

Reprinted with permission from the June 20, 2022, issue of the *New Jersey Law Journal*.

Further duplication without permission is prohibited. All rights reserved.

© 2022 ALM Media Properties, LLC.

Video and Toolkit Aim to Educate on Sexual Harassment in NJ Politics

By Kirsten Scheurer Branigan, Carole Lynn Nowicki,

Beth P. Zoller and Helen Archontou

The #MeToo movement revealed that sexual harassment occurs in all types of work environments and industries, but harassment in the political sphere includes some added challenges and concerns. One concern is that campaign workers are often volunteers, interns, or individuals just starting their careers who are not aware of the legal prohibitions against harassment. While sexual harassment often incurs an abuse of power, a significant power imbalance is inherent in the campaign setting. The vast majority of those subjected to harassment do not bring forward concerns or complaints even when internal resources exist. Many campaign environments and legislative offices do not have internal resources such as traditional Human Resources or Equal Employment Opportunity Departments and, therefore, lack clear avenues for workers to seek help or report concerns. These factors leave an extremely vulnerable population feeling powerless in an environment where inappropriate conduct can run rampant if left unchecked, causing grave damage.

Educational Video and Toolkit: 'Creating Safe Workplaces in NJ Politics'

It has been nearly five years since the 2017 #MeToo movement shined a spotlight on the issue of sexual harassment, sexual assault, and other forms of harassment, discrimination, retaliation, and bullying in the workplace, exposing fault lines and areas in need of enhanced protections. Many in New Jersey sought to turn that awareness into action. Such actions included legislation (some of which was passed and some of which remains pending) as well as the formation of workgroups to examine problems and propose recommendations.

In June 2022, a 48-minute educational video entitled “Creating Safe Workplaces in NJ Politics” will be widely disseminated in New Jersey. The video was spearheaded by the YWCA Northern New Jersey (YWCANNJ) and its CEO, Helen Archontou, and funded by the New Jersey State Bar Foundation (NJSBF). KSBranigan Law, P.C., a woman-owned law firm, collaborated on the video and contributed to its content.

The video features descriptions of sexually harassing and discriminatory conduct that workers might encounter in the workplace, how to understand unconscious bias and microaggressions, legal prohibitions and remedies, and strategies for communicating boundaries and making complaints regarding harassing and/or discriminatory conduct, including information about available support if inappropriate conduct occurs. It also educates on the importance of bystander intervention and the prohibitions against retaliation for raising concerns about legally protected conduct.

After release of the video, a separate “Call to Action Toolkit” will be released with a link to an outreach letter to politicians in all political parties encouraging them to share information about the video, increase interest, and continue action.

The video will be broadly distributed to political campaigns and legislative offices in June 2022 with the goal of raising awareness and educating political campaign groups and legislative offices on how to create safer environments and encourage a culture of respect in the workplace. Additional information can be found on the YWCA Northern New Jersey website, www.ywcannj.org.

The Post-#MeToo Landscape in NJ: Why the Video Was Created

Recent studies revealed the imperative need for more education and action to address harassment, discrimination, and retaliation.

- *Division on Civil Rights 2019 Hearings and 2020 Report*

In 2019, the New Jersey Division on Civil Rights (DCR) and the New Jersey Coalition Against Sexual Assault (NJCASA) held three public hearings on sexual harassment and related misconduct. Kirsten Scheurer Branigan, Manager Partner at KSBranigan Law, P.C., and Archontou were among those who testified during the public hearings. Following the hearings, the DCR, NJCASA, the Rutgers Law International Human Rights Clinic, and Rutgers Professor Penny Venetis prepared and released a report with comprehensive policy recommendations to achieve real change (the “2020 DCR Report”) in February 2020.

The 2020 DCR Report cited that 81% of women and 43% of men have experienced some form of sexual harassment during their lifetimes, including verbal, physical, and cyber harassment, and sexual assault. The 2020 DCR Report also highlighted that many instances of sexual harassment go unreported due to fear of retaliation or of not being believed. Indeed, the Equal Employment Opportunity Commission (EEOC) has estimated that “approximately 90% of individuals who say they have experienced harassment [at work] never take formal action against the harassment, such as filing a charge or a complaint,” and that “[r]oughly three out of four individuals who experienced harassment never even talked to a supervisor, manager, or union representative about the harassing conduct.” 2020 DCR Report, at 6-7 (internal citations omitted).

In December 2019, the New Jersey Star Ledger published an article entitled “#MeToo was supposed to fix things. But women in New Jersey Politics say they’ve been groped, harassed – and worse.” NJ.com, Dec. 30, 2019, Susan K. Livio and Kelly Heyboer. It detailed how the New Jersey political arena was found to be especially lacking in proper training and complaint procedures.

- *NJCASA 2020 Survey and Workgroup on Harassment, Sexual Assault and Misogyny in New Jersey Politics 2021 Report*

In January 2020, Senator Loretta Weinberg and Lieutenant Governor Sheila Oliver formed a bipartisan workgroup known as the “Workgroup on Harassment, Sexual Assault and Misogyny in New Jersey Politics,” with the mission to address the misogynistic culture in New Jersey politics and issues relating to power, control, coercion, silencing, retaliation, side-lining, harassment, and assault, and to make a safer and more equitable arena for women in politics. Following this, in August, NJCASA issued a 2020 Report on Misogyny and Sexual Misconduct in New Jersey Politics (the “NJCASA 2020 Report”), which provided sobering accounts of misconduct. The Workgroup issued a report on Jan. 14, 2021 (“2021 Workgroup Report”). The document was the culmination of findings after holding a variety of sessions.

- *Creation of the Video*

Following these reports, Archontou conceived the video to fill a void. She explained, “After hearing countless hours of testimony about the political misconduct that was sabotaging New Jersey’s politics and recognizing that a ‘boys club mentality’ was still present and fostering a toxic work environment for many, I knew our organization needed to take action.” She was inspired by the Workgroup and the efforts of Senator Weinberg and Lieutenant Governor Oliver and was motivated to do even more. Archontou recalled that she “reached out to our colleagues at the NJSBF with an idea to develop key action steps to combat the pattern of harassment, sexual assault, and misogyny within New Jersey politics at all levels and, through the NJSBF’s generous fundings, the training video was created.”

What Are the Goals for the Video and Toolkit?

One key goal of the video is to bring awareness for those working in the NJ political sphere on safe, respectful, and bias-free work environments where individuals feel comfortable sharing experiences and raising concerns. Other important goals are to empower individuals to keep themselves and others safe and to intervene if they

witness inappropriate conduct, as well as to act as agents for change in a collective effort to eradicate harassment, discrimination, intimidation, retaliation, and sexual violence.

The video was created to be shared annually with new hires and current staff of political campaigns and legislative offices to help them identify the types of behaviors that are unacceptable, and what to do if subjected to inappropriate conduct. However, it is important to note that the video is only an initial educational step and not intended to replace the requirement of training. The most effective training is live, interactive training where the attendees can participate and ask questions.

Continued Need for Key Legislation

Legislation that would require the creation of policies and training for those involved in political campaigns and in legislative offices is another important component to protecting workers. Many bills in this area are currently pending.

The Prevention and Remediation Act for Campaigns or (the “Act”) was first introduced in 2021 as S3389 and was reintroduced in 2022 as S2545 and A1248. The Act seeks to create within the New Jersey Election Law Enforcement Commission an Office on Discrimination and Harassment Prevention (ODHP) and to appropriate \$2 million for its operation. The ODHP would be authorized to adopt anti-harassment policies, implement training, designate individuals to receive confidential complaints of sexual misconduct, and establish an independent investigative unit not subject to control by campaign, party, or elected officials to receive and probe allegations of sexual violence, harassment, and misconduct in New Jersey campaigns and political activities. There would be a broad application of who would be considered “campaign and political staff,” including paid and unpaid positions.

Other pending bills include the proposed State Workplace Anti-Harassment and Discrimination Act (S2559), which seeks to codify the State of New Jersey’s Anti-Harassment/Discrimination Policy (applies to anti-discrimination efforts in gubernatorial

transition offices), and amendments that would broaden the New Jersey Legislature's Anti-Harassment Policy (A3127) that was codified in 2019 under N.J.S.A. 52:11-85.

Following the 2020 DCR Report, bills S2544 and A1691 were introduced to enhance preventative and remedial measures under the New Jersey Law Against Discrimination (NJ LAD), which, among other areas, would ensure that employers conduct interactive and participatory training for all employees, disseminate clear written harassment and anti-discrimination policies, and conduct “prompt, thorough and impartial investigations” into complaints of harassment, discrimination, and retaliation. While some of these requirements have been developed by the New Jersey courts in case law over the years, a clear statutory framework would help to avoid confusion and enhance protections.

Conclusion

The Video is a significant initial step but should not take the place of robust, meaningful, and interactive training. While the Video will undoubtedly help raise awareness, it is not intended to be the sole method of education or avenue to curb improper conduct. Effective policies and training are necessary—and should be legally mandated—and an impartial oversight office (such as the ODHP) is necessary so that campaign workers and others working in New Jersey political environments can raise concerns about harassing, discriminatory, and retaliatory conduct. Moreover, the impartial oversight office should be empowered to conduct prompt and impartial investigations and implement necessary corrective and remedial measures.

Kirsten S. Branigan, Carole Lynn Nowicki and Beth P. Zoller are attorneys with KSBranigan Law, P.C., a woman-owned law firm that provides Alternative Dispute Resolution, Employment Compliance, Audits, Training, and Workplace Investigation Services. Helen Archontou is the Chief Executive Officer of the YWCA Northern New Jersey.