

# *Sexual Harassment in the Workplace*

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Prepared for the  
Association of Women in Computing  
Florida Institute of Technology

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# *The Problem Starts Early*

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- American Association of University Women conducted two studies of students in grades 8-11:
  - *Hostile Hallways: The AAUW Survey on Sexual Harassment in America's Schools (1993)*
  - *Hostile Hallways: Bullying, Teasing & Sexual Harassment in School (2001)*
- *Over half of students surveyed admitted to engaging in sexual harassment*
- *Over 80% had at some point been sexually harassed: 24% of boys and 30% of girls reported being harassed frequently.*
- *From 1993 to 2001, large difference in school administration stance—69% of students reported that their schools had a sexual harassment policy (compare to 26% in 1993) but no evidence of a drop in the amount of harassment at school.*

## *The Problem Starts Early*

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“Incidents of sexual harassment reveal as much about power and authority as they do about sexuality; the person being harassed usually is less powerful than the person doing the harassing. Sexual harassment is prohibited under Title IX [U.S. Federal law], yet sex-biased peer interactions appear to be permitted in schools, if not always approved. Rather than viewing sexual harassment as serious misconduct, school authorities too often treat it as a joke.

“When boys line up to 'rate' girls as they enter a room, when boys treat girls so badly that they are reluctant to enroll in courses where they may be the only female, when boys feel it is good fun to embarrass girls to the point of tears, it is no joke. Yet these types of behaviors are often viewed by school personnel as harmless instances of 'boys being boys.'”

*AAUW, How Schools Shortchange Girls (1992, p. 128).*

- *According to the Hostile Hallways studies, very few students report instances of sexual harassment.*

# *What is Sexual Harassment?*

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- AAUW survey definition:

*“Sexual harassment is unwanted and unwelcome sexual behavior that interferes with your life. Sexual harassment is not behaviors that you like or want (for example, wanted kissing, touching or flirting).”*

- *American Heritage Dictionary (2000)*

*“The making of unwanted and offensive sexual advances or of sexually offensive remarks or acts, especially by one in a superior or supervisory position or when acquiescence to such behavior is a condition of continued employment, promotion, or satisfactory evaluation.”*

- *U.S. Merit Systems Protection Board, Sexual Harassment in the Federal Workplace: Trends, Progress, Continuing Challenges (1995).*

*“This report uses the term “sexual harassment” to characterize uninvited and unwelcome sexual attention and/or behavior reported by Federal employees, and that not all the conduct referred to as sexual harassment in the report would necessarily meet the more narrow legal definition of that term as established by legal opinions of the courts and the Board in the course of the past decade.”*

# *What is Sexual Harassment?*

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- Black's Law Dictionary

*“Harassment:* Words, conduct or action (usually repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose. Harassment is actionable in some circumstances, as when a creditor uses threatening or abusive tactics to collect a debt.”

*“Sexual harassment:* A type of employment discrimination consistent in verbal or physical abuse of a sexual nature.

- *“Hostile-environment sexual harassment. Sexual harassment in which a work environment is created where an employee is subject to unwelcome verbal or physical sexual behavior that is either severe or pervasive. This type of harassment might occur, for example, if a group of coworkers repeatedly e-mailed pornographic pictures to a colleague who found the pictures offensive.*
- *“Quid pro quo sexual harassment. Sexual harassment in which the satisfaction of a sexual demand is used as the basis of an employment decision. This type of harassment might occur, for example, if a boss fired or demoted an employee who refused to go on a date with the boss.”*

# Merit Systems Protection Board Data

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Table 4  
Forms of Sexual Harassment

*Percentage of respondents who experienced the indi-  
cated behaviors during the preceding 2 years*

	Men	Women
Sexual remarks, jokes, teasing	14	37
Sexual looks, gestures	9	29
Deliberate touching, cornering	8	24
Pressure for dates	4	13
Suggestive letters, calls, materials	4	10
Stalking	2	7
Pressure for sexual favors	2	7
Actual/attempted rape, assault	2	4

From the  
Merit  
Systems  
Protection  
Board study

# *Is THIS Harassment? Different Views*

Table 1  
Is It Sexual Harassment?\*

Type of Uninvited Behavior by a Supervisor	Percentage of Women Who Consider It Harassment		
	1980	1987	1994
Pressure for sexual favors	91	99	99
Deliberate touching, cornering	91	95	98
Suggestive letters, calls, materials	93	90	94
Pressure for dates	77	87	91
Suggestive looks, gestures	72	81	91
Sexual teasing, jokes, remarks	62	72	83

	Percentage of Men Who Consider It Harassment		
	1980	1987	1994
Pressure for sexual favors	84	95	97
Deliberate touching, cornering	83	89	93
Suggestive letters, calls, materials	87	76	87
Pressure for dates	76	81	86
Suggestive looks, gestures	59	68	76
Sexual teasing, jokes, remarks	53	58	73

Type of Uninvited Behavior by a Coworker	Percentage of Women Who Consider It Harassment		
	1980	1987	1994
Pressure for sexual favors	81	98	98
Deliberate touching, cornering	84	92	96
Letters, calls, other materials	87	84	92
Pressure for dates	65	76	85
Suggestive looks, gestures	64	76	88
Sexual teasing, jokes, remarks	54	64	77

	Percentage of Men Who Consider It Harassment		
	1980	1987	1994
Pressure for sexual favors	65	90	93
Deliberate touching, cornering	69	82	89
Letters, calls, other materials	76	67	81
Pressure for dates	59	66	76
Suggestive looks, gestures	47	60	70
Sexual teasing, jokes, remarks	42	47	64

\* Based on the percentage of respondents who indicated that they "definitely" or "probably" would consider the identified behavior sexual harassment.

From the Merit  
Systems  
Protection Board  
study

# *Gender Difference in Perception of Seriousness*

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**Table 2**

1994 Survey Item: *“Too much attention has been paid to the issue of sexual harassment in the past several years.”*

<b>Response</b>	<b>Men</b>	<b>Women</b>
Agree	32	17
Disagree	43	64
Neither agree nor disagree	23	16
Don't know/can't judge	3	3

*Note: Percentages have been rounded*

From the Merit Systems Protection Board study

# *Harassment is a Significant Problem*

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- Schoolgirls tended not to report cases of harassment, but about 25% of them reported consequences of harassment, such as avoiding certain classes, skipping days of school, etc.
- The U.S. Federal government study (Merit Systems Protection Board, 1995), reported that “in **1994, 44 percent of women and 19 percent of men** responding to our survey reported that they had experienced some form of unwanted sexual attention during the preceding 2 years--rates similar to 1987’s 42 percent and 14 percent.” Of these, only 6% took formal action in response to the harassment.

## *Costs of Harassment (MSPB data)*

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**Total Cost.** Our estimate of the cost of sexual harassment to the Government over the 2-year period for which victims were reporting may be summarized as follows:

Job turnover	\$ 24.7 million
Sick leave	14.9 million
Individual productivity	93.7 million
Workgroup productivity	193.8 million
<b>Total</b>	<b>\$327.1 million</b>

# *Costs of Harassment (MSPB data)*

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## What Is Sexual Harassment's Impact on Victims?

*Percentage of respondents who experienced sexual harassment and took or experienced the indicated action, 1987 and 1994*

	1987	1994
Used sick leave	13	8
Used annual leave	12	8
Took leave without pay	2	1
Received medical and/or emotional help	2	3
Would have found medical or emotional help beneficial	12	7
Were reassigned or fired	2	2
Transferred to a new job	5	2
Quit without a new job	0.6	0.1
Suffered a decline in productivity	14	21

# *Complaining Helps, Sometimes*

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From the Merit Systems Protection Board study

## MSPB 1994 Sexual Harassment Survey

*Percentage of victims who said that the indicated formal action made things better, made things worse, or made no difference*

<b>Action</b>	<b>Made Things Better</b>	<b>Made Things Worse</b>	<b>Made No Difference</b>
Requesting an investigation by an outside organization	61	32	7
Requesting an investigation by employing organization	47	19	35
Filing a grievance or adverse action appeal	32	47	21
Filing a discrimination complaint or lawsuit	21	37	42
Other	61	24	16

# *Effects of Informal Actions (MSPB Data)*

Table 9  
How Well Did the Informal Actions Work?

*Percentage of victims who said in 1994 that the indicated action made things better, made things worse, or made no difference*

	Better		Worse		No Difference	
	Men	Women	Men	Women	Men	Women
Asking or telling the person to stop	61	60	15	8	25	32
Reporting the behavior to a supervisor or other official	33	58	16	13	52	29
Avoiding the person	52	44	13	8	36	48
Threatening to tell or telling others	55	37	0	14	46	49
Making a joke of the behavior	29	29	3	16	68	55
Ignoring the behavior or doing nothing	32	17	6	10	62	73
Going along with the behavior	18	7	17	37	65	57

*Note: Respondents could choose more than one action.*

# *Interesting Demographics in MSPB Study*

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## Typical Victims of Harassing Behaviors

### Men

- professional/administrator/manager
- college educated
- over 35
- GS-11 and above

### Women

- professional/administrator/manager/clerk
- college educated
- over 35
- GS-5 through GS-12

A higher percentage of younger workers were harassed, but because most federal employees are over 35, that group dominated the statistics.

Look, though, at the other differences between harassed men and women. Harassed men are more likely to be supervisors or professionals.

# *Employer Liability for Harassment*

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- Standards vary across the United States, because harassment is covered both by Federal and State law.
- The Federal standard derives mainly from Title VII of the Civil Rights Act, which forbids  
    "discriminat[ion] against any individual with respect to his . . . terms [or] conditions . . . of employment, because of . . . sex."
  - Actions of the employer that are based on the sex of the employee and that negatively affect the terms or conditions of the employment relationship are actionable.
  - Issues that lawyers have arguments about:
    - “**Actions of the employer?**” Under what circumstances will we hold the employer accountable for actions by an employee?
      - What if the employer has a specific policy that bans the harassing employee's conduct? Should we still hold the employer accountable?

# *Employer Liability for Harassment*

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Actions of the employer that are based on the sex of the employee and that negatively affect the terms or conditions of the employment relationship are actionable.

- Issues that lawyers have arguments about:
  - **“Based on the sex of the employee?”** What about harassment of men or between people of the same sex? Is this actionable?
  - **“Negatively affect the terms or conditions of the employment relationship?”**
    - What actually affects those terms or conditions?
    - How much of a change is enough (or too little)?
    - Because different people have different perceptions of the severity of harassing behaviors, whose perception governs? Do we look at this from the viewpoint of the employee, the employer, a reasonable person, a reasonable woman (or man if the victim is male) in the position of the victim, or someone else?
    - Could the harassed employee have taken steps to reduce the effect? Should s/he have to?

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Actions of the employer that are based on the sex of the employee and that negatively affect the terms or conditions of the employment relationship are actionable.

- Issues that lawyers have arguments about:
  - **“Negatively affect the terms or conditions of the employment relationship?”**
    - If the employee quits because of harassment, under what circumstances can s/he claim that she was “constructively discharged?”
    - If the employee quits without going through the company's internal complaint process, can s/he still claim that s/he was constructively discharged?

# *The Basic Rules*

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- The employer will almost always be responsible for *quid pro quo* harassment.
- *The employer will almost always be responsible for harassment that results in a tangible impact on the employee's job, such as reassignment to a lower rank or firing.*
- *If the employee voluntarily selects a reassignment or quits, without filing a complaint with the employer (and if the employer has a clear anti-harassment policy and a reasonable and trustworthy complaint procedure), the employee is much less likely to recover damages.*
- *To be actionable in court, harassment has to be harassment. It is not actionable for a supervisor to ask a supervisee for a date, once, even if the supervisee doesn't want to go out with the supervisor. It is not harassment to tell the occasional offensive joke. The harassment has to poison the atmosphere, making a reasonable person in the position of the harassed employee feel unwelcome or uneasy. However, an employee who is in a hostile environment does not have to put up with it even if no one is demanding sex with her or threatening her with transfer or other loss of privileges.*

# *So, if You are Harassed, What Should You Do?*

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- Treat this with caution, but deal with it.
- If you know and trust one of the company's managers, talk with her first before filing a formal complaint or taking other actions. Learn more about your corporate culture, and the specific attitudes (and history) of the more senior executives, with respect to sexual harassment.
- Find witnesses to the harassment. This may involve letting someone listen in on a phone conversation (*beware of taping phone calls without permission, you can get in a lot of trouble*) or *bringing another employee to a meeting, or copying some memos, or photographing your work area.*
- *Talk with an employment lawyer before quitting.*

# *Key References*

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- **Start at this website from University of North Carolina,**

<http://library.uncg.edu/depts/docs/us/harass.html>

***The key federal court cases are linked to and summarized here, along with the California case that established the “reasonable woman standard” and links to key studies and regulations.***

- The U.S. Supreme Court cases, [Burlington Industries v. Ellerth](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=97-569) (1998, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=97-569>) and [Faragher v. City of Boca Raton, Florida](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=97-282) (1998, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=97-282>) discuss the employer-employee “agency” relationship and conclude that the employee can prevail even when there was no quid pro quo, and no tangible employment impact. The cases also lay out defenses for the employer who has set up a reasonable policy and complaints procedure.
- ***The Merit Systems Protection Board study is at***  
<http://www.mspb.gov/studies/sexhar.pdf>.
- ***The Equal Employment Opportunity Commission publishes the key federal regulations and legal guidance on sexual harassment. See***  
<http://www.eeoc.gov/docs/harassment.html>

# Key References

- **The American Association of University Women publishes reasonably priced books that describe their research and recommendations. The Hostile Hallways studies are two examples. For more information, go to <http://www.aauw.org>. Contact the Melbourne AAUW at**

- **Second Largest Membership Increase (6.6%) for Branches Over 200 Member**  
*1997-98 State Membership Competition*

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- [Melbourne and Palm Bay](#)