K-Notes: Harvey Weinstein Clauses from Noble Energy

Define Your Terms and What Counts

When drafting a Harvey Weinstein clause, take care to define not only a clear definition of sexual harassment, but also what kind of reporting counts as an allegation: word of mouth to a supervisor, anonymous tip line, etc.

> Just like you're going to rep that there is no outstanding material litigation... no environmental litigation, and those kinds of things, you're also going to say there's been no allegations of harassment.

Marcia Narine Weldon
Miami Law Professor

> "'Reasonableness' is of course, as every lawyer knows, will be vague wiggle room."

KEY TAKEAWAYS

- **Get Eyes On It From Employment Attorney**
  Have a well-qualified employment attorney walk through every word with you, encouraging them to poke holes in the clause where they can.
- **Decide How Far Back is Best**
  Have a clear reason for defining how far back the agreement should look for allegations. While five years sounds reasonable, it can sometimes make it seem like something happened six or seven years ago that is being avoided. And ten years may be practically too long to find accurate data.
- **Know What Is Not Covered**
  To avoid giving the acquirer a false sense of security, make it clear what is not covered in the Harvey Weinstein clause. For instance, what level of executive is covered and who is not, how the clause deals with contractors, etc.
- **Communicate with HR**
  Ask good questions of HR about the complaint procedure and get familiar with the employee handbook. This will help you tailor this clause to the specific situation and avoid unecessary confusion.