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## #MeToo and the Male Business Executive: A Call For Proactive Leadership

*Todd A. Leeson*

Picture an upscale steakhouse in a bustling downtown of a mid-size southern city—a swanky joint where every night hundreds of patrons happily pay \$50+ for a delicious steak, and \$15 for a cocktail. This is “THE Place” to be. It is frequented by business owners, executives, entrepreneurs, and those who love the good life (and can afford it). With glowing recommendations from TripAdvisor and from lawyers I know in that city, my wife and I recently dined there during an out of town trip.

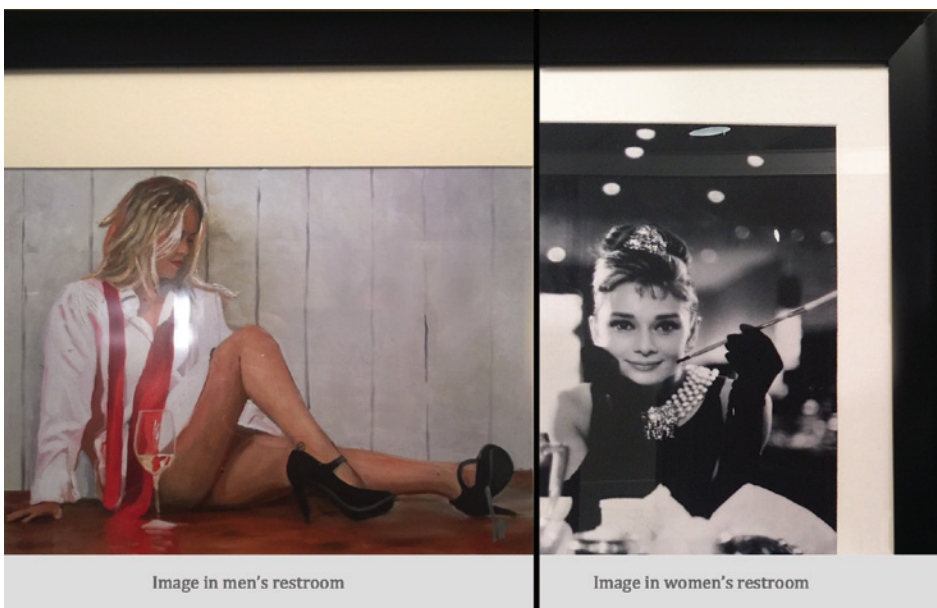
When I went to the men’s room, I observed a series of color photos of scantily clad women, drinking alcohol, in seductive poses—below is one such photo. When I described this to my wife, she reported that the women’s room was filled with classic photos of Audrey Hepburn—including the one below. Does this stark (and deliberate) contrast provide any lessons for business executives in the era of #MeToo?

I recently described the steakhouse to a cross section of women,



but only showed the Audrey Hepburn photo that I told them adorned the women’s room. When I sought their impressions, the overwhelming consensus was that this restaurant must be classy, elegant and glamorous. (If they only knew what their male counterparts saw!) Conversely, when I set the scene for a representative sample of men and only showed them the photo in the men’s room, the men viewed the women in a much different light, essentially as sexual objects. Several men opined that it appeared the restaurant was seeking to promote sexual liaisons.

I am a management employment lawyer. For almost three decades I have defended Virginia companies in court in discrimi-



nation and harassment lawsuits. I also regularly advise corporate clients in an effort to keep them out of court. This includes education and training of executives and managers (and employees) regarding EEO and harassment issues and prevention.

In 2015, the Equal Employment Opportunity Commission (EEOC) concluded that harassment continued to be a significant problem in the workplace, and formed a "Select Task Force" to examine the problem and search for solutions. (I wrote about the Select Task Force's June 2016 Report in an article posted on my law firm's website in January 2017.) As we know, in the fall of 2017, the Harvey Weinstein scandal exploded, and the #MeToo crusade began.

Businesses today are struggling to understand the impact the #MeToo movement will have on sexual harassment, and other improper conduct, that occurs in the workplace. Jodi Kantor, a *New York Times* reporter who has written extensively on Harvey Weinstein and the sexual abuse of women (which reporting recently helped *The New York Times* earn a Pulitzer Prize), framed the question this way:

Women have spoken. Men have fallen. Corporations are nervous. But are American workplaces making real progress in curbing sexual harassment?

"#MeToo Called for an Overhaul. Are Workplaces Really Changing?"

by Jodi Kantor, published in *The New York Times* (Mar. 27, 2018).

Candidly, I have my doubts. This brings us back to the steakhouse. We know that men overwhelmingly serve as the CEOs of private sector companies. Simply put, the men who frequent this steakhouse are the same persons who run companies, and often set the culture for their organizations. Regrettably, the continued objectification of women, overtly or subtly, especially by men in power, will make REAL change in the workplace unlikely.

Let me illustrate this point by discussing a recent case involving a Lexus dealership in Massachusetts. After years of good work, Emma was promoted to finance manager. In her role, she reported to Emmanuel, a long-term manager. The dealership had a sexual harassment policy in place and purportedly trained managers and employees on the policy. Unfortunately, for over a year, Emmanuel frequently subjected Emma to unwelcome conduct of a sexual nature. Among other things, he asked her if they could sleep together so he could see her breasts, he would attempt to throw coins down her blouse, and he regularly commented on her anatomy in graphic terms. Emma (and others) complained to senior management about Emmanuel's conduct, but nothing was done. One day Vince, the general manager, abruptly terminated Emma for allegedly having poor rela-

tionships with other co-workers. During the termination meeting, Emma told Vince that Emmanuel had been sexually harassing her.

In the litigation that followed, Vince admitted that he "honestly did not believe [Emma]." As a result, Vince oversaw a sham investigation in which he failed to interview anyone in the finance department because he did not want to undermine Emmanuel. Emma ultimately prevailed at trial, and received a substantial monetary award, including punitive damages.

The night I dined at the steakhouse, I observed dozens of young women and men working as hostesses, servers, and bartenders. I wonder about the culture in the steakhouse and its commitment to curbing sexual harassment. If a female hostess was subjected to unwelcome conduct by a male manager (or co-worker or customer), would she truly believe that she could complain to management or human resources, if she were not able to resolve the concern herself? (The EEOC counsels that the best first step, if possible, is to tell the offending person to stop the inappropriate conduct.) Moreover, if a male executive at the steakhouse learned about a complaint, especially from a newer employee, would he be predisposed to believe her complaint was unfounded, invited, and/or embellished?

In January, the Society for Human Resource Management (SHRM) reported findings from its year-

long research initiative to help businesses address the issue of workplace harassment. Among its findings, SHRM reported that 76% of non-management employees who experienced sexual harassment in the workplace never report it. This is an alarming fact. It is also consistent with the data that the EEOC Select Task Force previously uncovered. The primary reasons employees do not complain are fear of loss of job (i.e., retaliation), and/or a belief that the company will not take action (i.e., futility).

I have had corporate executives and HR professionals tell me that they are not concerned with the current landscape because they have solid policies, a good HR team, and have not had any valid complaints in years (or ever). Does this sound familiar? If this describes your company, does this mean that all is well with your workforce? If your former or current employees were surveyed anonymously, would any of them reveal that they experienced improper conduct of a sexual nature but did not complain?

My message to business owners in the private sector is simple: Do not fall into a false sense of security. Companies must evolve from a “check the box” mentality when it comes to preventing and addressing workplace mis-

conduct, especially sexual harassment. Yes, companies need to have updated policies and complaint processes in place. To this end, the EEOC recommends (as do I) that such policies not focus solely or primarily on legal definitions of “harassment.” The policy should make clear, among other things, that it violates company policy any time there is offensive or inappropriate conduct based on a person’s protected class.

More importantly, however, business leaders need to devote significant time and resources to ensure an internal culture that emboldens employees to come forward if they experience, observe, or learn about improper conduct. Human Resources needs to earn the trust of employees. Companies must impose proportional corrective action against persons found to have violated company policy.

Over the last few months, I have met with company executives, updated policies and educated managers and employees on the new landscape. The good news is that some executives get it! I still see male executives, however, who are naive or oblivious. As a classic example, what message does the company send when it schedules mandatory harassment/EEO education for its management team, and

the CEO does not attend because of an “unexpected” conflict? (Perhaps he has scheduled a business meeting at the steakhouse.)

I am a strong advocate for management in workplace matters. My recent experiences persuade me, however, that executives must do more. Will you answer the call?

*Gentry Locke partner **Todd A. Leeson** has more than 26 years of experience representing and advising Virginia employers in employment and labor law matters and litigation. He regularly defends employment claims in Virginia courts and before agencies such as the EEOC, National Labor Relations Board, DOL and OSHA (whistleblower and retaliation claims). His experience includes the defense of companies as to alleged violations of Title VII, ADA, ADEA, FLSA, FMLA and the NLRA. In addition, he has considerable experience representing management in labor union matters, including union avoidance campaigns, unfair labor practice charges and labor arbitrations. He also represents Virginia colleges in various student conduct matters, including Title IX and sexual misconduct complaints.*