

Paying the Cost When It's the Boss

When the Alleged Harasser is a Senior
Executive or Other Powerful Person

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This discussion presumes a fundamental understanding of sexual harassment law.



The law applies regardless of the VIP status of the accused, but strategy, tactics and practical considerations may be different.

Background

Focus on Four
Areas of Concern

Fear of retaliation

Personality

Organizational impact

Publicity

Fear of Retaliation

- Both sides need detailed fact finding.
- Fear of retaliation results in reluctance to reveal facts.
- Fear of retaliation stifles complaints, witnesses, and company representatives.
- Prohibitions against retaliation are less well known and understood than prohibitions against harassment.

Fear of Retaliation – Plaintiff's Perspective

Due diligence is essential.

Victim's fear of reprisal must be managed from the outset of the case.

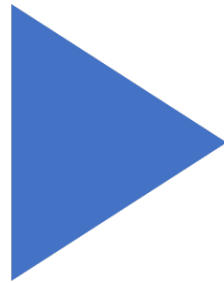
Witness fear of reprisal should be anticipated and managed.

Internal complaints require planning for backlash.

Consider seeking assurances of non-retaliation.

Understand and consider constructive discharge standards.

Fear of Retaliation – Defense Perspective



Investigation and responsive action are essential.

Internal policies must be reviewed and followed.

Accused VIP must be excluded from investigation oversight.

Monitor for retaliation or the appearance of retaliation.

Consider conflicts of interest and separate counsel.

Personality of the Accused Harasser

- VIPs more likely to be persuasive, confident, and charismatic.
- High stakes can create intense reaction for all sides.
- Powerful and well-known actors may be accustomed to scrutiny and controversy.

Personality of the Accused Harasser – Plaintiff's Perspective

Powerful personality may increase fear of retaliation.

Personality of the accused will affect settlement, discovery, and trial strategy.

Plaintiff's exposure to the accused should be carefully managed.

Sources of information within the organization may be biased because of accused's strong personality and visibility.

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Organizational Impact When the Accused is a VIP

Plaintiff's Perspective

- Early involvement by defense counsel may occur.
- Personal counsel to VIP may impact response.
- Employer investigation/response may be more or less aggressive than usual.
- Organizational changes may occur during the case.

Defense Perspective

- Liability is more likely; more is at risk.
- Normal procedures may be more difficult for employers.
 - Nature and timing of investigation and response may be affected.
- Client management may be more difficult.

Publicity

Accusations against a VIP ensure higher public interest.



The VIP may already be a target of public and media interest.




The increased likelihood of publicity means higher stakes for both sides.

Publicity – Plaintiff's Perspective

Publicity risks exposure for plaintiff,
not just accused.




Plaintiff's story and personal
information will be scrutinized.



Preparation for publicity is critical.



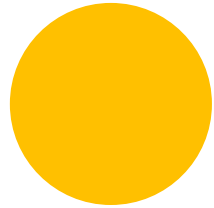
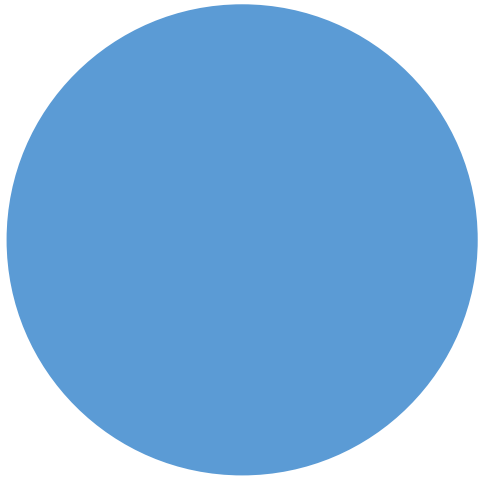
A publicity strategy should be
developed early and modified as
necessary.



The threat of publicity is only
effective while allegations remain
private.

Publicity – Defense Perspective

- Adverse publicity has economic consequences.
- Publicity and public relations strategy should be developed early and modified as necessary.
- The publicity goals of the organization and the accused harasser may be different.
- The goals of public relations professionals and lawyers may be different.



Thank you!

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