

## Chapter 12

### #MeToo and the Energy Industry

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## § 12.01. Prevention of and Reaction to Sexual Harassment Allegations in the Workplace.

In light of the recent swell of focus on sexual harassment as a result of the #MeToo and #TimesUp movements,<sup>1</sup> employers should take the following steps to prevent sexual harassment and sexual harassment claims in the workplace. Similarly, employers should also implement and follow proper response policies and procedures if there are complaints or allegations of sexual harassment or conduct made by employees.

### [1] — Create a Culture Where Sexual Harassment Is Not Tolerated.

First, employers should affirm, at all times, that they are prepared to prevent and respond to any allegations of improper conduct in order to not only maintain employee morale but to prevent and avoid litigation. Experts predict that there will be a surge in sexual-harassment lawsuits filed in the coming months and years, and employers report receiving an increased number of demand letters and charges of discrimination filed with state and federal authorities since the #MeToo movement and Harvey Weinstein allegations<sup>2</sup> came about.

Implementing proper preventative measures and ensuring proper responses to employee complaints of harassment and/or improper conduct is also necessary for employers to preserve their “*Farragher-Ellereth*<sup>3</sup> affirmative defense” to Title VII claims. As established in the landmark Supreme Court decisions, an employer may avoid liability for harassment that does not involve an adverse employment action (*e.g.*, termination or demotion) if the employer can demonstrate: (1) it took reasonable steps to prevent and promptly correct sexual harassment in the workplace, and (2) the

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<sup>1</sup> The #MeToo movement is a campaign against sexual harassment and sexual assault which spread widely on social media platforms beginning in the fall of 2017. The #TimesUp movement was founded in January of 2018 with a focus on eliminating sexual harassment and inequality in the workplace.

<sup>2</sup> In October of 2017, numerous women accused film producer Harvey Weinstein of incidences of sexual assault during his career.

<sup>3</sup> See *Farragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).