



WOMEN'S LEADERSHIP  
**EDGE**

An Initiative of the Center for WorkLife Law at UC  
Hastings College of the Law

*Wariness after Weinstein:*  
Effective Workplace Interactions  
When the Spotlight Is on Sex  
Harassment

Distinguished Professor Joan C. Williams  
Director, Center for WorkLife Law  
University of California, Hastings College of the Law

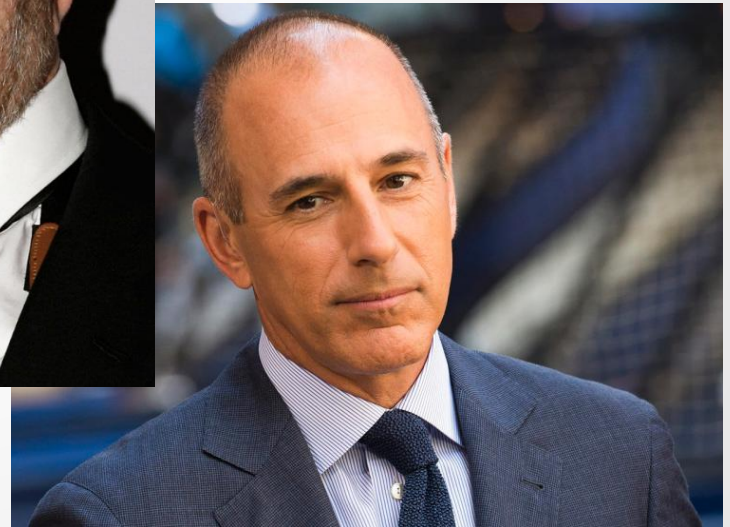
Practical  
Advice

Real-life  
Solutions

Social  
Science



# Yikes





# Wariness

- *“Can I compliment a woman?”*
- *“Can I ask a colleague out without getting in trouble?”*
- *“Does this mean we can no longer joke around and have fun at work?”*





# Wariness

- *“I’m going to stop mentoring women. It’s just too dangerous; my family depends on me.”*
- *“When I travel for business, I’m going to keep my distance.”*
- *“When I go out drinking with the guys, we’ll just not invite the women.”*





# VLS stereotype



“Are you a scorned woman?”

“A little bit nutty and a little bit slutty”  
(retracted)

<http://www.maryellenmark.com/text/magazines/harpers%20bazaar/905C-000-014.html>; Brock 1993







# “He said, she said”

- Typically, a lot of worry about women making false allegations: no evidence of that
- “Men have a motive to do it and then deny it whereas woman don’t have a motive to make false accusations, considering what an ordeal it is.” (Roger Park)





# Harvey Weinstein



Under investigation for  
rape in London, New  
York, California

> 70 allegations of  
misconduct





# Charlie Rose



5 women: Rose put “his hand on their legs, sometimes their upper thigh”

Groped her in the backseat of a car more than once

[https://www.washingtonpost.com/investigations/eight-women-say-charlie-rose-sexually-harassed-them--with-nudity-groping-and-lewd-calls/2017/11/20/9b168de8-caec-11e7-8321-481fd63f174d\\_story.html?utm\\_term=.0611fd9d0014](https://www.washingtonpost.com/investigations/eight-women-say-charlie-rose-sexually-harassed-them--with-nudity-groping-and-lewd-calls/2017/11/20/9b168de8-caec-11e7-8321-481fd63f174d_story.html?utm_term=.0611fd9d0014)







# Sexual assault

## **NYS - PEN §130.52 Forcible touching**

- Forcibly touching the sexual or other intimate parts of another person for the purpose of... abusing, or... gratifying... sexual desire
- Includes squeezing, grabbing or pinching





# Michael Oreskes



2 women accused him of abruptly kissing them on the lips and sticking his tongue in their mouths while discussing job prospects





# Quid pro quo sexual harassment

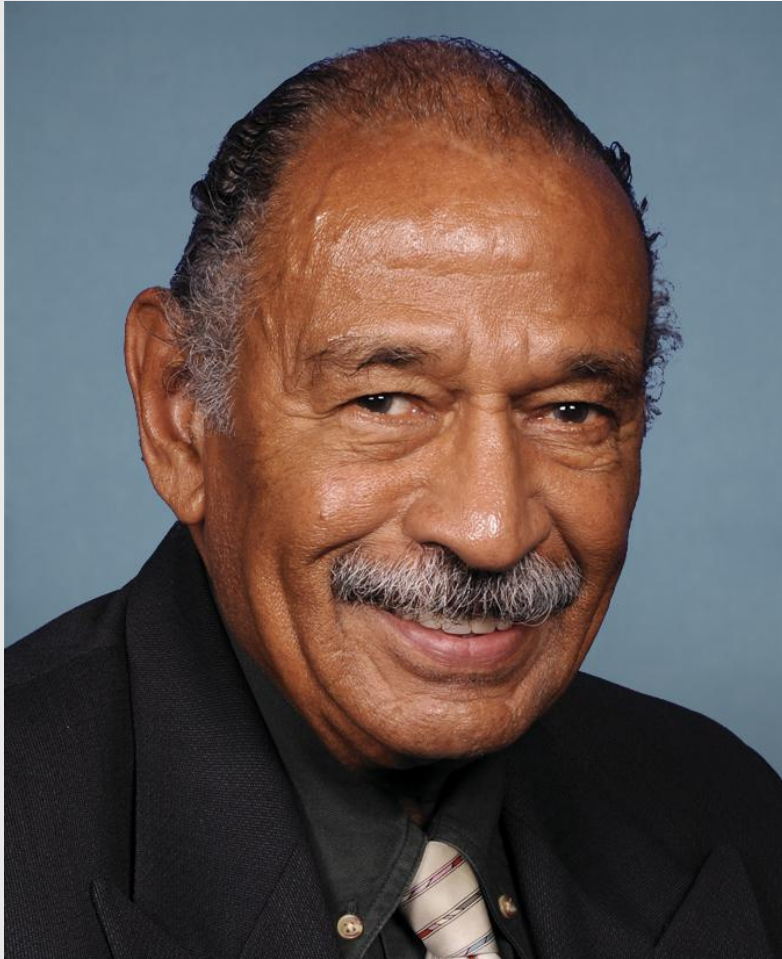
Plaintiff must prove

- 1) Conduct was unwelcome
- 2) Affected a term or condition of employment





# John Conyers

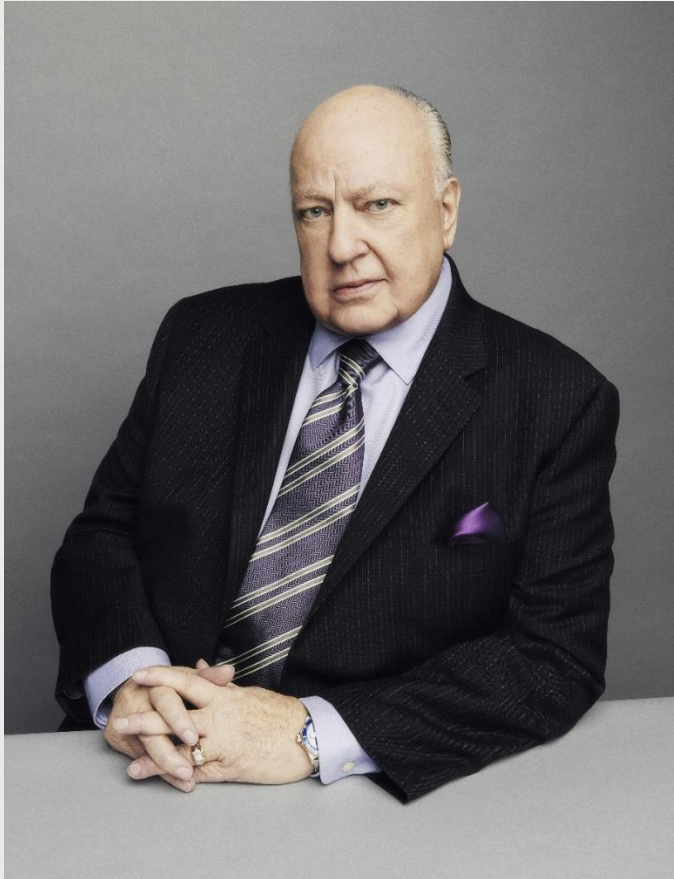


Reportedly paid  
\$27,000 to settle  
wrongful dismissal  
claim – for firing a  
staffer for refusing to  
have sex with him





# Roger Ailes



“No girls get a job here unless they’re cooperative.”

“I think you and I should have had a sexual relationship a long time ago and then you’d be good and better and I’d be good and better.”

<http://nymag.com/daily/intelligencer/2016/07/six-more-women-allege-ailes-sexual-harassment.html>,

<https://www.vox.com/2016/7/19/12215974/roger-ailes-fox-megyn-kelly-gretchen-carlson-sexual-harassment-explained>







# Hostile environment sexual harassment

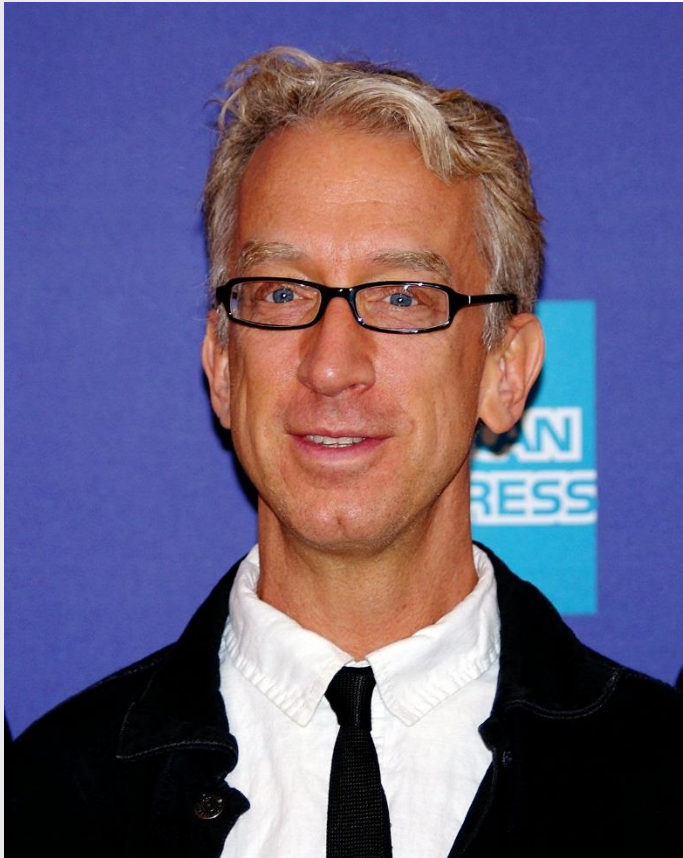
Plaintiff must prove

- 1) Conduct was unwelcome
- 2) Reasonable person would find environment hostile
- 3) Plaintiff found it hostile
- 4) Severe **or** pervasive





# Andy Dick (actor)



“I might have kissed somebody on the cheek to say goodbye and then licked them... I’m not trying to sexually harass people.”





# Hostile environment sexual harassment

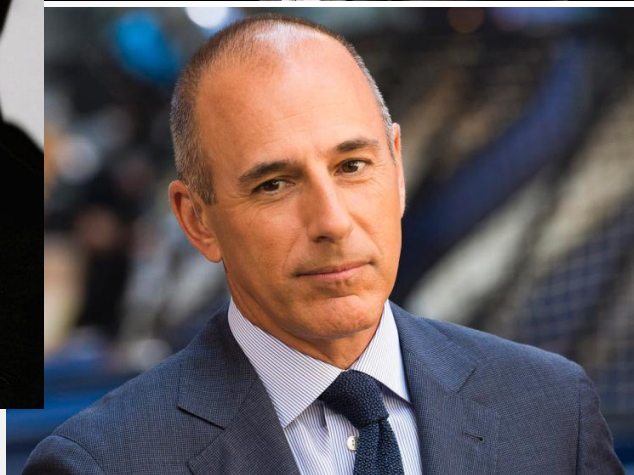
Plaintiff must prove

- 1) Conduct was unwelcome
- 2) A reasonable person would have found the environment hostile
- 3) The plaintiff herself found it hostile
- 4) **Severe** or pervasive





# Weinstein, Rose, Lauer



Exposing yourself to a colleague at work; insisting on sex

Arranging business meetings in a hotel room or home and appearing naked/insisting on sex





# Hostile environment sexual harassment

Plaintiff must prove

- 1) Conduct was unwelcome
- 2) A reasonable person would have found the environment hostile
- 3) The plaintiff herself found it hostile
- 4) Severe or **pervasive**







# Harris v. Forklift

- “You’re a woman, what do you know?”
- “We need a man as the rental manager”
- “Dumb ass woman”
- “...go to the Holiday Inn to negotiate your raise”
- Asked women to retrieve coins from front pocket of his pants





# Harris v. Forklift

- Threw objects on ground and asked women to pick them up
- Harris complained
- Said he was joking and promised to stop
- He didn't: "What did you do, promise the guy some Saturday night?"
- She quit





# Hostile environment sexual harassment

Plaintiff must prove

- 1) Conduct was unwelcome
- 2) A reasonable person would have found the environment hostile
- 3) The plaintiff herself found it hostile
- 4) Severe or **pervasive**





# Retaliation

- A manager may not fire, demote, harass or otherwise "retaliate" against an individual for filing a harassment complaint (or any discrimination complaint).
- You cannot treat someone *differently at all* than before they made a complaint





# Retaliation

## Susan Fowler at Uber

- Your manager may give you a poor performance review; “nothing we can do about it”
- Suggested she transfer
- “Word got around”: transfer blocked







# Can't a guy give a compliment?

- “That’s a nice dress.”
- “You look hot in that dress.”
- “I like those pants.”
- “I like the way your legs look in those pants.”





# What if you want to date someone at work?

- Remember, you are at *work*.
  - Assumption has to be that people are there to do their work.
  - That's why some workplaces have no dating policies—find out if yours does.
- If not, and you want to date someone at work, how do you go about it?





# How do you ask someone out?

- Ask the same way you would if you had a longtime friend and want the relationship to turn into something different.
- Make it clear that it's optional and that if she wants to continue your present relationship, no harm, no foul.
- If she says no, treat her exactly the same way you would if you'd never asked her out.





# Why do it this way?

- You find out whether it's **welcome**
  - You've created an environment that signals that she can say no
- A **reasonable** person would not consider this (alone) to create a hostile environment
- The conduct is not **pervasive** because you accepted “no” at face value
- You did not **retaliate**





# What if you're asked out and don't want to date?

- Tell him/her (hopefully kindly) that you are not interested
- They should take your answer at face value—which means that if you change your mind, *you* will need to re-open the subject







# *What Works for Women at Work*

## Law firm partner

- “I know your wife. She’s my friend. You’re married. There is just no way that I would ever consider that. So let’s not go there ever again.”

## Lesbian executive

- “You would hate yourself, and we could never be friends. Neither of us wants that.”





# *What Works for Women at Work*

Male colleagues are making jokes or inappropriate comments about a woman who's not there

- “I take a mother role: ‘You don’t want to go there’”
- “Think about what you just said.”
- “What are you thinking?”
  - All can be used by men (without mother role)





# Sexual joking and horseplay

- Is it welcome?
- Would anyone who's uncomfortable feel free to insist it stop—without being seen as a killjoy?





# *What Works for Women at Work*

When “just-one-of-the-boys” joking goes too far

- “This is making me uncomfortable”
- *Don’t be such a buzz kill*
- “We are at work. Let’s act like it.”
- *You never minded before*
- “Now I do. Let’s get back to work.”





# Is it sexual harassment?

- What if there's an environment where there are multiple lewd jokes, constant comments on women's bodies ("That dress makes her look huge"), and over-the-line teasing designed to embarrass or humiliate women?
- This is a violation of standard sexual harassment policies.





# Sexual harassment needn't be sexual

- Sometimes hostility towards women is used as a way to throw them off-balance
- May be sexual, but doesn't have to be
- Blue-collar workers
  - Loosening the screws on a tool
  - You don't belong here
- Women who don't conform to feminine mandates more likely to be harassed







# *What Works for Women at Work*

Male colleagues are sharing a picture and commenting that a woman is “hot”

- “You know, she’s cute, but it just doesn’t do much for me.”





# We all had a little too much...

- Roy Price met producer Isa Hackett at a dinner for her show's cast and Amazon staff
- Asked her to Amazon party later that night
- She took a cab to the party with Price and another Amazon executive
- Repeatedly propositioned her
- “You will like...”
- In her ear...





# We all had a little too much...

- “‘He would be completely ostracized,’ one person said on Friday, noting that it would be hard for the studio to attract female showrunners and actors in the current post-Harvey Weinstein environment where there is very little tolerance for sexual harassment.”





# Men can be sexually harassed

- Only 16% of sexual harassment claims from men
  - Includes sexual harassment of men by men; harassment by women is infrequent
- *Oncale v. Sundowner Offshore Services* (1998)





# Male allies

- You are standing with a group of guys and a female colleague walks by. A male colleague remarks, “Wow, she’s hot.”
- “That’s not the way I think of her, or the way I think she would want to be thought of. I think of her as a colleague.”





# Mentors and sponsors

- *“I’m going to stop mentoring women. It’s just too dangerous; my family depends on me.”*
- *“When I travel for business, I’m going to keep my distance.”*
- *“When I go out drinking with the guys, we’ll just not invite the women.”*







# Mentors and sponsors

- Again, deciding not to mentor or sponsor women is clear sex discrimination if you mentor and sponsor men
- Ask yourself
  - Do I interact with younger colleagues in a way that feels comfortable for everybody?





# Mentors and sponsors

- Going out drinking or dinner
  - Lunch instead?
  - Specific restaurant?
  - Make your intentions clear
- Hanging out in the locker room
  - Do the socializing on the running path
  - Take the group out for coffee





# Business trips

- Dinners late at night
  - Include others?
  - Think of your niece
- Remember, excluding women from developmental opportunities is sex discrimination





# Clients

- Sexual harassment by clients or customers can create a hostile environment if other requirements are met
- Make sure this can be reported without negative consequences
- Don't hold business functions in strip clubs even if clients request it





# Protecting your company

- What happened at Uber shows what can happen if sexual harassment is ignored
- Susan Fowler went to HR
  - Lied to her and other women (“first offense”)
  - “Star performer”
  - Jackets
  - Said they could do nothing about retaliation





# Protecting your company

- A company may be liable when there's a “tangible action” due to sexual harassment *even if it did not know about the incident*
- If no tangible action (such as firing), ERs can protect themselves by using reasonable care to prevent and promptly correct SH
- ER defense if EE unreasonably failed to use preventive or corrective opportunities provided by ER

*Faragher v. Boca Raton*, 524 US 775 (1998); *Burlington Industries v. Ellerth*, 524 US 742 (1998)







# Every company should have a sexual harassment policy

- [https://www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/cms\\_000554.aspx](https://www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/cms_000554.aspx)
- <http://www.philadelphiabar.org/page/MPSexual?appNum=3>
- <http://www.mass.gov/mcad/resources/employers-businesses/emp-guidelines-sexual-harassment-policy-gen.html>
- [https://dlr.sd.gov/human\\_rights/publications/samplesexualharassmentpolicy.pdf](https://dlr.sd.gov/human_rights/publications/samplesexualharassmentpolicy.pdf)
- <http://labor.vermont.gov/wordpress/wp-content/uploads/SEXUALHARASSMENTMODELPOLICY.pdf>
- <http://www.state.wv.us/brim/loss/model.htm>
- [https://dwd.wisconsin.gov/er/civil\\_rights/discrimination/sample\\_harassment\\_policy.htm](https://dwd.wisconsin.gov/er/civil_rights/discrimination/sample_harassment_policy.htm)
- <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide.pdf>





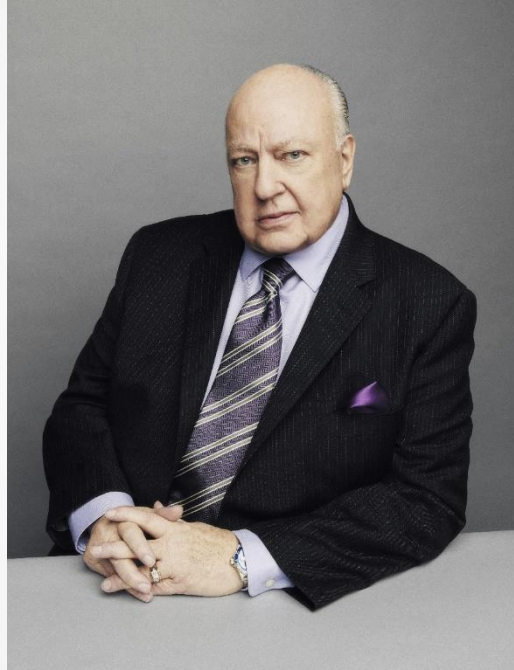
# Protecting your company

- Many trainings are ineffective
- However, training is important – otherwise, how will people know what's illegal?
- Also, can help if you are ever sued





# Weinstein, Ailes



\$32 million  
settlement just weeks  
before Fox gave Bill  
O'Reilly new 4-yr  
contract

Many large  
settlements paid out  
with NDOs





# A new legal environment

Pivot: unceremonious and public firings of famous men mean that companies are moving quickly away from settlements for clear violations of law or company policy.

Just as boards have never tolerated financial fraud and corruption, they will likely adopt the same standards for harassment—firing without pay.





# Shift in norms

- Traditionally, it was hard to win a sexual harassment suit, but now
- 78% of women: more likely to speak out now if treated unfairly due to gender
- 77% of men: more likely to speak out now if they see a woman being treated unfairly
- 49% of men: furor has made them reflect on their own behavior

<https://www.nbcnews.com/politics/first-read/nbc-wsj-poll-nearly-half-working-women-say-they-ve-n815376>

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# Due process?

- Do not jump to conclusions
- Use the same process your company already has if someone is accused of fraud, FCPA
- Typically, that will mean suspension (with or without pay, whatever is SOP)
- Doing a careful and credible investigation
- Then make a final decision based on the evidence





# Prevalence (lawyers)

- Sexist remarks: 82% women, 74% men
- Unwanted sexual or romantic attention/touching: 28% women, 8% men
- Bribed/threatened: 7% women, less than 1% men
- Lost work opportunities: 14% women, 5% men

"You Can't Change What You Can't See: Racial and Gender Bias in the Legal Profession," Center for WorkLife Law, ABA Commission on Women, Minority Corporate Counsel Association, forthcoming 2018

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# Sexual harassment linked w/ other gender bias

## **SH of any sort:**

- Delays in promotion
- Less access to high-profile assignments & sponsorship
- Bias based on parenthood
- Higher intent to leave

## **3 top types of SH:**

- Income reduction
- Demotion
- Loss of clients
- Loss of office space
- Removal from important committees





# Why so slow?

One reason is that so many  
women have faced sexual  
harassment





# Get in Touch | *Contact Us*

## Membership Questions

### ***Jamie Dolkas***

*Director of Women's Leadership*

*(415) 581-8826*

*dolkasj@uchastings.edu*

*Twitter: @jedolk*

### ***Chelsey Crowley***

*Development & Communications*

*Specialist*

*(415) 448-6071*

*crowleych@uchastings.edu*

*Twitter: @ckcrowley*

## Contact WorkLife Law

### ***Center for WorkLife Law***

***UC Hastings College of the Law***

*200 McAllister St.*

*San Francisco, CA 94102*

*Office Phone: (415) 565-4640*

*Twitter: @worklifelawctr*

*Email: [info@worklifelaw.org](mailto:info@worklifelaw.org)*

