

SEXUAL HARASSMENT: PRACTICE POINTER

The Power of "Me Too" Evidence:

In *Pantoja v. Anton*, 198 Cal.App.4th 87, 129 Cal. Rptr. 3rd 384 (2011), the Court of Appeal reversed a jury verdict for the lawyer defendant, finding that the exclusion of testimony by neutral witnesses to comments by the defendant offered at trial either in the plaintiff's case or for purposes of impeachment was reversible error.

Whether you represent employees or employers these facts illustrate an approach essential to your practice.

Sexual harassment rarely occurs in a vacuum. A harasser is commonly a bully acting out in inappropriate ways. Similarly, the culture of the workplace which includes such conduct is commonly permeated by boorish or harassing behavior.

For these reasons, a critical part of your investigation of a case is determining whether such conduct was rare or more common. Another element is whether neutral female employees experienced questionable behavior and the workplace generally as tasteless but harmless, uncomfortable or demeaning.

If you are a plaintiff's attorney, identifying the evidence on these 2 elements will determine whether you want the case and if so, how much to invest in it. If you represent employers, the evidence on these two elements will indicate the degree of confidence you can have in what management tells you.

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