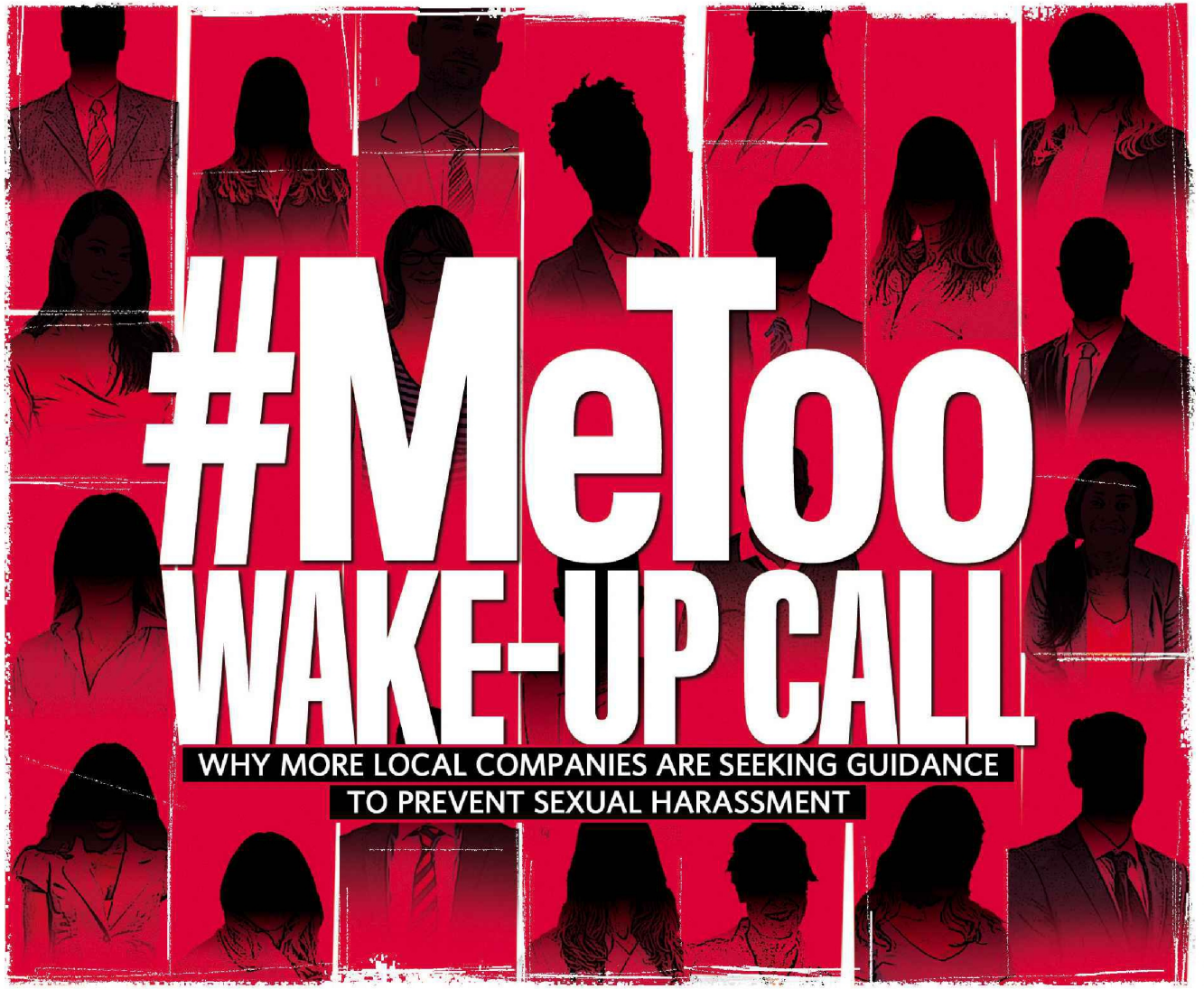

#MeToo WAKE-UP CALL

WHY MORE LOCAL COMPANIES ARE SEEKING GUIDANCE TO PREVENT SEXUAL HARASSMENT

NEWSDAY ILLUSTRATION BY NED LEVIN

BY CARRIE MASON-DRAFFEN
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Phones in the offices of local employment lawyers and workplace experts are ringing with calls from employers who want to prevent sexual harassment in their workplaces.

The rising interest in the topic follows a barrage of sexual harassment allegations that women have lodged against celebrities, business and media executives and politicians. The resulting #MeToo movement, which has emboldened women to call out powerful men who they say have abused them, has prompted a change among some Long Island companies — particularly smaller companies that lack the resources to address complex employee relations issues.

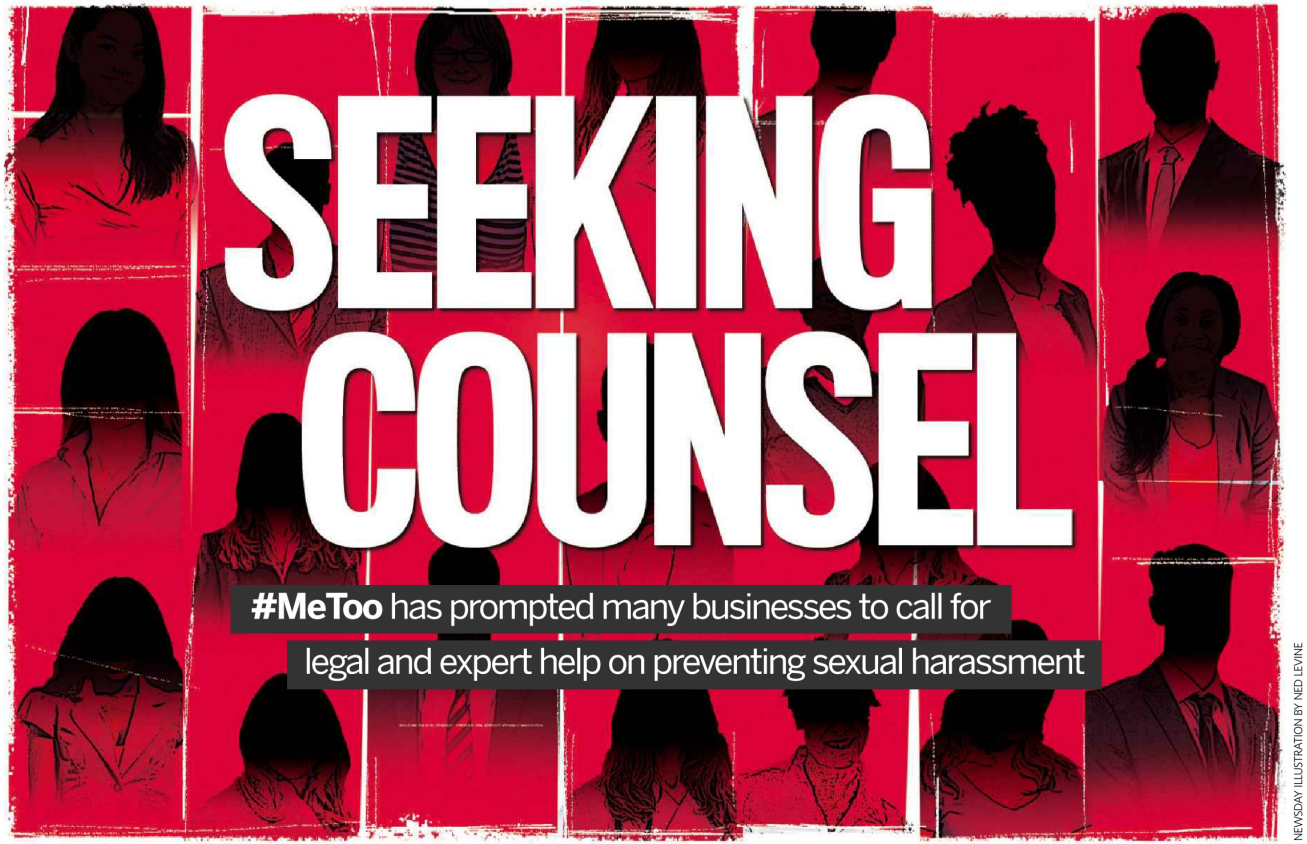
"There's been such an increase in calls from businesses" seeking harassment training, said Aoifa O'Donnell, chief executive of National EAP, a Hauppauge-based company that provides employee assistance programs and workplace training. "It's a real wake-up call for management and executives and owners of companies."

That wake-up call is loudest for Long Island's smaller companies, experts said.

Large companies have human resources departments to advise them, experts said. Several of the Island's big employers said they have sexual-harassment prevention policies that they regularly review and training for employees.

But 90 percent of the Island's nearly 97,000 businesses have fewer than 20 employees, U.S. Census data show. They are far less likely to have written policies or

See HARASSMENT on A38



NEWSDAY ILLUSTRATION BY NED LEVINE

HARASSMENT from A37

training against sexual harassment.

"It's not unusual for small employers to say, 'We have never done sexual-harassment training before,' " O'Donnell said. They "are far more vulnerable to inappropriate conduct happening."

Rob Basso, president of Advantage Payroll Services in Plainview, said a two-year review of handbooks of 500 of his 3,000 mostly small-business clients found that roughly 30 percent didn't have policies addressing sexual harassment. His clients, located primarily on Long Island and in Brooklyn and Queens, average about 16 employees, he said.

"A lot of small-business owners don't want to spend the money" on training, he said. "They are so busy running their businesses that they don't think something is going to happen to them."

Workplace harassment takes a toll on victims, a study published by Ball State University in Muncie, Indiana, shows. It has been "directly tied" to a variety of physical and psychological problems such as post-traumatic stress, sleep deprivation and depression, the study says.

Complaints increasing

The number of complaints of sexual harassment has been rising nationally. The U.S. Equal Employment Opportunity Commission received 12,860 complaints in its fiscal year ended Sept. 30, 2017, up from 12,573 in fiscal 2015. That year's increase followed two years of declines.

A local lawyer said employees are filing more claims against his business clients.

"There has always been a steady flow of these cases, but there has now been an uptick based on the heightened awareness, daily publicity and employees feeling empowered," said attorney Douglas Rowe, a partner at Certilman Balin Adler & Hyman in East Meadow.

NEWSDAY / ALEJANDRA VILLA

Kimberly Malerba at Ruskin Moscou Faltischek says the law firm has been getting more calls seeking help on policies and training.

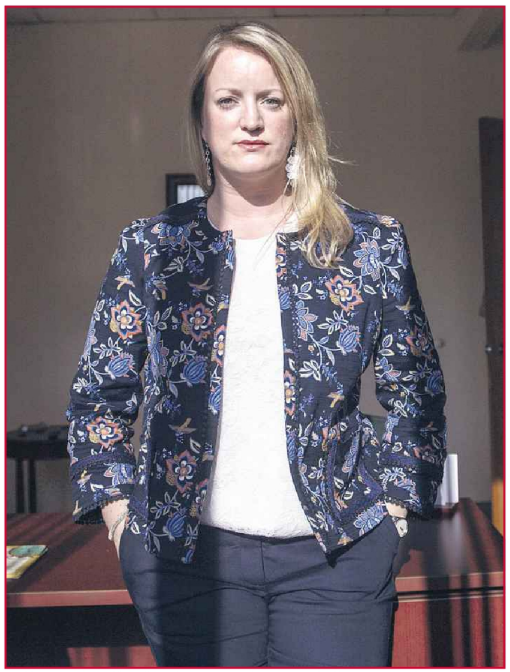
Some companies in past years questioned why they needed to offer sexual-harassment training, said attorney Michael Schmidt, vice chair of the labor and employment department at Cozen O'Connor in Manhattan.

Some would ask, "Mike, why is this stuff even necessary?" Schmidt said.

That mindset has changed since October, when sexual harassment allegations against Hollywood producer Harvey Weinstein began making news. Since then accusations have toppled or sidelined NBC "Today" show co-host Matt Lauer, Sen. Al Franken, celebrity chef Mario Batali and music mogul Russell Simmons, among others.

Several large companies here said they have made an effort for years to prevent sexual harassment. Henry Schein Inc., a medical-products distributor in Melville and the Island's largest public company by revenue, said in a statement, "Anti-harassment training has long been a mandatory part of our employment protocol."

MSC Industrial Direct Co., also based in Melville, issued a similar statement. "We reinforce our commitment to all of our values throughout the year through various means like our associate handbook, our code of conduct, our diversity and inclusion program,



Aoifa O'Donnell, of workplace-training provider National EAP, says the #MeToo issue has been a real wake-up call for business owners.

NEWSDAY PHOTOS / ALEJANDRA VILLA

Douglas Rowe of Certilman Balin says an uptick in harassment cases is due to heightened awareness and employees feeling empowered.

Key elements of a sexual harassment prevention policy:

- **Make sure your policy** is comprehensive, easy to understand and has complaint procedures.
- **Define the company culture** and include how employees should treat one another.
- **Maintain an open-door** policy so employees feel comfortable talking about untoward behavior they have experienced.
- **Diversify your workplace** with more women and minorities.
- **Require training** for everyone.
- **Be consistent**.
- **Investigate complaints** immediately.
- **If warranted**, take action immediately.

Sources: Mark Spund of Davidoff Hutcher & Citron; Aoifa O'Donnell of National EAP; Michael Schmidt of Cozen O'Connor; Ken Nawkoff of Rivkin Radler; Douglas Rowe of Certilman Balin; Kimberly Malerba of Ruskin Moscou Faltischek

What to do if you believe you have been sexually harassed at work

1. **Tell the person to stop**, if you feel comfortable doing so.
2. **If you don't feel** comfortable confronting the person, check to see if your employer has an anti-harassment policy.
3. **If there is a policy**, follow the steps for reporting the inappropriate behavior.
4. **If your office has no** anti-harassment policy, ask a supervisor for help in getting the behavior to stop.
5. **Bear in mind that** you have the right to report harassment and to participate in an investigation or lawsuit, without incurring retaliation.
6. **If the above suggestions** don't work, file a complaint with the EEOC.

Source: U.S. Equal Employment Opportunity Commission

and regular training," the industrial tool and supply distributor said.

New Hyde Park-based Northwell Health, the network that is the largest private employer in the state, provided Newsday with a copy of a "policy reminder" it sent to managers last year "in light of the numerous, recent examples of alleged sexual harassment and sexual assault that have appeared in the news . . . to reinforce" its policies.

Not all companies are prepared. Demand for National EAP's sexual harassment training from employers on both Long Island and in New York City has doubled in the past two months, O'Donnell said.

"Every week now, back to back, we're either delivering in-person harassment awareness and prevention training, or we're doing live webinars and recording them for clients," she said.

Local attorneys report similar calls, especially from potential clients looking for guidance.

They "are seeking out training on workplace harassment, and many, if they don't have policies, are looking for workplace policies or a review of their existing policies," said attorney Kimberly Malerba, who chairs the employment law and digital media practice groups at Ruskin Moscou Faltischek in Uniondale.

Sexual harassment becomes unlawful when "enduring the offensive conduct becomes a condition of continued employment or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive," according to National EAP's training materials.

Recommended for policies

Experts said these are among the key elements of good policies:

- They are easy to understand.
- They define the company culture and say how employees should treat one another.
- They require training for all employees.
- They mandate an open door to complaints, and consistent application to all employees.

Companies should revisit their anti-discrimination policies once a year, in January or at the beginning of their fiscal year, said Jessica Moller, partner at Bond, Schoeneck & King in Garden City.

"It's very easy to have an anti-harassment policy that's been sitting on the shelf and getting dusty," Moller said. "It's easy to not go back and double-check to make sure it's up to date and reflective of what you're doing."

Strong policies that spell out what is unacceptable workplace behavior help companies prevent costly sexual-harassment litigation — if companies abide by them, experts said.

"What's wrong is if you ignore it," said Mark Spund, the partner in charge of employment law at Davidoff Hutcher & Citron in Manhattan.

Some companies have gotten into trouble because of "a tendency to turn a blind eye to top-level executives who are high performers," Malerba of Ruskin Moscou said. "Employers need to consistently apply these procedures to everybody in the organization."

To prevent sexual harassment, local lawyers and experts recommend that companies also provide regular training programs.

Expense seen as worth it

Companies that view such training as unnecessary are taking a risk, said Jonathan Farrell, a partner at Meltzer, Lippe, Goldstein & Breitstone in Mineola.

"People view it as an expense and not a revenue generator, even though they don't realize that doing this incorrectly will cost the company a tremendous amount of money in legal fees and expenses," he said.

Training should take into account today's changing workplace, which has grown more multigenerational and multiracial and has an increasing number of women, Schmidt said.

"It's a really diverse workplace, and you have to have your training reflect that," he said.

One of the key reasons that sexual harassment complaints wind up as lawsuits is the defensiveness that leads company managers to downplay employee complaints, said attorney Alan Sklover of Sklover & Co., a Manhattan law firm that represents employees.

Many employees he has counseled came to him after their complaints were met with such statements as "George would never do such a thing" or "You have no proof."

"This is like throwing gasoline on a fire, and often leaves no alternative but initiating a lawsuit," he said.

And employers should act on a sexual-harassment complaint immediately, said Rowe of Certilman Balin.

"In the age of social media, if the employer doesn't deal with it immediately, it could just catch on like wildfire through social media," he said. "It's really in the employer's best interest to deal with a complaint on a priority basis."