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After the Hashtag Stops Trending: What Are the Lasting Effects of the #MeToo Movement?

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The #MeToo movement gained national prominence in October 2017 with the swift dismantling of Harvey Weinstein. During the 2017 holiday season, the nation was treated to a twisted advent calendar of rich and powerful men accused of sexual harassment and misconduct. The activists who championed the movement vowed that they would create a permanent and significant culture shift. Now, a year later, the media attention has faded, the nation is focused on other subjects and scandals, and the lasting effects of the #MeToo movement are uncertain.

On an individual level, it does appear that #MeToo may have empowered people to feel more comfortable reporting sexual harassment and misconduct. The Equal Employment Opportunity Commission (EEOC) reported that sexual harassment complaints increased by 12 percent during the current fiscal year over the same period in the 2017 fiscal year. From last fiscal year to this year, the EEOC also upped the number of sexual harassment lawsuits it pursued and filed.

The movement's effect on legislation is spottier. *USA Today* analyzed the more than 2,000 state bills that passed in the last two years. It found that, in the 12 months after #MeToo first trended, there was a less than one percent increase in the number of bills mentioning "sexual" and a related buzz term, such as "rape kit" or "nondisclosure," compared to the 12 months prior to the movement. The #MeToo conversation has not directly translated into a watershed moment for enacting new laws to combat sexual harassment and misconduct.

There have been some areas of success. One such area is the enactment of laws to combat the use of nondisclosure agreements to silence victims. Maryland, for example, enacted its [Disclosing Sexual Harassment in the Workplace Act](#), which went into effect on October 1, 2018. This law voids any provision in an employment contract, policy, or agreement that waives a substantive right, procedural right, or remedy with regard to a future sexual harassment claim. Arizona, New York, Tennessee, Vermont, and Washington have also enacted laws addressing this topic. State legislatures have also successfully passed laws addressing rape kits – either addressing a state's backlog of untested rape kits or creating procedures for testing in a timely fashion – and lengthening statutes of limitation for sex crimes. Still, while these laws will undoubtedly help certain victims, they are limited in scope and applicability.

Additionally, we have not seen the passage of any sweeping federal laws that address sexual harassment and misconduct. The sole change on the federal level so far has been one of limited applicability – and also in an area of law that is not intuitively related to sexual harassment – a tax law. Under the Tax Cuts and Jobs Act of 2017, employers are prohibited from deducting any settlement or payment for sexual misconduct or attorneys' fees related to such a settlement or payment as business expenses if there is a nondisclosure agreement involved.

Moreover, the federal change most immediately on the horizon appears to be more of a backlash to the movement than the type of legislation that #MeToo activists hoped to enact. On November 16, 2018, the Department of Education (DOE) proposed a new rule under Title XI of the Education Amendments of 1972. The new regulations address the way schools must handle complaints of sexual misconduct. In particular, they narrow the definition of sexual harassment to a school's employee demanding quid pro quo sexual relations,

sexual assault, or "unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity." The new regulations also permit a school to decide whether to apply the "preponderance of the evidence" or the much stricter "clear and convincing evidence" evidentiary standard to accusations of sexual misconduct and only hold schools accountable for investigating formal complaints made through proper authorities. Furthermore, schools will only be found liable if they acted with deliberate indifference when responding to a complaint.

The DOE's proposed rule will need to go through a period of public comment before it is finalized, but unsurprisingly, it received a mixed reception. Assuming the final rule does not differ much from the proposed rule, it may be that the most significant law to come out of the #MeToo era is one that many believe is designed to insulate schools from liability, not combat sexual misconduct on school campuses.

For assistance with preventing and addressing sexual harassment claims in your workplace, contact any member of Baker Donelson's [Labor & Employment](#) Group.