

"Cosby Released, But Not Exonerated," Today's General Counsel, authors Philip Voluck & Jennifer Prior, October 2021

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The decade known as the "20-teens" will be remembered for the #MeToo Movement, which dramatically changed the way people behave at work. Awareness about sexual violence in the workplace soon followed, with the hope that it would empower victims to come forward. To that end, states such as New York and New Jersey have enacted laws prohibiting non-disclosure agreements in sexual misconduct settlements. As the #MeToo Movement gained momentum, the U.S. Equal Employment Opportunity Commission reported that while the overall number of workplace discrimination complaints it received decreased, sexual harassment complaints increased as more victims opted to formally report. Essentially, employers were put on notice that the old workplace mores were no longer acceptable.

The first high-profile conviction came in Bill Cosby's sexual assault trial. However, the Pennsylvania Supreme Court's recent decision overturning the conviction has left the perception that the American worker was betrayed by the proverbial system. This simply did not happen. The conviction was overturned because the Court decided to enforce an agreement between Cosby and a prior District Attorney not to prosecute Cosby, in exchange for his deposition testimony in the civil case filed by "first victim" Andrea Constand, who ultimately became the face of Cosby's downfall...

Procedures that remove barriers to reporting are essential. They should provide multiple options for complaints to avoid, for example, requiring the employee to complain to the person who was harassing her. Employers should train supervisors how to respond and require them to report the complaint to Human Resources or face disciplinary action.

In summary, employers need to be proactive in preventing the pendulum from swinging back to a pre-#MeToo culture in which harassment was widely tolerated, if not completely ignored. Please see the full article at the link.

By Philip R. Voluck and Jennifer L. Prior