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PERSPECTIVE

# Nudging towards a harassment-free workplace

By Lonny Zilberman

As best as I can recall, it was over three decades ago that I first heard the phrase “sexual harassment.” It was October 1991, and along with millions of other Americans I watched the confirmation hearings for Supreme Court appointee Clarence Thomas with amazement as an all-male panel of senators interrogated then-35-year-old law school professor Anita Hill about porn stars and pubic hair on a Coke can, among other previously unthinkable subjects for a Senate committee hearing.

This was one of the first times someone had shared her account of workplace harassment in such a high-profile, public way — something so many women had experienced long before 1991. When the hearings ended, angered workers across the country (mostly women) set out to shine a spotlight on and eliminate the open secret of rampant workplace sexual harassment.

It took considerable advocacy and persuasion for California to become the first state in the nation to enact a mandatory sexual harassment training requirement — though initially only for “supervisors” of employers with 50 or more employees. The law, Assembly Bill 1825, effective in 2005, required approximately 1.7 million California supervisors to learn how “not to harass” their subordinates in the workplace. The law requires two hours of training, conducted every two years. The law was far from universally praised, only passing in the California Assembly by a vote of 47 to 31.



New York Times News Service

Anita Hill testifies during the Clarence Thomas harassment hearings in Washington, Oct. 11, 1991.

Thirty years after Anita Hill accused her boss of sexual harassment and 17 years after all California supervisors began having to undergo mandatory sexual harassment training, where do we stand? Based on recent statistics from the California Department of Fair Employment and Housing, nearly one quarter of all complaints filed allege some form of harassment. Those numbers are too high; we shouldn't accept that people continue to experience sexual and other forms of harassment in the workplace.

For all its ambitious and aspirational goals, I would not give the current harassment training models and methods a passing grade. California employers spend tens

of millions of dollars on annual anti-harassment trainings. I've personally conducted these trainings and drank the Kool-Aid; all we must do is tell managers what “not to do.” But — perhaps not surprisingly — the millions of hours and dollars spent on anti-sexual harassment training may not actually do what it is supposed to do. Claims and jury verdicts continue to rise, not fall.

How else would you reconcile Harvey Weinstein's actions — over a decade after California began its mass anti-harassment training? I use Weinstein as a symbol of the #MeToo movement, which exposed many wealthy and powerful people, who have for years been able to put a veil on their

own abhorrent and vile behavior. While Weinstein and others like him may be the poster children for what's not working in terms of training, we need to look behind the headlines and the celebrity names.

Despite current training mandates, everyday sexual and other forms of harassment happen. Let's look at a recent unconscionable case: Maria Tahara worked without incident for many years as a correctional officer with the Sutter County Sheriff's Department, until one day she was assigned a new supervisor. It was the beginning of a three-year nightmare. Her supervisor's conduct, witnessed by others, included unwanted touching of Tahara's but-

tocks, rubbing of her inner groin area and legs, cornering her into rooms with threats of sexual assault while blocking the exit, and sexual innuendos, such as “I have dreams of having sex with you.”

Sutter County, just north of Sacramento, has a population of about 100,000 and only 140 deputy sheriffs, with an annual budget of \$39 million. Last November, after a six-day trial and eight hours of deliberation, a jury awarded Tahara \$9.9 million, an amount that was nearly 30% of the entire sheriff’s annual budget because her supervisor continually engaged in unwanted and offensive behavior, which they found included almost daily physical and verbal harassment that was neither investigated nor stopped. *Tahara v. County of Sutter*, CS19-0000737 (Sutter Cty. Super Ct., filed March 29, 2019).

Since municipalities and governments are not subject to punitive damages, the verdict was based on past and future emotional distress and economic loss. Why did the jury award such a large amount? Unbelievably, when Tahara reported the harassment to human resources, the only response she received was: “Yes, he is a dog, but you have to live with it.” This is what 17 years of mandatory sexual harassment has bought us.

We need to scrap the current anti-harassment training models and rethink what works to stop and eliminate harassment in the workplace. We need to take a positive approach, as opposed to hitting people over the head with

what they are doing wrong.

Albert Einstein famously said, “Insanity is doing the same thing over and over and expecting different results.” If harassment claims are not decreasing, even after years of mandatory training, it’s time to rethink how we conduct training. That’s exactly what Apple, the first \$3-trillion company, does with its exercise apps. Every day my Apple Watch “encourages” me to close my exercise, move and stand ring. It awards me virtual badges for various challenges and tells me to “go for it!” Notice how these are positive reinforcements? It’s not telling me that I may die of a heart attack if I don’t walk 10,000 steps every day or that I’m a bad person if I don’t move around enough or stand up every hour.

OK, so exercise is different than harassment. How about a system that helps you lose weight by use of behavioral science that changes eating habits? Noom is a \$4-billion subscription-based app for tracking a person’s food intake. The company is focused on behavior change. Through a combination of psychology, technology and positive coaching, according to the company’s website, “the app has helped millions to lose weight and meet their personal health and wellness goals.”

Instead of blaming people, or hitting them over the head with evidence of their own propensity for harassment, we should devise more subtle and positive forms of influence, using psychology and technology, as well as coaching, to motivate people to do the right

thing and not harass others in the workplace. What we’ve been doing doesn’t work, so let’s try applying technology to assist in training.

The strategy doesn’t have to be “high tech.” In the early 1990s, a cleaning manager at Amsterdam’s airport was trying to reduce “spillage” around urinals. He decided to etch a small image of a fly on the urinals, near the drain. The idea was to give people something to aim at — and aim they did. There was an astonishing 80% reduction in urinal spillage after introducing the flies. This resulted in a significant reduction in bathroom cleaning costs at the airport. Since then, urinal flies have begun showing up in restrooms all over the world.

Over the years, the urinal fly has become an illustration of a “nudge.” In their 2008 book on the topic, Richard Thaler and Cass Sunstein define it as a choice “that alters people’s behavior in a predictable way without forbidding any options or significantly changing their economic incentives.” Nudges are not mandates. Nudges don’t attempt to make it harder to do the wrong thing — they make it easier to do the right thing.

This same principle can be applied to sexual and other forms of harassment. We need to take these insights from behavioral economics and nudge people to not engage in harassment. If you think it’s a harebrained idea, Richard Thaler, who coauthored “Nudge: Improving Decisions About Health, Wealth, and Happiness,” discussing

methods for helping people make better choices, won a Nobel Prize in Economics for his work examining how individuals make decisions.

I haven’t yet invented an app for nudging people not to harass, but we need to rethink how we train employees and apply new principles, since old paradigms don’t seem to be working very well. It is past time we revamp our harassment training methods, and we should use metrics, proven psychological research and technology to see what works and what doesn’t and learn from the tech sector and other employers who are doing better than others.

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