

## Massachusetts Lawyer Weekly

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Opinion: The sexual harassment laws need to change

## OPINION

# The sexual harassment laws need to change

By Maura A. Greene



The sexual harassment laws need to change to protect victims of harassment.

Currently, victims have a very short timeframe for filing claims. The statute of limitations is only 180 calendar days for filing with the Equal Employment Opportunity Commission or 300 calendar days if a state agency enforces a law that prohibits sexual harassment on the same basis. These limited timeframes include weekends and holidays in the calculation. Filing with the Massachusetts Commission Against Discrimination is 300 days.

How short is this timeframe compared to other types of claims? If you have a personal injury lawsuit in Massachusetts, you have three full years to file a claim. If you have a breach of contract claim, you have at least six full years. Why should the law treat discrimination and sexual harassment claims differently? How does the limited time for filing impact plaintiffs and defendants?

• **Why are sexual harassment and employment discrimination claims treated differently?**

The typical argument for a short statute of limitations is that claims should be brought while the memories of witnesses are fresh and evidence is available for a trial. If you sue a doctor in Massachusetts for malpractice, however, you have three full years to bring a claim. If you bring a personal injury claim in Massachusetts, you also have the benefit of a three-year statute of limitations.

If you bring a claim in Massachusetts against a supervisor in the workplace for sexual harassment, you have only 300 days — or less than a year. The evidence in personal injury or malpractice cases, such as witness testimony, documents and electronic evidence, is similar to the evidence in employment litigation. It's difficult to see why sexual harassment claims should have a shorter timeframe for filing.

• **Victims of sexual harassment need a longer**

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timeframe to consider claims/sexual harassment cases take time to prepare

Victims of discrimination need longer timeframes to consider their options. They need to meet with an attorney and consider filing claims. This is particularly true considering companies often take many weeks, if not months, to investigate claims.

During the short 300-day timeframe, many victims of discrimination need therapy or medical treatment. They are turning to primary care physicians, therapists and psychiatrists to deal with the very real effects of sexual harassment. They need the time to seek out appropriate care for anxiety, depression and other medical conditions.

• **Many sexual harassment victims want to job hunt to avoid retaliation**

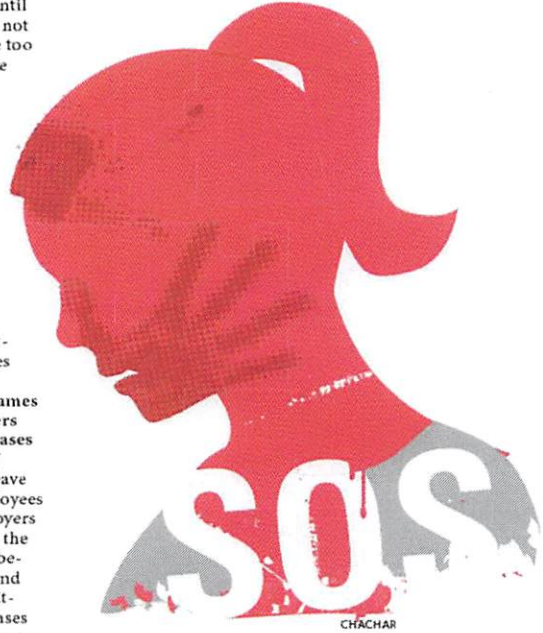
In addition, victims of workplace discrimination are often job hunting. They want to leave a hostile workplace before filing a claim. Employees may be concerned about retaliation, especially when a supervisor or high-

Victims may not feel empowered to come forward until they learn that they are not alone. They may realize too late that they are not the only victim.

That appears to be the case for the women who allege powerful Hollywood producer Harvey Weinstein sexually harassed or sexually assaulted them. In that way, a short statute of limitations favors serial harassers, who may continue to harass others as the statute of limitations expires on individual claims.

• **How longer timeframes would benefit employers and the resolution of cases**

The short shelf life of claims often does not leave sufficient time for employees to approach their employers and determine whether the matter can be resolved before filing. The EEOC and MCAD are both committed to seeing whether cases can be resolved through mediation or conciliation. The



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ly placed executive is the harasser. It can take months to find another job. In the meantime, the clock is ticking on the 300-day claim.

The EEOC on its website addressed the issue as follows: "Regardless of how much time you have to file, it is best to file as soon as you have decided that is what you would like to do." Given the short timeframe to file, a harassment victim's claims may be time-barred if he or she does not preserve all claims by filing.

Filing a claim takes consideration, reflection and a legal assessment. It can take time to meet with lawyers, evaluate the facts, and prepare appropriate filings. The 300-day filing window often doesn't give complainants sufficient time to consider their options, meet with physicians, therapists and psychiatrists, and prepare their case with legal counsel.

• **Short timeframes for sexual harassment claims favor serial harassers**

Many victims don't realize that they are dealing with a serial sexual harasser.

limited timeframe for filing often does not allow victims sufficient time to propose informal negotiations.

As the EEOC states, complainants are encouraged to file "as soon as they have decided that is what [they] would like to do." Given the short statute of limitations, victims must act quickly to preserve their claims. A longer timeframe for filing would allow employers and employees sufficient time to negotiate the matter. Early resolution of claims

would reduce the burden on administrative agencies such as the EEOC and MCAD, which handle a large volume of complaints.

• **The case for extending timeframes for filing sexual harassment claims**

In summary, the statute of limitations for filing sexual harassment claims in Massachusetts should be extended to three years for the following reasons:

1. Complainants need time to consider their options, meet with an attorney and medical providers, and prepare their claims.

2. Many victims are concerned about retaliation and do not feel comfortable reporting the conduct while they are employed. This is particularly true when the harasser is a supervisor or executive in the company. These employees may need time to leave the company in order to avoid retaliation and feel

comfortable bringing a claim.

3. Short timeframes favor serial harassers, who may continue to victimize other employees as individual claims expire. By the time employees realize that the offender is a serial harasser, their individual claims may be time-barred.

4. A longer timeframe would allow employees who have suffered sexual harassment to consider approaching their employers to resolve the claim prior to filing. An extended timeframe may lead to the informal resolution of claims and lessen the burden on administrative agencies that are overburdened with a volume of complaints.

5. There is no reason to differentiate between personal injury, malpractice and discrimination claims in terms of the statute of limitations. Sexual harassment victims need the full protection of the law and a minimum of three years to file claims. **MLW**

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