



When CEO's Refuse Sexual Harassment Training *What to do if top execs are too busy or think training doesn't apply*

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What do these five people have in common? All are (or were) powerful professionals or politicians whose reputations and careers were blemished by allegations that they sexually harassed others.

At a time when companies and government entities are pouring money and manpower into preventing sexual harassment, how can some leaders—despite being smart, educated and worldly—still not get it?

“It happens all the time,” said David Lewis, who for two decades has trained workers about sexual harassment as president of OperationsInc, an HR consulting firm in Norwalk, Conn. “Training is done for employees, except the top person or a few top people manage not to attend, whether because they feel they’re too busy or they feel it’s not something they need to attend.”

The importance of training for top executives can’t be overstated, Lewis and other experts agreed. “The source of the harassment sometimes really has no idea that what they’re saying or doing is harassment,” Lewis said. “Most of them are just ignorant and insensitive to the fact that it’s not about you or your intent; it’s about the victim and their perception.”

Recent history demonstrates that plenty of leaders don’t grasp what behaviors constitute sexual harassment, don’t understand the prohibitions against it or don’t care. The result can be a tarnished executive and company as well as expensive civil lawsuits.

Starting last month, women began publicly accusing San Diego Mayor Bob Filner, a Democrat, of sexual misconduct. To date, the former congressman has been accused by 11 women, one of whom is suing him. Filner, who admits treating women badly but denies he sexually harassed any, announced he would undergo intensive therapy, though he’s resisted calls for his resignation.

The Filner situation raises important liability issues that all companies should consider, advised Carolyn Rashby, special counsel at San Francisco-based Miller Law Group. To establish an effective defense to a



harassment lawsuit, a business must show that all employees were made aware of its anti-harassment policy.

According to a recent memo to the city by [Filner's defense attorney Harvey Berger](#), the city failed to offer required sexual harassment training within the mayor's first six months in office. Berger argued that the instructor canceled the session for Filner and others, and as a result, the city may be liable for the mayor's legal defense. News accounts indicate that it was Filner's staff who canceled the training.

For the past eight years, California law has required the state's employers to provide harassment-prevention training to all California-based supervisors within six months of their hiring or election and again every two years.

In *Faragher v. City of Boca Raton* (524 U.S. 775 [1998]), the U.S. Supreme Court ruled that although employers are presumed automatically liable for harassment by a supervisor, training can help organizations escape liability in harassment cases, even if the harassment occurred.

Yet, experts acknowledge that the HR manager can find himself in an awkward position if one of his superiors refuses to participate in harassment training.

"If you have a high-level employee who says 'I'm not taking this training,' then you need to go as high up the chain of command as you can," said Michael Johnson, a former trial attorney in the U.S. Justice Department's Civil Rights Division and now CEO of Arlington, Va.-based Clear Law Institute, which provides harassment training to thousands of employees. "Maybe you go to the board. Of course, if the person is the mayor, there may not be anyone else to go to. I would certainly be sending e-mails documenting the fact that they were offered this training and they didn't attend."

Recent years are replete with examples of powerful men and women accused of sexual harassment:

Former California Gov. Arnold Schwarzenegger, a Republican, was accused of sexual harassment by six women. Schwarzenegger did not confess but admitted to previous misconduct before he was elected.

Former Idaho state Sen. John McGee, a Republican, resigned amid sexual harassment charges by a Senate attache.

Herman Cain, a 2012 GOP presidential candidate, suspended his campaign after allegations surfaced that he sexually harassed women while he was the CEO of the National Restaurant Association. While he denied the accusations, he acknowledged that the association made financial settlements to the complainants.

Samuel B. Kent, a former Texas federal district judge, was accused of sexually harassing two female employees, impeached for abusing his authority and imprisoned for 33 months for obstruction of justice.

Suzanne Barr, chief of staff to Immigration and Customs Enforcement Director John Morton, resigned after at least three ICE employees alleged she engaged in inappropriate sexual behavior. Barr called the allegations "unfounded."

On average, companies spend \$25 to \$50 per employee for sexual harassment training. But some businesses are

saving money by cutting back on this training for supervisors, so these employees have less awareness of and fewer tools for handling harassment situations, according to a [January 2013 article in the SHRM Legal Report](#).

Training can be high- or low-tech or a blend of both. Some trainers, for instance, combine classroom instruction with videos, Web-based training and slide presentations. Requiring workers to actively participate is important, experts said, as is allowing them to ask questions anonymously and get answers online that all participants can see.

Training should avoid the history and theory of the law, focus on practical skills for complying with the law and explore complex gray areas, experts said.

“Most people don’t need to be told about the worst types of sexual harassment—physically assaulting someone or making direct comments about their body,” Lewis said. “But commenting to someone how nice they look today—in certain circumstances, said in a certain way, with a certain tone, at a certain point, to a certain person—could constitute harassment. If you never complimented them before, if you’re staring at something below their face, if the person came dressed more provocatively than usual—there are 19 different scenarios that could suddenly tip things in the direction of harassment.”

Lewis said the most effective training is “fairly aggressive and focuses on the fear these people should experience if they don’t listen.” He points out in his training that the law allows victims to pursue civil penalties against not just the harasser but the managers who failed to stop the harassment.

“I’d much rather show real-life stories, ideally about companies they know,” he said. “It personalizes it. If I tell the story about the executive who was sued by his personal assistant for \$68 million because of a long list of complaints, which some might not consider overt harassment, you can see students thinking, ‘Oh, my God—I do that’ or, ‘Someone in my department does that.’ ”

HR managers must also emphasize “what it can cost the company if it’s hit with a harassment lawsuit,” Rashby said. “Give [top executives] examples of recent lawsuits and verdicts and settlements and the attendant attorneys’ fees. Also make it clear that the harasser can be personally liable and their pocketbook is also on the line. Juries do award damages against both the harassers and the company.”

Strategies include offering executives training in small groups that includes only CEOs and other high-level employees and breaking the training into smaller chunks to accommodate busy schedules,” she suggested.

“Sometimes, when you downsize your group, you have a better dialogue and you can get into examples that are more relevant to them,” she said. “You can alert them to behaviors they may see when they’re in a meeting, when walking through an office and talking to employees or when they’re in the lunchroom.”

