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THE LONG VIEW

AN SEC VET WITH A QUARTER-CENTURY IN INTERNATIONAL CORPORATE FINANCE LOOKS BACK

PLUS: THAT ELUSIVE
WORK-LIFE BALANCE

MICROSOFT WINS
BIG IN DATA CASE

JUST TRY SUING THE
U.S. GOVERNMENT

Paul Dudek

for employees and employers," Orenstein says.

Many states are similarly taking action to do away with or limit noncompetes. California and Oregon, for example, have laws prohibiting them, with very limited exceptions. Other states, such as Massachusetts and Washington, are considering legislation to limit their use.

And in New York, Attorney General Eric Schneiderman recently made it clear that, per New York law, these clauses have no place in most employment contracts. First, the attorney general announced a settlement with legal news service Law360 in which it was agreed that, with few exceptions, the company would no longer include noncompetes. And in June Schneiderman announced that sandwich company Jimmy John's had agreed it would no longer require low-wage workers to sign noncompetes.

Despite this crackdown, noncompetes are still prevalent. In fact,

according to a report published by the White House in May, roughly 30 million workers in the United States are currently subject to one.

Companies use them because they want to protect their intellectual property rights and the investment made in training employees. "But there are better ways to protect intellectual property," Orenstein says. "For example, most contracts include basic confidentiality provisions that stipulate that employees won't reveal things like trade secrets. So if they do that, you can go after them."

Using noncompetes may seem like the best way to protect valuable business information, but they impose a heavy burden on workers and the economy, Orenstein says. "It's a tragedy of the commons situation—where a company is looking out for itself and not looking out for the good of the employees or the economic region as a whole."

—JENNIFER WILLIAMS-ALVAREZ

NEEDS IMPROVEMENT

That's the grade the EEOC gave U.S. employers on preventing harassment.

WORKPLACE HARASSMENT TRAINING IS largely ineffective and too focused on simply preventing liability, according to a new report from the U.S. Equal Employment Opportunity Commission. But there are ways to better this situation, the report says.

The EEOC released the 118-page report in June. It was prepared by commissioners Chai Feldblum and Victoria Lipnic and informed by the findings of a 16-member task force of attorneys, advocacy group representatives and academics. According to the report, nearly one-third of the approximately 90,000 charges received by the EEOC in fiscal year 2015 included an allegation of workplace harassment. This comes at a steep cost for businesses.

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ABOUT THE AUTHOR



Corey R. Chivers is a partner in Weil, Gotshal & Manges LLP's Capital Markets practice. He has represented corporations, investment banks, national governments and multinational financial institutions in a wide range of public and private securities offerings, including initial public offerings, major high-yield transactions and investment grade debt offerings.

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EXPERTS INTERVIEWED ON THE EEOC REPORT

"The first thing you have to do [to ensure that training is working] is to understand how your company is handling the risk of harassment. Is it being handled by compliance or HR? And what sort of controls and processes do you have to ensure that people are aware of the rules?" —Ryan McConnell, an attorney at compliance and litigation boutique R. McConnell Group and a Corporate Counsel columnist

"The biggest issue is making sure that people realize that this is something the company takes seriously,

it's not just something they do to check off a box. There has to be a real commitment from the top of the organization down to harassment and diversity training." —Christina Stoneburner, a partner at Fox Rothschild

"People need to know that when they are on the receiving end of behavior that's improper, they can speak up about it. If you don't have a culture where people can speak up, you'll never completely root out a problem. You want your messages to be very

simple and not laden with legal terminology. And you have to make the learning stick." —Stephen Paskoff, former trial attorney for the EEOC and founder of corporate training company Employment Learning Innovations Inc.

"Bystander intervention is sort of the next frontier. It allows people in the environment to take responsibility for what's going on." —Brenda Feis, founding partner at employment law firm Feis Goldy and member of the EEOC's task force —J.W.-A.



THOMAS SAENZ

Last year the EEOC recovered \$164 million for workers alleging harassment. And that doesn't account for decreased productivity, increased turnover and reputational damage.

What's the fix? Two methods the report offered are bystander intervention and workplace civility training. The latter focused on promoting respect in the workplace as opposed to telling employees and employers what to avoid. Bystander intervention, often used by colleges and high schools to prevent sexual assault, empowers students to intervene to prevent assaults from occurring in the first place.

There's an untapped opportunity to take what's learned about harassment in colleges and apply that to the workplace, says Thomas Saenz, general counsel of the Mexican American Legal Defense and Educational Fund and a member of the task force. "We're having a very useful and powerful ongoing discussion about harassment at universities and colleges, but this is not being translated to the workplace," he says.

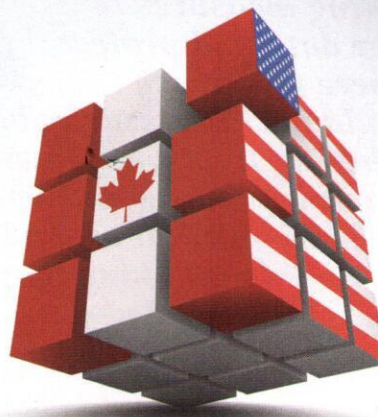
There also needs to be a way to monitor effectiveness, says Saenz. "We haven't been good about monitoring the quality of programs," he says. "If we're going to rely on training, there has to be a better way of rating and

making known the quality of training programs out there."

As for a company's responsibility, "if all companies do is offer two hours of training annually to supervisors, managers and new employees," says Rae Vann, general counsel of the Equal

Employment Advisory Council and a task force member, "that's probably not going to be enough in and of itself to change the underlying behaviors that may be leading to actionable harassment and potential liability risks."

—JENNIFER WILLIAMS-ALVAREZ



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