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Workplace sexual abuse: Mediate with care

AB 250 extends survivors' time to sue for workplace sexual abuse, and trauma-informed mediation offers a safer, empowering alternative to court, helping survivors pursue justice without retraumatization.

By Ellie K. Vilendrer

Sexual abuse in the workplace can be a nightmare for victims. They may have been subjected to inappropriate conduct by someone in a position of authority. They might have suffered retaliation after reporting such conduct. Their employer may have even taken steps to cover up the alleged incident. Whether the abuse happened recently or many years ago, the survivor will carry vestiges of that experience for the rest of his or her life.

This is why Congress enacted the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, giving survivors of workplace sexual assault the right to bypass arbitration and have their day in court. It's one of the reasons California enacted AB 2777 in 2022, extending the statute of limitations on a wide range of sexual misconduct, including workplace abuse.

Effective Jan. 1, 2026, the time to file claims will be further extended by AB 250, the Justice for Survivors of Sexual Assault Act. The window for filing claims on sexual assaults that occurred on or after Jan. 1, 2009 will now remain open until Dec. 31, 2027. Survivors of incidents preceding Jan. 1, 2009 will have a two-year "lookback" window to file suit if an entity responsible for their harm had covered up a prior alleged sexual assault by the perpetrator. The law also revives related claims, such as wrongful termination and sexual harassment, that stem from the original alleged sexual assault.



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It is significant that victims can now go directly to jury trial and can seek redress for wrongs that occurred many years ago, but the trial process can make things far worse for those still suffering the scars of their abuse. Traumatized by the original violation, these victims are now required to share their stories with strangers in a public forum.

Trials can be a trial

For survivors of sexual abuse, trying to find justice through the legal system can feel like undergoing abuse all over again. They must endure the arduous process of awaiting trial dates on packed court calendars, tracking down witnesses, testifying before juries, and putting private abuse into the public record — all

extremely painful and disruptive. Reliving trauma, answering openly hostile questions, and revisiting deeply personal pain can be excruciating for abuse victims.

Mediation can offer a safer alternative for resolving these matters, when the mediator has been properly trained to work with survivors of sexual abuse. This is unlike other types of mediation because of the sensitive nature of the trauma that lies at the heart of the dispute, and mediators who handle such cases must be trained to understand the issues that are unique to these cases and develop tools and skills to successfully resolve them.

Legal professionals who have undergone trauma-informed training understand how difficult this can be. Memories can be buried, prior

traumas can resurface and perceptions can be blurred. A far better way to respond to and resolve abuse claims could be mediation — if counsel and the mediator are trauma-informed and sensitive to issues that may come up for the victim.

Sexual abuse trauma

Trauma can have a profound impact on nearly every aspect of a person's life. Common symptoms that emerge in the aftermath of sexual abuse are anxiety, depression, intrusive thoughts, flashbacks, nightmares, and sleep and eating disturbances.

Survivors of workplace sexual abuse — especially those who were abused by persons in positions of trust — often have unresolved trauma that can translate into fear and lack of trust. They may have long-term

difficulties with emotional regulation and stress management, as well as chronic feelings of helplessness. These can affect how they see themselves and how they relate to others and the outside world.

Although we expect that important things will be remembered, what actually gets remembered in a heightened state of stress may be what the survivor focused on during the incident — how an abuser smelled or what someone was wearing, rather than when or where the trauma occurred. Survivors may therefore struggle to recall events in a linear way or may have difficulty articulating their experiences. The presentation of intensely remembered details and lost context can seem inconsistent to legal professionals who are unfamiliar with trauma dynamics.

The mediator may be the first person, other than their attorney, with whom a survivor shares their story. Mediators entrusted with such private and sensitive stories should be trauma-informed — educated on the effects of trauma in general and sexual abuse in particular. They must understand and reduce the risk of retraumatization, be mindful of triggers (e.g., smells, spaces, touch and authority dynamics), and ensure that survivors are treated with dignity, respect and care. When a mediator is prepared to hear whatever the survivor wishes to share, the survivor can feel heard and not judged.

Trauma-informed mediation

Mediators use trauma-informed strategies to create a safe, transparent and empowering process that minimizes the risk of retraumatization.

By fostering trust, choice and collaboration, they enable survivors to engage more meaningfully and reach more valuable resolutions. Survivors should feel that they are heard, understood and respected. This is especially important in workplace sexual abuse cases, which may involve not just the alleged perpetrator but corporate representatives — who may have enabled or covered up inappropriate conduct.

Although mediators are ostensibly neutrals, they must also be advocates when working with survivors of sexual abuse. They must make victims' interests and well-being a priority and help claimants begin the healing process so they can move on with their lives. Pre-mediation calls with the attorneys is a valuable way to identify needs and concerns, inform the process architecture, and eliminate surprises.

A trauma-informed mediator will take time to build rapport, giving survivors time to adjust to the mediation setting. The mediator will describe the process, invite questions and explain that breaks can be taken at any time. Survivors should be able to have their own support people present who can provide a sense of safety, stability and empowerment during what can be a stressful process.

Questions should be open-ended, rather than closed, and victims should not be asked for details that have already been provided. As the process moves forward, the mediator can gently introduce sensitive topics, giving survivors control over their own voices and choices to help them feel respected and in control.

Trauma-informed mediators will know how to respond to distress in a supportive way, recognizing when

to call time out or change a dynamic that is not working. When a participant becomes distressed, the mediator may provide support by normalizing the reaction: *"Many people have strong emotional reactions in this process — it's completely understandable"* and offering choices: *"Would you like a short break, or would you prefer to continue?"* The mediator can also encourage grounding if the person is overwhelmed: *"Take a slow breath with me. You're here now, and you're safe."*

Empathy and empowerment

Trauma-informed mediators recognize that they cannot know how much a survivor is suffering; some injuries are invisible. They must approach their role from a place of empathy, which means that instead of saying, "I know what you are feeling" they will say, "I am so sorry for what you have been through. It sounds like you are in a hard place now. Tell me more about it."

Being trauma-informed allows the mediator to normalize, validate, and reduce shame so the survivor can engage in the process with greater safety and move forward with greater self-worth. It takes both courage and strength for survivors to share their stories. The mediator can acknowledge this and express appreciation for the survivor's participation. A thoughtful process and an empowering dialogue can help the survivor leave with something far more valuable than just a legal settlement.

Conclusion

Mediation can be emotionally taxing for any claimant, but especially so for workplace abuse survivors

who often also suffer feelings of fear, shame, rage and grief. Trust issues — arising from their exploitation and any additional victimization — could extend to the mediation process, as well as to the mediator. For this reason, mediators should be understanding, empathetic and trauma-informed.

Mediation may be the only "day in court" for survivors of workplace sexual abuse. A trauma-informed approach can provide a way for survivors to recover from their victimization and move beyond their trauma. A trauma-informed practice can facilitate feelings of trust, safety and empowerment.

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