

Knowing Your Legal Rights In The Fight Against Sexual Harassment

May 3, 2016 • Legal Updates & Insights

According to a poll conducted by the [Huffington Post and YouGov](#) an estimated 70% of cases of workplace sexual harassment went unreported in the United States in 2013. Many cases of workplace sexual harassment go unreported because individuals feel vulnerable as they fear termination or retaliation and the impact such a complaint could have on their personal and professional reputations. What many often don't realize is that under Title VII of the Civil Rights Law of 1964, the New York City Human Rights Law and the New York City Administrative Code, [employees are protected](#) from gender discrimination, including sexual harassment, in the workplace. Unfortunately, the law cannot protect people from workplace sexual harassment if it goes unreported. Asserting your legal rights is the only way the law can offer you protection from sexual harassment, and may even positively affect the lives of other victims of sexual harassment and gender discrimination in your work environment. The first step in determining whether you have a viable workplace sexual harassment claim should be to seek sound legal advice.

What is sexual harassment?

The U.S. Equal Employment Opportunity Commission (EEOC) is the federal agency responsible for interpreting and enforcing federal laws such as Title VII of the Civil Rights Law of 1964, ("Title VII") which makes it illegal for an employer to discriminate against an employee based on race, color, religion, national origin and sex. The EEOC defines [sexual harassment](#) as unwelcome "advances, requests for sexual favor and other verbal or physical harassment of a sexual nature." This definition also includes "offensive remarks" made about a person's gender. A perpetrator of workplace sexual harassment can be a male or female, and both the victim and the harasser can be of the same gender. The harassment must be so severe that it results in having the employee subjected to an "offensive work environment."

Unlike federal law, the [New York City Human Rights Law \(NYCHRL\)](#) provides a broader scope of employer liability with regard to the degree of harassment required to establish a viable workplace sexual harassment claim. The NYCHRL states that the harassment must negatively affect a person's work performance or consequently, create an "intimidating, hostile or offensive work environment." Moreover, the NYCHRL states that the harassment may be verbal, physical, or pictorial and goes on to include sexual comments such as jokes and innuendos, pressure for dates, sexual touching, sexual gestures, and sexual graffiti. The standard to assert a sexual harassment claim under NYCHRL is lower than the one set by Title VII.

What is the established standard for asserting a viable retaliation claim?

With regard to establishing a claim for retaliation, the [Supreme Court has held](#) that "the employer's actions must be harmful to the point that they would dissuade a "reasonable worker" from making or supporting a charge of discrimination. As such, evidence to support a claim of retaliation goes beyond seemingly evident adverse actions such as when an employee is terminated or demoted after filing a

complaint of sexual harassment with their employer. The Court has established an objective standard, or a “reasonable worker’s” standard.” This standard broadens an employer’s liability by allowing plaintiffs to introduce other evidence or underlying circumstances that may support a claim of retaliation. It is also important to take into consideration whether an employer’s actions constitute a “materially adverse action.” An employer’s material adverse action could disprove allegations made by the employer that an employee is making a frivolous claim.

Who can be a harasser?

A harasser isn’t always an employee’s direct supervisor. The law recognizes that the harasser may be a supervisor in another department, a co-worker and may, in certain circumstances, even be a client or customer.

What are an employer’s duties to their employees?

Even before an incident of sexual harassment is reported, an employer is legally responsible for providing a workplace free from discrimination, including sexual harassment. Steps an employer may take to prevent sexual harassment in the workplace include providing training for employees and managers to promote awareness that sexual harassment is unlawful. Employers may also develop policies prohibiting sexual harassment in the workplace and guidelines to investigate and abate any allegations of sexual harassment.

The most important note to take away is that once an employee reports sexual harassment allegations to an employer, the employer should take steps to investigate the allegations. Employers may be held liable for failing to investigate the allegations and taking corrective measures.

BIKRAM CHOUDHURY CASE SETS NEW BENCHMARK FOR SEXUAL HARASSMENT

According to [Maureen Farrell at Forbes](#), starting in 1972, Bikram Choudhury opened his first yoga studio with the assistance of President Richard Nixon who sought Choudhury’s advice in dealing with phlebitis, and “granted him a U.S. Visa and found tax payer money to build his first three schools.” In 2002, he began the promotion of “Bikram Yoga,” a practice of yoga he developed based on a series of 26 yoga poses performed over the course of 90 minutes, performed at a room temperature of 104 degrees.

Choudhury paved a path to financial success by securing copyrights to an instruction book outlining his yoga sequence, franchising Bikram Yoga Studios world-wide and trademarking “Bikram Yoga.” [Choudhury’s cult like following](#) took off once he became known as a yoga instructor [to the likes of](#) Lady Gaga, Barbra Streisand, Madonna, Bill Clinton, Quincy Jones and Gwyneth Paltrow. By 2012, it was calculated that about 600 Bikram yoga studios were open world-wide.

Boden’s allegations of Retaliation

Ms. Minaskshi Jafa-Boden, a single-mother and an attorney in her home country of India, was hired by Bikram Choudhury in 2011 as a legal analyst at his yoga school and moved to Los Angeles with her six year-old daughter to live in an apartment provided by Choudhury. In court, Ms. Boden stated that Bikram Choudhury sponsored her for a Green Card (legal permanent resident immigration application) and

provided her with a car. During her tenure at Choudhury's company she began to see a pattern of complaints from female yoga instructor trainees against Choudhury, including several allegations of sexual assault and one allegation of rape.

[Ms. Boden alleged that once she started investigating](#) the complaints of sexual harassment and rape, she was faced with intimidation and retaliation from Choudhury and employees close to him. He even threatened to put Boden in jail and to have both her and her daughter deported to India and killed. Ritu Jha (Jha, R. (2016, February 5,) Bikram Choudhury fine \$6.4 million, India Abroad) reports that Ms. Boden alleged that she was forced to resign due to what she felt were physical threats from Choudhury – she and her daughter were evicted from their home, their car was repossessed and her Green Card application was eventually revoked. These are employment related matters that were under Choudhury's control; he had provided these benefits as her employer and sponsored her for an employment based Green Card application.

Boden's claims of Sexual Harassment

Ms. Boden also alleged that she was subjected to a hostile work environment that she described as "hypersexualized, offensive and degrading environment for women." In court, [Ms. Boden recounted details of the sexual harassment and hostile work environment](#) alleging that:

- Choudhury "repeatedly used obscene language, repeatedly made offensive and vulgar sexual gestures and made disparaging remarks against single mothers, including herself;"
- he repeatedly referred to women employees as "bitches," or used other insults or epithets;
- he repeatedly required meetings with him to be held in his hotel rooms while young females provided him with massages;
- during one of these meetings Choudhury requested she join him on the bed;
- he would use his hands to simulate oral sex;
- during another such meeting, he urinated in front of her; and Choudhury's wife, Rajashree Choudhury was informed about the allegations being made against her husband, yet took no corrective-measures to address or investigate the allegations.

Evidence provided during trial included [testimony from Petra Stark](#), a former attorney who worked for President Obama's Administration. Ms. Stark was hired by Choudhury to replace Ms. Boden. She attested to the hotel meetings and stated that she witnessed a 23 year-old yoga instructor, perform oral sex on him. The allegations set forth by Ms. Boden in court and the material evidence supporting her allegations provided a strong foundation for her claims of sexual harassment.

The Verdict

In January 2016, a jury's verdict in California found Bikram Choudhury liable for sexual harassment and wrongful termination, in favor of Ms. Boden to the tune of \$6.4 million in punitive damages and \$924,000 in compensatory damages; [setting a strong precedent for future gender-based discrimination claims against public personalities and high profile companies](#). Such a verdict not only vindicates Ms. Boden's efforts to investigate allegations of sexual harassment and misconduct including an allegation that Choudhury had raped a trainee, but also provides some solace to other women who also attempted to

confront Bikram Choudhury with similar allegations.

In Ms. Boden's case, punitive damages were awarded because the jury found that [Bikram Choudhury acted with "malice, oppression and fraud."](#) In addition to a favorable verdict for Ms. Boden's claims of sexual harassment and retaliation, she was also granted a Green Card as a victim of work place violence. Five civil lawsuits other women filed in recent years are still pending in the wake of this benchmark verdict, alleging similar complaints of sexual harassment or assault by Choudhury. A sixth civil lawsuit alleging similar claims was settled for an undisclosed amount.

SHOULD YOU CONSULT AN ATTORNEY?

The effects of workplace sexual harassment on a person can vary depending on variables such as the duration of exposure to sexual harassment and the severity of the harassment. Whereas the psychological and health effects in the aftermath of sexual harassment may be out of your control, invoking your legal rights, or at least inquiring whether you can invoke your legal rights against sexual harassment is most certainly within your control.

Legal knowledge and court experience is power in the legal landscape when dealing with workplace sexual harassment. Why not level the playing field by seeking out the assistance of experienced attorneys to provide you with legal guidance? If you think you are a victim of sexual harassment or have been retaliated against for reporting instances of sexual harassment, you should consider consulting with an attorney. Consultations with an attorney are confidential under attorney-client privilege.

Wigdor's seasoned attorneys can assist you in understanding your legal rights, the merits of your claims and provide legal guidance. Our reputation has been built on thousands of workplace sexual harassment cases including some of the most high-profile matters of our time.

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