SEXUAL HARASSMENT ANSWERS

It’s not your fault.

By J. Roderik “Rod” Stephens, J.D., Attorney and Counselor at Law
Forward

“I’ve learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel.”

~ Maya Angelou

During the past 30 years, I have been privileged to represent people that fought against sexual harassment in the workplace. I have watched them struggle with the repercussions of sexual harassment, find their voice and stand up to the powerful.

The experience of being sexually harassed is something that will be permanently etched in their lives. Because they took a stand, the door was opened for others to work in an environment free of sexual harassment.

Maybe the harassment happened when you were younger and more trusting.

Remember Mr. Jones in accounting? “Oh, he’s completely safe to be around. He’s as old as my dad and happily married.”

Later, you learn that Mr. Jones was not safe to be around. While it may have been a long time ago, those memories don’t fade. Powerlessness, self-doubt, anxiety, blame, fear, guilt and intimidation — you remember those feelings. These are the tools of the trade for the sexual harasser.

Over the years, I have been inundated with questions about how to address this problem.

They come in various forms from people of all ages:

• “I was just sexually harassed. What do I do now?”
• “I’ve told him to leave me alone! How do I get him to stop?”
• “What about my job? What if I get fired? We can’t survive without my income”
• “I’m done. Tell me what’s involved in taking them to court? Can we impose conditions that will make meaningful change?”

Hopefully, this e-book will help answer some of those questions and provide direction.

Here is the reality. Academic professor and attorney Anita Hill
testified before the U.S. Senate in October 1991. The nation was glued to the television proceedings. We watched as she described the sexual harassment at work by her then-boss Clarence Thomas of the U.S. Department of Education and the Equal Employment Opportunity Commission.

Hill's courageous testimony was the catalyst for major changes in how victims of sexual harassment were treated and perceived. Employers were persuaded to adopt more stringent prohibitions against workplace sexual harassment.

While some change happened as a result of Hill's testimony, it was not a revolution. A quick look at the news shows this. The rich and powerful feel they can harass with impunity and then shield their actions with confidentiality agreements and money. Women (and men) that are harassed remain fearful they will suffer retaliation for objecting to workplace sexual harassment.

The continued fear of retribution is widespread. A 2017 report from the Equal Employment Opportunity Commission (EEOC) said roughly 75 percent of those who experience sexual harassment never discuss it with a supervisor, manager or union representative. The EEOC also reports the most common responses to sexual harassment are to ignore it, endure it, downplay the gravity of the event, “forget” and avoid the harasser. Few take action, either in the form of an HR complaint or through legal mechanisms. It has been more than two decades since Professor Hill testified and yet, people continue to be silent in reporting illegal sexual harassment.

Individuals that harass act with determined intent. When the time is right, he will pounce. He is betting you won't do a thing — because you are astonished, stunned and humiliated.

Maybe you are a single parent that needs this job or are new to the job. Perhaps the perpetrator is the “golden boy” who brings in big deals or is popular with upper management. Regardless of the situation, the perpetrator is betting that your self-doubt and insecurity will dictate how you respond. He knows you will struggle with his actions.

1: I know that women can be perpetrators of sexual harassment and sexual harassment can occur between members of the same gender. For a variety of reasons, that include, but are not limited to, societal forces that keep men in positions of power and societal perceptions that sexual advances directed toward men are not unwelcome, more reports of sexual harassment are made by females. This certainly will change as more women work in roles of power and our society begins to accept that unwelcome and offensive conduct should be reported, regardless of the gender of the perpetrating or reporting party.
Sexual harassment is a serious allegation and people think twice about the repercussions of making a report to management. After all — what if — you misinterpreted his actions? You didn’t and you know it in your gut. That’s because he wouldn’t have said or done it if he didn’t mean it! To quote poet Maya Angelou, “When someone shows you who they are, believe them the first time.”

There was nothing you could have said or done that would have stopped the perpetrator. It is not your fault.

And actress and activist Jane Fonda agrees, according to a 2017 interview in the *Edit*, Net-A-Porter’s online magazine.

“I’ve been raped, I’ve been sexually abused as a child, and I’ve been fired because I would not sleep with my boss, and I always thought it was my fault — that I didn’t do or say the right thing.”

Blame, guilt, self-doubt — the perpetrator uses this to his advantage. He wants you to delay making a report. The passage of time is the perpetrator’s ally.

The perpetrator will use the delay in reporting to suggest that you are fabricating the story. He is counting on you to do his heavy lifting by beating yourself up with thoughts like:

- “What did I do to make this happen?”
- “Was it the clothes I was wearing?”
- “Maybe it will stop if I dress and look frumpy?”
- “What if I wear less makeup?”
- “What if HR doesn’t believe me because I didn’t report it immediately?”
- “OMG, what if they think I invited it or wanted it because I did not report him the first time this happened?”
- “What if I misunderstood or misinterpreted his actions?”
- “No one will believe that Dr. Smith did that, will they?”
- “Everybody loves Floyd, so no one will believe me”
“Since we used to date, they are going to think that I like it when he touches me”

“HR won’t do anything with the way he treats me because they know we used to date.”

These thoughts shift the focus of the blame from the perpetrator to you. In the process, the actions of perpetrator are overlooked.

I have heard from women who are convinced it was their appearance that caused the unwelcome actions. Their solution? Stop wearing makeup, form-fitting clothing and come to work with hair that is just-this-side of bedhead. To their surprise, the harassment continued.

The perpetrator may not care what you look like and, even if he did, that does not excuse the conduct. It’s not your fault and it never was your fault. Here’s the truth: Sexual harassment is about power and control. Short of quitting or moving to a foreign country, there was nothing you could do to stop it once the perpetrator decided to act.

Sexual harassment continues to exist at work for two reasons.

First, management has done a poor job by creating a culture that tolerates this conduct and re-victimizes the brave people who report it.

Second, employees are fearful their cooperation in an investigation will result in job loss. The second reason exists because of the first reason. Culture change will not occur in a vacuum nor will it occur until upper management has embraced and accepted the change. Until that occurs, employees will continue to fear reporting and co-worker witnesses will be reluctant to come forward. The benefactor in all of this: the perpetrator — because management fails to do the heavy lifting associated with culture change.

This e-book was written from a perspective of providing insight on how to address sexual harassment at work. This e-book is not intended to be a legal primer on sexual harassment. It is designed to be a guide on steps that can — and should — be taken when encountering sexual harassment at work. If you are an employer reading this, I’m happy to see you here. You are probably one of many employers who want to create a work culture where sexual harassment is not tolerated or accepted by anyone. This e-book is written primarily for the employee who needs some answers and direction.

More than 1 in 10 workers (or 12 percent) say they have felt sexually harassed in the workplace.”

12%
Because I am a lawyer, it goes without saying, I have to give you a disclaimer. This e-book is designed to give some general advice on a topic. Please don’t treat it as the definitive guide on how to handle your circumstance. I have learned over the years is that every case is different.

If you have been sexually harassed, talk to a lawyer that devotes a large portion of their practice to these cases and can give advice tailored to your circumstances. I am licensed to practice law in Washington and this e-book is primarily intended for residents of the state of Washington.

Now that the disclaimer is out of the way, let’s get started.

**What is sexual harassment?**

Sexual harassment is discrimination that includes unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature that explicitly or implicitly impacts a person’s employment, unreasonably interferes with an individual’s work performance or creates an intimidating, hostile or offensive work environment. That is the textbook definition. In all likelihood, it bears striking similarities to the definition in your employee handbook. To appreciate what is encompassed in the textbook definition, we have to get to the details.

As a resident of the state of Washington, you benefit from the federal law prohibiting sexual harassment — Title VII of the Civil Rights Act of 1964 (Title VII) — and the Washington Law Against Discrimination (WLAD). The WLAD tends to be more robust than Title VII. It’s not surprising — given this state’s independent heritage — for the WLAD to be structured to protect individual rights, while Title VII tends to be more management-friendly. Our state Legislature stated:

“...The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of ... sex, ... are a matter of state concern, that such discrimination threatens not only the rights of and proper privileges of its inhabitants but menaces the institutions and foundation of a free and democratic state.”

Based on this legislative declaration, Washington courts have interpreted the WLAD as providing greater protections that those that are available under federal law, specifically Title VII.
There are two types of sexual harassment: quid pro quo and hostile work environment.

Quid pro quo means “this for that.” In the workplace it means that someone has received an employment benefit from some type of sexual act. The benefit could be job retention, usually a threat — actual or implied — that you will lose your job. It could be better wages, a transfer, better hours, etc. These types of claims are not seen as frequently because many victims fear no one will believe they were coerced into having sex.

Since Washington’s law against discrimination provides greater protections to employees, I will discuss what must be proven to establish a viable hostile work environment sexual harassment claim under that law. Hostile work environment sexual harassment is more prevalent than quid pro quo. Hostile work environment cases require proof of four elements: the conduct was because of sex or gender; it was offensive or unwelcome; the conduct violated the terms and conditions of employment; and there was notice of the conduct to the employer.

Sometimes you will hear a lawyer say there is not enough there to make a sexual harassment case. What the lawyer means is that, for a hostile work environment sexual harassment case to rise to the level of severity to be heard in court, all four of the elements have to be satisfied.

Let’s take a look at what a person has to prove in a sexual harassment case.

The conduct must occur because of sex or gender.

This means that someone did or said something to you because of your gender. The law recognizes certain conduct and words may be offensive to members of a particular gender.

As an example, in one case “Kahn vs. Salerno,” a state court ruling said, regardless of the variety of modern expressions and uses for the “b” word, it remains a term that is highly offensive to women. In another case, “Steiner vs. Showboat Operating Co.,” a federal appellate court rejected the employer’s defense that the perpetrator was an equal-opportunity harasser. In other words, the harasser was equally vile and deplorable to males and females. When the court rejected this defense, it noted that some
of the words and actions used by the harasser were distinctly offensive to women.

The conduct must be offensive or unwelcome.

This means that you did not invite or welcome the conduct. You regard the conduct as undesirable or offensive. Sometimes, this can be a source of confusion because people — in an effort to get someone to stop harassing them — may reciprocate by using equally foul language to shock the harasser with the goal of making it stop. This is a defense mechanism.

For example, when a male co-worker shocks his female co-worker with unsolicited descriptions of his sexual prowess to his female co-worker, it would not be surprising for her to respond by attacking him in some way. A response, such as jokingly questioning whether he has the ability to function in that manner, does not mean the conduct is welcome or invited. It does say she is attempting to tell him, “Buddy, you crossed the line. Stop!”

The conduct must impact the terms and conditions of employment.

This is the area were most of the battles are fought. This element looks at the severity and persistent nature of the conduct. In other words, whether the conduct was sufficiently severe and persistent to seriously impact the emotional or psychological well-being of the person being harassed.

Here, we are trying to discern whether we have a one-off incident that falls into the category of boorish behavior or whether the conduct is sufficiently severe to create a legal right of action. The law recognizes that — sometimes — people do and say stupid things. These are generally one-offs and, often, can be resolved by a sincere apology and coaching.

To impact the terms and conditions of employment, the conduct must be severe, it must significantly impact the individual (e.g. anxiety, nightmares, depression, fear, weight gain, high blood pressure, etc.) and, generally, it should have occurred more than once. That said, there are instances where unwelcome conduct occurred once and resulted in liability. In an example case, a manager forced his assistant up against the door, French kissed her and placed his hands underneath her bra. In that case, the
federal trial court held that the conduct was sufficiently severe that it was actionable, even though it only occurred on one occasion.

**There must be notice of the conduct to the employer.**

*Unless the employer knows of the conduct, it will not be liable.* Notice can occur in a variety of ways. The actions of an owner, corporate officer or manager (and, in limited circumstances, a supervisor) are deemed to be those of the employer.

When sexual harassment is carried out by a co-worker, the employer is deemed to be on notice of the conduct once it is reported, or if it was so pervasive, that one could only conclude the company should have known. The employer, once on notice, must act promptly and take measures that will assure the conduct ceases in reported co-worker harassment. The level of response by the employer may vary depending on the circumstances. Management should have given a response to confirmed sexual harassment and should not fear terminating an employee. Employers that respond aggressively to workplace sexual harassment deliver the message to its employees that it will not be tolerated.

**I don’t care about the law. Just tell me what I need to do?**

**READ YOUR EMPLOYEE HANDBOOK**

I’m guessing you downloaded this book because you or someone you know is at a stage where the perpetrator won’t stop, the sexual harassment is impacting your ability to do your job, and/or you believe your job is in jeopardy.

Even if you are not at that stage, you should be familiar with the procedures in your handbook. It is your employer’s playbook of how we work together. It was written with the intent that you would use it to handle situations that happen at work, like sexual harassment. The handbook should outline reporting procedures, what to expect and what to do in the event of retaliation. Your failure to follow established procedures for reporting and cooperating may, under the right set of circumstances, be used as a defense by your employer.

When harassment is perpetrated by a co-worker, the employer is only held accountable if they knew — or should have known — of the conduct and failed to take immediate, remedial action.
designed to end the harassment. You reported, someone else reported, or the conduct was so flagrant, there is no way management could not have known about it.

It also means, once the employer has been notified that you were sexually harassed, the employer has to do something about it and that something has to be an effective way of addressing and stopping the problem. Depending on the severity of the conduct, the remedy may be a write-up, suspension, attendance in mandatory training or termination. The key point is until you make a report, your employer’s duty to act may not be triggered. Once that duty is triggered, you need to consult your handbook about what to expect and what to watch out for that may be considered retaliation.

When the harassment is perpetrated by an owner, corporate officer or a member of management, the standard is different.

Managers, owners and corporate officers have the ability to bind your employer through their actions. As a result, if a manager, owner or corporate officer engages in sexually harassing behavior, the employer is deemed to have known about the conduct and will be held accountable. Your handbook should also address how, when and to whom a report should be made if harassment is perpetrated by a person in a supervisory or managerial role. If your handbook is silent on this, go to human resources, another manager or a member of upper management.

Generally, the reporting procedure is found in one of the following places: the sexual harassment policy, equal employment policy, discrimination policy or retaliation policy. Remember, although your handbook contains disclaimers that say the handbook is not a contract and the policies are advisory only, the reality is the courts look to see if you reported and whether internal procedures were followed. Not only is the reporting procedure important, but it will also outline your duties while the employer is handling your report.

**When reading your handbook, pay attention to the retaliation policy.** Many people do not understand that, once a report is made, they are in a protected status and the employer can’t do things like make your job more difficult, move you to an undesirable position or location, reduce your hours, make your schedule more difficult, reduce your pay, remove responsibilities or terminate you. Obviously, this assumes that you have not engaged in conduct that merits termination (e.g. you didn’t embezzle $2 million).
REPORT THE CONDUCT.

To find out where to report, read your handbook. If you don’t have a handbook, go to Human Resources or a member of management to make your report.

When you make the report, don’t sugarcoat what transpired, don’t make excuses for the perpetrator’s actions, don’t downplay or accept “some blame” for what happened. It is important that you tell the employer everything that happened.

Do not assume they will understand what it means when you say, “I don’t feel comfortable around him.” Let your employer know everything he did or said. Everything. You know what I am talking about. The looks that made you feel…dirty or creeped out. The innuendo.

Don’t suggest what action should be taken, unless asked. If asked, tell the employer, “I want it to stop. I don’t want to have to worry about retaliation. I want you to enforce the sexual harassment policy to the fullest extent permitted by law.”

Right or wrong, it is ultimately management’s right to take — and be held accountable for — disciplinary action. Do not give management the chance to use the “if we would have known that” excuse.

TRUST YOUR INSTINCT AND, IF NECESSARY, TAKE IT UP THE LADDER.

Sometimes, when making the report, you will encounter a manager or HR person that makes you uncomfortable. If that is the case, trust your instinct and make your report to another manager or HR person.

The accuracy of your suspicions is, ultimately, immaterial. It is important for you to be able to make your report in an environment where you feel as comfortable as is possible under the circumstances.

There are occasions when management or HR drops the ball. The immediacy of the response by an employer can be dependent on the nature of the report.

Speak up if you disagree with the response and investigation timeline. Hold the employer accountable for any deadlines or response times promised. In the event, you do not receive an
immediate or satisfactory response, it is time to escalate your report by taking your report to a higher level within the company.

**DOCUMENT ... BUT BE CAREFUL**

Employers have wide latitude in the items they can review or search. As a general rule, materials kept on the employer's computer or device are considered the property of the employer and do not carry an expectation of privacy. Some employers have policies clearly stating that employees have no expectation of privacy in locked desks, password-protected files, in personal purse/wallet and any electronic device brought on company property, and in vehicles parked on company property. Proceed under the assumption that your employer can access anything you bring onto company property, on devices it owns or any device connected to the company computer system via the internet.

Since memories fade and events can be forgotten, it is important to keep a record of the actions taken by the perpetrator and how they made you feel. Record any changes in your emotions, health and relationships that you attribute to the sexual harassment. This record is best kept off-site, off the company cloud and off of any company device (i.e. smart phone, tablet, laptop, etc.).

**Start by telling us why you are keeping this record.**

Is it to record events so you can give it to your lawyer, if necessary, in the future? Is it to journal for therapy? Under some circumstances, if the record is prepared for your lawyer it may be protected from disclosure under the attorney-client privilege, the work product doctrine or both.

**When documenting you should be as detailed as possible.**

Tell us the who, what, when, where and how? That means recording exactly what was said including the exact words used by the perpetrator.

Who acted? What did they do? How did you respond? How did that make you feel? Where did it happen? Who in management or supervision observed the act? Don’t worry about formality. Write down what happened and provide the level of detail you would give if you were telling this to your closest friend.

Finally, a word about recording. While certain limited exceptions exist, proceed on the assumption that any recording made...
without the other person’s consent (preferably recorded consent) will create serious headaches. Washington is not a jurisdiction that allows one party consent to a recording. Recording someone without their consent could expose you to criminal and civil liability. In addition, under the right set of circumstances, it could give your employer grounds to assert the defense of an after-acquired basis for termination which could materially limit the amount of damages you can recover is a lawsuit.

**TRUST BUT CONFIRM.**

Avoid misunderstandings by sending a confirming email. Here is an example of a confirming email:

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Hi Ms. Lattimer:

Thank you for meeting with me to discuss my report of sexual harassment. It is my understanding that you are going to meet with your supervisor tomorrow to discuss my report and develop an investigation timeline. You also told me I should hear back from you by close of business on Wednesday.

Best regards,
Your signature
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This and any follow-up email will become the electronic paper trail that chronicles how management addressed your report.

Any written communications with your employer should be drafted with the understanding that, at a much later date, it may become a trial exhibit. Keep it professional, serious and honest.

**DON’T BE AFRAID TO REPORT RETALIATION.**

It’s not uncommon for there to be a degree of awkwardness while an investigation is ongoing. You are uncomfortable because you made a report. Members of your team that know of your report may also be slightly uncomfortable. That’s normal.

Retaliation is a different breed of cat. It is adverse action taken against you because you engaged in a protected activity (including reporting sexual harassment).

Retaliation takes many forms. It can be a transfer, demotion, denial of promotion, decrease in pay or hours, a negative performance review and termination. As with sexual harassment, retaliation is more prevalent in companies that have not fully

"I want you to enforce the sexual harassment policy to the fullest extent permitted by law."
embraced a culture that vigorously addresses retaliation.

Immediately report retaliation. Don’t make the mistake of waiting to report or disregarding your gut instinct by making excuses for the conduct. Retaliation is a serious matter and HR or upper management should be made aware of it.

With retaliation by upper management, your best course of action is seeking a lawyer or filling a complaint with an administrative agency such as the Washington State Human Rights Commission or the Equal Employment Opportunity Commission. If the business has more than eight employees, you can file with the state agency. If the business has more than 15 employees, you can file with the federal agency.

I understand that you may not wish to rock the boat or make waves because you just made a report of sexual harassment. The truth is that you have a right to report sexual harassment, are expected to report it and you should not have to experience repercussions because you expect to work in a workplace that is free of harassing conduct.

There is nothing wrong with getting help.

Sexual harassment impacts people differently. Many victims of sexual harassment experience anxiety, fear, depression, loss of sleep, loss of trust, relationship issues, nightmares and post-traumatic stress disorder.

Unfortunately, they don’t seek out treatment for these problems, due to the stigma associated with seeing a mental health professional. Don’t be feel embarrassed about seeking help. You would have no reservations seeing a doctor for a broken arm. Just because this injury is emotional — and not physical — does not make it any less severe. Often, your family physician will be able to prescribe medication and make a referral to competent counselor, psychologist or psychiatrist.

As with any matter that adversely impacts your health (mental or physical), failing to address the problem does not make it go away. It only results in more serious problems down the road.
Be careful with advice given by friends and family.

Generally, individuals will discuss the sexual harassment with a close friend or family member before they speak with an employment lawyer. Sometimes your confidant gives you advice obtained from a cousin whose best friend was a clerk in a law firm. Unless that source has a law degree, you really need to speak with an employment law attorney, especially if you feel that you are being subjected to retaliation.

An experienced employment law attorney will discuss your legal rights, what options are available and provide practical self-help advice. There are a variety of topics that should be discussed including exit strategies, potential claims, and how to report harassment and retaliation.

The law limits the time you have to bring a claim. Under federal law, the general rule is 180 days from each harassing or retaliatory event. The WLAD is more generous and, generally, allows you to commence your lawsuit within three years of each harassing or discriminatory event. The 180-day federal rule may be extended to 300 days if the charge also is covered by a state or local anti-discrimination law.

For example, 14 months ago, Susan was groped by manager Xavier. Susan can bring a claim under Washington law because the event occurred within the past three years. Susan cannot bring a claim under federal law because Susan did not file a Charge of Discrimination with the Equal Employment Opportunity Commission within 180 days of the act.

For those working in the public sector, you will first have to file a Tort Claim with your employer’s risk management department before you can file a lawsuit. Since there are a myriad of issues that can impact the viability of a legal claim, it is always important to get a legal opinion early on, if possible.

Special damages are not that special, General damages are not that general.

When a sexual harassment lawsuit is brought, the plaintiff (the person bringing the lawsuit) can recover their special and general damages. **Special damages, or economic damages, are items you can specify with reasonable certainty.** These include wage loss (past and future); lost benefits; lost promotions; the cost of...

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- Those who DID NOT REPORT the sexual harassment most often did not because they:
  - DIDN’T WANT TO BE LABELED A TROUBLEMAKER 40%
  - THEIR WORD AGAINST THE OTHER PERSON 22%
  - AFRAID OF LOSING THEIR JOB 18%

- On the other hand, of those who DID REPORT IT:
  - ISSUE WAS RESOLVED – 76%
  - PERSON STOPPED THE HARASSMENT 29%
  - PERSON WAS FIRED 21%
medical or mental health treatment; and deductibles, mileage, and prescription medical expenses. These items of damage are relatively easy to calculate.

**General damages, or non-economic damages, are those items of damage that go to one’s quality of life.** Often these damages are referred to as emotional distress damages. The truth is the law recognizes that, in cases of severe sexual harassment, individuals experience severe anxiety, nightmares, nausea, acid reflux, post-traumatic stress and damage to existing relationships. These damages should reflect the severity of physical and/or emotional injury.

Consider the worry of a parent that is fired for reporting sexual harassment (and yes, it still happens). Rent has to be paid, children have to be fed, car payments need to be made and unemployment does not pay even close to what you earned.

What about the loss of trust, embarrassment, humiliation, nightmares and constantly being on edge? When we perceive our jobs are on the line or matters are out of our control, there is a corresponding increase in our level of worry, fear and anxiety.

In addition to general and special damages, you are also permitted to recover your attorney's fees and court costs. If you win at trial, the employer has to pay for your lawyer and your court costs — and pay the employer’s lawyer and court costs. That doesn’t mean that employers are out there rolling over on these claims, but good defense attorneys recognize solid claims and try to get them resolved early on.

**What is a contingent fee?**

Lawyers are paid in a variety of ways. Sometimes it is at their hourly rate, a flat rate or a set amount in phases of the project or litigation.

Lawyers also handle cases on a contingency-fee basis. What that means is that the lawyer will not be paid their hourly rate as the case progresses. Instead, they will be paid a percentage of the recovery obtained. If there is no recovery, then you are not responsible for the attorney's time. But you are responsible for your litigation expenses. The contingent-fee arrangement enables the employee to have a voice that will be heard by their employer.
**Moving forward: Be strong, be honest, trust your gut and always get it in writing**

Standing up takes courage. Be truthful about what happened (don’t minimize or downplay), because the whole truth is a powerful thing.

One of the things that most employees don’t understand is what to tell their employer. Tell them everything. Don’t assume that by telling your employer that a manager is crude, your employer will know that he grabbed you in an intimate area.

Some employers prefer to get a written statement from employees at the time a sexual harassment report is made. Some employers require it as a condition of employment. If you work in a union shop, always take a union steward with you.

These employers understand that many employees feel uncomfortable identifying each act of inappropriate conduct. Be as thorough as possible at the time — names, places, times, even if you think it may be a trivial detail. Anything you omit, your employer will try to exploit later in court suggesting that any acts not disclosed in the employee’s report are fabricated. Get a copy of the initial report you submitted and see a lawyer immediately.

Remember, you did not ask to be put in this situation, the perpetrator is the one who is at fault. Not only should he be held accountable for his actions, but his despicable conduct should be exposed. It takes courage to tell the truth — and you can do it or you wouldn’t be reading this book.

Always be cautious and trust your instinct when in doubt. That uneasy feeling you get when something appears to be off is an internal alarm system. More often than not, your internal alarm is correct.

There may be occasions where a co-worker offers support and to “testify if your lawyer subpoenas me.” Try to explain to them that — while they may think this is helpful — in reality, it means that you will have to file an action in court before you can subpoena their testimony. It will take time and money — your money — that will be spent.

Instead, try to get them to write, email or text you the details of their witness statement. Always get it in writing.

If in doubt as to what I am saying, consider this: You file a lawsuit against your employer. Your lawyer subpoenas the supportive

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**Overall, 28 percent of those harassed said they reported it, with 15 percent telling the person’s boss or someone higher up in the organization, 11 percent telling HR and 3 percent the legal department.**
co-worker to a deposition. Present at the deposition will be a court reporter, you, your lawyer, the supportive witness, the employer’s attorney and possibly his boss. How candid do you really think that co-worker’s testimony will be with his boss staring him down?

The answer is simple: Not very candid.

Earlier, we discussed the importance of confirming promises to assure there is no miscommunication. If your employer asks you to sign any document that you believe has legal implications, you should ask (or tell them you need time) to speak to an attorney.

To be clear, you can sign documents that clearly call for you to sign acknowledging receipt. When an employer presents you with a written agreement — or asks you to release or discharge claims — you should not sign until you have the chance to consult with a lawyer.

**My final thoughts**

Sexual harassment claims are hard fought claims. Under the right circumstances, they can bring about meaningful change in an organization.

It’s not an easy road. At times it may feel like you are climbing a mountain in the dark. You are not alone in this. When you get to the top of that mountain — and you see that your actions resulted in meaningful change in the workplace — it’s priceless.
About the author

While a large part of his work is in the context of litigation, J. Roderik “Rod” Stephens, J.D., prefers to work with his clients to develop procedures and processes that avoid the cost and expense of litigation. Rod — and the members of his legal team — provide training, seminars, employment handbooks, updates on recent cases and, of course, sound counsel.

Rod’s clients benefit from his years of experience and in-depth understanding of institutional and management operational structures. The members of his firm understand that legal matters can require immediate response in times of crisis. On those occasions, the firm’s clients can take comfort in the knowledge that the firm is prepared to provide the type of response that takes advantage of their years of experience.

Rod has been in practice since 1984 and has successfully represented clients from across the United States and Canada. He has taught continuing education classes in employment law to members of management, human resource professionals and lawyers. The prestigious legal directory, Martindale Hubbell, has ranked Rod as AV Preeminent and his firm is listed in the Bar Register of Preeminent Law Firms. Rod has also been selected — on multiple occasions — as a SuperLawyer by *Washington Law and Politics* magazine.

**This survey was conducted online within the U.S. by The Harris Poll on behalf of CareerBuilder among 809 employees ages 18 and over (employed full-time, not self-employed, non-government) between Nov. 28 - Dec. 20, 2017. With a pure probability sample of 809, one could say with a 95 percent probability that the overall results have a sampling error of +/- 3.45 percentage points.**