



#MeToo: One Year Later

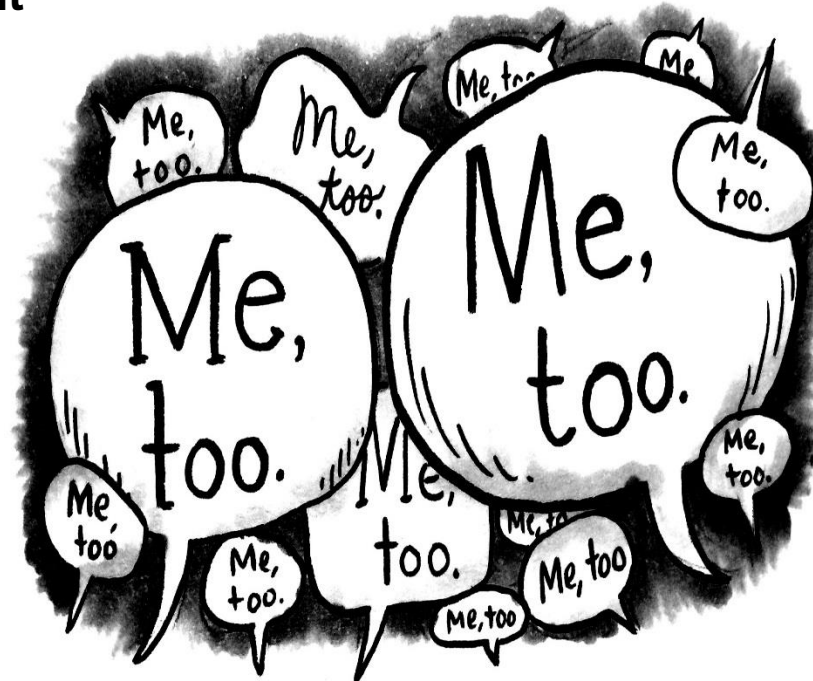
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Agenda

1. #MeToo One Year Later Quiz Show
2. Risk Assessment
3. Risk Management





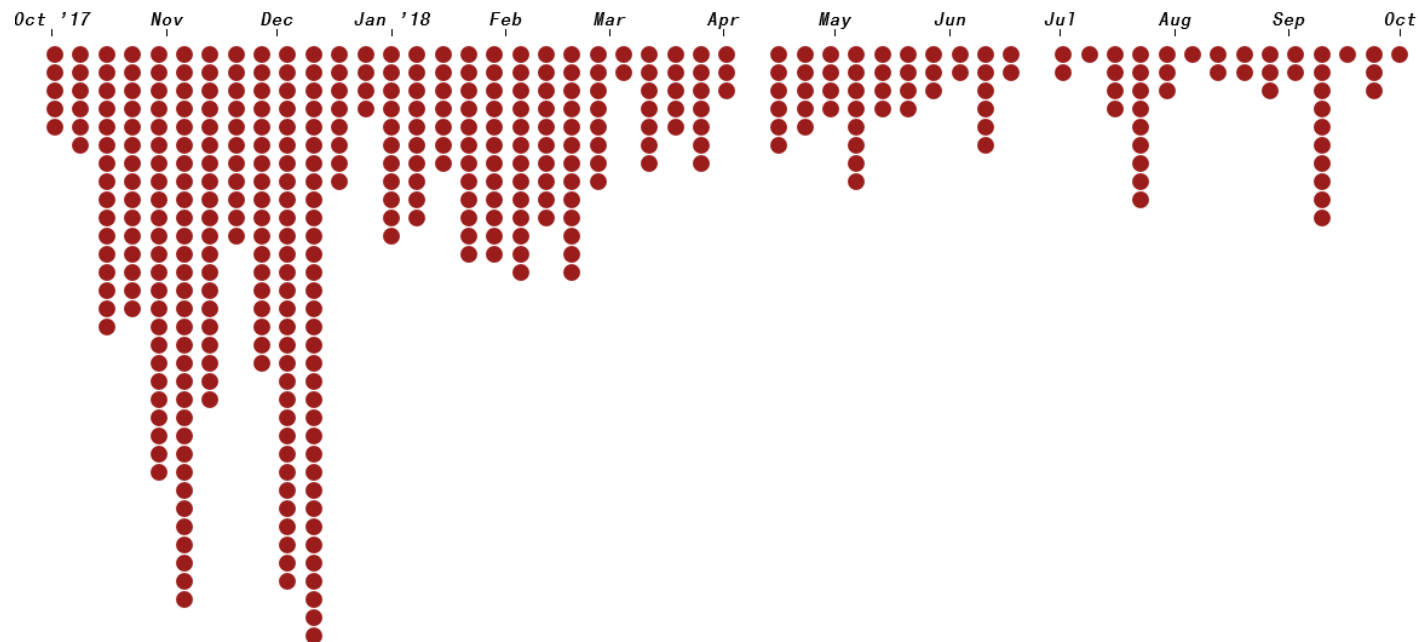
Question 1

- From October 2017 to September 2018, how many people were publicly accused of sex-related bad behavior in the workplace in connection with #MeToo?
- A. 27
- B. 219
- C. 429
- D. 1,007



Answer: C. 429

- According to a report prepared by Bloomberg News, and represented in this graph, at least 429 people were publicly accused of sex-related bad behavior in the workplace in the year following the #MeToo movement.



Question 2

- From October 2017 to September 2018, the EEOC received 76,418 charges of discrimination. How many of those charges alleged sexual harassment?
- A. Less than 5,000
- B. 5,000 – 10,000
- C. 10,000 – 20,000
- D. 20,000 – 30,000
- E. 30,000 – 40,000
- F. 40,000 – 50,000

Answer: B. 5,000 – 10,000

- In the EEOC's FY 2018, it received 7,609 charges alleging sexual harassment.
- Retaliation remains the most frequently alleged claim, with more than half of the charges alleging retaliation.
- Race, which had been the most frequently filed claims for years, is now the 4th most frequently filed claim.

Question 3

- According to Navex Global, a leading provider of third-party hotlines, the number of internal harassment complaints increased in 2018 by:
 - A. 3%
 - B. 7%
 - C. 15%
 - D. 25%



Answer: D. 25%

- According to Navex Global, it received 56,400 complaints of sexual harassment in 2018 compared to 44,540 complaints of sexual harassment in 2017.

Question 4

- According to a survey conducted by SHRM, how many male executives changed their behavior in response to #MeToo?
 - A. 1 in 10
 - B. 1 in 8
 - C. 1 in 5
 - D. 1 in 3

Answer: D. 1 in 3

- According to a survey conducted by SHRM, 1 in 3 male executives changed their behavior in response to #MeToo.
- In the same study, 72% of employees reported they were happy with the efforts their company was taking to stop sexual harassment.
- 33% of the employees say their work environment fosters sexual harassment.



Question 5

- According to polling conducted by YouGov in September 2018 and reported by the Economist, what percentage of women said women who complain about sexual harassment cause more problems than they solve?
- A. 10%
- B. 15%
- C. 30%
- D. 0%

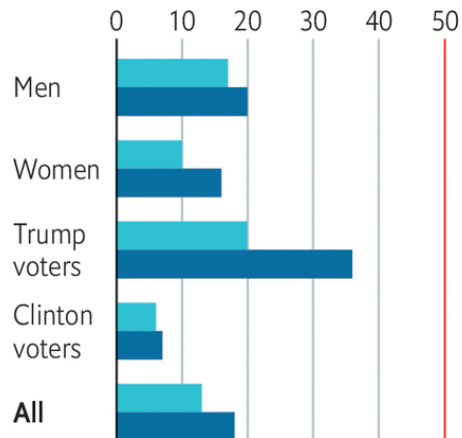
Answer: C. 30%

Victim blaming

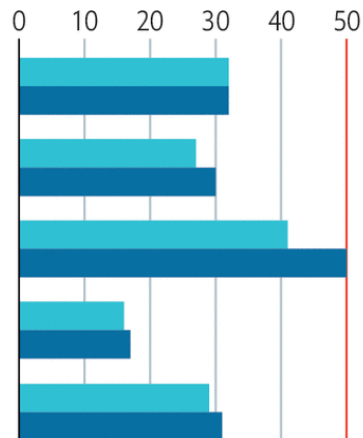
United States, % of adults agreeing

■ November 2017 ■ September 2018

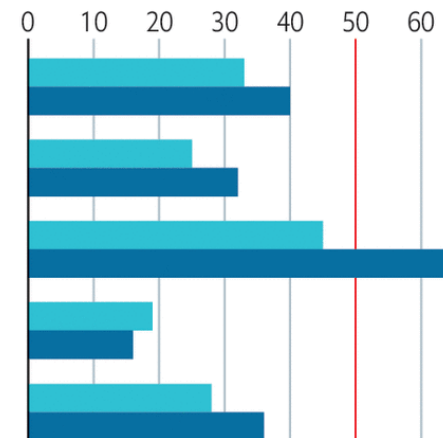
False accusations of sexual assault are a bigger problem than unreported assaults



Women who complain about sexual harassment cause more problems than they solve



Men who sexually harassed women 20 years ago should not lose their jobs today



Source: YouGov

The Economist

Bonus Question

- In a survey conducted by the Working Mother Institute and the ABA Journal, what percentage of men believed a heightened perception of improper behavior surrounds one-on-one mentoring and sponsorship relationships with women?
 - A. 18%
 - B. 32%
 - C. 56%
 - D. 75%

Answer: C. 56%

- Though this survey did not seek information regarding an actual change in mentoring behavior, it is notable that more than half of the men responding were concerned about the perception of mentoring and sponsoring women.



Risk Assessment

1. Litigation Risk
2. Operational Risk
3. Reputational Risk

Litigation Risk

- To date, we have not seen a surge in sexual harassment claims or litigation.
- At least one jury consultant reports seeing juror attitudes that reflect a belief #MeToo has gone too far and decreased willingness to award significant monetary damages.



Operational Risk

- If a #MeToo issue arises in the workplace, and particularly with executives, it costs the company time, money, and resources that would have been devoted to operations.
- According to a study conducted by SHRM, the belief that the company is not addressing sexual harassment impacts:
 - Employee Morale
 - Employee Engagement
 - Employee Productivity

Reputational Risk

- Millennials are reporting sexual harassment at work at a much greater percentage than any other generation. One study found 43% of workplace sexual harassment complaints were made by Millennials.
- #MeToo complaints, accusations, and rumors can spread quickly on social media





Harassment Training

- Required by law in California, New York, Delaware and Maine
- What should the training cover
 - Harassment, discrimination, bullying, implicit bias, inclusion, diversity, leadership
- Who should conduct the training
 - Third-party, HR, employee relations, managers

Ensure Pay Equity

- Have legal counsel conduct an audit
- Where there are differences, be able to explain differences
- Communicate pride in pay equity



Board of Directors

- If you do not have a diverse board of directors, it can exacerbate the operational and reputational harm done by a #MeToo incident.
- A diversity of thought, perspective, and approach leads to better decision-making and a higher likelihood of company success.
- A change in culture must start from the top.

Leadership

- If you do not have diverse leadership, it can exacerbate the operational and reputational harm done by a #MeToo incident.
- A diversity of thought, perspective, and approach leads to better decision-making and a higher likelihood of company success.
- A change in culture must start from the top.



Arbitration Agreements

- #MeToo advocates argue arbitration agreements help to foster sexual harassment because they provide the opportunity for confidentiality for disputes involving sexual harassment.
- Harvard law students boycotted Kirkland & Ellis and Venable over the use of arbitration agreements.
- In 2018, 17,000 Google workers walked off the job over sexual harassment concerns, including the mandatory arbitration requirement.

Facilitate Communication Without Discipline

- Most harassment and discrimination policies frequently reference discipline.
- Many employees report a decision not to report harassment in its early stages to avoid getting another employee in trouble.
- Consider adding to your harassment policy the opportunity to facilitate conversation about conduct that made someone uncomfortable without the need for discipline.

Mentor Assignments

- Do not let men get away with refusing to mentor women out of fear for perception or how conduct may be received.
- Do not just assign women to mentor other women.
- Consider joint mentor assignments.



Diversity, Inclusion, and Other Committee Assignments

- In many corporations, women and minorities are asked to lead diversity, inclusion, and related committees.
- Ask whether these are true leadership positions. What authority do the positions have and to whom do they report?
- Ask whether an unfair burden is being placed on women / minorities in the workplace.

Consider Disclosing Results of Harassment Complaints

- Often times, companies do the right thing, but get no credit for it.
- Employees are left wondering whether anything happened, or with false impressions.
- Consider disclosing, even in summary form with little identifying detail, the results of harassment complaints.



The Mansfield Rule

- The Mansfield Rule is a voluntary program that encourages law firms and in-house legal departments to consider a diverse pool of candidates for certain positions.
- It is based on the so-called Rooney Rule in the NFL, which has resulted in more diversity in the league's coaching staff.



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