DON'T SUFFER IN SILENCE

Speaking out and taking steps against sexual harassment at work

LEGAL CORNER
HARVEY MARS, ESQ.

Harvey Mars is counsel to Local 802. Legal questions from members are welcome. E-mail them to **HsmLaborLaw@HarveyMarsAttorney.com**. Harvey Mars's previous articles in this series are archived at **www.HarveyMarsAttorney.com**. (Click on "Publications & Articles" from the top menu.) Nothing here or in previous articles should be construed as formal legal advice given in the context of an attorney-client relationship.

IT SEEMS THAT every day brings a new report about pervasive and long-standing sexual harassment in the workplace. It is not a mystery that this kind of harassment is still prevalent in many industries. The entertainment industry in particular is one where horrific practices are endemic. One cannot help but be sickened by the vile stories outlining years and years of illegal behavior from some of the major figures in this industry, such as Harvey Weinstein. Reason and hope would dictate that such behavior would have abated over the years, especially as women have spoken out. We remember the heroic Anita Hill during Clarence Thomas' confirmation as a U.S. Supreme Court Justice. Unfortunately, reason and civility have not yet prevailed in our society. Terrible instances still abound and some employees still suffer in silence.

We should take note that while most stories reveal sexual harassment against women, harassment knows no gender bounds. It exists for men, too. Including myself. While I have never before spoken of the following incident except to my wife, I would like to share with readers that I was the victim of harassment while I was employed as a summer intern working for Morgan Stanley on a summer break from college. When I complained to the temp agency managers and begged to be moved to a new position, they exclaimed that there was nothing that they could do because the harasser was not their employee. Rather than remaining in that situation, I resigned. I am sure there are other men who have similar stories but remain silent because of the embarrassment that disclosure would prompt.

To date I have handled several sexual harassment suits initiated by men – one involving Liza Minnelli and the other involving a high-ranking internal affairs deputy inspector in the New York City Police Department.

My own story happened back in 1981 when I was still in college. Unfortunately it appears we have not advanced very far since then. But for those in New York City, one bright spot opened up in 2009 when the legal protections afforded against workplace harassment advanced well beyond their previous boundaries. Any employee exposed to harassing conduct should be aware of these protections and be prepared to take advantage of them.

The New York City Administrative Code contains provisions that protect employees (including part-time workers and temps) against a kind of sexual harassment called a "hostile work environment." This form of gender discrimination is distinct from "quid pro quo" sexual harassment, where sexual favors

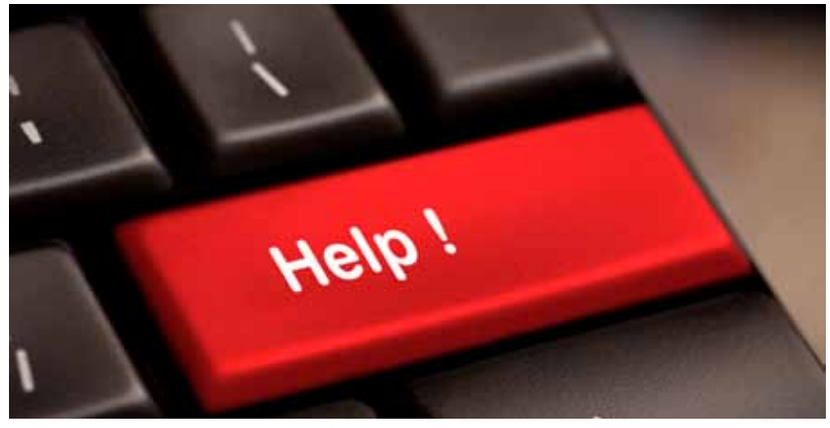

PHOTO: SCYTHER5 VIA ISTOCKPHOTO.COM

are exchanged for workplace advancement. A hostile work environment is more subtle but no less illegal. It exists where a sexually charged environment is created in the workplace – "locker room talk," to use the parlance of our current president. Until 2009, the New York City code paralleled the state and federal gender discrimination statutes and required that for a hostile work environment action to succeed, instances of harassment must be "severe and pervasive." Thus infrequent comments, occasional misconduct or "stray remarks" would still have to be tolerated.

This changed radically in 2009. A New York City Appellate Court extended the contours of the city code in order to liberalize the protections the statute was intended to afford. (See Williams v. The New York City Housing Authority, 872 NYS 2d 27, 1st Dept. 2009.) This was prompted by an amendment to the code entitled the Restoration Act of 2005 that authorized judicial interpretations of the statute to effectuate that law's "uniquely broad and remedial purposes."

Under the Williams decision, employees no longer have to demonstrate that the harassing practices are "severe and pervasive." Rather they must show that the conduct complained of is more than what a reasonable victim of discrimination would consider "petty slights and trivial inconveniences."

This new judicial gloss has opened the door to many claims that would not have been viable under the old standards. However, even under the new provisions, one must still ultimately prove that the harassing conduct was targeting employees based upon their gender. Courts have noted that the law is not intended to be a civility code. If an employee cannot prove that the conduct they find objectionable was prompted by actual gender bias, their claim will not succeed.

Anyone experiencing sexual harassment should consult their employer's anti-harassment policy (if one exists) and follow the procedures. They may also submit a claim with the New York City Commission on Human Rights, which can be started online at **www1.nyc.gov/site/cchr/enforcement/complaint-process-flowchart.page**

Don't suffer in silence.