

## **National Conference of State Legislatures Legislative Summit**

*Keynote Presentation by Johnny C. Taylor, Jr., SHRM-SCP,  
SHRM President and CEO, July 31, 2018, Los Angeles, Calif.*

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Thank you, Executive Director Pound, President Sen. Peters and President-elect Hutchinson.

I'm here on behalf of the Society for Human Resource Management (SHRM), the world's largest HR professional society, representing nearly 300,000 members. Those members, in turn, impact the lives of over 100 million individuals in the workforce—about one in three Americans.

It's a real honor to be invited to speak at this summit. SHRM and the National Conference of State Legislatures (NCSL) have a strong and longstanding partnership. It was my pleasure to testify before the California Legislature in January on best practices for tackling sexual harassment.

SHRM members have also testified and been active in helping California develop a harassment-free workplace policy. And, late last month, its Joint Committee on Rules approved what's being called a "landmark overhaul" of the Legislature's policies on sexual harassment. They're on their way to transforming the workplace culture in California.

Congratulations to all of you from California who were a part of that. Well done.

And in just the last few months, several legislatures across the country—California, Illinois, Indiana, Maryland, Rhode Island, Virginia and Washington among them—have taken steps to address harassment in the legislatures.

That is a great start, but what I want to talk to you about today is what's next.

### **More Work to Do**

We need to understand that much more needs to be done.

According to SHRM's research, in the past 12 months, 11 percent of employees said they had experienced some form of sexual harassment. That's more than 1 in 10 individuals—in one year. What's worse, 76 percent of them said they did not report it, chiefly because they feared retaliation or believed that nothing would change. The U.S. Equal Employment Opportunity Commission (EEOC) has similar findings.

Thirty-six percent of HR professionals reported at least one sexual harassment allegation at their organizations within the past 12 months. For more than a third of those, this was an increase in allegations in the past year.

Here's the upshot: The numbers tell us we have more work to do to create the kind of environments that simply will not tolerate sexual harassment.

But there's something else we need to understand: While we may be here having this national reckoning because of #MeToo, every other form of harassment is just as wrong and damaging.

For every high-profile case of sexual harassment, there are many more cases of workplace bullying, discrimination and exclusion. They won't make headlines, but they can cut your workplaces and your people deeply.

Harassment complaints—sexual or otherwise—wreak havoc on any organization's ability to hire and keep talent. Even when a situation never reaches the level of a complaint, but it pushes good people out or down, you have lost the talent game. And with the U.S. unemployment rate down to 3.8 percent, this is a risk no employer can afford.

This is why I got into this business. It's why I care as much as I do about this issue. I have a mom, sisters and a daughter. Sexual harassment shouldn't ever happen in business. Which leads me to another important point: Legislative workplaces are not exempt.

### **Legislative Workplaces Are Not Different**

You may believe that the public sector's problems with sexual harassment pale in comparison to what we've seen come out of Hollywood, the media and the private sector. Well, let me take you back a few decades. Anyone remember Clarence Thomas? Bill Clinton? Those public-sector cases were the origin stories of #MeToo. They fueled headline news for months.

The private sector was watching, and businesses got busy changing internal policies to try to get ahead of the problem. Legislators made new laws. The issue retreated from the front page—until last October, when Harvey Weinstein came screaming into the headlines. Then Matt Lauer. It seemed like we were back at square one. For too long, Hollywood had rationalized that its workplaces were different and operated on another level than “normal” office policies.

Now let's be honest. Don't you think that legislative workplaces share some similarities to the entertainment business? Or do you think yours are somehow different?

Look at the ingredients: Long workdays and nights. Ambitious young people looking for leg up in the business. Powerful players who are considered “too big to fail.” Sound familiar? This culture creates perfect conditions for sexual harassment—but it's one that is also ripe for positive transformation.

While several congressional and state legislators—like U.S. Representatives John Conyers and Blake Farenthold, and Assemblywoman Cristina Garcia—have faced disciplinary procedures or been forced out of elected office, I would say that your industry has dodged a bullet. But now it's time to stop focusing on legislating for others, look in the mirror, and start living your own

healthy, honest and practical workplace cultures. You can set the example for every American workplace. You can have an impact.

### **Culture Trumps Compliance**

Getting HR's perspective on harassment is essential because our profession spans all industries, including companies and workforces large and small. Our members have seen it all, and they let us know what works to prevent harassment—and what doesn't.

Here's what doesn't work: relying solely on compliance—rules, education and training—to prevent or address harassment. In short, making policies isn't going to change very much about your workplace. Sorry. It's going to be harder than that.

Yes, compliance is a key component of a harassment-free workplace, but in reality, we could demand that every employee take 10 hours of sexual harassment training every week, and accusations would still happen. We could enforce the strictest policies forbidding workplace relationships, but office romance would still happen.

Even zero-tolerance policies have no real effect—

- When people don't feel safe to report harassment,
- When there is no mechanism to protect people who report,
- And when there is no trust in what will eventually happen to the person who reports.

Those who have been victims are too easily marginalized, distrusted, bullied and even forced out. So, what's their incentive to speak truth to power? Manuals and training are useless in workplaces where bad behavior is silently tolerated. And the EEOC agrees: Its 2016 Select Task Force Report on Harassment recognized that even the most effective training must be part of a holistic culture of non-harassment that starts at the top.

Consider that 94 percent of U.S. workplaces have sexual harassment policies, and yet, here we are. What we know is that written policies don't matter if the *unwritten* rules perpetuate humans behaving badly. This is why SHRM believes in a "rules-plus" approach.

### **Rules-Plus**

Yes, rules, education and training are important. Yes, policies need to make your stance—and your response to a breach in policy—clear. But beyond the rules, leaders have to decide the guiding principles of the organization and then enforce them. They need to bridge the gap between what is legal or compliant with policy and what you really want your daughter, son, sibling or parent to experience in the workplace.

I've been there on the front lines, as both a General Counsel and an HR executive. And one thing that has always been clear to me is that all forms of harassment exist on a continuum. That's another reason having strict policies won't save you. We have seen case after case where problematic behaviors and situations never rise to the legal definition of harassment. There is a vast gray area between what the law calls harassment and other behaviors that are simply bad for business. In that gray area is where people get hurt, get angry, and get even.

### **The "Rules": Five Practices for a Harassment-free Workplace**

So, with that said, let's start with the "rules" part of the equation. I want to talk about five ways to get to a harassment-free workplace.

#### **First, be practical about people.**

Let me ask you, what is your policy on workplace relationships? You probably employ a lot of young people—many of them single, most of them ambitious. They will pursue each other or their mentors and role models. That's just human nature.

If workplace relationships are forbidden, the "outlaws" will go underground, contributing to a culture of dishonesty and secrecy. If they are discovered, you are faced with the choice of firing one or the other, or both, and you have lost key talent.

Instead, you could follow a policy of disclosure when two coworkers become involved. Think of it like a conflict of interest disclosure. Allowing them to come forward without fear of reprisals gives them another pathway—honesty. And honesty is a key element of a healthy culture.

Get practical when it comes to policy. Factor in that *humans* are involved.

#### **Second, we've got to handle any and all complaints with swift action and transparency.**

Claims should be investigated immediately, quickly—and ideally by an independent panel. If a behavior is found to violate the culture of the organization, that individual should be subject to progressive disciplinary procedures up to and including firing.

This brings up a critical point, however. In the zeal to root out sexual harassment, organizations should not swing too far in the other direction, creating a culture of "guilty until proven innocent." Many sexual harassment allegations later are found to be unsubstantiated and, in some cases, outright untrue. A trustworthy due process should protect the accused until he or she is found either responsible or innocent of wrongdoing.

I recommend that you take every allegation seriously, investigate it promptly and adjudicate it fairly, quickly and appropriately, always maintaining the highest possible standards of confidentiality.

### **Third, practice real diversity.**

This type of diversity goes beyond ethnicity, gender, age and other obvious markers. It makes room for talent from non-traditional educational and work backgrounds and for those who don't necessarily look or think like your typical legislative employee. It brings people to the table who can contribute to building a positive, inclusive culture.

**Next, be consistent.** The rules apply to everyone. No one can be “too big to fail” —not the CEO of a big business and not even a duly-elected legislator.

Importantly, make sure that in your workplace, when it comes to harassment, women are treated the same as men. Men are also victims, and women are also perpetrators. Nearly one in five—about 17 percent—of complaints filed with the EEOC come from men—and this rate has remained relatively consistent over the past decade. Just think how many more incidents against men do you think are going unreported.

Sexual harassment is about power and is committed by whoever is in control. It just so happens that in many workplaces, much of the power belongs to men—at least for now.

### **Finally, use your HR experts.**

The HR profession is extraordinarily skilled and armed with knowledge and evidence about harassment prevention. I know, because SHRM works tirelessly to provide our members with these tools and resources that we update constantly.

Let me tell you: A really talented, certified HR leader can make sure you have the smartest policies and the best training available, based on the latest evidence about what works to prevent sexual and other harassment. HR can be the one to make tough, unpopular calls and to step in or stand up to bad actors, no matter where they rank.

This is a wonderful time for state legislatures to invest in an HR function, and I think the benefits will be far greater than just solving a potential #MeToo issue. An investment in HR is your path to building a healthy and productive workplace culture.

### **The “Plus”: Culture Change**

Which brings me to the “plus” in our rules-plus approach to making your offices harassment-free—and the reasons why I was so excited to join you today. When it comes to conduct at work, culture always trumps compliance.

An organization's culture is more than being a nice place to work, where everyone is engaged and happy. It goes far beyond that. Culture, for better or worse, represents who you are and

what you believe as an organization. It shows every day in the workplace. And every decision our organizations make strengthens or weakens it.

Think of the organizational culture like a human body. When it's working properly, viruses and toxins are naturally expelled. In a healthy workplace culture, when something like sexual harassment is observed or experienced, the community takes over and shuts it down, with a message that the behavior will not be tolerated—by anyone at any level.

Ideally, harassment won't occur when the workplace is inoculated with healthy norms, expectations and standards. The right culture says to the wrong people, "You don't belong here."

I know what you are asking yourselves: Can organizations change their culture?

Yes. But to change it, you have to know it. You have to understand how your employees experience it. That means learning what your culture *is* versus what you want it to be. Then you can start creating a strong statement of values that feels right to your people and your business practices.

Bear in mind that outside of a toxic workplace, there really is no "good" or "bad" culture. But you have to have a solid grasp on what behaviors will be accepted and what will not. You must know what you stand for, and where your lines are drawn.

Once you understand your culture, then you can begin to "hire for who you are." But be honest and transparent about it from the beginning, during the hiring process. Because when people come in and find the culture isn't what they expected, they will leave, and then they will trash your reputation.

Your culture must also be reflected in your everyday people practices—who you bring in, who you retain, and who you allow to move up.

So how do you know your culture is working? When it mostly runs on its own. Healthy cultures self-police bad behavior, self-select good people, self-regulate effective policies and self-perpetuate—no matter who comes in or out.

Now I don't want to make this sound simple. It's not, and it takes courage. You may need to challenge those at the very top—the legislator who makes your job possible and others in leadership roles. You may have to speak truth to power.

You may need to ask your leaders pointedly: "What do we really believe in as an organization and workforce?" If you don't like the answer, you must be prepared either to lead a change, or muster up the courage to leave for a better culture. That's the hard stuff—beyond the policies.

My challenge to you is to create cultures, starting in your own offices, with values that are bigger than rules on paper. Bigger than the laws you are legislating.

People are counting on you. Your staff, your constituents, your legislators, and the American people need legislative workplaces that are honest, fair, inclusive, and free to carry out the will of the people.

You need the best talent in your offices working on the most vexing problems affecting your communities, towns, cities and states. Creating these kinds of workplaces is my obligation too, and that of every organizational leader.

How will we know our American workplaces have reached the Holy Grail of cultural transformation? We will see it in how the majority of our society relates to each other, in the values people accept as obvious and in the ways they behave in every situation. We will see it when what is accepted as “normal” behavior today will be radically different tomorrow—in all the best ways.

I’m very excited to go on this journey with you, and I’m honored that you all would give SHRM the opportunity to partner with you. Let’s never stop fighting for inclusive, harassment-free workplaces—including statehouses across this nation.

Thank you.

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