

2022 CALIFORNIA STATE HR

# ADVOCACY & LEGISLATIVE CONFERENCE

SHERATON GRAND HOTEL - SACRAMENTO

APRIL 20-22, 2022



CALIFORNIA  
STATE COUNCIL OF SHRM



## Bystander Empowerment:

*Stopping Harassment  
By Training Bystanders  
To Intervene*

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# October, 1991

Clarence Thomas confirmation hearings.



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26 Years later...

# 2017, one October day on Twitter...



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October, 2017

**The New York Times**      **THE NEW YORKER**

Dozens of women have accused American film producer Harvey Weinstein of rape, sexual assault and sexual abuse over a period of at least 30 years.

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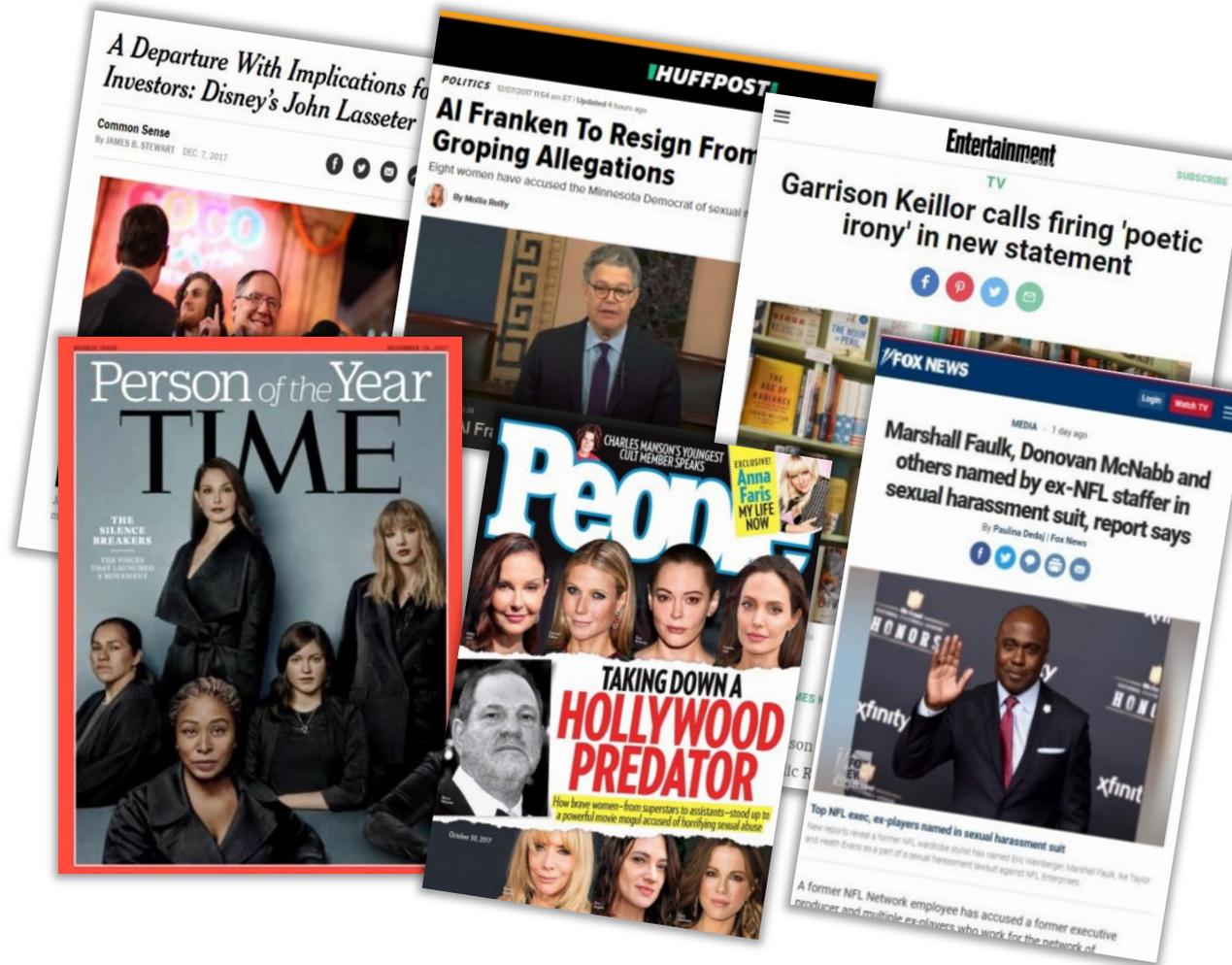
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# 2017, continued...

- #MeToo: High profile leaders face serious consequences.
- Legal attacks:
  - NDAs in settlement agreements
  - Arbitration of employment disputes



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# Also In October 2017

- 147 of California's most prominent female political leaders:  
**"We Said Enough!"**
- Sign a letter denouncing a "systemic" and "pervasive" culture of sexual harassment and assault by powerful men in California government and politics.



Handwritten signatures of political figures, including: Mayor Sixel, Don Imus, [crossed out signature], [signature], Leah Doherty, Queri Ben, John Grant, [signature], Mission Sefor, and [signature].

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# What's going on here?

- The Thomas confirmation hearings were in 1991
- Employers have since adopted good internal complaint policies
- Employers provide anti-harassment training
- And yet, in 2017, we had Harvey Weinstein, Charlie Rose, etc. etc.
- So the California legislature responded...



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# California Legislative Responses To #MeToo

1. More Defendants

2. Boards of Directors

3. Training

4. Confidentiality Clauses

5. "Love Contracts"

6. Privileged Communications

7. Standards of Proof

8. Data Collection: IHSS

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But We Aren't Done Yet...



August 11, 2021







**March 3, 2022**

**The “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021.”**

# So, Why Is This STILL A Problem?

- Persons who are the targets of sexual harassment may respond passively to offensive conduct.
- They often will respond by trying to avoid the harasser.

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# So, Why Is This **STILL** A Problem?

- They want the conduct to stop, but they balance that desire against the possibility of maintaining their status within the organization, and against the potential for reprisals should they come forward.
- So, even the very best internal complaint process may not be enough to actually stop harassment from happening – victims tend to suffer along, rather than complain.

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Survey Says...

**45%**  
witnessed sexual  
harassment,  
and **42%** did nothing  
about it.

*-Ladders*



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# Why Don't Employees Who Witness Harassment Do Something?



Didn't know help  
was needed



Didn't know how  
to help



Fear of retaliation

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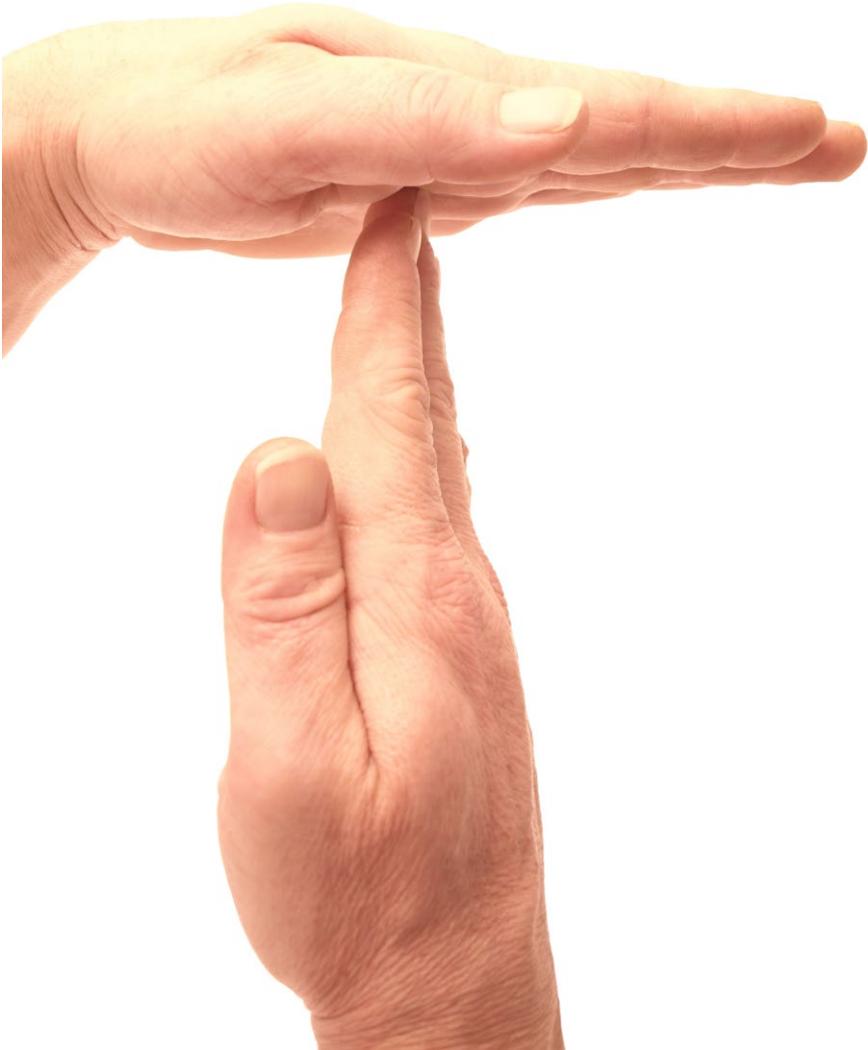
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# So, Let's Try Something Different:



We have tried training supervisors.

We have tried training targets.

**LET'S TRY TRAINING THE WITNESSES!**

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# Is This Required?



## BYSTANDER INTERVENTION TRAINING!

California's SB 1300  
(Jan. 1, 2019):

- ***Encourages*** (but does not require) employers to provide bystander intervention training

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If you want  
*real change*

***“Everyone***

from the ground level up and from the leadership of the organizations on down, has to be committed to making a change and making this change now.”



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**Victoria Lipnic, Former EEOC Commissioner**

# Bystander Intervention Training

- Anti-drunk driving campaigns.
- Prevention of sexual assault on college campuses.
- And now, in the workplace.

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# Options

- Incorporate into existing anti-harassment training?
- Stand-alone training, separate from existing anti-harassment training?

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## How About This One?

# Littler FAQs

Q: We haven't had a sex harassment claim in the past 10 years. Do we have to keep training?

**A: YES! Employers with more than 5 employees to provide sexual harassment prevention training every 2 years to all employees (including seasonal and temporary workers), 2 hours to supervisors, and 1 hour to non-supervisory employees**



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## Is Everything OK?

# Fighting the Bystander Effect

- Just **one person speaking up** breaks the bystander effect
- One person catalyzes others to act



**Yeah, Quit Being Such A Creep!**

**She Had To Have Something Done.**



## Bystander Intervention: Supporting the Victim

If you witness harassment, how would you support the victim?

- Speak directly to victim:  
I heard what he said. Are you okay?
- Encourage victim to report conduct.
- Report conduct.



## Bystander Intervention

- Speak up and do something
- You must act when:
  - You become aware of harassment by anyone
  - Even if an employee does not ask for help or asks you not to do anything
  - Referring employees back to their immediate supervisor is not enough

# Training Is Important, But Obviously Not Enough



- In addition to regular training...
  - Implement effective policies
  - Foster environment where employee complaints are taken seriously
  - Treat all complaints as serious
  - Acknowledge the outcome
  - Impose consequences
  - **NO RETALIATION!**

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Questions?



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# Thank you!

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