

HR IS NOT YOUR FRIEND

THAT CHEERFUL PERSON FROM HUMAN RESOURCES MAY SEEM NICE. HECK, SHE OR HE MAY EVEN BE NICE. BUT AMID THE CURRENT WORKPLACE RECKONING, IT'S IMPORTANT TO REMEMBER THAT HR EXISTS PRIMARILY TO SERVE TOP MANAGEMENT, NOT YOU.

BY ERIKA FRY AND
CLAIRE ZILLMAN

• **MICROSOFT HAS A WOMAN PROBLEM.** That, at least, is the claim of an ongoing gender discrimination lawsuit against the venerable technology giant. The class action suit contends that Microsoft cheated the plaintiffs represented—roughly 8,630 women engineers and IT specialists—out of 518 promotions and between \$100 million and \$238 million in pay between 2011 and 2016.

But maybe what Microsoft really has is an HR problem. A careful reading of the documents in the lawsuit reveals that the company's human resources department plays a consistent supporting role in the accounts of the plaintiffs—that of a seemingly disinterested observer. At best, according to the complaint, Microsoft's HR team frequently appears to have done nothing when employees lodged complaints about serious problems. When HR did get involved, plaintiffs allege, it often made things worse.

Microsoft, which is fighting the case in court, strongly denies the allegations and argues there are non-discriminatory reasons that the plaintiffs were not promoted or paid according to their expectations. A company spokesperson gave this statement to *Fortune*: "Microsoft encourages employees to raise concerns and has numerous channels for them to do so. We take each concern seriously and have a separate team of experienced professionals whose job it is to investigate these types of allegations thoroughly and in a neutral way, and to reach a fair conclusion based on the evidence."

The testimonials of the women involved in the lawsuit as presented in the court papers, however, suggest that they didn't feel supported or protected by Microsoft HR.

Consider, for example, the experience of Katherine Moussouris, an Internet security strategist who filed complaints with Microsoft's HR department at least three times, according to the lawsuit. In 2008, one year into her tenure at the company, she reported that her director was sexually harassing women in her group. Her claims were allegedly substantiated, but the offending manager was merely

reassigned—and subsequently promoted. Moussouris suspected that he had docked her bonus pay before being transferred and she complained to HR about that too. Nothing happened. She went back to HR in 2014 to claim that despite being a star researcher, she had been repeatedly passed over for promotions. She said a male colleague who became her boss disempowered her and assigned her low-level tasks that he didn't give to men. HR took no action on this complaint either. She eventually left Microsoft and sued.

Then there's Heidi Boeh, an engineer, who claims in the lawsuit that her boss told her in 2010 that he didn't want to "waste" a promotion on her. She'd just had one baby, and he imagined she'd want to have another one soon. She reported the exchange to HR, which, she says, didn't respond in a timely fashion. That wasn't her first bad experience with HR. Boeh had reported being sexually

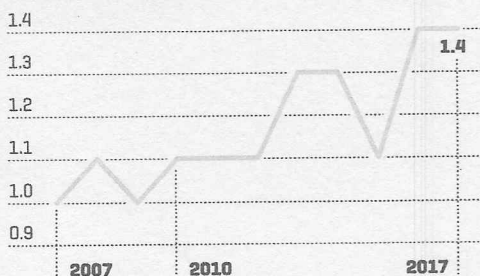
harassed by a male colleague back in 2002, according to the lawsuit, but she claims the department failed to "properly address" the situation. (In fact, Boeh declared in a court document that HR increased "the pain and stress of the situation.") Human resources also ignored Boeh in 2017, she claims, when she reported gender disparity in the compensation offers made to two of her recent hires.

• **IN ACCOUNT AFTER ACCOUNT**, according to the lawsuit, the Microsoft employees made an assumption that left them feeling betrayed after it was ultimately revealed to be false: They took for granted that HR was on their side.

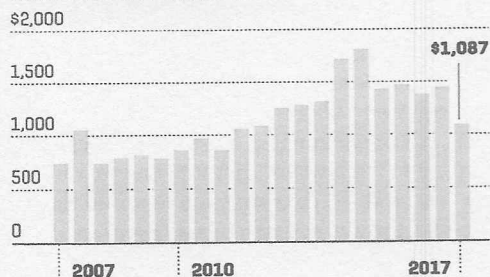
It's a narrative that repeats itself innumerable times per year in workplaces across the country—and a misapprehension encouraged by countless internal communications campaigns at companies seeking to build trust and esprit de corps among their workers. Even seasoned employees are apt to forget that HR isn't likely to have your back when things go bad. "HR is not your friend," says Kevin Mintzer, a prominent New York-based employment attorney. "HR is not your confidant."

The reason for that is obvious if you stop and think about it: As nice and well-meaning as they may be, your colleagues in HR don't work for you. Management signs their paychecks, and their No. 1 priority is

RATIO OF HR STAFF FOR EVERY 100 WORKERS IN U.S. COMPANIES



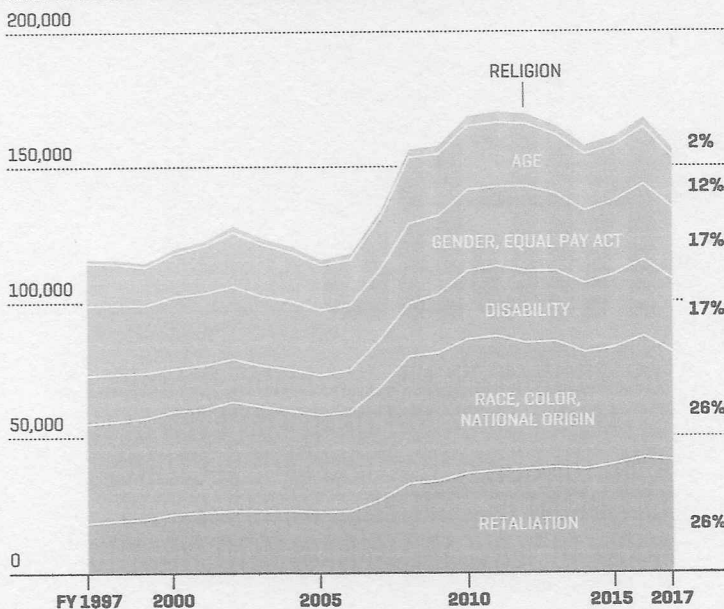
HR SPENDING PER EMPLOYEE



SOURCE: BLOOMBERG BNA

ANNUAL NUMBER OF CHARGES FILED WITH EEOC

NOTE: INDIVIDUALS OFTEN FILE CHARGES CLAIMING MULTIPLE TYPES OF DISCRIMINATION



SOURCE: U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

to serve and protect the company. The “resources” in question are there for the benefit of the executive team, not the average worker.

Indeed, the idea that HR isn’t your buddy isn’t exactly a novel one. But as the #MeToo movement has swept the country—exposing badly behaving bosses and out-of-control corporate cultures—that harsh reality has become all the more apparent. Money has too often trumped principles or workers’ well-being. The manager who propositioned Uber engineer Susan Fowler—on her very first day working for him—was allegedly given a pass by HR because he was a “high performer.” Fox’s Roger Ailes and Bill O’Reilly had their alleged transgressions repeatedly buried by confidentiality provisions in settlement agreements and alleged multimillion-dollar payoffs. And those are just highly publicized sexual harassment cases: For every Harvey Weinstein, there are roughly 86,000 discrimination and retaliation cases filed with the U.S. Equal Employment Opportunity Commission each year. And behind every fallen offender and hostile workplace, it seems, there is a complicit HR department—the executor of a liability-avoidance strategy that ticks all the boxes (cookie-cutter antidiscrimination training, a perfunctory investigations process, silencing arbitration, and nondisclosure agreements).

The #MeToo reckoning has been all the more jarring for HR departments because the tough task of policing workplace misconduct often feels at odds with what has emerged as their top priority in recent years: recruiting.

As the labor market has tightened dramatically, and with employers trying to figure out restless millennial workers, HR’s focus has shifted to the warm and fuzzy matter of wooing and winning talent. In service of that mission, HR departments have gotten as big as they’ve ever been. According to a 2017 survey by Bloomberg BNA, there are now 1.4 HR professionals for every 100 workers, vs. 1.0 a decade ago. They’ve also launched an arms race of perks. Look no further than *Fortune’s* very own 100 Best Companies to Work For list in

THREE WAYS THAT COMPANIES ARE DISRUPTING HR

AS THE #METOO MOVEMENT HAS MADE PLAIN, THE HR STATUS QUO JUST ISN’T CUTTING IT. SO COMPANIES ARE LOOKING FOR NEW WAYS TO EXECUTE THE DECADES-OLD PRACTICE OF HUMAN RESOURCES:

FINGER ON THE PULSE

- Rather than the ceremony of the annual performance review, employers are checking in more frequently to gauge “organizational health” and identify trouble spots earlier, says Lars Schmidt, an HR practitioner turned consultant. This could mean everyone gets monthly or quarterly meetings with management or simply that HR conducts regular “pulse checks” using online surveys. Some are as simple as thumbs-up, thumbs-down, “How was your week?” he says.

AIN’T NO PARTY LIKE A... THIRD PARTY

- Companies are turning to outsiders—namely law firms—to amp up their investigative firepower when probing workplace complaints. Uber, for example, hired Covington & Burling last year. And Covington partner Nancy Kestenbaum says her firm is getting more business in the #MeToo era both from companies vetting specific allegations and those proactively assessing whether “they have the right policies and culture...to resolve these issues going forward.”

THERE’S AN APP FOR THAT

- When human problems pop up, startups seek a tech solution. Bravely, backed by \$1.5 million in seed money, is a new platform where workers connect with HR experts outside their own companies for candid, off-the-record conversations about workplace issues. Spot, meanwhile, is a new free online tool where users record instances of sexual harassment to an A.I. bot with the aim of upping the reporting of workplace abuse.

this issue to witness the solicitousness of corporate America’s top employers—dog-friendly offices and flexible hours, free snacks and on-site life coaches. In the same spirit, many corporations have invested in building their “employer brand,” i.e. the story they sell, particularly on social media, to prospective hires. With all the corporate boosterism and glad-handing, it can be easy to forget you’re dealing with the same department that oversees performance review and workplace surveillance efforts.

HR practitioners, for their part, say they’re working to serve both the interests of the company and the employees. They don’t see those efforts as mutually exclusive, and it’s perhaps for that reason that some HR departments, particularly in the tech world, have recently undergone

some of their own internal rebranding, shedding the stodgy old “human resources” name in favor of friendlier and more inviting monikers like People Operations (Google, Southwest Airlines), Employee Experience (Airbnb), and Employee Success (Salesforce).

But given the accumulating evidence that—when it comes to managing the employee experience—HR is perhaps not so good at its job, how can workers avoid having disappointing experiences of their own? The first step is to understand better the challenges facing your colleagues in human resources.

• **THE ROOTS OF THE MODERN-DAY HR** can be traced back to the Second Industrial Revolution of the late 19th century when personnel departments were needed to allocate the scores of workers that companies were hiring to shore up assembly lines and fill factory floors. But today, “employee relations is really about limiting the liability of the employer,” says Mintzer, the employment attorney. That’s due in part to the workplace regulation—the Equal Pay Act, Title VII of the Civil Rights Act, the Pregnancy Discrimination Act—that popped up in the second half of the 20th century.

Today’s HR departments are wide-ranging kingdoms of corporate responsibilities: part administrative functionary (payroll, benefits), part welcome wagon (recruiting and training), and part compliance cop (employee relations, discipline). The Supreme Court determined in 1998 that employees, in order to get legal recourse, have to first file harassment complaints with HR. In fact, in December 2017 a Virginia district court judge ruled against a female plaintiff in a lawsuit alleging sex discrimination, sexual harassment, and retaliation against defense contractor BAE Systems, in part, because she “did not take advantage of BAE’s harassment reporting procedures of which she was well aware.” (In a statement at the time, BAE praised the judge’s decision and called the plaintiff’s claims “meritless.”)

Susan LaMotte, the CEO of employer brand consultancy Exaqueo, is not surprised

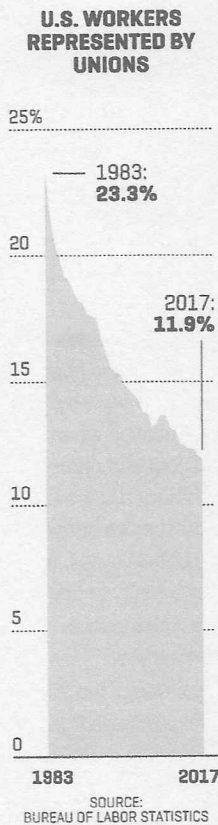
by the unflattering picture of workplaces that has come into focus through the #MeToo movement. “It’s the same as it was 20 years ago,” she says, noting that HR practitioners have long dealt with cases like those that recently have been making headlines. “I hate to say it, but it’s hard to drive systemic change.”

The lack of progress reflects corporate priorities. Lars Schmidt, a former HR practitioner who now runs Amplify, an employer branding and search consultancy, points out that while the field has evolved significantly over the past few decades—becoming more strategic and aligned with business, as well as more automated and data-driven—the practice of employee relations, or how workplace grievances are handled, has hardly changed.

That lag includes the level of investment in such departments. David Sanford, chairman of Sanford Heisler Sharp, the law firm that argued the largest-ever employment gender discrimination case to go to trial—a class action suit against Novartis Pharmaceuticals that resulted in a \$253 million jury award for plaintiffs in 2010, reduced post-trial to \$175 million—noted that in that case, the company had just three investigators for a workforce of thousands. (The company’s HR department also lacked a centralized system to track discrimination complaints; as part of the settlement Novartis has since made improvements.)

While corporations have largely failed to bulk up on their employee relations infrastructure, the broader economic scaffolding that has supported workers in the past has continued to fall away. The percentage of U.S. workers represented by unions stands at 11.9%, down from 23.3% in 1983. Meanwhile, more and more companies—54% of non-unionized private sector workplaces, up from 2% in 1992—are forcing employees into mandatory arbitration agreements, a contractual arrangement that prohibits employees from filing suit in public court. (While arbitration is typically speedier and cheaper than litigation, the setup has also been found to disadvantage employees in some ways.)

These factors may help explain why, even with the march of time and social progress, the number of charges of workplace discrimination and retaliation filed annually with the EEOC has remained relatively steady for the past 20 years. Prompted by how little companies had moved the needle in stamping out workplace harassment, the EEOC in 2015 formed a select task force to study the issue.



In its special report on the topic, the agency asserted that the majority of workplace harassment cases are never reported because employees fear retaliation; a recent survey from LegalZoom found that just a quarter of workers have faith in their employers to quickly and effectively resolve workplace issues.

The broader system available to employees has its issues as well. Last fiscal year, the EEOC resolved 99,109 claims in total—31,411 of which involved harassment. Of the harassment claims, the EEOC found “reasonable cause” in just 970 or 3.1% of them.

Nicholas Inzeo, director of field programs at the EEOC, says that the agency’s early filtering system means that it investigates and issues judgment in only about 50% of all charges. But still, he says, the bar for employees bringing harassment claims against their employer “is very high.”

“We see a lot of cases where there’s a lot of talk in the workplace of a sexual nature but courts have said that’s not ‘severe and pervasive’ conduct,” Inzeo says. “It happens a lot.”

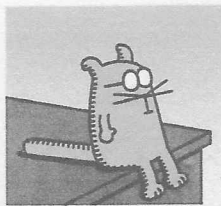
• **A NUMBER OF HR PRACTITIONERS** told *Fortune* that the current moment has prompted soul searching in the field, though they’re hesitant to say the system is completely broken. Many point out—and employment lawyers do too—that you don’t read about the many everyday cases in which HR does its job well.

There are also limitations that give HR a bad rap, says LaMotte. One issue is transparency: HR professionals are committed to upholding a high level of ethics and confidentiality. Says LaMotte: “It makes it really hard for organizations to show they’re doing what they said they’d do.” Employees may complain that their boss is bullying them or committing ageism, for example, but they may be kept in the dark about what actions are actually taken to investigate their claim or discipline the accused. (LaMotte notes that while it’s best practice to keep the accuser informed, there are limitations on what they can say depending on the outcome.)

Another issue, particularly acute with

A BRIEF HISTORY OF HR IN POP CULTURE

++



DILBERT
Catbert was the “evil director of human resources” in the long-running satirical office comic strip.



THE DREW CAREY SHOW
The “everyman” star of the sitcom (1995–2004) tries to escape his dead-end personnel job.



OFFICE SPACE
In this cult classic film, “the Bobs” show up to downsize, and Milton gets moved to storage.

younger workers, many say, is that those who take issues to HR often have unrealistic expectations of what could and should be done about their situation. Removing a manager makes sense in response to some complaints, but not all of them.

Sexual harassment cases can be especially tricky, as HR is responsible for investigating a behavior whose legal definition often doesn’t match its conventional one. “Part of the problem is what many people believe counts as sexual harassment is not the legal definition of sexual harassment,” says Peter Cappelli, director of Wharton’s Center for Human Resources. A YouGov poll in November found that 17% of Americans ages 18–29 felt that a man asking a woman out for a drink could be an instance of sexual harassment. Legal precedent, meanwhile, tends to define sexual harassment as occurring either when a supervisor requests sex in exchange for a subordinate being promoted or not being fired, or when an employee is subject to behavior of a sexual nature that’s so pervasive it creates a hostile work environment.

Differing interpretations of sexual harassment can have devastating results for victims. “We’ve seen this play out,” says Johnny Taylor, CEO of the Society for Human Resources Management. “You come to me and say, ‘An executive asked me out on two different occasions. I said no and he asked again and I feel like I’m being harassed.’”

If the employee is told that such behavior is not, in fact, sexual harassment from a legal standpoint, she feels HR didn’t do its job, Taylor says. “HR did exactly its job, but a lay person’s understanding of sexual harassment and what the law is don’t match.”

The other issue, of course, is power. While more and more heads of human resources (or “Chief People Officers”) report directly to the CEO—half currently do, according to Bloomberg BNA—they rarely wield the corporate clout of, say, the CFO or the CMO. HR professionals who investigate complaints have even less influence. If senior leaders don’t pay attention or overrule HR’s concerns,

© DILBERT: © SCOTT ADAMS. USED BY PERMISSION OF ANDREWS MCMEEL SYNDICATION. ALL RIGHTS RESERVED; THE DREW CAREY SHOW: WARNER BROS. TELEVISION/COURTESY; EVERETT COLLECTION; OFFICE SPACE: 20TH CENTURY FOX/PHOTOFEST

says LaMotte, HR usually has to live with it.

It's a systemic problem, says Eric Nelson, a New York business and employment lawyer with three decades of experience. HR is a cost center, not a profit generator. That means the human resources professionals have very little leverage. "People in HR understand more than most that they're not essential," says Nelson. "If they stick their necks out too far, they're not going to get anything but the hatchet themselves. Until the people who make companies money are made responsible for what goes on, nothing is going to change."

HR professionals agree that management's emphasis on the bottom line often overrides other concerns. "Whenever you deal with a high performer, people tend to look the other way," says John Hudson, a transparency-minded HR veteran who currently works for Slalom, the business consulting firm, and who previously worked for Oprah's Harpo Studios. "That's where a lot of the distrust happens."

Both Hudson and Lamotte concede not all HR professionals are great at their job, and that also sows distrust. Even worse, a disconnected HR department can allow a hostile workplace environment to fester.

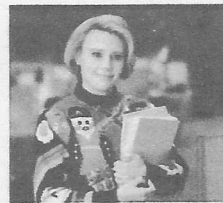
When Edwina Prescott, a construction industry veteran of 30 years, worked as a document control specialist at a construction firm that works on high-end property development, she grew accustomed to routinely being told things like, "If you had blond hair and bigger tits, you'd go further." Prescott is biracial and in her fifties, and she says the toxic environment fueled by demeaning comments made by her mostly male colleagues—and their behavior toward other women—eventually got to her. She reported the situation to the company's HR department. The human resources team expressed sympathy, says Prescott, and advised her to go to her supervisor. But her supervisor was not only well aware of the behavior but also a participant in it. She claims he dismissed her concerns—"that's just how they are, Edwina"—and said if she preferred she could become



THE OFFICE
Toby Flenderson, the mild-mannered HR rep on hit sitcom *The Office* (2005–2013), is openly despised by manager Michael Scott.



UP IN THE AIR
George Clooney and colleague Anna Kendrick do HR's dirty work, traveling the country and firing people in this 2009 film.



OFFICE CHRISTMAS PARTY
In the 2016 movie, HR head Mary, played by SNL's Kate McKinnon, wields her power mercilessly: "I know why you took medical leave."

his secretary. Prescott rejected the offer and says she was shunned and isolated thereafter. Eventually she was terminated, and she says she was relieved to move on.

There's also the matter of HR personnel not living up to the standards they set for others. In Sanford's Novartis case, it was revealed in depositions that the company's HR department—in a scene reminiscent of the sitcom *The Office*—hosted an annual "Oscars" event in which members of the department would buy props and booze and act out the most colorful personnel issues they'd encountered during the year. As the former HR director acknowledged in testimony, one such tableau included an incident in which a regional manager had invited two direct reports to participate in a threesome. The Oscars event itself offended another member of the HR team.

Rooting out that kind of misguided behavior is a must for any company, but fostering a safe workplace where HR is a respected sounding board for employees means going beyond such obvious steps. "That's where HR is evolving," says Taylor of the Society for Human Resources Management. Rather than simply checking the boxes of workplace regulations, he says, HR departments must help create a workplace culture with its own standards and hold employees and management to them.

• **THE LAWSUIT AGAINST Microsoft** is still pending. Yet in December, the tech giant took an important step to make its workplace culture more amenable to aggrieved employees when it eliminated forced arbitration agreements with workers who bring sexual harassment claims. What's more, the company said it supported federal legislation that would ban such agreements altogether. In another welcome move, Microsoft says it will spend \$55.4 million a year on corporate diversity initiatives through 2020.

Such action goes a long way in fostering an employee-friendly environment. But it still doesn't make HR your friend. ■

© THE OFFICE: JUSTIN LUBIN/NBCU PHOTO BANK; UP IN THE AIR: DREAMWORKS PICTURES/COURTESY EVERETT COLLECTION; OFFICE CHRISTMAS PARTY: GLEN WILSON/PARAMOUNT PICTURES/COURTESY EVERETT COLLECTION