



# Sexual Misconduct Allegations: Prompt, Thorough and Coordinated Response and Prevention Strategies Are Critical

*Hinckley Allen Government Enforcement & White Collar Defense Alert*

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In today's environment, following the almost daily allegations and revelations of sexual misconduct in media, government, academia, and the private sector, it is clear that no industry, and no company or organization, is immune from these incidents. This is not just a "Hollywood problem." The Hinckley Allen [Government Enforcement & White Collar Defense Practice Group](#) has extensive experience assisting public, private and government clients in addressing these allegations across a variety of industries, including health care, higher education, and construction.

## **This alert discusses:**

- The risks that these allegations present to your organization
- What you should do when these allegations surface in your organization
- What proactive measures you can take to help prevent such incidences from occurring and mitigate the risks they pose to your organization

## **1. What Are the Risks that Sexual Misconduct Allegations Present to Your Organization?**

Some of the risks associated with allegations of sexual misconduct are obvious. There is always the potential that your organization could be held civilly liable, resulting in substantial monetary judgments or settlements. In recent years, there have been double- and triple-digit jury verdicts in favor of sexual harassment plaintiffs, as well as publicly-reported settlements topping \$20 and \$30 million. In addition, law enforcement agencies can launch investigations into allegations of state civil rights laws where there is evidence of a pattern of assault, harassment, or intimidation.

Other risks, however, are less readily quantifiable, but nevertheless equally perilous. For example, negative press coverage arising from the allegations, even where the allegations are false, can cause devastating and long-lasting reputational harm to institutions and professionals. In addition, your employees are always watching, even if you don't think they are, to see how you handle these allegations. If your employees are not satisfied with the way you handle these allegations, you can be perceived as promoting a culture of tolerating inappropriate or even illegal behavior. The critical questions your employees, customers, clients, the public, and potentially government agencies will ask if allegations arise are: what did you know, when did you know it, and what did you do about it? The stigma that can attach to an institution that cannot provide satisfactory answers to these questions can be difficult, if not impossible, to erase.

In addition, the answers to these questions for publicly-traded companies can also potentially give rise to securities fraud issues. To the extent control persons at your company were aware of allegations, liabilities, and/or settlements arising out of incidences of sexual misconduct and failed to properly disclose them in public filings, your company may be at risk of a government investigation or civil suit for securities fraud. For example, public reports indicate that Fox News is under federal investigation concerning whether it masked settlement payments to sexual harassment victims as salary and compensation to avoid disclosure of the payments and the harassment. In addition, the Weinstein Co., its board members and others have been named in a civil complaint alleging violations of the Racketeer Influenced and Corrupt Organizations Act for their role in allegedly facilitating and concealing a pattern of sexual misconduct.

## **2. What You Should Do When Allegations of Sexual Misconduct Are Made by or Against One of Your Employees, Officers, or Agents?**

One of the critical lessons of the recent wave of reported incidences of sexual misconduct is that you must take these allegations seriously. You have an obligation to immediately investigate incidences reported at your company and, if appropriate, take decisive action. No longer can institutions simply enter into settlements and confidentiality agreements with the hope that the problem will "go away" or the accused personnel will change their ways. You must be vigilant and show your employees, customers, clients and the public that your institution does not tolerate a culture of sexual harassment and intimidation.

can help you respond to these allegations by conducting a timely, comprehensive and independent internal investigation, and make recommendations regarding appropriate steps to be taken as a result of the findings of that investigation. We can coordinate with each of the relevant departments and stakeholders at your institution to ensure that the allegations are taken seriously, and that all individuals—including both the accusers and the accused—are treated fairly in the process.

### **3. What Can You Do to Prevent Incidences of Sexual Misconduct?**

Ensuring that your institution has a robust, meaningful training and compliance program in place is the best way to protect against incidences of sexual misconduct in the workplace. Your organization must have a clear sexual harassment policy that includes a mechanism for reporting complaints of sexual and other forms of harassment, and must encourage employees, officers, and agents to report all instances of sexual misconduct. It is equally important for those in the chain of command to be prepared to handle and address those allegations. Your institution should have multiple individuals designated and prepared to address harassment and misconduct complaints to give employees options for who to speak with about any issues or incidents.

Routine organization-wide trainings can provide your workforce with the “rules of the road” in terms of acceptable behavior in and outside of the workplace and ensure that employees are aware of your organization’s resources for addressing and rectifying incidents of sexual misconduct or harassment. Above all, it is your management team that sets the tone. They must take these issues seriously, create an environment where sexual misconduct is not tolerated and is punished if it occurs, make employees comfortable reporting incidences of sexual misconduct, participate in trainings themselves, and report promptly any incidents of harassment or misconduct they observe or otherwise learn about from their subordinates. They must also protect employees who report or participate in the investigation of a sexual harassment claim from retaliation in the workplace.

Working with the [Government Enforcement & White Collar Defense Group](#), Hinckley Allen’s [Labor & Employment](#) group can assist you with all of these needs. We can develop and conduct sexual harassment trainings for your employees, tailored to management or non-supervisory employees, develop new or review existing sexual harassment policies and complaint mechanisms and other related employment materials, and provide guidance to management on handling harassment allegations, complaints and/or related discussions with employees.

Today's environment requires diligence and, where necessary, investigation and remediation. Hinckley Allen's attorneys have the experience and judgment to help you navigate and address issues when they arise.

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