

---

## **HIRING TO FIRING – WHAT CAN THE TV SERIES *SUCCESSION* TEACH US ABOUT HARASSMENT?**

### **Tracey Diamond**

Welcome to hiring to firing the podcast. I am Tracey Diamond a labor and employment attorney with the law firm of Troutman Pepper. Today, I am joined by my partner Leah Katz from our business litigation group. And we welcome our guest Sarah Goncher who is Deputy General Counsel of Operations for regional health care provider which oversees 13,000 employees. Welcome and thanks so much for joining us Sarah.

### **Sarah Goncher**

Oh thank you so much for having me.

### **Tracey Diamond**

So tell us a little bit about your role with the health care system. What do you do for them or what are your responsibilities?

### **Sarah Goncher**

Sure. Well I am part of a fantastic in-house legal department and so really the work we do runs the gamut. But a big part of my primary responsibilities are supporting our HR team. And in this role I work with our employees relations specialist and leadership on anything from individual employee matters to system wide issues particularly during the COVID-19 pandemic.

### **Tracey Diamond**

So well today we are going to talk about the work place and in particular we are going to talk about sex harassment in the work place as depicted on the popular HBO TV series Succession. So this show needs a little bit of explanation for those that haven't watched all of the seasons. The show is about a family called the Roy. Um they are, let's say they are highly dysfunctional, extremely wealthy and they own a media empire called Waystar. When the temperamental father Logan Roy, who is the company CEO, considers retirement, each of his adult children scramble to become his successor, hence the name Succession. So today we are going to focus on the relationship in particular between Gerry Kelman who is the company's General Counsel and Roman who is one of the adult Roy children. Gerry and Roman's relationship is bizarre, right? It is part mother, son like and also part flirtatious and it culminates in one of the season's in a crazy phone sex scene. When Gerry is later appointed as interim CEO of the company, she tries to set firm boundaries with Roman, however, he does not take "no" for an answer. And one of the last episodes of the last season we see Roman mistakenly text a picture of his privates to his father and the picture was intended to go to Gerry. Roman's sister Shavonne sees a chance to take Roman down in the scramble to become the who will be the successor and corners Gerry in the hallway trying to convince her to report the incident as sexual harassment to the board. Let's listen to a clip.

## **HIRING TO FIRING – WHAT CAN THE TV SERIES *SUCCESSION* TEACH US ABOUT HARASSMENT?**

CLIP So is this or something like this happened before.

I can't recall.

Uhm, And if it did that did you ask him to stop?

Let's talk about this tomorrow, OK? I just need to check in with some people.

OK. Well sure it is not as if you are welcoming these items. [laughing]. Is this something for your wellbeing we need to get really clear about because all this potential upheaval and you being in such a delicate position as interim CEO if you can't deal with your own sexual harassment, then that is not a good look.

I can cope.

OK. So do you want to make a formal complaint against him regarding those?

Well that is for me to decide.

I just think Gerry that you should report him to HR. Because if you don't, it could be argued that you welcomed these photos. And that just undermines your position. It is just that, this is my concern for you here. I wonder if we shouldn't just kick this up to the Board.

Well thank you for giving this so much thought and um, I will think it over, OK? So I will see you back inside.

Uhm, let me know.

### **Tracey Diamond**

Oh boy. OK. So much to talk about here, right? Before we get into it, I think it would be helpful to start off with the standard. Let's talk a little bit about what is the standard for sexual harassment. At least under federal law. Some states have different standards. But today we are going to concentrate on federal law and there are two types of harassment or actionable harassment under federal law. One is called quid pro quo and that is basically you know between a supervisor and a subordinate either a threat or a promise of something that is going to happen if the person submits or doesn't submit to the sexual conduct. So, you know, have sex with me or you are fired. Have sex with me and I will give you a promotion. The other type of sex harassment is called "Hostile Work Environment" and that can be between two co-workers, it doesn't necessarily have to be between a supervisor and a subordinate and the standard is severe or pervasive. So one really extreme piece of conduct like a physical assault could be enough for a sexual harassment or what we see more often frankly is a bunch of smaller, non-extreme, not as extreme conduct but taken together create an environment where a person feels uncomfortable going to work. And that could take the form of verbal conduct, posters, pictures, text messages, social media posts, emails and it can happen at the work place or outside the work place if the relationship is fostered because of the employment

relationship. So that is the basic standard. Let's now pull it back to the clip. You know, Sarah, what do you think here? Where do you think the line is in terms of, well first of all is Roman's behavior does it rise to a claim for sexual harassment.

**Sarah Goncher**

Well let me start by saying, I found Gerry's comment, "I can quote", so telling. I think it is so hard for someone to report sexual harassment, even someone in a powerful position like Gerry. Obviously, you know, this is a TV show things are heightened but you know I think we can extrapolate out to anyone in a work place that it is going to be very difficult to report. And as an employer you do not want your employees being sexually harassed. You want a safe, supportive work place and I think it goes sort of towards the importance of having a well-publicized robust complaint structure. Having a policy against harassment. And in importance of company culture that an employee is going to trust that process and trust that you will protect them.

**Leah Katz**

Tracey and I are at a law firm and you are in house and it is a little bit different but how do you foster that company culture? What are you doing to ensure that you have that company culture?

**Sarah Goncher**

You know, I think you can do it in a lot of different ways. I don't think it necessarily needs to be specific to sexual harassment all the time. Obviously, we want to see things like training, again a robust policy, confidentiality for reporter. But I think that it can be bigger than that. You know, we want our employees to feel supported, to feel that they can be their authentic selves. I think there are a lot of different ways you can do that. One thing we have at my company that I am so proud of is we have a number of different employee resource groups. It is a really robust program. It is supported from the C suite on down. We have LGBTQ, First Generation, you know a wide variety. And I think when people know that they can be authentic and know that they can be supported, that trust is going to carry over into things such as, feeling more comfortable to report sexual harassment.

**Tracey Diamond**

So you mention something about confidentiality, you know, I think that that tends to be a big issue where a company feels tension between not be able to guarantee absolute confidentiality because that would impede a company's ability to conduct a prompt and thorough investigation of the complaint but that could have a chilling effect on an employee coming forward if they are afraid...its, I mean, a huge chilling effect, right on an employee coming forward and being so afraid it is going to get out, to other people but also to the person who is the alleged harasser. How do you deal with that tension.

**Sarah Goncher**

You know you are never gonna to mitigate that entirely and I think that is just part of you know, something that companies have to deal with and it is part of the reality of these situations. I think, assuring employees that no one will know about the investigation, the investigation will only be on a need-to-know basis and will otherwise be maintained as

confidential, I think can be really important in trying to maintain that trust. I think also having your HR teams trained in how to conduct these investigations, so that they can be sensitive to these issues, so they know where the people who might need to be brought in, can go a long way into building their trust. And having a more thorough investigation.

**Tracey Diamond**

I was in HR in my past life and um I mentioned this on this podcast before that I use to get a lot of complaints come into my office where an employee would come in, sit down, tell me the whole story and then say, I am sure you know what is coming next right, don't tell anybody. And it would be really tough and I would say to the employee, you know clearly you are upset about what happened because you came to talk to me about it and I am really glad that you came to talk to me about it but now it is time for me to do my job. If I don't investigate and take corrective action, if there is corroboration for what you are telling me then I am not doing my job. So I think that often an employee will look for somebody to talk to, because they want to be able to sometime vent and sometimes really put the company on notice to what is going on but they are afraid to take that next step and I think it is important for the HR person to be able to say, 'I need to do something because that is doing my job' and it is important that I do this job because it is going to ultimately protect you.

**Sarah Goncher**

I think it is also important to recognize that people may feel comfortable reporting sexual harassment in different ways. And I think if the company can give folks different avenues it could be written, it could be verbal, it can be to their direct supervisor, it can be to HR, it could be through a Portal, I mean there can be a number of different ways to

**Tracey Diamond**

A hot line complaint I mean...

**Sarah Goncher**

A hot line exactly, exactly to your point Tracey. You know, I don't think there is a right way to report it but we want to make sure we have different options for folks but also ways that as a, as an employer we are appropriately on notice when we need to take action exactly like you said. I sit here, I am in house, I am sort of am working with the teams as these issues are unfolding, from your prospective Tracey and Leah, you know when you are coming in as outside council, what are things that you can recommend that companies do when they are responding to this that can be helpful down the line should it proceed to litigation?

**Tracey Diamond**

Well it is very important that a company does its duty to perform a prompt and thorough investigation to the extent it can with the information that it has and the ability to know you know again with the hot line complaint, you can't go back to the complainant and ask more questions so it becomes a little more difficult but take that investigation as far as they can to gather the evidence in as a confidential way as possible and then make some decisions about whether or not they think the harassment did in fact in cure and if it did what kind of corrective action are you going to take. The worst thing that could happen is the company receive a complaint and doesn't do anything about it, right?

**Sarah Goncher**

I think that is a really good point. I mean, I know one thing we think about a lot or maybe I think about for my seat as in-house counsel if we need to potentially defend a law suit, one thing we need to demonstrate is that we have effectively tried to prevent harassment and when it has come to our attention that we have promptly corrected it.

**Tracey Diamond**

And just keep in mind that those complaints are evidence so you know if there is a litigation that Plaintiff's counsel is probably going to ask for all other hotline complaints that were made over a period of time. So that is evidence for better or for worse. So I want to get back to the show for a minute. So you know Gerry's at the top here, she is almost at the top here, she is the interim CEO, of course Logan is sort of calling the shots from above. Why do you think Gerry is so reluctant to report Roman's conduct to the board?

**Sarah Goncher**

I think it is tough for anyone to report sexual harassment. You know interim CEO, someone who is lower down on the corporate ladder. I think recognizing the reality that it is inherently uncomfortable can be really critical to having an effective investigation when someone does come forward and report.

**Tracey Diamond**

So you know in the clip she tells Gerry if she does not report Roman's behavior to the Board it will appear like she can't control her own harassment. So did Gerry lose either way here? What about sex harassment victims in real life? Are their choices just as bleak?

**Sarah Goncher**

It is easy to sit a remove and say we would have done something different. We would have acted quote on quote better. And I think we really need to meet folks where they are and recognize that people may have different reactions. And some of the things we have already ran through can be really helpful in that respect, you know, having multiple ways that someone can report. Affirming confidentiality and that the information will only be disclosed on a need-to-know basis. Annual training, trained investigators, I think all these things empower our employees to feel comfortable coming forward and reporting sexual harassment, which is again, what we want. You know it is in nobody's interest to have unreported sexual harassment. Hopefully we have no sexual harassment.

**Tracey Diamond**

And the employee has an obligation here too right? It is not just the company. The employee...once you have all those systems in place, you have the policy and the training, the employee has an obligation to come forward if they feel they are being treated inappropriately because we can't get inside employee's heads right? If the employee knew that there were channels to report and they do not exercise their right to report and then they just go ahead and file suit, that is a defense to a law suit because the company cannot be omnipresent, it can't know what is going on inside people's minds.

**Sarah Goncher**

That is exactly right.

**Tracey Diamond**

So Sarah what avenues does your company give your employees to report sexual harassment and other forms of harassment?

**Sarah Goncher**

It's such a good question. You know, and I think as an employer, one thing you are thinking about is you want to have multiple ways for someone to be able to report, but you also want it to be clear when the employer is considered on notice that harassment has been reported. So, for our organization, employees can report either to their manager, to a member of leadership, to employee relations, either verbally or in writing, or, we sort of have an on-line portal for reporting all different things, and so they can submit a concern through our on-line portal.

**Tracey Diamond**

So let's focus a little bit on Roman. He is such a fascinating character for so many different reasons on Succession and I think that it really goes to this idea of what is actually harassment is it about sex or is it really about power. You know at one point in early on in season 2 Roman describes his professional partnership with Gerry as Rock Star and the Mole Woman alluding to the fact that he sees himself as the face of the company as one of the children of the Roy family and Gerry is a sort of a behind the scenes person. But when Gerry later on becomes interim CEO she is becoming the Rock Star and it seems like he is not so happy about that. Do you think that his sexual harassment was his way of changing back that power imbalance?

**Sarah Goncher**

Leah and I took a course together in law school that is how long we have known each other. And we spent a lot of time...a lot of the course was talking about sort of the power dynamics in abusive relationships and I think you know as you touch on here so much about harassment is about power. And I think what is really interesting about what Roman says here is that sexual harassment might not be immediately obvious. He calls her a Mole Woman. Look, I think it goes to the expectation that a woman is supposed to be attractive perhaps and Gerry is not and that he is sort of giving her, I think the term is Negging which is an insult, it is sort of like a backhanded compliment and it is sort of intended to undermine someone's self-confidence so that they will be more receptive to someone else's advances. I think it is an example of you know he is not using language that is necessarily explicitly sexual but it goes to this power dynamic which you know is at the core of a harassment concern.

**Tracey Diamond**

And you know Roman has his own power issues in terms of trying to seize as much power as he can with respect to his siblings and you know curry favor with his father. And to everybody is looking to get the power here. It is very much the theme of the show. And I do think that Roman's use of his comments and innuendos and his text messaging is a way to maintain that power over Gerry. I also think it is interesting what you said about the Mole Woman. That is

putting her back in her place, right? Reminding her of the fact that she really should be behind the scenes because no one really wants to see her.

**Sarah Goncher**

Absolutely, and I think it is such a good example of what you, you mention in the beginning when you were sort of defining a hostile work environment which is it can be a lot of little things over time, it might not be something that immediately screams harassment. It is something that can maybe give you pause and you think 'Oh that, that didn't feel very good.' I think another interesting thing about the context in which this conversation happened between Roman and Gerry is it happens when they are at a conference. After hours, in Gerry's room and I think it goes to again something you mentioned earlier on which is, these employment issues can happen outside the four walls of a traditional office. And especially now that we are doing remote work and we got more people interacting virtually. I think those types of issues and those scenarios are going to become increasingly common for employers and employees.

**Tracey Diamond**

And I agree 100% with you and I also think the use of electronic media that becomes evidence of harassment also becomes a much bigger issue than it was 10 years ago, 15 years ago. You know here the text message goes to his dad right? You have to be really careful where you are sending your messages and what you are saying. When I give harassment training I always talk about how you know what that joke might be really funny at the time or you think it is really funny at the time, it is not going to be so funny when you are on the witness stand and it is replayed back to you.

**Leah Katz**

That is what might client training is always is. Image if this were on the cover of the New York Times. How would your children and your family feel?

**Tracey Diamond**

Not so funny all of sudden, right?

**Leah Katz**

Most of the time not great is the answer.

**Sarah Goncher**

You know you also don't know how something is going to be perceived what someone's own lived experience is and how they might receive that message. It might feel very benign to someone else but someone depending on who is at the receiving end of it, they may take it differently than even intended.

**Leah Katz**

Intent is very different than impact.

**Tracey Diamond**

And intent is not relevant in a harassment lawsuit and that is always a huge surprise to people to hear that intent is not relevant. I talk about this a lot in my training too. You know, barely

as somebody...maybe Roman but most people don't wake up in the morning and say, 'I am going to harass 10 people today.' Normally, when I do a harassment investigation and we call in the alleged offender and we tell them what the allegations are they say, 'Ah, I was just joking' or 'I can't believe they were so sensitive' or 'I did not mean for that to be offensive to somebody. I really was just joking.' Well you know what it doesn't matter what you meant. What matters is how it was perceived. Was the person offended and was it reasonable for the person to feel offended. And that is really surprising to people because everyone focuses on their own intent they don't really focus on the perception of others.

**Sarah Goncher**

What I see sometimes when we talk to folks is it could even be a manager that says, 'Oh but I knew what they meant.' And I think it is really important for you know when you are thinking about management training to think about your managers need to know that as well.

**Tracey Diamond**

That what they perceive is not necessarily the issue here, the issue is how did the person who was, who found it offensive how did they perceive it and was it reasonable that the person perceived it that way. So you know, in this particular case Roman is in an appropriate pictures, his weight is throwing power over Gerry, right? And then Gerry's reaction to show his pressure to report it is to than sweep it under the rug. So did Gerry regain the power by sort of taking the high road here? And is that the right message that we want to be giving our employees? Even those at the executive level.

**Sarah Goncher**

I don't think anyone wins when it is about that power dynamic. There is no winners only losers there and I think this really goes to back up what we were talking about before which is really the need of these institutional structures and how important they are and that is really what the law is there to protect as well. It is not solely within the employees responsibility to take back the power. Report it up. There are structures, there are protections. It is not something that we want someone necessarily just trying to manage on their own.

**Tracey Diamond**

So what if we turn the hypothetical around from this clip and it was Gerry that sent a picture of her privates to Roman or God forbid to Logan, right? If Roman received a picture from Gerry could that be grounds for harassment claim? What about men? Can men experience harassment?

**Sarah Goncher**

Absolutely. I mean I think there is a stereotype that maybe there is a cyst-gender woman who is the victim of harassment. Anyone across the gender spectrum. Anyone can be the victim of harassment and anyone can be the perpetrator of harassment. And I, you know I think one thing that is really imperative for employers to be aware of is that individuals who may not fit that stereotype of what a victim, of who a victim is may be even more reluctant to come forward and report that harassment.



**Tracey Diamond**

So let's talk for a minute about Shiv. Shiv also super fascinating character with lots of different layers. She often expresses frustration throughout the series about being sidelined as the only woman in the family and Logan clearly takes advantage of that, right? He kind of you know sets out these sort of tantalizing potential promises to her and then pulls them back again. Yet here we are in her...in this clip and she is completely turning on Gerry, who could be a powerful ally to her as another woman. In reality, are women more powerful when they team up?

**Sarah Goncher**

It shouldn't be a female versus male gendered whatever kind of approach. Again, we want all of our employees to feel supported and to feel safe. And I think we are a stronger organization when our employees are comfortable being authentic and comfortable supporting their colleagues regardless of who they are, I mean I think that goes back to the trust we were talking about earlier and how critical that can be.

**Leah Katz**

You know Gerry says to Roman at one point, 'I am quite a successful person Roman. And I remain so by avoiding mess.' What do you think she means by avoiding mess? Workplaces are messy, right?

**Sarah Goncher**

This initially made me go like "Ugg" like even to hear her say like "Ugg". I hope as a society we have moved past this scent that woman have the Onis or whoever the victim may be have the Onis to avoid the quote-on-quote mess.

**Tracey Diamond**

Mess!

**Sarah Goncher**

And you know one thing that I thought that was really interesting about Roman and Gerry's dynamic is it did start out as consensual at some point and then it stopped being consensual with Gerry told Roman very clearly to stop sending her pictures. And I thought that was interesting in two sets. One, you know consent once given is not given forever. Somebody can withdraw their consent. Nobody quote on quote wants to be sexually harassed. You know, I think we see this even in dress codes. We want to make sure that girls are not wearing spaghetti straps cause what will the boys think? I mean it is just ridiculous. And so I think here it is really important to know that Gerry withdraws her consent and at that point, the behavior is no longer welcome and Roman needs to stop it. I think the other interesting thing here and sort of as an attorney I found particularly interesting is sort of establishing what might be unwelcomed behavior. And you know we talked about how employees have an obligation to take advantage of reporting systems that are there and I think one thing that we also sort of look to employees to do is to make it known that behavior is unwelcomed. You know, to tell someone. You know, as you said Tracey, you know someone....when you are doing these investigations people said, 'Oh I had no idea it wasn't welcome.' As an attorney as we are

thinking about you know what we might need to show, having someone explicitly say, 'Don't do this. I don't like this can be really really critical.

**Leah Katz**

And really hard, I would say. And so how...what tools do we give people to empower them to do that? Right? Because you know if I am an employee you can tell me that until I am blue in the face but giving me the power to do that is a very different thing.

**Tracey Diamond**

I think it depends a little bit on the circumstance and you know it is always good to encourage employees to tell the person that is offending them to stop because again going to intent often the offender doesn't even know that they are offending someone and they will stop if they are told that they are offending you. It is an awkward thing and we certainly wouldn't want to make it mandatory that the employee has to tell the person to stop. They can go and complain about it and not have to confront the person. Certainly don't want people to feel they are in a position and they must tell the person to stop. Particularly that is going to make them feel awkward or worse unsafe. Right?

**Sarah Goncher**

You know I think you both make such good points that it is really, so much of this is nuanced.

**Tracey Diamond**

And fact specific.

**Sarah Goncher**

Yeah absolutely.

**Leah Katz**

Like everything we do. [laughing]

**Sarah Goncher**

I think that is one thing that is really hard for companies to navigate quite honestly is those very nuanced facts specific situations and it can be really it can be really difficult.

**Tracey Diamond**

It is very. And certainly nothing we are going to be able to resolve in our one podcast episode but I think that we raised lots of really interesting discussion questions here. And I want to thank you so much for joining us today Sarah and also thank you to Leah for joining. Before we go I would like to remind our listeners about our amazing blog, "Hiring to Firing.law" which is your go-to resource for information about cutting-edge human resource issues across the country. And if you like our podcast please leave us a review on your podcast platform of choice and be sure to subscribe to this podcast. The podcast is available on all the major platforms. Let us know what you think and thanks again for listening.

---

implied, regarding the contents of this podcast. Information on previous case results does not guarantee a similar future result. Users of this podcast may save and use the podcast only for personal or other non-commercial, educational purposes. No other use, including, without limitation, reproduction, retransmission or editing of this podcast may be made without the prior written permission of Troutman Pepper. If you have any questions, please contact us at [troutman.com](http://troutman.com).