

The Rising Cost of Harassment

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Sexual Harassment Stats

- ▶ One in three people (31 percent) in the U.S. admitted to having experienced sexual harassment on the job. Source: [poll](#) conducted by MSN, in partnership with Business Insider.
- ▶ The Bureau of Justice Statistics [reports](#) that from 1993 to 1999, workplace rapes and sexual assaults numbered 36,500
- ▶ In FY17, the EEOC reported receiving 25,605 Charges of Discrimination alleging discrimination based on gender (including sex harassment). During FY14, the EEOC recovered \$106.5 million for individuals along with substantial changes to employer policies to remedy violations and prevent future discrimination.

Sexual Harassment Stats

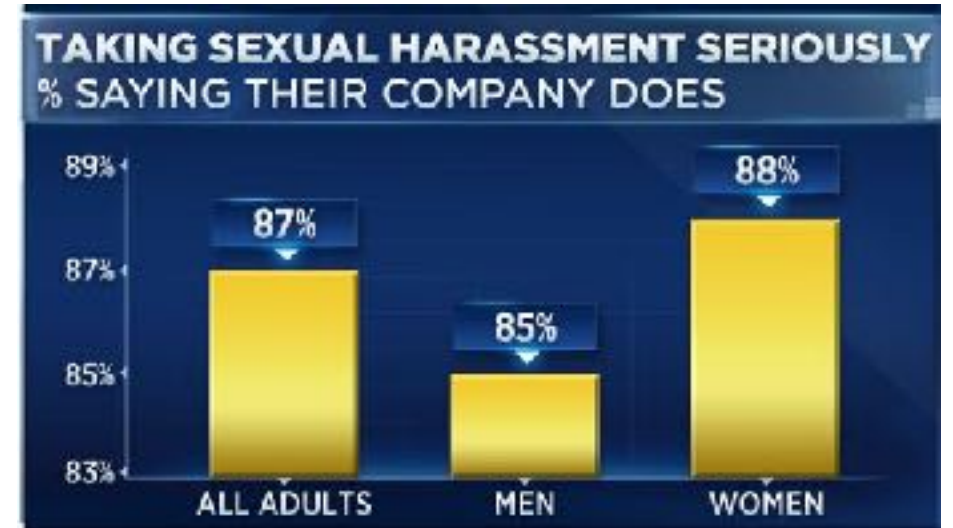
- ▶ The Society for Human Resource Management (SHRM) survey found that **11 percent** of non-management employees said they had experienced some form of sexual harassment in the **past 12 months**. Of those, **76 percent said they did not report it** for reasons that included fear of retaliation or a belief that nothing would change.
- ▶ Ninety-four percent of surveyed HR professionals told SHRM that their organizations have anti-harassment policies. Yet, 22 percent of non-management employees did not know for sure that these policies existed.

“You don’t want to have this become you or your brand” ~ Anita Hill

“...[E]mployees don’t feel that they have the power to bring allegations forward in a way that won’t harm them.” ~ Evren Esen, SHRM’s director of workforce analytics.

Sexual Harassment Stats

- ▶ A majority of Americans say management takes sexual misconduct seriously, with 74 percent of all adults saying their company takes it "very seriously" and only 5 percent saying their company does not.
- ▶ Of the women who reported being victims, 39 percent are of the baby boomer generation, 36 percent are Gen X, and 25 percent are millennials.



<https://www.cnbc.com/2017/12/19/one-fifth-of-american-adults-have-been-sexually-harassed-at-work.html>

Scenario

- ▶ Kelly is a frontline supervisor. Four years ago, she took extended leave following a severe car accident both to recover from the accident and because she began experiencing panic attacks in confined spaces. Keith was hired six months ago as the manager over Kelly's department. Kelly shared with her co-worker Susan last week that Keith has been sending her highly suggestive messages on Facebook messenger late at night and on weekends and he intentionally brushes up against her in the elevators and around the office. Kelly and Keith were assigned to work together in the County EOC during Hurricane Florence and Kelly called out sick each day she was assigned. Susan told two co-workers at lunch that she thinks Kelly called out because she doesn't want to be in the EOC with Keith.
- ▶ What are the potential costs?



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Potential Costs

- ▶ Charge/Litigation Costs: During FY14, the EEOC recovered \$106.5 million for individuals along with substantial changes to employer policies to remedy violations and prevent future discrimination.
- ▶ In a 1994 [study](#), the cost of sexual harassment in the federal government was estimated to be \$327 million, which includes the expense of job turnover (\$24.7 million), workers taking sick leave because of harassment (\$14.9 million), and diminished productivity (\$287.5 million). Source: <https://www.ineteconomics.org/research/research-papers/metoo-the-economic-cost-of-sexual-harassment>



Potential Costs

- ▶ Overall, 80 percent of women who experienced severe sexual harassment left their jobs within two years. Source: <https://www.ineteconomics.org/research/research-papers/metoo-the-economic-cost-of-sexual-harassment>
- ▶ Sociologists researching the economic impact of harassment in the workplace found that targets of harassment exhibit an increased willingness to accept negative economic consequences (e.g. unemployment, diminished hours, etc). They found that overall impact is on par with that of serious injury or illness, incarceration or assault. Source: <http://journals.sagepub.com/doi/full/10.1177/0891243217704631>



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What is Harassment?

- ▶ Protected Classes

- ▶ Race
- ▶ Color
- ▶ National Origin
- ▶ Religion
- ▶ Gender (Sex)
- ▶ Disability
- ▶ Age
- ▶ Participation in protected activity

- ▶ *NOTE: Unlawful harassment can occur even if both parties are members of the same protected class.*



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Unlawful Harassment

To be unlawful, conduct must be **UNWELCOME** and :

- ▶ Submission to the conduct is made a term or condition of employment; or
- ▶ Submission to or rejection of conduct is used as the basis for employment; or
- ▶ Conduct has the purpose or effect of interfering with an individual's performance or creates an intimidating, offensive, or hostile work environment.

Tangible Employment Actions

- ▶ Harassment that results in change in the individual's employment status.
- ▶ Only individuals designated to perform supervisory functions can commit this type of harassment. However...Boyer-Liberto v. Fontainebleau Corp. (4th Circuit 2015).
- ▶ An agency is **AUTOMATICALLY LIABLE** for this type of harassment regardless of actual knowledge.

Is it unwelcome?

Treat any conduct that would be a violation of law if unwelcome, as a violation of policy. This is the zero tolerance approach.



But what if he/she wanted it?!

- ▶ Meritor Savings Bank vs. Vinson (1986)
- ▶ Voluntary may not mean welcome.
- ▶ Do you really want to subject yourself to the scrutiny?
- ▶ **JUST SAY NO!**

Common Sense Test

- ▶ Would I be comfortable saying or doing this in front of my significant other, children, or parents?
- ▶ Would I be comfortable having my actions discussed in the news?
- ▶ Remember, intent does not matter. It is about the perception of the individual and reasonableness.

Employer Liability

- ▶ When sexual harassment by a supervisor results in tangible employment action against an employee, employer is automatically liable.
- ▶ If no tangible action is taken, an affirmative defense is available **if** the employer exercised reasonable care to prevent and correct promptly any harassing behavior,
AND
The employees unreasonably failed to take preventive or corrective opportunities provided by the employer.

Liability for Hostile Work Environment

- ▶ The agency is liable if it knew or should have known of the harassment and failed to take immediate and appropriate corrective action.
- ▶ This applies whether the harasser is a co-worker or non-employee.
- ▶ For non-employees consideration is given to the extent of the agency's control over the non-employee. An agency may not be able to control the actions of a one-time visitor to the workplace.

Beyond the News

Acts that don't constitute harassment may still require management intervention and/or disciplinary action. Discrimination laws are not a "General Civility Code", however, some level of civility in the workplace is obvious desirable.



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Promising Practices

The EEOC created a Select Task Force on the Study of Harassment in the Workplace and identified five core principles that have generally proven effective in preventing and addressing harassment:

Promising Practices, cont.

1. Committed and engaged leadership;
2. Consistent and demonstrated accountability;
3. Strong and comprehensive harassment policies;
4. Trusted and accessible complaint procedures;
and
5. Regular, interactive training tailored to the audience and the organization.

Questions?

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