

people, places, dates, and events—will be pertinent, both in the reporting process and to eventually prove your claim if you ultimately choose to go to court,” says Eric M. Sarver, an employment law and business law attorney in New York City.

Note what occurred, as well as the names of anyone who witnessed the harassment and those to whom you reported it, keeping your notes in a safe place. “Don’t place them on your work computer, in a desk drawer, or somewhere your employer can take them,” Sarver advises. “This is especially key in case you are fired and prevented from taking your notes from your work computer or your desk drawer at work.”

What should I do if a coworker shares sexually explicit images?

“Once you recognize what you are being shown, decline to look any further and report the coworker to your supervisor and/or the HR department,” Carr advises. “If your company has a sexual harassment policy, not only is this behavior in violation of the policy, but as an employee, you have an obligation to report the violative conduct.”

Make sure to preserve any evidence. “If the harasser is texting, emailing, or sending cards or sexually explicit images, keep copies—don’t delete them,” Sarver says. “Make sure you take a screenshot of any texts, pictures, or Snapchats and print them, so you don’t lose them if your device crashes or you buy a new one. Print out emails, too, and keep them in a safe place.”

I’m an openly gay male. Is it okay for me to hug a female coworker?

“We all have different comfort levels, so hugs could be uncomfortable regardless of gender dynamics of colleagues,” says Todd. “Unless you know the individual well and know confidently that someone feels comfortable in those types of situations, err on the side of caution. Skip the hug and opt for a high five instead.”

As a man, on a business trip, is it appropriate to invite a female colleague to my hotel room to quickly go over our presentation?

“Don’t do it,” McNicholas advises. “Even if you have the purest of intentions, the invitation has too great of a chance to be misconstrued or misinterpreted. In this day and age, almost every hotel has a meeting space to use. There’s nothing about your room that can’t be achieved elsewhere.”

If you’re the person being invited, suggest an alternative. “It is perfectly acceptable and appropriate to state, ‘I’d prefer to meet downstairs in the lobby,’” Todd says. “Our hope is that with attention to this topic, individuals are feeling more comfortable stating their preferences.”

In any of these cases, if your company fails to remedy the situation, you may need to seek assistance outside the organization. *DW*

Confidentiality Agreements: Should They Go Away?

As more people share their stories of sexual harassment and assault, attention has turned to nondisclosure agreements, or NDAs. These contracts, long used to settle sexual harassment cases, prevent the parties involved from discussing any details of the settlement. Critics argue that NDAs push stories of sexual harassment into the shadows, allowing possible perpetrators to safeguard their reputation.

Now some companies are rethinking these agreements. The Weinstein Company made headlines when it dissolved its NDAs, allowing women to speak freely. “It’s a new era, with people being released from confidentiality agreements due to the MeToo

movement,” says Bonnie Mayfield, an attorney with Dykema Gossett PLLC and chair of the Diversity and Inclusion Committee and a vice chair of the Employment Law Committee of the International Association of Defense Counsel. The State of Washington recently passed a law prohibiting companies from requiring employees to sign such agreements, and other states are introducing similar legislation.

Perhaps most significantly, Congress enacted the Tax Cuts and Jobs Act, which prohibits companies from deducting as a business expense any sexual harassment settlements or payments or associated attorney’s fees if the payment is subject to an NDA.

This emerging trend has various implications. “Women have been freed of the restrictions of not being able to talk about these events,” Mayfield says. “It also allows the public—to the extent that the alleged victim comes forward—to know the alleged victim’s and the alleged aggressor’s versions of the facts. And companies may be seen as having more transparency and credibility.”

Mayfield notes, however, that everyone who entered into the NDA believed that the information would remain confidential. “It’s now out there to be discovered,” she says. “The lack of the NDA may prevent some people from coming forward because it’s a sensitive area.”