

BUSINESS TIMES®

February 23 - March 1, 2018

Proudly serving Santa Barbara, Ventura and San Luis Obispo counties

Vol. 18, No. 50

#MeToo movement changing labor law

By Robert Shutt*Staff Writer*

Even before the #MeToo movement, employment law and company policies were gradually changing to reflect the progressive mentality of most Americans. Now, in the era of #MeToo, those changes are being pushed to the forefront.

“We receive new harassment and gender discrimination cases on a weekly basis,” said Karen Gabler, an employment lawyer at LightGabler in Camarillo. “The fact patterns and commonality of these claims does not seem to change. What has changed, however, is the willingness of companies to take complaints seriously and to address them more stringently.”

“I think it is drastically changing the culture of the workplace,” agreed Jennifer Duffy of Fell Marking Attorneys at Law in Santa Barbara.

The pressure caused by the #MeToo movement has pushed many companies to revamp their harassment and discrimination policies. Even some individual cities in the U.S. have begun implementing laws on pay disparity and harassment.

Initial offenses at many companies are now required to have more stringent, immediate discipline and retraining while repeat offenders are being dealt with even more harshly, Gabler said. In May 2017, the California Department of Fair Employment & Housing even published new guidelines for employers on what should be included in harassment policies and training.

“Employers may not be able to expect

substantial change from an employee who does not seem to understand why their conduct is wrong in the first place, and liability exposure has significantly increased in today’s #MeToo environment,” Gabler said.

Most law firms have been ahead of the curve when it comes to shifting interoffice dealings, even though it has been a male-dominated profession. Some firms in Santa Barbara are even hiring outside employment lawyers tasked with revamping employee manuals and providing counsel on how to properly deal with employee problems.

“Prior to this training, we believed that the best way to handle office issues and problems was in a closed door setting with the disgruntled individual,” Lisa Spiwak, a partner at Spiwak & Iezza, LLP, said in an email to the Business Times. “Now, we would never dream of doing that. Instead, everything is put into writing. All of those written memos must be signed off by all involved employees and placed in their employment files. We no longer do anything behind closed doors, and in our handling of employee issues, all parties are brought into the meeting.”

Law firms in the Central Coast area today are also being highly cautious about how they reprimand employees for their misconduct, Spiwak added. The days of criticizing employees in the hallway while other employees look on are long gone. In law offices especially, male attorneys now fear severe repercussions from allegations of misconduct towards their female support staff.

“In fact, the pendulum has swung so far that, oftentimes, mistakes are not adequately dealt with because everyone is too afraid to risk being accused of harassment,” Spiwak said. “It seems as if too much perceived power has been given to the legal support staff and taken away from the attorneys they work for. Mistakes in their work product often go unresolved because of fear of hurting their feelings or of being accused of harassment.”

Spiwak has also noticed a shift in her firm’s legal staff’s attitudes as they seem to feel much more empowered in certain situations. One story she told was of a secretary who felt as if the attorney she worked for treated her unfairly. The secretary then bypassed her office manager and went straight to one of the firm’s partners to demand that the behavior stop and she be given an apology. That was an occurrence Spiwak said would have never happened prior to the #MeToo movement.

Another legal change that has come as a result of movements that pushed for change is Senate Bill 179 under which Californians will be able to identify as male, female or nonbinary.

Duffy of Fell Marking said law firms, and employers in general, will need to get ready for it because they can be subject to liability for failing to abide by a person’s choice of gender, name or pronoun.

“I am optimistic that the #MeToo movement is giving courage to girls and women to speak up in real time, rather than be so afraid of personal loss,” she said.