

CLIENT ALERT

Time's Up For Medicine. The #MeToo Movement Focuses on the Health Care Industry.

March 18, 2019

With its roots in Hollywood and the entertainment industry, the #MeToo movement, and the Times Up legal defense fund created in response, over the past year extended into various other industries including the financial sector, tech, and even the federal judiciary.

Time's Up launched a health care branch of the legal defense fund on March 1, 2019. With the stated goals of uniting health care workers across fields, improving care for those who have been targets of harassment and inequity, raising awareness within health care organizations, promoting higher workplace standards regarding inclusivity and diversity, and reaching equitable compensation levels, it will focus not only on sexual harassment, but also on gender discrimination in health care workplaces.

This increased focus on harassment and gender discrimination means that health care companies should take proactive measures to not only ensure compliance with applicable law, but also to review the effectiveness of workplace training, policies, internal reporting and investigation procedures.

As with other employers, the failure of health care companies to take prompt and appropriate corrective action to stop workplace sexual harassment and discrimination can result in significant legal and reputational risks. The risks are magnified in the health care industry where women comprise approximately 65 percent of the workforce, and patient care and safety are paramount. With an ever-increasing spotlight on toxic workplace cultures, abuse of workplace power dynamics and confidentiality agreements reached with those accused of harassment and discrimination, health care organizations should be mindful of the unique risks they face by failing to address these issues in a prompt and effective manner. Some of these unique risks include the following:

- Increased CMS and State survey deficiencies and fines for failure to follow CMS directives to State surveyors of hospitals.
- Loss of Joint Commission "deemed status" (organizations accredited by JCAHO are "deemed" to meet CMS Conditions of Participation in the Medicare and Medicaid programs) if the workplace issues are viewed as adverse "sentinel events" (currently rape and assault of patients, staff, visitors, and vendors are sentinel events) or otherwise violate conditions of participation.
- Loss of accreditation by the Accreditation Council of Graduate Medical Education of residency and fellowship programs for failing to meet the "professionalism" standard if there is evidence of an unprofessional, disrespectful or disruptive environment for students.
- Reputational harm (affecting prospective patients and referral sources).
- Recruitment challenges where shortages of workers exist among competitors.
- Higher staff turnover, which leads to lower quality of care.

Now more than ever it is important for health care organizations to be proactive, rather than simply reactive, when it comes to addressing claims of harassment and gender discrimination, maintaining workplaces free from such harassment and discrimination, and assessing the overall risk to the organization.

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