



3 Takeaways After #MeToo Fells CBS Chief Moonves

By [Braden Campbell](#)

Law360 (September 10, 2018, 8:41 PM EDT) -- Les Moonves resigned as chairman and CEO of broadcasting giant CBS on Sunday after The New Yorker published its second article detailing allegations of workplace misconduct from several women who said Moonves abused them, becoming the latest and perhaps most powerful man brought down by harassment allegations since the #MeToo movement took shape.

#MeToo Takes Its Biggest Name Yet

Moonves, the first CEO of a Fortune 500 company to be toppled by the #MeToo movement, joins a long list of prominent leaders and media personalities who have lost their jobs in the wake of harassment and assault accusations in the last few years.

The New Yorker, which is credited with helping spark the #MeToo movement through its reporting on sexual assault allegations against movie producer Harvey Weinstein last fall, published a story describing similar accusations against Moonves in late July. The article was based on the accounts of six women who said Moonves sexually harassed them between the 1980s and late 2000s.

Days after the magazine published its article, CBS [announced it had hired](#) law firms [Covington & Burling LLP](#) and [Debevoise & Plimpton LLP](#) to investigate the allegations against Moonves. Rumors swirled over the last several weeks that Moonves was negotiating his exit with CBS and could net a severance package worth upward of \$100 million. But after several more women spoke with The New Yorker for a follow-up article that ran Sunday, Moonves abruptly resigned — potentially without a payout.

According to a disclosure document filed with the [U.S. Securities and Exchange Commission](#) describing CBS' separation agreement with Moonves, the company will give a total of \$20 million to "one or more charitable organizations that support the #MeToo movement and equality for women in the workplace." The company will also put \$120 million into a trust, with its fate dependent on whether CBS' board of directors finds it has cause to fire Moonves. If it does, he won't see a cent, notwithstanding a provision of the agreement letting him challenge the board's decision in arbitration.

The #MeToo movement has been credited with bringing a long-awaited reckoning to powerful

figures who previously used their clout to sweep harassment accusations under the rug. That the movement has toppled as notable a corporate leader as Moonves shows its power, according to [Frankfurt Kurnit Klein & Selz PC](#) executive compensation practice head Gavin McElroy.

“It’s a lesson for both executives and companies that no one ... is beyond the law,” he told Law360.

'Cause' Key to Avoiding Severance

Members of the C-suite almost always negotiate contracts with employers guaranteeing them a payout if they’re removed, but Moonves’ departure shows such contracts may not hold up against sexual harassment allegations, McElroy said.

McElroy, who told Law360 he has negotiated about 4,000 executive employment contracts, said “virtually anyone” covered by such agreements will negotiate clauses guaranteeing them payouts at termination unless they are let go for cause. And while executives will push back in negotiations against language that gives businesses a lot of power to duck their severance obligations, “it’s hard to argue that violating federal laws on sexual harassment is not cause,” he said.

Michelle Phillips, a [Jackson Lewis PC](#) attorney whose practice includes counseling businesses on stopping workplace harassment, echoed McElroy.

“It’s important in drafting those agreements to give the company the leverage where necessary to limit a severance payout when there’s been either wrongdoing or unlawful behavior,” Phillips said.

This language alone may not be enough to let businesses avoid paying off alleged harassers because the accusations can be difficult to prove, McElroy said. But businesses help their chances of avoiding action for withheld severance payments when they bring in outside counsel to investigate the matter.

The Debevoise team investigating Moonves is being led by firm partner Mary Jo White, a former U.S. attorney for the Southern District of New York. If White says Moonves likely sexually harassed women he worked with, “that’s probably sufficient” for CBS to recoup the money from the trust, McElroy said.

The Power of Public Pressure

If Moonves doesn’t get a severance, that may be a credit to The New Yorker’s reporting, McElroy said.

He said many companies, including those that tout ostensible zero-tolerance policies regarding sexual harassment, attempt to negotiate executives’ exits quietly even if it means “giving an executive who might not be entitled to severance, severance.”

The magazine in its Sunday follow-up said several of the women who came forward were “outraged” by reports that CBS was negotiating a potential nine-figure deal with Moonves. But the continued publicity likely did away with any incentive CBS had to strike a deal, he said.

“Once the cat is out of the bag, they have less of an interest in saying, ‘Let’s make this go away without being on the front pages of The Wall Street Journal and The [New York Times](#),’ because guess what, they are,” McElroy said.

--Editing by Pamela Wilkinson and Jill Coffey.