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## EMPLOYMENT LAW LETTER

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Jones Walker LLP

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### SEXUAL HARASSMENT

## Some straight talk (man to man) about sexual harassment

by H. Mark Adams

*Another article in our December newsletter (see "Hollywood scandals generate new interest in workplace harassment" on pg. 6) will address some of the legal nuances related to sexual and workplace harassment and will provide valuable guidance on creating a harassment-free work environment and protecting your company from harassment claims and potential liability, but I want to speak a little more directly on the subject.*

### Time for another national conversation

The last time sexual harassment was a national conversation was 26 years ago, when Anita Hill's revelations about sexual harassment by her old boss, former Equal Employment Opportunity Commission (EEOC) Chair Clarence Thomas, almost derailed his appointment to the U.S. Supreme Court.

At the time, I was a young partner in my law firm, and in those days, I was the only partner in our labor and employment department. The management committee called on me to ensure that we had policies and procedures in place and—more important—a workplace culture that would keep us from becoming the object of similar allegations. After I explained the nuances of the law on sexual harassment and what employers must do to avoid

liability, one of the committee members remarked, "So what this is really all about is behaving like gentlemen and ladies and what happens when people do not."

At the time, I thought, "Yes, that really is what it's all about." But unfortunately, too many people don't understand what it means to behave like gentlemen and ladies. I knew I had to find a better way to make the point to a broader audience. That's especially true today in the age of reality TV shows, in which the objective seems to be to outdo other people in the capacity to be crude, profane, and even cruel.

### My 'shipyard manifesto'

A short time after the meeting with our management committee, a client called on me to help prepare an all-male shipyard repair crew to welcome two new female welders into its midst. I suggested holding a "training session" similar to one I had done so many times for various supervisor and management groups. We scheduled the session in the shipyard between shift changes (when we could catch both crews at once) the day before the women were set to start work.

I arrived at the appointed time with my usual prepared remarks, which were not too different from the presentation I had given the male lawyers on



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my firm's management committee a short time before. But as I looked into the faces of the assembled workers before me, I knew I needed a different script. Suddenly, it hit me, just before panic set in. I folded my prepared remarks, put them in my pocket, took a deep breath, and said:

OK, guys, we're going to have a couple of new welders starting work here tomorrow. They're well qualified or they wouldn't have been hired. They've had the same training and passed the same tests as you. The only thing that's different is they're both women. Now, your bosses want to make sure we don't have any problems that might land you or the company in legal trouble. So it's real simple. Don't do or say anything to these women that you wouldn't want your mother, your wife, or your daughter to see or hear you do or say.

For emphasis, I added:

Let me put it in a different way, *man to man*—don't do or say anything to any woman at work that you wouldn't just coldcock a guy for doing or saying to your mother, your wife, or your daughter. And don't let another guy do it, either. Don't tell me your mother, wife, or daughter wouldn't want to work in a place like this because these women who are coming to work here tomorrow are somebody's mother, wife, and daughter. So treat them like your own mother, wife, or daughter [is] watching. That's all I have to say.

Immediately, the cold indifference of what had been the toughest jury I had ever faced melted away. Guys looked at each other and nodded in agreement. One man even commented that what I'd just said was the first thing he'd ever heard a lawyer say that made any sense. The next day, the two women went to work without incident, and there never were any incidents.

In relating that story, I don't mean to suggest that I think sexual harassment is confined to blue-collar

workers and work environments in any way. We all know it's not, and you don't have to read today's headlines about Hollywood producers, corporate executives, politicians, and celebrity chefs to know better. In fact, many women have told me that they are more concerned about bosses in the office than workers in the field or plant because the bosses are the ones with the power.

### *Playing it forward*

In the 26 years since my shipyard manifesto, I have delivered the same speech many times to many different audiences—lawyers, doctors and medical professionals, bankers, sales professionals, security guards, warehouse employees, refinery and oil field workers, and even C-suite executives. Invoking the holy trinity of mother, wife, and daughter seems to make the point better—and help it resonate more—than making generic policy statements and sterile talk about discrimination law. Nevertheless, in today's workplace, something more may be needed.

Workplace harassment takes many forms—for example, based on sexual orientation, gender identity, race, religion, national origin, age, or disability. Whatever form it takes, it's wrong. It's bullying. Your co-workers are human beings. They are people just like you who deserve to go to work, do their job, and not be bothered by inappropriate comments, jokes, leering, touching, or groping. Just like you, they are there to work and make a living. Just like you, they have themselves, their families, and their partners to support. For that reason alone, everyone deserves to be treated with dignity and respect—not harassed—because everyone is a human being. No matter our gender, sexual orientation, gender identity, race, religion, or national origin, we are in this together.

### *Enough said*

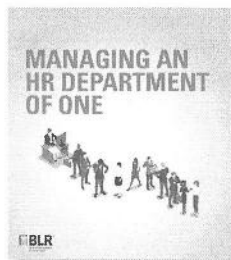
I know some people still won't get it and will think they can get away with sexual harassment. Some will get away with it for a while, but eventually, someone's mother, wife, brother, sister, or child will say, "Enough is enough." When that happens, your mother, wife, brother, sister, or children will know what you did, and you'll have some explaining to do. That ought to be enough said on the subject.

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