigation-resolution loop that establishes trust, openness, and transparency. As one survey respondent noted to highlight the issue of fear of complaints, "Incidents are closely guarded by HR because of potential employer liability, so [this] may not reflect true pervasiveness [of misconduct]."

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Implement effective training across the board. Everyone needs effective sexual harassment training.

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Healthy Complaint-Investigation-Resolution Cycle



It is disturbing that so few employees (36%) feel comfortable reporting misconduct and that only about half (56%) believe resolutions are fair regardless of seniority. Doing nothing to improve sexual harassment prevention efforts, simply because your company has a low number of reported complaints, may be contributing to a “culture of complicity”—or at least blindness—that places you at risk of future sexual harassment allegations, litigation, and reputational harm.

Action Step 2: Establish an early response procedure.

Educate your employees on how to respond appropriately and early to problem behavior so that they are more likely to resolve issues before they escalate to a lawsuit. If employees want help to address a situation, teach them how to communicate with their managers and HR such that it diffuses the situation rather than increasing the tension. Precise, persuasive communication is key to early resolution and it can be taught. This is a key area where in-house counsel involvement in sexual harassment issues early on can prevent lawsuits.

Action Step 3: Implement effective training across the board.

Everyone needs effective sexual harassment training. That means everyone in the company, including executives and line employees, needs training that goes beyond mere legal definitions and procedures. Most companies view sexual harassment prevention training as something they are required to do, not something that directly benefits them long term, so little emphasis is put on effective training programs that incorporate realistic, practical examples and advice. Executives often miss out on training altogether, which sends the message that such training isn't important. In order to make sexual harassment prevention training effective, *everyone* needs to participate and the program must include topics such as conflict resolution, communication tools, and unconscious bias. This isn't just good practice, it's the wave of the future: New York City has already made sexual harassment training mandatory for *all* employees, and California is pursuing similar legislation.

Action Step 4: Develop better investigation and resolution procedures.

Two worrisome results in our study were the low percentage of properly trained investigators and the acknowledgment that discipline was unequal across seniority level—the latter being an alarming issue at the heart of the #MeToo movement.

A culture of complicity can develop in companies that “look the other way” when someone in power engages in bad behavior. Enabling this behavior, whether intentionally or unintentionally, comes at a high cost. A high-powered, senior employee may seem too valuable to lose, but weighed against the multitude of attorney fees, settlement costs, and most importantly, the negative impact on brand reputation and company morale, it’s clear that no single individual is worth the risk. Strong investigation and resolution procedures apply to everyone and companies need to mete out discipline equally.

Action Step 5: Design and execute programs to increase the number of women in leadership. Regardless of the reasons for the difference in responses between genders, our results suggest that organizations must take this striking gender divide into account when addressing sexual harassment prevention efforts internally. Who is being included in the conversation? Women should be equally represented in these talks and in decision-making about how to improve prevention mechanisms. Women must have a place at the table of influence.



About Emtrain

Emtrain is the leading CultureTech company providing education, expert guidance and analytics to help build healthier, more productive workplaces.

Emtrain’s suite of content and learning solutions provides guidance to employees when they most need it, helping them quickly and effectively solve workplace issues ranging from sexual harassment to cybersecurity.

Emtrain’s insightful risk analytics uncover blind spots, helping employers to be proactive around issue resolution. Our solutions help optimize behavior, creating stronger more effective talent pools, which in turn, creates healthier and more productive workplace cultures for our clients.

[Visit here for a free course trial.](#)



In The House

About In the House

In The House is the #1 community for in-house counsel with thousands of members worldwide. Our mission is to empower in-house attorneys to succeed by providing opportunities to network with their peers, share information and best practices and gain the knowledge they need to excel in the in-house legal profession.

Learn more and join our private community at www.inthehouse.org.