

The State of Sexual Harassment in America: What is the Status of Sexual Harassment in the US Workplace Today?

**Steven V. Cates, DBA, SPHR
Lynn Machin, Kaplan University, USA**

ABSTRACT

The purpose of this research paper is to investigate the current status of sexual harassment in the workplace today. The results provide many interesting and important facts about this subject. This research takes an in depth view of the sexual harassment in US organizations today and provides current knowledge on the subject. Federal laws protect employees in a workplace by constituting sexual harassment as unlawful. This is a critical human resource and overall managerial issue which is widely discussed in many organizations due to the overwhelming liabilities that they hold. Sexual harassment trainings have been shown to be one way that companies attempt to diminish incidents, by giving employees information on the topic. There are many implications held for people that are involved in sexual harassment in the workplace. The results from this research however indicate that in US workplaces sexual harassment is still prevalent in the workplace despite attempts to eradicate it.

What is the Status of Sexual Harassment in the Workplace Today?

The research performed in this paper was accomplished by examining various governmental sources, as well as print publications. The research will provide an in depth view into sexual harassment, and its role in today's work environment. Included in the research are a recent case in regards to the subject of sexual harassment, and how that case affects the parties involved. This will provide proper reasoning as to why it is important for managers to take this matter seriously, as well as recommendations as to how an organization's managers should approach the subject.

SEXUAL HARASSMENT OVERVIEW

Definition

Sexual Harassment is defined as “unwelcome verbal, visual, or physical conduct of a sexual nature that is severe or pervasive and affects working conditions or creates a hostile work environment” (Know Your Rights, 2012). It is a form of sexual discrimination that can happen anywhere, but for the purposes of this research paper, will only be elaborated upon in the work place environment. There is a thin line between occasional unwanted sexual advances and comments that may be deemed inappropriate. These are not always labeled as sexual harassment, but if “a number of relatively minor separate incidents...affect your work” (Know Your Rights, 2012) then this could turn out to be sexual harassment.

Causes

Sexual harassment in the work place can happen for a number of reasons. Research shows that some people are triggered by provocative clothing or certain behavior by the victim, but there is no specific cause for sexual harassment. It can happen anywhere, to anyone, at any given time. It leaves victims wondering “why me?” with no real answer to that question.

Conduct

Sexual harassment includes various conducts, whether they are verbal, visual, or physical, and are severely sexual in nature, which includes unwelcomed sexual behavior (Know Your Rights, 2012). The several types of sexual harassment are the following:

- Verbal or Written: This type includes comments about attire, personality, or physical appearance; sexual jokes; requesting sexual favors; constantly asking someone out; sexual insinuation; starting rumors about personal aspects or sexuality; threatening a person with sexual advances.
- Physical: Sexual advances of the physical nature include assault; obstructing movement; improper and unwanted touching; kissing; hugging; patting; stroking
- Nonverbal: Sexual cues that are nonverbal include staring at someone's body parts; hand gestures or facial expressions that are sexual; following a person or stalking.
- Visual: This type includes sexually explicit drawings, pictures, posters, emails, and any other images that depict unwanted sexual fixations.
- Non-sexual: There is harassment that is not in a sexual manner, but is considered sexual harassment. This includes discrimination based on gender. Females or males can be sexually discriminated on purely because of their gender in the workplace. For example, a woman can be sexually discriminated at a job site that is conventionally known as a "man's" job, if the other employees are constantly pestering her.
- Severe or Pervasive: Sexual harassment can only be considered as such if it is severe or pervasive in sexual nature. For a singular incident to be regarded as sexual harassment, it must be severe. An example of this includes a single occurrence of attempted rape. In order to determine whether conduct is persistent is to establish the frequency of the incidents, as well as the length of time the instances have been occurring, and how many people are affected by the sexual harassment (Know Your Rights, 2012).

Consequences

Sexual Harassment is illegal in the workplace, and there are many consequences to violators of workplace sexual harassment laws. These include termination, community service, probation, criminal fine, imprisonment; etc. The consequence depends on the type of sexual harassment. For example, rape or attempted rape is punishable by criminal proceedings since it "violates criminal laws" (Know Your Rights, 2012). Employers should provide all of their employees with communication regarding consequences, and they should take the appropriate steps if someone comes forward with a claim.

Anyone can be a Victim

Anyone can be a victim of sexual harassment in the workplace. Men are not excluded from harassment, and the accused can be a woman as well. Same sex harassment is as common as opposite sex harassment. The person committing the sexual harassment can be a supervisor of the victim, an agent of the organizations, an indirect supervisor, a co-worker, or a client. Victims also include others indirectly affected by the harassment. If an employee feels they are being sexually harassed because the behavior is unsolicited, then they should first inform the harasser of their feelings, and secondly file a complaint with a superior or HR manager (Facts, EEOC).

Preventing

Avoiding sexual harassment is not an easy task. There are steps to take if an employee is getting unwanted attention from another employee in a sexual manner. If an employee, whether it is male or female, is a victim of sexual harassment, they should immediately take the matter to their immediate supervisor. The victim should "communicate either verbally, in writing, or by their own actions to the harasser that the conduct make them uncomfortable and it should be stopped" (Know Your Rights, 2012). An employer should, and is legally required to prevent sexual harassment in the workplace by "clearly communicating to employees that sexual harassment will not be tolerated" (Facts, EEOC). Employers should provide their employees with training on the subject, where direct guidelines are provided, along with steps to filing a complaint for potential victims.

Types of Sexual Harassment

There are two types of sexual harassment as defined by the EEOC, quid pro quo harassment and hostile environment. These are two different accusations, but they can happen at the same time, and therefore are not always

clear in distinction. An employer's obligation to the law depends highly on correctly differentiating between both quid pro quo and hostile environment, or realizing that both have occurred. An example of the two types happening together is depicted below:

An employee's tangible job conditions are affected when a sexually hostile work environment results in her constructive discharge. Similarly, a supervisor who makes sexual advances toward a subordinate employee may communicate an implicit threat to adversely affect her job status if she does not comply (Notice, 1990).

Hostile environment sexual harassment can take on similarities of quid pro quo sexual harassment in this instance if the supervisor "abuses his authority over employment decisions to force the victim to endure or participate in the sexual conduct" (Notice, 1990). At this point retaliation may occur if the supervisor terminates his employee because of their refusal to continual abuse; retaliation is also unlawful.

Quid Pro Quo

This type of sexual harassment "occurs when 'submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual'" (Notice, 1990). Quid pro quo is Latin for "this for that", and it is the most common form of sexual harassment. Quid Pro Quo sexual harassment includes the removal or negative impact on "job benefits, (such as) employment, promotion, salary increases, shift or work assignments, performance expectations and other conditions of employment" (Quid, 2007). Quid pro quo classification can also be found is a victim rejects "a sexual advance or request for sexual favors results in a tangible employment detriment, a loss of a job benefit of the kind described above" (Quid, 2007).

Hostile Work Environment

Hostile environment is a type of sexual harassment that creates "an 'intimidating, hostile, or offensive work environment'" (Know Your Rights, 2012). If the victim tries to put a stop to the harassment, and they are negatively impacted by it, such as termination, denied employment, or demoted, to name a few, then this would constitute as hostile environment sexual harassment. Another example would be if the harassment makes the victims work performance suffer due to the emotional duress caused.

Laws against Sexual Harassment

It is against the law to harass a co-worker, potential employee, supervisor, or subordinate in a sexual manner. The harassment does not have to be sexual in nature for it to be unlawful, but it can include remarks that are constituted as unpleasant; to include pestering based on a person's sex. Not all sexual harassment is illegal; it is only illegal when it so excessive that it creates issues that affect the workplace, or "when it results in an adverse employment decision, such as the victim being fired or demoted" (Sexual, EEOC).

Federal Law

Title VII of the Civil Rights Act of 1964, was amended to include sexual harassment in the workplace. The EEOC created guidelines in 1980 that deemed sexual harassment as a violation of Section 703 of Title VII; when the 1986 case of Meritor Savings Bank v. Vinson went to the Supreme Court, and ruled that this guideline and the EEOC were accurate in their definition. The guidelines include both quid pro quo and hostile environment, 29 C.F.R § 1604.11 (a)(1), and consider sexual harassment to be "unwelcome sexual conduct (where) submission to such conduct is made either explicitly or implicitly a term or condition of and individual's employment" (Notice, 1990). Title VII covers federal, state and local government entities, along with employers that have 15 or more employees in their organization (Facts, EEOC). The law also covers victims from retaliation from harasser. This protects victims who come forward with a grievance, so that they are not wrongfully terminated or demoted.

SEXUAL HARASSMENT TODAY

Sexual Harassment on the Rise

A poll conducted by SHRM in March of 2010, revealed that various organizations have had an increase in sexual harassment claims in a period of 24 months. These claims came from both male and female employees, neither being more prominent than the other. Of the organizations polled, 37% give yearly sexual harassment trainings at their workplace, and 8% don't give any training but plan to start soon. 25% of the organizations stated that there was a rise in sexual harassment claims being filed recently (Is Workplace, 2010).

Recent Litigation

The Federal Agency, EEOC, brought suit against Dunkin Donuts for sexual harassment in New York. The manager of a Dunkin Donuts in Wyncott, N.Y. was sexually harassing various female employees, including minors, by unwanted sexual advances and inappropriate conduct (EEOC, 2009). Once the EEOC became involved in the suit, Dunkin Donuts fired the manager responsible for the sexual harassment. On May 31, 2011, the EEOC won the case and was granted a settlement of \$290,000 to be distributed to the victims (Dunkin, 2011). The company that owns the Dunkin Donuts franchise will also "be bound by a six-year consent decree enjoining it from engaging in further discrimination or retaliation. Guidelines for the decree call for a coordinator from the EEOC to be assigned to them, as well as mandatory sexual harassment training for all employees and managers.

Sexual Harassment Charges: EEOC & FEPAs Combined: FY 2000 - FY 2010

This data from the EEOC website, and modified to show the last 10 years of sexual harassment charges filed by the Equal Employment Opportunity Commission (EEOC) and Fair Employment Practices Agency (FEPA) and solved under Title VII of the Civil Rights Act of 1964.

Sexual Harassment Charges: EEOC & FEPAs Combined: FY 2000 - FY 2010

	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Receipts	15,836	15,475	14,396	13,566	13,136	12,679	12,025	12,510	13,867	12,696	11,717
% of Charges Filed by Males	13.6%	13.7%	14.9%	14.7%	15.1%	14.3%	15.4%	16.0%	15.9%	16.0%	16.4%
Resolutions	16,726	16,383	15,792	14,534	13,786	12,859	11,936	11,592	11,731	11,948	12,772
Resolutions By Type											
Settlements	1,676	1,568	1,692	1,783	1,646	1,471	1,458	1,571	1,525	1,382	1,417
	10.0%	9.6%	10.7%	12.3%	11.9%	11.4%	12.2%	13.6%	13.0%	11.6%	11.1%
Withdrawals w/Benefits	1,389	1,454	1,235	1,300	1,138	1,146	1,175	1,177	1,183	1,285	1,195
	8.3%	8.9%	7.8%	8.9%	8.3%	8.9%	9.8%	10.2%	10.1%	10.8%	9.4%
Administrative Closures	4,632	4,306	3,957	3,600	3,256	2,808	2,838	2,804	2,618	2,835	2,907
	27.7%	26.3%	25.1%	24.8%	23.6%	21.8%	23.8%	24.2%	22.3%	23.7%	22.8%
No Reasonable Cause	7,370	7,309	7,445	6,703	6,708	6,364	5,668	5,273	5,718	5,695	6,393
	44.1%	44.6%	47.1%	46.1%	48.7%	49.5%	47.5%	45.5%	48.7%	47.7%	50.1%
Reasonable Cause	1,659	1,746	1,463	1,148	1,037	1,070	797	767	687	751	860
	9.9%	10.7%	9.3%	7.9%	7.5%	8.3%	6.7%	6.6%	5.9%	6.3%	6.7%
Successful Conciliations	524	551	455	350	311	324	253	282	234	254	308
	3.1%	3.4%	2.9%	2.4%	2.3%	2.5%	2.1%	2.4%	2.0%	2.1%	2.4%
Unsuccessful Conciliations	1,135	1,195	1,008	798	726	746	544	485	453	497	552
	6.8%	7.3%	6.4%	5.5%	5.3%	5.8%	4.6%	4.2%	3.9%	4.2%	4.3%
Merit Resolutions	4,724	4,768	4,390	4,231	3,821	3,687	3,430	3,515	3,395	3,418	3,472
	28.2%	29.1%	27.8%	29.1%	27.7%	28.7%	28.7%	30.3%	28.9%	28.6%	27.2%
Monetary Benefits (Millions)*	\$54.6	\$53.0	\$50.3	\$50.0	\$37.1	\$47.9	\$48.8	\$49.9	\$47.4	\$51.5	\$48.4

ANALYSIS AND FINDINGS

Although the number of complaints received by the EEOC in 2000 versus 2010 has dropped by 26% it should be noted that almost 12,000 complaints for sexual harassment were filed officially. That is a small percentage of actual incidents that may have taken place.

Men filed more complaints in 2010 than ever with a 3% increase seen over the 10 year period.

Resolutions were higher than the number of complaints filed in each year due to the carry over of complaints in the system from previous years. What should be of great interest is the types of resolutions and the comparison of complaints resolved and those not resolved. Resolutions were only about 10% of the total complaints filed each year over this 10-year period. The EEOC held that approximately 25-27% of all complaints held no merit and administratively closed the complaint and issued a Right to Sue letter to the complainant. What was striking was that approximately 44% of all complaints were found to have no merit in 2000 and were summarily dismissed. This percentage increased to over 50% in 2010.

Of those cases to have merit some 28% over the 10-year period went to court and resulted in approximately \$50 million being paid out in class action suits against employers.

Overall claims are still filed in the thousands and organizations are still paying millions of dollars to settle these claims.

RECOMMENDATIONS FOR MANAGERS

This research shows how significant it is for all involved in organizations to be quite knowledgeable about sexual harassment. This is especially true for managers who have 15 or more employees. Managers need to know that it is vital they train their employees about sexual harassment and their legal implications. By doing this, managers are taking moving towards preventing sexual harassment in the workplace from occurring.

It is also important for practicing managers to familiarize themselves with the law regarding sexual harassment in the workplace, not only to initially prevent, but also to stop it from happening again. Managers need to have a plan in affect if they are presented in a situation of sexual harassment, so that they take the proper steps to remedy it. Managers should make their employees feel comfortable coming to them with a grievance by ensuring them that the harassment will be punished.

CONCLUSION

Sexual harassment in the workplace is still very much in existence today more than ever. The data presented in this research paper describes the two types of sexual harassment, quid pro quo and hostile environment, as well as the legal ramifications for the accused harasser. All employees have rights, and it is important for employers to make their subordinates aware of the channels available to them in order to file a grievance against their sexual harasser. The Equal Employment Opportunity Commission (EEOC) is a federal agency that protects employees from various infractions, one of them being sexual harassment in the workplace. Since the 1980's, the EEOC has been fighting for employee rights, and after the amendment of Title VII of the Civil Rights Act of 1964, employees have even more protecting against unwanted sexual advances and lewd behaviors.

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