

Woska Associates
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Sexual Harassment – Complaints Against Women

Abstract

It has been 20 years since the United States Supreme Court first addressed the issue of sexual harassment. Although sexual harassment is generally perceived as women filing complaints against men, this view is gradually changing. During the last ten years the number of sexual harassment complaints filed by men with the Equal Employment Opportunity Commission has increased by more than 50 percent.¹ Many of these charges are filed by males against other males. Nevertheless, as an increasing number of women move into positions of authority, the trend is clear that the number of complaints filed by men against women will increase.

Background

It has been 20 years since the United States Supreme Court first addressed the issue of sexual harassment.² In *Meritor Savings Bank v. Vinson*, the issue was whether a claim of hostile work environment sexual harassment is a form of sex discrimination that is actionable under Title VII the Civil Rights Act of 1964.³ The Court's affirmative ruling established the working definition of sexual harassment and the kinds of workplace conduct that may be actionable under Title VII. The case also reaffirmed previous rulings by other courts that there are two types of sexual harassment – quid pro quo and hostile work environment.⁴

The Court subsequently released several opinions since *Meritor* clarifying sexual harassment issues. In 1993 the Court ruled that a discriminatorily abusive work environment is unlawful even if it does not affect an employee's psychological well-being.⁵ In 1998 the Supreme Court released three decisions. It held that men as well as women can bring sexual harassment claims and that Title VII applies to "same-sex" harassment.⁶ The Court also created a new rule for employer liability when a supervisor creates a hostile work environment for a subordinate. Under this rule, an employer is liable when a supervisor who has immediate authority over an employee has created a hostile environment resulting in a tangible employment action, or a denial of a promotion.⁷ Additionally, the employer is liable for a hostile environment created by a supervisor when no tangible employment action has occurred, unless (1) the employer

has taken reasonable care to prevent and correct sexual harassment, and (2) the employee unreasonably has failed to avoid harm.⁸

A Source of Power

Sexual harassment is a legal term created for the purpose of ending harassment and discrimination against women in the workplace. Although the term is constantly being redefined and extended in legislation and court decisions, the basic definition comes from the Equal Employment Opportunity Commission (EEOC) Guidelines on sexual harassment:

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”⁹

The courts have given deference to the EEOC Guidelines on sexual harassment, interpreting Title VII’s ban on sex discrimination, and sanctioning those guidelines so long as they are reasonable.¹⁰ The Guidelines established criteria for determining “unwelcome sexual contact,” whether verbal or physical, that constitutes sexual harassment and defined the circumstances under which an employer is liable for such conduct. The Guidelines further explain how “prevention” is the best means of eliminating sexual harassment and suggests affirmative steps an employer should take to prevent the occurrence of unlawful sexual harassment.

Sexual harassment may occur at all levels within an organization in relationships categorized as male-to-female, male-to-male, female-to-male, and female-to-female. Harassment often occurs because the harasser is in a position of leadership or authority that provides the necessary power to facilitate the harassing behavior.¹¹ This type of harassment is considered quid pro quo sexual harassment. Heather Hemming defined the power approach to sexual harassment as “a product of power differences between men and women in society and the workplace.”¹²

Since the workplace is dominated by men in positions of authority, combined sexual harassment charges filed with the EEOC and state Fair Employment Practice Agencies (FEPAs) confirm that a large percentage of the complaints are predominately female against male. During the 2004 fiscal year 84.9% of sexual harassment complaints filed with EEOC were by women.¹³ However, the number of complaints filed by men has increased by more than 50% during the last ten years as reported below:

**Sexual Harassment Charges
EEOC & FEPAs Combined: FY 1995 - 2004¹⁴**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Charges (total)	15,549	15,342	15,889	15,618	15,222	15,836	15,475	14,396	13,566	13,136
Filed - males ¹⁵	1,539	1,534	1,843	2,015	1,842	2,154	2,120	2,145	1,994	1,984
% filed - males	9.9%	10.0%	11.6%	12.9%	12.1%	13.6%	13.7%	14.9%	14.7%	15.1%

A number of the sexual harassment claims filed by men may involve male-on-male harassment. Nevertheless, the significant increase in claims filed by men may have a direct correlation to an increasing number of women in positions of authority in the workforce.

Women in Positions of Authority

Education is a major factor in preparing women for managerial positions in the workforce. Women now earn the majority of diplomas in fields men used to dominate, from biology to business. Women account for about half the enrollment in professional programs such as law, medicine, and optometry. This is an increase from 22 percent in the past generation. In business women earn slightly more than half of all bachelor degrees, an increase from 33 percent in 1980.¹⁶

There has been a significant increase in the number of women in the work force during the last 30 years. In 1970 approximately 43 percent of women age 16 and older were in the labor force. By 2004 the number of women in the work force increased to 59 percent.¹⁷ Women also made substantial gains into professional and managerial positions. In 2004 half of all management, professional, and related occupations were held by women.¹⁸ Women comprise 50 percent of the managers in business.¹⁹ The number of women-owned businesses grew 20 percent between 1997 and 2002, twice the national average.²⁰

Even with Carly Fiorina's departure as the Chief Executive Officer (CEO) at Hewlett-Packard, there were more women CEOs running Fortune 500 companies in 2005 than there were in 2004. With the appointment of Indra Nooyi as the CEO of PepsiCo, there are now ten Fortune 500 companies run by women, and a total of 20 Fortune 1000 companies with women in the top job.²¹ The percentage of female corporate officers has risen about one percent a year since 1995. In 2002 15.7 percent of corporate officers in Fortune 500 companies were women as compared to 12.5 percent in 2000, and 8.7 percent in 1995. Among the five highest-paid corporate officers at each Fortune 500 company, 5.2 percent were women in 2002, up from 1.2% in 1995.²²

The emerging change in the number of women in positions of authority very likely will be linked in future studies and surveys to the noticeable increase in the number of sexual harassment complaints filed by men with the EEOC. It should be noted that there is also an increasing number of lawsuits filed by men claiming that they were sexually harassed or discriminated against by women. Litigation included sexual harassment by female co-workers in addition to females in positions of authority.²³ Several cases are notable. A male employee who was terminated subsequently received a \$70,000 award for quid pro quo sexual harassment by his female supervisor.²⁴ In a sex discrimination case a jury returned a verdict of \$210,000 in compensatory damages and \$400,000 in punitive damages when a male employee was terminated by a management committee consisting of only women. In another case a jury decided that the plaintiff's gender, a male, was a motivating factor in the defendant's decision to fire him.²⁵

The Future – More Claims Against Women

Women are graduating in greater numbers from business, law, and other professional schools than ever before and entering the workforce.²⁶ More women in corporate America are becoming managers, executives, and corporate officers. As women move into positions of influence and power, the trend established during the last ten years is that there will be an increasing number of charges of sexual harassment, and lawsuits, filed as a result of female on male harassment. Sexual harassment is about power.²⁷ The balancing of power between men and women, during the next decade or longer, may establish the myth that sexual harassment is a problem resulting from men in the workforce.

¹ "Sexual Harassment Charges Filed With the EEOC, 2005," United States Equal Employment Opportunity Commission.

² *Meritor Savings Bank v. Vinson*, 106 S. Ct. 2399 (1986).

³ 42 U.S.C. Sect. 2000e *et seq.*

⁴ *Williams v. Saxbe*, 413 F. Supp. 654 (1976); *Bundy v. Jackson*, 641 F.2d 934 (1981).

⁵ *Harris v. Forklift Systems*, 114 S. Ct. 367 (1993).

⁶ *Onacle v. Sundowner Offshore Services, Inc.*, 118 S. Ct. 998 (1998).

⁷ *Burlington Industry v. Ellerth*, 118 S. Ct. 2257 (1998).

⁸ *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998).

⁹ 29 CFR 1604.11 (a).

¹⁰ *Griggs v. Duke Power Co.*, 91 S. Ct. 849 (1971); *Albemarle Paper Co. v. Moody*, 95 S. Ct., 2362 (1975).

¹¹ "Leadership, Power and Sexual Harassment: An Ethical Perspective," *Leadership Review*, Claremont McKenna College, Fall 2003.

¹² Hemming, Heather. "Women in A Man's World: Sexual Harassment," *Human Relations*, vol. 38 (1), 67-79, (1985).

¹³ "Sexual Harassment Charges Filed with the EEOC, 2005," United States Equal Employment Opportunity Commission.

¹⁴ *Id.*

¹⁵ EEOC reports total charges and percentage filed by males. Number of male charges factor of multiplication.

¹⁶ U.S. Department of Education, National Center for Education Statistics (2006), “The Condition of Education 2006.”

¹⁷ “Women in the Labor Force: A Databook,” U.S. Department of Labor, May 2005.

¹⁸ *Id*

¹⁹ “2002 Catalyst Census of Corporate Officers and Top Earners,” Catalyst (2002).

²⁰ U.S. Census Bureau, January 26, 2006.

²¹ Fortune 500, April 18, 2005.

²² “2002 Catalyst Census of Corporate Officers and Top Earners,” Catalyst (2002)

²³ *Richards v. Stolzenberg*, 640 N.Y.S. 2d 352 (A.D., 1996); *Fantazzi v. Temple University Hospital*, No. 00-CV-4175, 2003 U.S. Dist. LEXIS 7693.

²⁴ *Dornfeld v. Omega Optical Co.*, No. 96-4064 , 1998 U.S. Dist. LEXIS 1081.

²⁵ *Carey v. Mt. Desert Island Hospital, ET AL*, No. 95-0157, 1997 U.S. Dist. LEXIS 5755.

²⁶ “2004 American Community Survey,” U.S. Census Bureau.

²⁷ Hemming, *supra*.