

Sexual Harassment in Federal Workplaces:

Understanding and Addressing the Problem



A Report to the President and the Congress of the United States
by the U.S. Merit Systems Protection Board
December 2022

THE CHAIRMAN



U.S. MERIT SYSTEMS PROTECTION BOARD
1615 M Street, NW
Washington, DC 20419-0001

December 19, 2022

The President
President of the Senate
Speaker of the House of Representatives

Dear Sir and Mesdames:

In accordance with the requirements of 5 U.S.C. § 1204(a)(3), it is my honor to submit this U.S. Merit Systems Protection Board (MSPB) report, *Sexual Harassment in Federal Workplaces: Understanding and Addressing the Problem*. We are submitting this report electronically, with paper copies to follow.

Since 1981, MSPB has periodically evaluated the prevalence of sexual harassment in Federal workplaces and Federal agency efforts to prevent and respond to such harassment. This report, the fourth MSPB report on sexual harassment, is based on research that was underway when a quorum was lost on January 7, 2017. As a result, when the report was completed, it could not be released. With a quorum recently restored, we are now releasing the entire report because the findings and recommendations remain relevant given that eradicating sexual harassment from all Federal workplaces will take time and persistence.

To support MSPB's long-term perspective on sexual harassment, items regarding this topic appeared on the 2016 Merit Principles Survey, as well as on the 2021 Merit Principles Survey, which will be summarized in a separate publication. Results indicate that Federal employees are less likely to experience sexual harassment, compared to twenty years ago. Yet approximately 21% of women and almost 9% of men responding to the MPS had experienced one or more forms of sexual harassment during the preceding two years, with rates varying by agency. Also, many employees who experience harassment take no action—such as telling the harasser to stop or filing a formal complaint—believing that an action might be futile or even worsen the situation. Clearly, Federal agencies should do more to prevent sexual harassment and respond promptly and appropriately should it occur. Therefore, in addition to summarizing findings, this report provides practical recommendations that agencies can implement to address both prevention and response.

Sexual harassment is both illegal and contrary to the Federal Government's fundamental values, which include the merit system principles of treating all employees fairly and maintaining high standards of conduct and integrity. Actions to eradicate sexual harassment would foster a better work environment for all employees and help agencies better serve the American public.

I believe you will find this report useful as you consider issues affecting the Federal workforce.

Respectfully,

A handwritten signature in black ink, appearing to read "Cathy Harris", with a long horizontal flourish extending to the right.

Cathy Harris

Enclosure

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Executive Summary

As the guardian of Federal Government merit systems, the U.S. Merit Systems Protection Board (MSPB) has conducted several studies since 1980 regarding the prevalence of sexual harassment in Federal workplaces.¹ This study, the fourth, is based on MSPB’s 2016 Merit Principles Survey (MPS 2016), a review of statute and case law, a review of Equal Employment Opportunity (EEO) complaint processing statistics, and information provided by Federal agencies and EEO officials about policies, practices, and issues related to sexual harassment. Although this research commenced prior to the MPS 2016 being administered, MSPB was unable to release this report during the time period that the agency lacked a quorum (January 7, 2017 through March 3, 2022).² With a quorum re-established, the Board can recommence the statutory missions for which a quorum is required, such as issuing final decisions on petitions for review and releasing reports to the President and the Congress of the United States.³ Although there have been many changes in Federal workplaces in recent years, due in large part to the impact of the pandemic on increased teleworking, as well as greater awareness regarding sexual harassment, this report remains timely given that sexual harassment remains an ongoing challenge for many Federal employees.

Additionally, MSPB has continued research on this topic given the ongoing concern regarding preventing and addressing sexual harassment. For example, MSPB included items related to sexual harassment on the 2021 Merit Principles Survey (MPS 2021). These results are being summarized in an upcoming publication and will facilitate greater understanding regarding the current state of sexual harassment in Federal workplaces.

Sexual harassment is unlawful because it is a form of sex-based discrimination that violates Title VII of the Civil Rights Act of 1964. Sexual harassment is also contrary to the Federal merit system principles (MSPs)⁴ and constitutes a prohibited personnel practice (PPP).⁵ To uphold the expectations of the MSPs, Federal employees—at all levels—must treat each other fairly and conduct themselves with integrity. Failure to do so jeopardizes the health and wellbeing of the workforce and undermines mission accomplishment. For example, employees who either experience or observe sexual harassment witness its negative impact on productivity and work satisfaction. They may use annual leave or sick leave, either to avoid their harasser or to address illness resulting from the stress of being harassed. Ultimately, they may choose to leave or may be involuntarily reassigned or relocated. These negative outcomes represent avoidable threats to the efficiency and effectiveness of the Federal Government.

Regulations governing the Federal workforce (29 C.F.R. §1604.11) characterize sexual harassment as “[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.” Such actions can create “an intimidating, hostile or offensive work environment” or coerce the target⁶ to comply with the harasser’s demands to engage in sexual activities.⁷ Whether the harassment is legally actionable depends on whether it meets certain criteria, such as severity or pervasiveness, and on the roles of those involved and the specific circumstances. However, any instance of harassment is inconsistent with fair treatment of employees, or a professional and productive workplace. Accordingly, the U.S. Equal Employment Opportunity Commission (EEOC) advocates that employers look beyond the narrow legal definition of sexual harassment when addressing

¹ The citations for these earlier reports are: U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Workplace: Is It a Problem?*, March 1981. U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Government: An Update*, June 1988. U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Workplace: Trends, Progress, Continuing Challenges*, October 1995. These previous reports can be found at <https://www.mspb.gov/studies/viewallstudies.htm>.

² U.S. Merit Systems Protection Board, *Frequently Asked Questions about the Lack of Board Quorum and Lack of Board Members*, https://www.mspb.gov/FAQs_Absence_of_Board_Quorum_March_4_2022.pdf.

³ U.S. Merit Systems Protection Board, *MSPB Welcomes Vice Chair Raymond Limon and Member Tristan Leavitt*, Press Release, March 4, 2022, https://www.mspb.gov/publicaffairs/press_releases/Restoration_of_the_Quorum_Press_Release_1904722.pdf.

⁴ 5 U.S. Code §2301(b).

⁵ 5 U.S. Code §2302(b).

⁶ The term “target” is used throughout this report rather than “victim” because the latter implies that the person has been harmed, while modern conceptualizations of sexual harassment do not require proof of physical or psychological harm to substantiate that harassment occurred.

⁷ Exchanging sexual favors for preferential treatment (or to avoid negative consequences) is also known as “quid pro quo,” which is translated from Latin as “something for something,” per Merriam-Webster online dictionary, <https://www.merriam-webster.com/dictionary/quid%20pro%20quo>, retrieved on November 15, 2018.

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harassment in the workplace⁸ stating that harassment “does not have to be of a sexual nature...and can include offensive remarks about a person’s sex.”⁹ In other words, legally prohibited discrimination related to a person’s sex or gender may include harassment of a sexual nature (sexual harassment), as well as harassment of a nonsexual nature that is based on the target’s sex (sex-based or gender-based discrimination).¹⁰

Adopting this broader view, contemporary research has identified three dimensions of sexual harassment:^{11,12}

1. Sexual Coercion: Pressure or force to engage in sexual behavior;
2. Unwanted Sexual Attention: Unwelcome behaviors of a sexual nature that are directed toward a person; and
3. Gender Harassment: Unwelcome behaviors that disparage or objectify others based on their sex or gender.

Findings

Understanding of Sexual Harassment

Federal employees are increasingly likely to correctly identify behaviors that might be considered sexual harassment in the workplace. Further, opinions of men and women about behaviors that may be sexual harassment have converged, primarily because men are now more likely to agree that a behavior is or may be viewed as sexual harassment. Consequently, there is less room for misunderstanding and less opportunity for employees to inadvertently engage in behaviors that others interpret as sexual harassment.

Federal employees are most likely to recognize the following behaviors as sexual harassment: pressure for sexual favors or dates, offers of preferential treatment for sexual favors, and unwelcome sexual teasing, jokes, comments or questions or other communications of a sexual nature, as well as stalking and sexual assault. That recognition may reflect familiarity with high-profile litigation involving these blatant forms of sexual harassment. However, employees increasingly realize that other behaviors (e.g., exposing others in the workplace to sexually-oriented talk or material or disparaging others based on their sex) may also constitute sexual harassment.

Prevalence of Sexual Harassment

Based on the MPS 2016, approximately 14% of Federal employees experienced one or more sexual harassment behaviors during the preceding two years.¹³ The most frequently experienced behaviors were:

1. Exposure to sexually oriented conversations (7.3%);
2. Unwelcome invasion of personal space (7.2%);
3. Unwelcome sexual teasing, jokes, comments or questions (5.9%);
4. Derogatory or unprofessional terms related to sex or gender (5.0%); and
5. Unwelcome sexually suggestive looks or gestures (4.6%)

⁸ U.S. Equal Employment Opportunity Commission, *Select Task Force on the Study of Harassment in the Workplace*, June 2016, p. 11.

⁹ U.S. Equal Employment Opportunity Commission, Sexual Harassment. Retrieved from https://www.eeoc.gov/laws/types/sexual_harassment.cfm on September 6, 2018.

¹⁰ Because both forms of harassment are harmful, this report uses the more inclusive definition of sexual harassment that encompasses both sexual and nonsexual forms. However, sexual and nonsexual harassment are distinct for several equal employment opportunity (EEO) purposes, such as adjudicating cases, conducting barrier analyses, and official (Form 462) reporting.

¹¹ Gelfand, M.J., Fitzgerald, L.F., & Drasgow, F. (1995). The structure of sexual harassment: a confirmatory analysis across cultures and settings. *Journal of Vocational Behavior*, 47, 164-177.

¹² Fitzgerald, L.F., Gelfand, M.J., & Drasgow, F. (1995). Measuring sexual harassment: theoretical and psychometric advances. *Basic and Applied Social Psychology*, 17(4), 425-445.

¹³ For brevity, we characterize employees who responded that they experienced any of the listed behaviors as having “experienced harassment.” We note that survey data reflect employees’ perceptions of their experiences which may or may not meet the legal criteria for harassment. For more information, see the Method section of the Introduction. Detailed legal guidance regarding sexual harassment is included in 29 CFR §1604.11 and posted on the website of the U.S. Equal Employment Opportunity Commission at <https://eeoc.gov>.

Risk Factors for Sexual Harassment

The average of 14% across the Federal workforce masks a continuing and clear difference by gender: women were more than twice as likely as men to experience sexual harassment, with a rate of 21% for women compared to 9% for men. Although these rates are substantially lower than the comparable rates from the 1994 survey, they still represent an unacceptable amount of sexual harassment in the Federal workplace. MSPB's further analysis confirms what a quick comparison of the rates of sexual harassment for men and women suggests: the single greatest risk factor for experiencing harassment is being female.

Rates of sexual harassment for men and women also vary across agencies. Among the Federal agencies surveyed, the rate for women ranged from 9% to 27%, and the rate for men ranged from 4% to 15%. Various factors, including workforce demographics and policies, practices, and culture, likely influence each organization's rate of sexual harassment. Analyzing workforce data (and measures of sexual harassment) along demographic lines may help organizations identify risk factors and target interventions accordingly, while also implementing broader organizational practices and actions to reduce the incidence of sexual harassment.

Perpetrators of Sexual Harassment

The survey data show that sexual harassment can be committed by anyone present in the workforce. In terms of gender, a harasser is most frequently a man acting alone, particularly when the target is a woman. However, women also commit harassment, most commonly acting as an individual and targeting a man. In terms of role, harassment is typically committed by an agency employee, either at the peer level or by someone in a position of authority. For example, 45% of those who experience sexual harassment attributed it to a coworker, 11% to an immediate supervisor, 12% to a higher level manager, while 15% to a customer or other member of the public. As with workforce demographics, careful collection and analysis of data can help organizations identify patterns or risk factors that can be addressed through targeted and tailored actions.

Employee Response to Sexual Harassment

An employee can respond to sexual harassment in three general ways:

1. Active response (e.g., asking the harasser(s) to stop or reporting the harassment);
2. Avoidance (e.g., avoiding the harasser—either temporarily, or permanently by leaving the organization); and
3. Toleration (e.g., ignoring the behavior or going along with it).

Employees most frequently indicated that they asked the harasser to stop (59%) or that they avoided the harasser (61%). Although each type of response has a variety of possible advantages and disadvantages, active responses tend to be more effective to actually stop harassment, for both the target and others.¹⁴ Further, should the harassment continue, demonstrating that the behavior was unwelcome bolsters the employee's case and provides a basis for future corrective action by the agency, the EEOC or the courts. In contrast, avoiding the harasser may solve the problem for the initial target—but pass the problem on to the next target. Similarly, toleration may embolden the harasser to continue or escalate misconduct, because it provides no feedback that the behavior is unwelcome or wrong. Employees in 2016 were more likely to take an active response, and less likely to tolerate sexual harassment, than their predecessors. Yet they were also more likely to resort to avoidance strategies, such as avoiding the harasser or even changing jobs. This implies that some organizations have failed to create a culture where employees feel safe to stand up to a harasser.

¹⁴ MPS 2016 data showed that over half of respondents indicated that asking the harasser to stop improved the situation.

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Further, although asking the harasser to stop and avoiding the harasser are different in important respects, they share a common characteristic: an attempt to resolve the situation without involving the organization or its officials. Although such an attempt can be a reasonable first step, targeted employees should not believe that they must shoulder the entire burden of stopping sexual harassment. Survey results indicate that employee views of the formal complaint process—a keystone of Federal agency anti-discrimination programs—are mixed. Although most employees (61%) believed that a formal complaint would be a “very effective” remedy for a hypothetical experience of sexual harassment, only 11% of employees who had actually experienced sexual harassment filed a formal complaint or grievance. Reasons for this difference may include fears of retaliation, the low odds of prevailing, and a belief that harasser(s) will not be stopped or disciplined, as well as time and cost. Among employees who filed a formal complaint in response to sexual harassment, 36% indicated that this action improved their situation—but nearly the same percentage (32%) indicated that it made their situation worse.

These results suggest that employees need better options to halt sexual harassment, whether experienced or observed, and more support for choosing an active response. It also suggests that many organizations need to strengthen existing channels and work to earn trust that harassment will be addressed. Increasing the likelihood that employees will speak up, rather than remain silent, could strengthen accountability and lead to better outcomes for all.

Employee Perceptions of Agency Efforts to Combat Sexual Harassment

The survey revealed that Federal employees believe their agencies have achieved varying degrees of success in preventing and addressing sexual harassment. While there was widespread awareness of policies prohibiting sexual harassment and formal complaint channels, employees (particularly those who had experienced sexual harassment) were less confident about the implementation and effectiveness of these policies and practices to hold harassers accountable, as indicated by the lower percentages of employees agreeing with some of the following items:

- Aware of agency policies prohibiting sexual harassment (96%);
- Aware of the formal complaint channels for discrimination (81%);
- Agency takes sufficient steps to prevent sexual harassment (79%);
- A charge of sexual harassment would be resolved fairly and justly (60%); and
- Management would act on a supervisor who committed sexual harassment (63%).

Recommendations

Although the survey results reflect progress towards a greater understanding and avoidance of sexual harassment in most Federal workplaces, agencies should continue to strive to develop and implement strategies to prevent sexual harassment and better respond to it when it occurs. These strategies and actions fall into three categories, as follows:

1. Policies and practices: To document and communicate definitions, expectations for conduct, and procedures for seeking and obtaining redress;
2. Education: To inform employees and managers about agency policies, actions they can take to prevent or respond to harassment; and
3. Accountability: To reinforce agency policy and expectations, at both the organizational and individual level.

These categories (“prongs”) are interrelated and interdependent. For example, for agency policy to be effective, it must be clear and comprehensive—then communicated (through education) and enforced and evaluated (through accountability).

Policies and Practices

For agency leaders—

- Communicate through policy and individual action that sexual harassment and other misconduct will not be tolerated. Agency leaders do not only exercise formal authority; they are also role models for expected behavior in their organizations.

For agencies—

- Ensure that policies on sexual harassment clearly and concisely summarize critical information, which includes: (1) the types of behaviors that are prohibited; (2) employee rights and responsibilities should harassment occur; and (3) where to find additional guidance.
- Distribute policies on a regular basis and make the policies and associated materials accessible, so they are prominent in employees' minds and readily available should the need arise. This information should be available to employees as soon as they enter the workforce and whenever they are promoted to new roles. Agency policy and guidance should also describe expected behaviors—what is optimal, in addition to what is appropriate—and not focus exclusively on prohibited or negative behaviors.
- Establish multiple channels for handling harassment, and ensure that employees are knowledgeable regarding their options, as well as the requirements of each, such as 45 days from the date of the alleged discriminatory act to initiate contact with an EEO counselor to preserve one's rights to file a formal EEO complaint, even after pursuing alternative methods of resolution.¹⁵ Ideally, those channels will collectively cover a full range of issues, and provide differing levels of formality and means of resolution. For example, once aware of harassment, agencies should promptly start the management investigation process. However, they should simultaneously notify employees of the 45-day deadline to seek EEO counseling through the agency's EEO program since these two processes may take place concurrently.
- Allocate sufficient funding so alleged harassment can be fairly and expeditiously investigated by experienced and well-trained investigators and take prompt and appropriate corrective action when the investigator finds that harassment occurred.
- Encourage targets of harassment to report these behaviors and provide the support that they need throughout the process.
- Communicate cultural support for employees serving as allies in maintaining a healthy work environment and taking actions to report and stop sexual harassment.

Education

For Federal agencies—

- Provide timely training to all Federal employees (including interns and contract employees) on their rights and their responsibilities to foster a productive and professional workplace for all—one that is free of discrimination, harassment, and misconduct.
- Provide notice of basic policies and rights to employees on or immediately following entry on duty (EOD)—“first day of the job.” That notice should outline what to do if sexual harassment is observed or experienced.
- Provide basic information about agency policy (e.g., non-tolerance of sexual harassment and discrimination) and standards of conduct (e.g., expectations for behavior) to other individuals present in the workplace, such as contractors and visitors, to the extent practicable.

¹⁵ U.S. Equal Employment Opportunity Commission, Federal EEO Complaint Processing Procedures, <https://www.eeoc.gov/publications/federal-eeocomplaint-processing-procedures>.

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- Develop training materials and requirements that address the unique responsibility of Federal supervisors, managers, and executives to prevent and address any form of harassment. Whenever possible, provide basic information, such as agency policy, to employees *before* they assume supervisory authority.
- Provide employees with training that prepares them to stop sexual harassment. Such training should address employees as both potential targets of harassment and as potential observers of harassment. Prompt action from observers (“bystanders”) can be highly effective in stopping harassment and preventing escalation.¹⁶
- Tailor training content, frequency, and delivery to an organization’s particular circumstances, including evidence and indicators about the prevalence and nature of sexual harassment. For example, an agency with a higher rate of sexual harassment may need greater investment in training, and more frequent and forceful messages about agency policy and employee accountability.
- Evaluate the effectiveness of sexual harassment prevention training—not only in terms of increasing employee knowledge, but also in terms of organizational outcomes, such as the prevalence of sexual harassment.

For agency leaders—

- Establish expectations for employee conduct through mandatory training as well as via direct communications regarding the intended work culture.

Accountability

For Federal leaders—

- Serve as a role model for respectful treatment of others.
- Promptly address inappropriate behavior rather than waiting for harassment to escalate and respond swiftly and appropriately to substantiated allegations of misconduct—even if they do not meet the stringent legal standards that are required to support a formal charge of sexual harassment.
- Acquire and evaluate data on the scope and nature of sexual harassment within the agency, to make informed choices about how to best prevent and address harassment.

For Federal agencies—

- Hire, promote, and reward or discipline supervisors, managers, and other agency leaders on the basis of criteria that evaluate the ability to (1) manage people fairly and effectively and (2) foster a positive workplace that is free of harassment and discrimination.
- Demand that supervisors and managers serve as role models, in both their personal conduct and holding others accountable. The obligations of supervisors and managers include taking action when harassment is observed or reported and refraining from retaliation (or the appearance of retaliation) against any employee who raises concerns about harassment or participates in a formal complaint process.
- Investigate and address allegations of sexual harassment fairly and promptly. Timely investigations are important to (1) prevent further harm; (2) provide a foundation for corrective action; (3) communicate that the agency is taking the matter seriously; and (4) deter future misconduct.

¹⁶ Dobbin, F. and Kalev, A. The promise and peril of sexual harassment programs. *Proceedings of the National Academy of Sciences*, 116(25), pp. 12255-12260. U.S. Commission on Civil Rights, *Federal #Me Too: Examining Sexual Harassment in Government Workplaces*, Briefing Report, April 2020, pp. 139-141.

- Base corrective action, including discipline for harassers, on the seriousness of the misconduct and the interests of the target(s) and the agency. Although there is a high legal standard (e.g., severe or pervasive) for the finding of sexual harassment through the EEO process, an agency is not constrained to this legal criterion in order to take action. Using a different criterion (for example, “inappropriate conduct”) allows an agency to quickly and forcefully address less serious sexual harassment behaviors before they become unlawful.¹⁷ It also empowers managers to act and stop behaviors that are inappropriate.
- Exercise transparency through their timely reporting and posting of accurate agency statistics.

For Federal employees—

- Ensure that your behavior is appropriate for the workplace.
- Consider options to stop harassment should you experience or observe it.

Pursuing a multi-pronged strategy, as outlined above, will help agencies eliminate (or at least greatly reduce) sexual harassment in the Federal workplace. The result will be a more positive and productive work environment for all employees, and one that is better able to accomplish the organization’s vital missions.

¹⁷ However, using a charge for behavior that meets the definition of sexual harassment may have the effect of masking issues of sexual harassment within an agency or diluting a potential penalty by proposing a charge that carries a lesser range of penalties than a “sexual harassment” charge might. It might also prevent agencies from providing appropriate remedial action to the target of the harassment. For these reasons, agencies should be sure to not just promptly correct but also remediate sexual harassment.

Introduction

Background

The U.S. Merit Systems Protection Board (MSPB) was established by the Civil Service Reform Act of 1978 (CSRA) to safeguard the “effective operation of the merit principles in practice.”¹⁸ To that end, the CSRA authorizes MSPB to conduct studies of the Federal civil service on matters related to adherence with the merit system principles (MSPs) and the prevention and commission of prohibited personnel practices (PPPs).

The nine MSPs are basic standards for management of the Federal workforce. Those standards include treating employees fairly, protecting employees against reprisal for lawful disclosures or exercise of a right, and maintaining high standards for integrity and conduct.¹⁹ The PPPs²⁰ include discrimination on selected bases (including sex) and reprisal for exercising of a right, including filing a complaint of discrimination under Title VII of the Civil Rights Act of 1964. Sexual harassment is clearly a matter directly related to the MSPs and PPPs.

Consistent with that understanding, in 1979 a subcommittee of the U.S. House of Representatives asked MSPB to conduct a study “to determine the extent, if any, of sexual harassment in the Federal workplace.”²¹ At that time, the concept of sexual harassment was evolving in both case law and U.S. Equal Employment Opportunity Commission (EEOC) guidance. In March 1981, MSPB issued the report *Sexual Harassment in the Federal Workplace: Is It a Problem?* with follow-up reports in 1988 and 1995. Over that period, the prevalence of sexual harassment among Federal employees was stable, with approximately 40% of women and slightly less than 20% of men indicating in MSPB surveys that they had experienced sexual harassment in the prior two years.²²

In 2014, MSPB included an update on sexual harassment in the MSPB Research Agenda for 2015-2018²³ and sexual harassment was among the subjects covered by MSPB’s 2016 Merit Principles Survey (MPS 2016).²⁴

This study was designed to—

- Measure the rate at which Federal employees experience or observe sexual harassment;
- Assess Federal agency progress in preventing and responding to sexual harassment; and
- Develop recommendations for preventing and responding to sexual harassment.

While this research was in progress, MSPB lost a quorum, meaning that the completed report could not be released. However, given heightened awareness at that time of the continuing problem with workplace sexual harassment, MSPB had an obligation to share the highly relevant information that it had gathered, within the constraints imposed by an absence of a quorum. Therefore, MSPB issued a high-level summary of basic research findings via a Research Brief, *Update on Sexual Harassment in the Federal Workplace*,²⁵ in March 2018 and provided numerous briefings and consultations to Congressional staff, Federal agency executives, managers, supervisors, and staff, shared information with the U.S. Government Accountability Office as requested to assist them with their reports and presented research findings at a variety of public sector and academic conferences.

¹⁸ S. Rep. 95-969, at 6, reprinted in U.S.C.C.A.N. 2723, 2728.

¹⁹ 5 U.S. Code §2301(b).

²⁰ 5 U.S. Code §2302(b).

²¹ U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Workplace: Is it a Problem?*, March 1981, p. v.

²² U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Workplace; Trends, Progress, Continuing Challenges*, October 1995, p. 15.

²³ U.S. Merit Systems Protection Board, *Research Agenda 2015-2018*, February 2015, p. 10. See <https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1140540&version=1145045&application=ACROBAT>.

²⁴ Appendix A provides a description of the survey method.

²⁵ U.S. Merit Systems Protection Board, *Update on Sexual Harassment in the Federal Workplace*, March 2018, https://www.mspb.gov/studies/researchbriefs/Update_on_Sexual_Harassment_in_the_Federal_Workplace_1500639.pdf.

Introduction

Since a quorum was restored in March 2022, MSPB has taken steps to release the entire report because the findings and recommendations remain timely. The report is based largely on data gathered via the 2016 Merit Principles Survey. Therefore, this report captured Federal employees' perspectives on sexual harassment before the influence of the #MeToo movement, as well as prior to the pandemic, which caused a dramatic increase in telework.²⁶ This provides a useful comparison point for subsequent surveys where Federal employee views are likely to have been impacted by these changes. This report also represents a meaningful contribution to MSPB's long history of studying sexual harassment. MSPB began studying sexual harassment in 1979 and has continued to issue reports periodically on the subject, providing long-term research and laying the groundwork for future studies.²⁷ Finally, by publishing this MSPB report, we summarize a unique perspective in terms of breadth of coverage by examining sexual harassment across the Federal Government's sizable full-time permanent civilian workforce.

As noted earlier, MSPB has continued researching sexual harassment in Federal workplaces. For example, some items related to this topic were included on the 2021 Merit Principles Survey. These survey results will provide an opportunity to consider potential impacts that recent changes in the nature of work, such as increased telework, may have had on the prevalence and types of sexual harassment. These findings will be summarized in an upcoming publication.

Method

The findings and recommendations in this report are based on—

- A literature review of topics related to sexual harassment from a variety of sources, including academic journals, Federal agency reports regarding sexual harassment, and guidance and reports from Federal agencies, such as the EEOC.
- A review of relevant Federal laws and regulations.
- A review of case law (litigation and decisions) on sexual harassment, in both the public and private sectors.
- Surveys of Federal employees, including the MPS 2016 and previous MSPB surveys (from 1980, 1987, and 1994) that covered sexual harassment.
- Discussions with EEOC staff.
- A review of Federal statistics and program reports on matters related to EEO, nondiscrimination and anti-harassment policy, and complaint activity, including MD-715 reports, Form 462 data, and Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) data.
- Information from agency EEO and civil rights directors, agency Chief Human Capital Officers (CHCOs) and Human Resources (HR) Directors and staff, collected through interviews, discussion groups, and other correspondence.
- Information from Federal employee discussion groups.

The MPS 2016 was the primary source of data on aspects of sexual harassment, such as the prevalence of sexual harassment, employee views of agency efforts to prevent and respond to harassment, and demographic and organizational factors that might be associated with an increased or reduced risk of sexual harassment.

Figure 1 summarizes selected features of that survey.

²⁶ This provides a useful comparison point for subsequent surveys where Federal employee views are likely to have been impacted by these changes.

²⁷ The citations for these earlier reports are: U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Workplace: Is It a Problem?*, March 1981. U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Government: An Update*, June 1988. U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Workplace: Trends, Progress, Continuing Challenges*, October 1995. These previous reports can be found at <https://www.mspb.gov/studies/viewallstudies.htm>.

Figure 1. Design Elements of the 2016 Merit Principles Survey

Survey Sampling and Administration

- Government wide (24 participating agencies).
- Stratified random sample, to provide statistically reliable measures and permit analysis by agency and key demographic dimension (including gender).
- Confidential, to protect employee privacy and encourage accurate reporting of experiences and opinions.

Survey Content

The survey covered several topics related to sexual harassment, to answer questions such as—At what rate do Federal employees experience behaviors associated with sexual harassment? How has that rate changed over time? How do rates differ across dimension such as employing agency, gender and supervisory status?

- What forms does sexual harassment take? Has that changed as technology and culture have evolved?
- Are employees familiar with agency policies prohibiting sexual harassment and how to file a formal complaint?
- Do employees have confidence that their agency takes sufficient steps to prevent sexual harassment and would take appropriate action if warranted?
- What behaviors do employees view as likely to constitute sexual harassment in the workplace?
- Which sexual harassment behaviors were most prevalent within the prior two years?
- What were common characteristics of the harassers (e.g., role, sex, relative age)?
- What actions did the employees take after being harassed (and how effective were they)?
- What were the outcomes of being harassed and/or any actions taken?

Survey Design and Measurement Approach

The survey was designed to provide a reliable, behavior-based measure of sexual harassment and to gauge change over time, while reflecting a contemporary view of sexual harassment. Design elements supporting these objectives include—

- Replication of items from previous MSPB sexual harassment surveys, with additions or revisions when needed to update an item or measure;
- A measure of “experience of sexual harassment” is based on a set of clearly-defined behaviors within a defined time period. Throughout this report, where we say that an employee has “experienced” harassment, we mean that the employee indicated that they experienced at least one of these behaviors; at least one time, within the two years before the survey. This approach produces a more reliable and meaningful measure than a single, general question such as “Have you ever experienced sexual harassment at work?; and
- Expanded demographic items, beyond individual characteristics such as gender and age, to explore conditions or factors that might be related to the prevalence or nature of sexual harassment.

Introduction

As noted, this survey data captured employees' perceptions of behaviors that they experienced or observed. Without additional background information, it is not possible to determine whether these behaviors rose to the level of sexual harassment within the context in which they occurred. However, using a behavioral approach (e.g., providing a list of potential sexual harassment behaviors) is considered to be more accurate than simply asking if they experienced sexual harassment, which is susceptible to different (and not always accurate) interpretations of what constitutes sexual harassment.²⁸ Additionally, the survey limited the time frame to be considered to the prior two years to establish a window large enough to cover a reasonable period of time, yet short enough to enable accurate memory of the events that transpired. Further, with the confidential nature of these survey responses in which individuals cannot be identified, employees may truthfully respond regarding their experiences without any negative repercussions for themselves or the harasser(s). Likewise, there is no motivation for these survey respondents to report behaviors if they did not occur. These survey method decisions serve to reduce the likelihood of respondents underestimating or overestimating the frequency with which they have may have experienced or observed sexual harassment. Therefore, this survey data provides greater insights into the types of behaviors that employees are experiencing and observing in the workplace, as opposed to the comparatively small numbers of sexual harassment complaints that are filed through the formal EEO complaint process.

²⁸ U.S. Government Accountability Office, *Workplace Sexual Harassment: Experts Suggest Expanding Data Collection to Improve Understanding of Prevalence and Costs*, GAO-20-564, September 2020, p. 15.

What is Sexual Harassment

Legal Definition

The EEOC states that “Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.”²⁹ EEOC regulations 29 CFR §1604.11(a) further clarify that sexual harassment³⁰ occurs when:

- acceptance of the harassment is required (implicitly or explicitly) as a condition of continued employment;
- acceptance or rejection of the harassment by an individual affects their treatment at work; or
- the conduct unreasonably interferes with an individual’s work performance or creates an intimidating, hostile, or offensive work environment.

Sexual harassment in the first two categories is commonly characterized as “*quid pro quo*,” which translates from Latin as “something for something.”³¹ This type of harassment typically involves a person with supervisory or other official authority who demands that the target acquiesce to avoid punitive action (such as a low performance evaluation or removal) or to obtain a desired outcome (such as an award or promotions). The third category of sexual harassment is frequently abbreviated as “hostile work environment.”

Behaviors Covered

The initial legal definition of sexual harassment focused narrowly on behaviors “of a sexual nature” in one or more of the categories listed above.³² However, a 2016 EEOC report states that agencies should be vigilant about other forms of legally prohibited discrimination, advocating a broader view of workplace harassment.³³ For example, harassment “does not have to be of a sexual nature...and can include offensive remarks about a person’s sex.”³⁴ This type of harassment may involve behaviors that are neither overtly sexual nor related to sexual attraction, but that reflect attitudes or beliefs related to another person’s sex or gender.³⁵ A common form involves disparaging individuals of a particular sex as an expression of bias against some or all members of that sex. Gender-based harassment may also be directed at individuals who are seen as “different” (for example, because they do not conform to sex role stereotypes).³⁶

The behaviors prohibited by Title VII are not limited to discrimination on a protected basis. Title VII also prohibits retaliation for either exercising a right under Title VII (such as requesting EEO counseling or filing a formal complaint) or participating in an associated activity (such as testifying in a complaint proceeding).³⁷

²⁹ U.S. Equal Employment Opportunity Commission, <https://www.eeoc.gov/laws/guidance/fact-sheet-sexual-harassment-discrimination>.

³⁰ However, in recent years, some states have passed legislation eliminating the “severe or pervasive” requirement for sexual harassment, see e.g., <https://www.americanbar.org/groups/litigation/publications/litigation-news/featured-articles/2020/new-state-laws-expand-workplace-protections-sexual-harassment-victims/#:~:text=Softening%20the%20Federal%20%E2%80%9CSevere%20and%20Pervasive%E2%80%9D%20Standard,-New%20York%2C%20California&text=Such%20conduct%20is%20prohibited%20if,hostile%2C%20or%20offensive%20work%20environment>. For example, see Md. Code Ann. State Gov’t § 20-601; Md. Code Ann. State Pers. & Pen. § 2-203.1.

³¹ Merriam-Webster online dictionary, <https://www.merriam-webster.com/dictionary/quid%20pro%20quo>, retrieved on November 15, 2018.

³² Nemy, E. (1975, August 19). Women begin to speak out against sexual harassment at work. *The New York Times*. Retrieved from <http://www.nytimes.com>.

³³ U.S. Equal Employment Opportunity Commission, *Select Task Force on the Study of Harassment in the Workplace*, June 2016, p. 1.

³⁴ U.S. Equal Employment Opportunity Commission, Sexual Harassment. Retrieved from https://www.eeoc.gov/laws/types/sexual_harassment.cfm on September 6, 2018.

³⁵ The term sex refers to “biological aspects of maleness or femaleness, whereas gender implies the psychological, behavioral, social, and cultural aspects of being male or female (i.e., masculinity or femininity.)” Source: American Psychological Association. (2015). *APA Dictionary of Psychology* (2nd ed.). Washington, DC. In this report, we have continued to use the traditional terms of “sexual harassment” and “harassment based on sex” although some researchers advocate terms such as “gender-based harassment” or “harassment based on gender.”

³⁶ Kabat-Farr, D., & Cortina, L.M. (2014). Sex-based harassment in employment: New insights into gender and context. *Law and Human Behavior*, 38(1), 58-72; Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

³⁷ See the Civil Rights Act of 1964 (42 U.S.C. § 2000e-3).

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Circumstances and Context

A legal determination of sexual harassment is not based solely on behaviors; it also accounts for the circumstances and the context.³⁸ For example, was the behavior or action unwelcome? In terms of reactions to the behavior, it should be kept in mind that voluntary does not always mean welcome.³⁹ Was the behavior pervasive? Pervasive may be behavior that is sufficient in number and continuous. It also may be an action such as the posting of offensive materials in the workplace.⁴⁰ If not pervasive, was the action or behavior severe? Severe harassment may be a onetime but egregious event (e.g., a kiss on the lips) or it may be a behavior that occurred more than once.⁴¹ Relevant circumstances also include who committed the harassment—did the harasser have official or effective authority to make personnel decisions?

Establishing and Enforcing Policy on Workplace Sexual Harassment

In the United States, legislation, interpretation, regulation, and enforcement are distributed across the three branches of the Government: (1) Congress, the legislative branch, has the authority to make laws regarding prohibited discrimination; (2) the judicial branch interprets and applies laws and regulations in cases brought before the courts; and (3) the executive branch (primarily through the EEOC) issues anti-discrimination guidance to all employment sectors and adjudicates discrimination cases under its purview. Consequently, the legal definition and treatment of sexual harassment have evolved gradually. The broader societal understanding of sexual harassment has also evolved gradually and unevenly. Yet both the legal and cultural shifts over the decades are clear, toward a fuller understanding of sexual harassment and higher expectations for behavior in the workplace.

Table 1 lists selected events that have shaped and marked this evolution. In the mid-1970s, behaviors that were once viewed as a natural and inevitable effect of men and women sharing workspace, were increasingly seen as a problem that was termed “sexual harassment.”^{42,43} In the late 1970s, in cases such as *Williams v. Saxbe* (1976) and *Barnes v. Costle* (1977), lower courts began to hold that sexual harassment was a violation of Title VII of the Civil Rights Act of 1964. Accordingly, the EEOC issued guidelines in 1980 to define and prohibit sexual harassment.⁴⁴ That interpretation was not fully ratified until 1986, through the Supreme Court’s holding in *Meritor Savings Bank v. Vinson* (1986), which examined agency liability for sexual harassment that included both *quid pro quo* and hostile work environment.⁴⁵

³⁸ U.S. Equal Employment Opportunity Commission, Policy Guidance on Current Issues of Sexual Harassment, N-915-050, March 19, 1990.

³⁹ *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

⁴⁰ *Robinson v. Jacksonville Shipyards*, 760 F.Supp 1486 (M.D.Fla. 1991).

⁴¹ As mentioned previously, some states have removed the “severe or pervasive” requirement for sexual harassment, see e.g., <https://www.americanbar.org/groups/litigation/publications/litigation-news/featured-articles/2020/new-state-laws-expand-workplace-protections-sexual-harassment-victims/#:~:text=Softening%20the%20Federal%20E2%80%9CSevere%20and%20Pervasive%20Standard,-New%20York%2C%20California&text=Such%20conduct%20is%20prohibited%20if,hostile%2C%20or%20offensive%20work%20environment>. For example, see Md. Code Ann. State Gov’t § 20-601; Md. Code Ann. State Pers. & Pen. § 2-203.1.

⁴² Farley, L. (2017, October 18). I coined the term ‘sexual harassment.’ Corporations stole it. *The New York Times*, <https://nyti.ms/2zkAtYk>, retrieved on March 22, 2018.

⁴³ Swenson, K. (2017, November 22). Who came up with the term ‘sexual harassment’? *The Washington Post*, https://www.washingtonpost.com/news/morning-mix/wp/2017/11/22/who-came-up-with-the-term-sexual-harassment/?utm_term=.45d662b81f72, retrieved on March 22, 2018.

⁴⁴ As described in EEOC’s March 19, 1990 Policy Guidance on Current Issues of Sexual Harassment, N-915-050, <https://www.eeoc.gov/policy/docs/currentissues.html>, retrieved December 4, 2018.

⁴⁵ Per EEOC’s Guidelines as codified in 29 C.F.R. §§ 1604.11(a)(2) and (3), there are two kinds of sexual harassment: “quid pro quo,” in which “submission to or rejection of [unwelcome sexual] conduct by an individual is used as the basis for employment decisions affecting such individual,” and “hostile work environment,” in which unwelcome sexual conduct “unreasonably interfer[es] with an individual’s job performance” or creates an “intimidating, hostile or offensive working environment.”

Table 1. Milestones Related to Sexual Harassment in Federal Workplaces

| Date | Development | Result |
|------|---|--|
| 1974 | <i>Barnes v. Train</i> , Civ. No. 1828-73 (D.D.C. 1974) | Typically viewed as the first U.S. court case alleging sex discrimination/sexual harassment related to the supervisor's sexual advances. The case was dismissed in D.C. District Court but won on appeal in <i>Barnes v. Costle</i> in 1977 (561 F.2D 983) |
| 1975 | Term "sexual harassment" coined | Facilitated discussion and improved understanding of the problem. |
| 1976 | <i>Williams v. Saxbe</i> , 413 F. Supp. 654 (1976) | Ruled that retaliation for rejecting a supervisor's sexual advances is prohibited sexual discrimination under Title VII of the Civil Rights Act of 1964. |
| 1980 | EEOC issued guidelines regarding sexual harassment | Provided employers and employees with guidance regarding expectations for behavior in the workplace. |
| 1986 | <i>Meritor Savings Bank v. Vinson</i> , 477 U.S. 57 (1986) | First Supreme Court case finding an employer liable for sexual harassment committed by a supervisor, finding sex-based hostile work environment violates the law, and holding voluntary does not necessarily mean unwelcome. |
| 1989 | <i>Price Waterhouse v. Hopkins</i> , 490 U.S. 228 (1989) | Landmark sex stereotyping case finding sex discrimination on the basis of not conforming with social and/or gender expectations. |
| 1991 | Testimony of Anita Hill before the U.S. Senate Judiciary committee on the nomination of Clarence Thomas to the Supreme Court. | Increased public discussion of the types of behaviors that could constitute sexual harassment. |
| 1991 | <i>Ellison v. Brady</i> , 924 F. 2d 872 (1991) | Established the reasonable person standard. |
| 1993 | <i>Harris v. Forklift Systems, Inc.</i> , 510 U.S. 17 (1993) | Held that sexual harassment is not necessarily based in sexual desire, but may be targeted at a person's gender or nonconformity to gender roles, and that targets of harassment did not have to prove that they were harmed. |
| 1997 | <i>Jenson v. Eveleth Taconite Co.</i> , 130 F.3d 1287 (8th Circ. 1997) | First class action sexual harassment lawsuit in U.S. |
| 1998 | <i>Oncale v. Sundowner Offshore Services, Inc.</i> , 523 U.S. 75 (1998) | Ruled that sexual harassment could occur between people of the same sex. |
| 1998 | <i>Burlington Industries Inc., v. Ellerth</i> , 524 U.S. 742 (1998) and <i>Faragher v. City of Boca Raton</i> , 524 U.S. 775 (1998) | Discussed responsibilities of the employer and the employee and their implications for the employer's liability for sexual harassment. |
| 2002 | Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) | The No FEAR Act established new requirements for Federal agencies to increase their accountability for discrimination, including annual employee notifications and biennial employee training. |
| 2003 | EEO Management Directive 715 (MD-715) | MD-715 required Federal agency anti-harassment policies to cover all legally protected bases and mandated annual EEO reporting. |
| 2017 | #MeToo and #TimesUp movements ⁴⁶ | Renewed public discussion regarding sexual harassment. |

⁴⁶ For more information, see Langone, A. (2018). #MeToo and Time's Up founders explain the difference between the 2 movements—and how they're alike. *Time*, retrieved from <https://time.com/5189945/whats-the-difference-between-the-metoo-and-times-up-movements/> on May 2, 2019.

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Subsequent Supreme Court cases have affirmed and built on the central holding in *Meritor v. Vinson* (1986) and addressed employer liability for sexual harassment. In *Harris v. Forklift Systems, Inc.* (1993) and *Oncale v. Sundowner Offshore Services, Inc.* (1998), the court held that: (1) sexual harassment did not have to be driven by sexual desire; (2) psychological harm was not required to determine that harassment occurred;⁴⁷ and (3) sexual harassment can occur when both the harasser and the target are the same sex.⁴⁸ In *Faragher v. City of Boca Raton* (1998) and *Burlington Industries v. Ellerth* (1998), the decisions elucidated steps that employers could take to prevent sexual harassment and potentially reduce their liability for subsequent sexual harassment. These decisions modified the Supreme Court's holding in *Meritor v. Vinson* (1986), finding that an employer may avoid liability if no tangible employment action has been taken and the employer proves as an affirmative defense (1) that the employer exercised reasonable care to avoid harassment and to eliminate it when it might occur, and (2) that the complaining employee failed to act with "reasonable care" to take advantage of the employer's safeguards and otherwise to prevent harm that could have been avoided. However, the key is whether the sexual attention is unwelcome. That is, even if the perpetrator engages in the behavior for purposes of expressing sexual interest, the inquiry should still be focused on whether the behavior was unwelcome by the target.

Congress crafted the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act)⁴⁹ to increase agency accountability for discrimination (on all legally protected bases) and retaliation against employees, such as those who file discrimination complaints. Specific provisions of the act include (1) requiring agencies to pay for judgments and settlement costs from their own funds; (2) mandatory annual reporting to Congress, the EEOC, the Department of Justice, and the U.S. Office of Personnel Management (OPM); (3) posting of EEO complaint data on agency websites; (4) mandatory annual notification to employees of their rights under antidiscrimination and whistleblower protection laws; and (5) mandatory biennial training for employees.⁵⁰

To provide policy guidance and standards for EEO programs, the EEOC issued Management Directive 715 (MD-715) in 2003. MD-715 requires agencies to annually assess their EEO program against criteria for model EEO programs, to conduct barrier analyses to ensure equal opportunity for groups regardless of personal characteristics, such as sex, race or disability, and to prepare plans to address any deficiencies discovered.⁵¹

MSPB's Research on Sexual Harassment in the Federal Workplace

Since 1980, MSPB research has sought to both identify the behaviors that Federal employees view as sexual harassment and to measure the prevalence of those behaviors.⁵² The 1980, 1987, 1994 and 2016 surveys provided the ability to assess changes in prevalence over time.⁵³ **Table 2** lists the survey items that appeared on our 1994 and 2016 surveys, with an asterisk (*) indicating items that appeared on both surveys (with wording updated when necessary).

⁴⁷ *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993).

⁴⁸ *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998).

⁴⁹ The No FEAR Act (Public Law 107-174) took effect on October 1, 2003.

⁵⁰ U.S. Equal Employment Opportunity Commission, Question and Answers: No FEAR Act, <https://www.eeoc.gov/eeoc/statistics/nofear/qanda.cfm>, retrieved on October 11, 2018.

⁵¹ U.S. Equal Employment Opportunity Commission, Instructions to Federal Agencies for MD-715, <https://www.eeoc.gov/federal/directives/md715/section3.cfm>, retrieved on October 11, 2018.

⁵² As noted earlier, this report uses the more inclusive definition of sexual harassment that encompasses both sexual and nonsexual forms. However, the EEO community makes a distinction between sexual and nonsexual harassment when processing complaints.

⁵³ Although the survey items specified "workplace," prohibitions on sexual harassment also apply to interactions at other locations, such as offsite meetings or training conferences or during work-related travel. In fact, these situations may introduce greater uncertainty as they may be perceived to be more relaxed and social in nature. However, Federal employees should continue to treat their colleagues with respect, regardless of the setting.

Table 2. Types of Sexual Harassment Behaviors Included on 1994 and 2016 Surveys⁵⁴

| |
|--|
| <p>Gender Harassment <i>Unwelcome behaviors that disparage or objectify others based on their sex or gender</i></p> <ul style="list-style-type: none"> • Derogatory or unprofessional terms related to sex or gender • Unwelcome sexual teasing jokes, comments or questions* • Exposure to sexually oriented material (e.g., photos, videos, written materials) • Exposure to sexually oriented conversations |
| <p>Unwanted Sexual Attention <i>Unwelcome behaviors of a sexual nature that are directed toward a person</i></p> <ul style="list-style-type: none"> • Unwelcome invasion of personal space (e.g., touching, crowding, leaning over)* • Unwelcome communications (e.g., emails, phone calls, notes, text messages, social media contacts) of a sexual nature* • Unwelcome sexually suggestive looks or gestures* |
| <p>Sexual Coercion <i>Pressure or force to engage in sexual behavior</i></p> <ul style="list-style-type: none"> • Offer of preferential treatment in the workplace in exchange for sexual favors (quid pro quo) • Pressure for sexual favors* • Pressure for dates* • Stalking (e.g., unwanted physical or electronic intrusion into your personal life)* • Sexual assault or attempted sexual assault* |

These items are grouped according to the results of a factor analysis⁵⁵ of items gauging employee experiences with each of the sexual harassment behaviors. The three factors were identified as: Gender Harassment (GH), Unwanted Sexual Attention (USA), and Sexual Coercion (SC). These results are generally consistent with those of other researchers in this field.^{56,57}

Some researchers have suggested that the underlying theme of each of these categories is an expression of power that is disguised as sexual attraction or sexual humor.^{58,59} Perhaps this is most obvious in sexual coercion, in which the harasser forces or pressures the target to acquiesce to sexual demands. The harasser’s leverage is typically based in formal authority or power at work, but a harasser’s power or influence may be informal or social rather than formal authority. Stalking and pressure for dates similarly represent an expression of power: the unwillingness to take “no” for an answer.

Unwanted sexual attention likewise represents the exercise of control over the target’s will through unwanted intrusions into the target’s physical space, or by communications, or looks. The intrusions may range from crowding or leaning over the person to physical touches that may or may not be overtly sexual. Unwanted communications and looks may vary in their apparent expression of sexual attraction. Regardless, the underlying motivation is typically not to express sexual interest, but to demean the target.⁶⁰

⁵⁴ Items followed by an asterisk (*) were included on both the 1994 and 2016 surveys.

⁵⁵ Factor analysis is a statistical technique that can be used to reduce a set of survey items to a smaller number of dimensions by identifying similarities among items. In other words, items that are associated with a particular factor have similar response patterns, and examining those patterns makes it possible to identify and label the common characteristic (factor) those items measure.

⁵⁶ Gelfand, M.J., Fitzgerald, L.F., & Drasgow, F. (1995). The structure of sexual harassment: a confirmatory analysis across cultures and settings. *Journal of Vocational Behavior*, 47, 164-177.

⁵⁷ Fitzgerald, L.F., Gelfand, M.J., & Drasgow, F. (1995). Measuring sexual harassment: theoretical and psychometric advances. *Basic and Applied Social Psychology*, 17(4), 425-445.

⁵⁸ Williams, M.J., Gruenfeld, D.H., & Guillory, L.E. (2017). Sexual aggression when power is new: effects of acute high power on chronically low-power individuals. *Journal of Personality and Social Psychology*, 112(2), 201-223.

⁵⁹ Berdahl, J.L. (2007). Harassment based on sex: Protecting social status in the context of gender hierarchy. *Academy of Management Review*, 32(2), 641-658.

⁶⁰ *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993).

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Finally, gender harassment typically occurs when the harasser conveys (either explicitly or implicitly) to the target that they are inferior or unwelcome by insulting or objectifying them. However, gender harassment need not target a particular person or persons. For example, sexually-charged material in the workplace or public discussions create an atmosphere that denigrates or objectifies members of a certain sex. Such behaviors may be an expression of a generalized belief that members of one sex are less capable, or an attempt to demean employees who do not conform to the harasser's stereotypes about how men or women should look or act.^{61,62}

Employee Perspectives on Behavior that Constitute Sexual Harassment

Because individuals may hold different views of what sexual harassment entails, MSPB's surveys have used behavioral checklists to assess what employees have experienced or observed in the workplace in the past two years, instead of asking employees directly if they have experienced sexual harassment. Analyses of MPS 2016 data showed that the vast majority of Federal employees agreed that they viewed each of these behaviors as sexual harassment (**Table 3**). Further, men and women were highly similar in how they evaluated each behavior.

Table 3. Agree that the Behavior is Sexual Harassment, MPS 2016

| Sexual Coercion | Total | Women | Men |
|---|--------------|--------------|------------|
| Pressure for sexual favors | 96% | 96% | 97% |
| Offer of preferential treatment for sexual favors | 96% | 96% | 96% |
| Stalking (unwanted intrusion into your personal life) | 95% | 94% | 95% |
| Sexual assault or attempted sexual assault | 95% | 94% | 96% |
| Pressure for dates | 94% | 94% | 94% |

| Unwanted Sexual Attention | Total | Women | Men |
|---|--------------|--------------|------------|
| Unwelcome communications of a sexual nature | 94% | 94% | 94% |
| Unwelcome sexually suggestive looks or gestures | 92% | 93% | 92% |
| Unwelcome invasion of personal space | 90% | 90% | 90% |

| Gender Harassment | Total | Women | Men |
|---|--------------|--------------|------------|
| Unwelcome sexual teasing, jokes, comments or questions | 94% | 95% | 94% |
| Derogatory or unprofessional terms related to sex or gender | 92% | 93% | 92% |
| Exposure to sexually oriented material | 89% | 90% | 89% |
| Exposure to sexually oriented conversations | 82% | 80% | 89% |

All of the sexual coercion behaviors were recognized by at least 94% of employees as sexual harassment, with little difference between men and women. Employees expressed highest agreement regarding pressure for sexual favors (96%) and the *quid pro quo* offer of preferential treatment in return for sexual favors (96%). Forcible intrusion, through stalking or sexual assault, was also recognized by the vast majority (95%) as sexual harassment.⁶³ Similarly, although “pressure for dates” may seem less troublesome than “pressure for sexual favors,” “pressure” indicates that the behavior is both unwelcome and repeated.

⁶¹ Berdahl, J.L. (2007). Harassment based on sex: protecting social status in the context of gender hierarchy. *Academy of Management Review*, 32(2), 641-658.

⁶² Leskinen, E.A., Rabelo, V.C., & Cortina, L.M. (2015). Gender stereotyping and harassment: A “catch-22” for women in the workplace. *Psychology, Public Policy, and Law*, 21(2), 192-204.

⁶³ Given the gravity of sexual assault or stalking, we examined why the level of agreement for those behaviors fell short of 100 percent. Written comments from some survey respondents provide a useful explanation. Many commenters believed that labeling such behaviors as “sexual harassment” would trivialize behavior that was not merely inappropriate, but criminal.

Additionally, 90% or more of employees agreed that various types of unwanted sexual attention, such as unwelcome communications, jokes, questions, or gestures of a sexual nature, would be viewed as sexual harassment. Unwelcome invasion of personal space may be slightly more ambiguous, depending upon how it occurs, but was still typically seen as indicative of sexual harassment.

Employee agreement was most variable (82%–94%) for behaviors associated with gender harassment. Agreement was higher for behaviors that have a clear target (such as unwelcome sexual teasing, jokes, comments or questions) than those that might not, such as exposure to sexually oriented material or sexually oriented conversations. This suggests that some employees are unaware that such behaviors are offensive to many others, may contribute to a hostile work environment, and that even if they are acceptable in private, among family or friends, they may be grossly inappropriate in the workplace.

Trends in Perceptions of Sexual Harassment Behaviors

As discussed above, men and women now hold similar views about what behaviors may constitute sexual harassment. Differences are now quite small, especially in comparison to previous survey results. For the six behaviors covered in the “Is it harassment?” section of the 1994 and 2016 surveys, **Table 4** shows that: (1) the gap between men and women has virtually disappeared, and (2) there is much greater understanding among Federal employees that these behaviors evidence sexual harassment. The gap has closely largely because agreement has increased among men that certain behaviors can indeed be sexual harassment. But there is also evidence of greater awareness among both men and women that certain behaviors are incompatible with a professional, inclusive work environment. Notably, the greatest increase in agreement was for “unwelcome sexual teasing, jokes, comments or questions.”

Table 4. Agree that the Behavior is Sexual Harassment, 1994 and 2016

| Behavior | Women | | Men | |
|--|-------|------|------|------|
| | 1994 | 2016 | 1994 | 2016 |
| Pressure for sexual favors | 99% | 96% | 96% | 97% |
| Pressure for dates | 91% | 94% | 86% | 94% |
| Unwelcome communications of a sexual nature | 95% | 94% | 89% | 94% |
| Unwelcome sexually suggestive looks or gestures | 94% | 93% | 82% | 92% |
| Unwelcome invasion of personal space | 98% | 90% | 94% | 90% |
| Unwelcome sexual teasing, jokes, comments or questions | 86% | 95% | 76% | 94% |

Sexual Harassment: Prevalence and Context

Prevalence of Sexual Harassment Behaviors

Although Federal employees appear to have a good understanding of what constitutes sexual harassment, as shown below, sexual harassment remains all too common. That result suggests that abstract understanding has progressed more than actual behavior, posing the question “Do Federal employees know what sexual harassment is in concept, but fail to recognize or refrain from it in practice?” Another, more troubling question is “Do some employees engage in sexual harassment knowingly, believing that they will not be held accountable?”

As shown in **Table 5**, across genders, gender harassment was the most common form of sexual harassment. Unwanted sexual attention also occurred in the workplace, especially directed at women. Notably, women were four times as likely as men to report that they experienced an unwelcome invasion of personal space, and six times as likely to have experienced unwelcome sexually suggestive looks or gestures.

Table 5. Types of Sexual Harassment Behaviors Experienced⁶⁴

| Behavior | Total | Women | Men | Ratio Women : Men |
|---|-------|-------|-------|----------------------|
| Any Type of Sexual Harassment Behavior (of 12) Experienced | 14.3% | 20.9% | 8.7% | 2.4 : 1 |
| Gender Harassment | | | | |
| Exposure to sexually oriented conversations | 7.3% | 9.5% | 5.4% | 1.8 : 1 |
| Unwelcome sexual teasing, jokes, comments, or questions | 5.9% | 9.4% | 2.9% | 3.2 : 1 |
| Derogatory or unprofessional terms related to sex or gender | 5.0% | 7.1% | 3.0% | 2.4 : 1 |
| Exposure to sexually oriented material | 2.8% | 3.6% | 2.0% | 1.8 : 1 |
| Unwanted Sexual Attention | | | | |
| Unwelcome invasion of personal space | 7.2% | 12.3% | 2.9% | 4.3 : 1 |
| Unwelcome sexually suggestive looks or gestures | 4.6% | 8.5% | 1.4% | 6.0 : 1 |
| Unwelcome communications of a sexual nature | 3.2% | 5.4% | 1.5% | 3.7 : 1 |
| Sexual Coercion | | | | |
| Pressure for dates | 1.7% | 2.5% | 0.8% | 3.1 : 1 |
| Stalking (intrusion into your personal life) | 1.7% | 2.4% | 1.1% | 2.1 : 1 |
| Offer of preferential treatment for sexual favors (<i>quid pro quo</i>) | 1.1% | 1.5% | 0.7% | 2.1 : 1 |
| Pressure for sexual favors | 0.9% | 1.4% | 0.6% | 2.5 : 1 |
| Sexual assault or attempted sexual assault | ≤0.5% | ≤0.5% | ≤0.5% | *65 |

⁶⁴ Throughout this report, unless otherwise stated, “experienced sexual harassment” means that a survey respondent experienced the described behavior (or one or more of a set of behaviors) one or more times during the two-year period preceding the survey. The same frequency and time criteria are used for “observed” sexual harassment.

⁶⁵ Percentages are too small to calculate a ratio.

Sexual Harassment: Prevalence and Context

Even though American culture has become more accepting of openly discussing sexuality, explicit discussions of sexual activities remain off-limits while on duty.⁶⁶ Nevertheless, over 7% of Federal employees responded that they had been exposed to such a discussion. Although some instances were viewed as unintentional intrusions (for example, conversations among coworkers who lacked discretion or volume control), other instances were seen as deliberate efforts to embarrass or demean the target.

For the least prevalent sexual harassment experiences, (i.e., those related to sexual coercion), our figures might have been reduced by a tendency to under-report highly personal negative experiences, even on a confidential survey. We also note that employees might be reluctant to report experiencing or engaging in *quid pro quo*.⁶⁷

In summary, women were more likely than men to report that they had experienced sexual harassment. This reflects actual differences in what women and men experience at work. Past research has explored whether differences in perceptions of sexual harassment by men and women are due to actual differences in treatment, or whether they reflect, at least in part, women being more “sensitive” to sexual harassment.⁶⁸ The latter is not a plausible explanation for differences shown, given their magnitude and the similarity (discussed earlier) in men’s and women’s views on whether a particular behavior may constitute sexual harassment. Moreover, as shown in **Table 6**, men and women (who had not personally experienced sexual harassment in the past two years) *observed* sexual harassment at more similar rates—as opposed to what they *experienced*.

Table 6. Types of Sexual Harassment Behaviors Observed

| Behavior | Total | Women | Men | Ratio Women : Men |
|---|-------|-------|-------|----------------------|
| Any Type of Sexual Harassment Behavior (of 12) Observed | 25.6% | 28.9% | 22.7% | 1.3 : 1 |
| Gender Harassment | | | | |
| Exposure to sexually oriented conversations | 14.5% | 15.6% | 13.3% | 1.2 : 1 |
| Unwelcome sexual teasing, jokes, comments, or questions | 11.8% | 14.1% | 9.7% | 1.5 : 1 |
| Derogatory or unprofessional terms related to sex or gender | 11.0% | 12.0% | 9.9% | 1.2 : 1 |
| Exposure to sexually oriented material | 4.9% | 5.7% | 4.3% | 1.3 : 1 |
| Unwanted Sexual Attention | | | | |
| Unwelcome invasion of personal space | 12.7% | 15.7% | 10.1% | 1.5 : 1 |
| Unwelcome sexually suggestive looks or gestures | 9.6% | 12.5% | 7.1% | 1.8 : 1 |
| Unwelcome communications of a sexual nature | 7.3% | 8.6% | 6.0% | 1.4 : 1 |
| Sexual Coercion | | | | |
| Pressure for dates | 3.5% | 4.0% | 2.9% | 1.4 : 1 |
| Stalking (intrusion into your personal life) | 3.9% | 5.3% | 2.7% | 2.0 : 1 |
| Offer of preferential treatment for sexual favors (<i>quid pro quo</i>) | 2.5% | 3.2% | 2.1% | 1.5 : 1 |
| Pressure for sexual favors | 1.9% | 2.0% | 1.8% | 1.2 : 1 |
| Sexual assault or attempted sexual assault | 1.0% | 1.2% | 0.9% | *69 |

⁶⁶ Rare exceptions might include investigators, EEO staff, HR professionals and agency counsel, certain health care providers or law enforcement personnel.

⁶⁷ Although *quid pro quo* is typically coercive, survey respondents also described situations that appeared to involve willing parties who engaged in personal relationships for mutual benefit. However, voluntary participation does not always mean the behavior was welcome, per *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

⁶⁸ Druhan, V.B. (2013). Severe or pervasive: an analysis of who, what, and where matters when determining harassment, *Vanderbilt Law Review*, https://www.vanderbiltlawreview.org/wp/89//Druhan_66_Vand_L_RW_355.pdf.

⁶⁹ Percentages are too small to calculate a ratio.

These figures show that harassment is frequently committed in front of others. This means that there is often an opportunity for coworkers to intervene and that agencies may be able to obtain evidence and testimony from individuals other than the target and alleged harasser. These coworkers should also keep in mind that intervening to assist a colleague who is being harassed and serving as a witness in the EEO complaint process are protected activities, making it unlawful for an employer to retaliate against the person for supporting the target of harassment.^{70,71}

Trends in Employees’ Experiences of Sexual Harassment

The concept of sexual harassment, both in law and in organizations, has evolved to encompass behaviors that can contribute to an unwelcoming or inequitable work environment, beyond those that meet the legal definitions of “severe” or “pervasive.” MSPB’s surveys have also evolved, while maintaining sufficient continuity to permit comparison across surveys. As discussed in **Appendix B**, MSPB’s 2016 survey covered 12 sexual harassment behaviors: eight from prior surveys and four new items. This section discusses change over time, and therefore focuses on measures of sexual harassment based only on the eight behaviors included on both surveys, as shown in **Table 7**. The figures reflect both progress and the continuing reality that many women and men still experience sexual harassment at work.

Table 7. Percentage of Employees Experiencing Sexual Harassment, 1994 and 2016

| Year | Measure of Sexual Harassment | Employees | |
|------|--------------------------------|-----------|-------|
| | | Women | Men |
| 1994 | Experienced any of 8 behaviors | 44.3% | 19.1% |
| 2016 | Experienced any of 8 behaviors | 17.7% | 5.5% |
| | Experience any of 12 behaviors | 20.9% | 8.7% |

Table 8 illustrates this pattern of progress made and challenges remaining. For example, although the rate of unwelcome invasion of personal space dropped by half among women, it was still experienced by 12%.

Table 8. Types of Sexual Harassment Behaviors Experienced, 1994 and 2016⁷²

| Behavior | Women | | Men | |
|--|-------|------|------|------|
| | 1994 | 2016 | 1994 | 2016 |
| Unwelcome invasion of personal space | 24% | 12% | 8% | 3% |
| Unwelcome sexual teasing, jokes, comments or questions | 37% | 9% | 14% | 3% |
| Unwelcome sexually suggestive looks or gestures | 29% | 9% | 9% | 1% |
| Unwelcome communications of a sexual nature | 10% | 5% | 4% | 1% |
| Pressure for dates | 13% | 3% | 4% | 1% |
| Stalking | 7% | 2% | 2% | 1% |
| Pressure for sexual favors | 7% | 1% | 2% | 1% |
| Sexual assault or attempted sexual assault | 4% | <1% | 2% | <1% |

⁷⁰ 29 CFR 1614.101(b).

⁷¹ U.S. Equal Employment Opportunity Commission, Questions and Answers: Enforcement Guidance on Retaliation and Related Issues, <https://www.eeoc.gov/laws/guidance/questions-and-answers-enforcement-guidance-retaliation-and-related-issues>, EEOC-NVTA-2016-5, retrieved on May 4, 2022.

⁷² Unwelcome communications of a sexual nature for men and offer of preferential treatment for sexual favors experienced by women in 2016 was 1.5% in an earlier table. These percentages vary slightly due to differences in rounding.

Risk Factors for Sexual Harassment

Not surprisingly, consistent with the data shown above, our analyses found that the greatest risk factor for experiencing sexual harassment is being female.⁷³ Other risk factors include the gender composition of the work unit being heavily skewed⁷⁴ (especially for women⁷⁵), and being lesbian, gay, bisexual or transgender (LGBT) (especially for men) and being young. Importantly, we also identified factors under organizational control that are associated with reduced risk. For example, knowledge of complaint procedures and perceived credibility of preventive policies appeared to reduce risk, which may reflect positively on an organizational culture that ensures employees not only know their rights but also have confidence that they can use them. Supportive peers and a collegial workplace may also reduce risk as employees may be less likely to harass their colleagues under such conditions, particularly when the culture suggests that they will experience negative consequences for their actions.

Analyzing patterns in sexual harassment and factors that might be associated with increased risk of sexual harassment can help organizations to: (1) identify trends that may call for preventive measures or heightened vigilance; (2) identify work environments or segments of the workplace that might benefit from targeted training (e.g., on standards of conduct, complaint procedures, and how to intervene); and (3) clarify expectations for behavior, backed up by procedures for accountability. In contrast, the goal of such analysis is *not* to assign blame to targets of harassment or to discourage the recruitment and hiring of people in “at risk” groups.

Given that various individual and organizational risk factors likely contributed to differences between agencies in terms of percentages of employees who experienced sexual harassment, agencies should decisively act upon the factors that they can control, such as a commitment to hold employees accountable for sexual harassment and consider preventive measures in settings associated with a higher incidence of sexual harassment.

As shown in **Figure 2**, individual Federal agencies may have higher (or lower) than average prevalence rates for men, women, or both.⁷⁶ Therefore, it is important to assess rates separately for men and women.

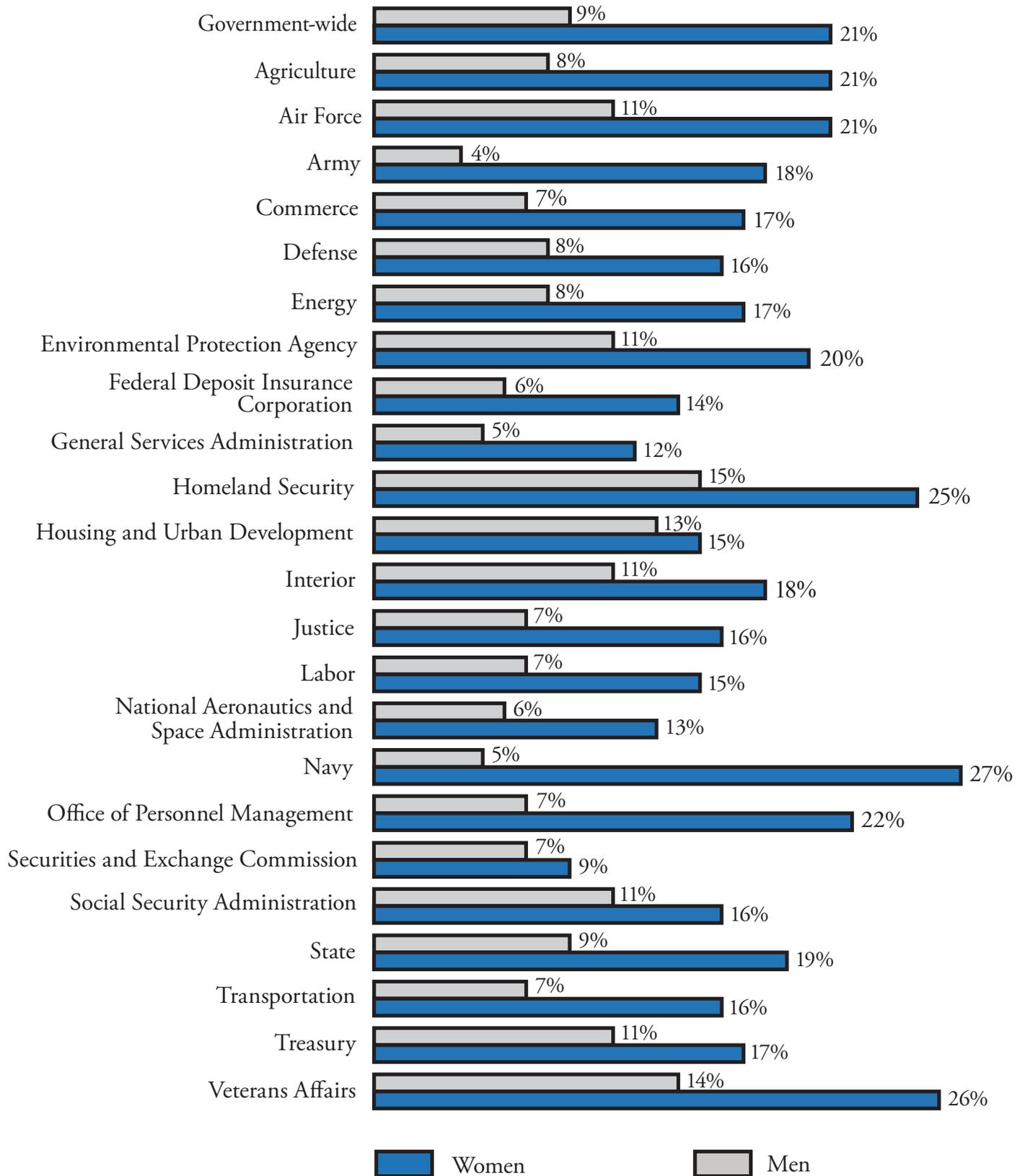
⁷³ A statistical technique called logistic regression was used to identify the variables that explained the most variance in terms of experiencing one or more of the listed sexual harassment behaviors.

⁷⁴ In other words, there is a small percentage of women in a majority male workgroup or a small percentage of men in a majority female workgroup.

⁷⁵ This may be due to the fact that women who work in certain occupations that are majority women, such as nurses, or who work in jobs where they are in the minority, such as science, technology, engineering and mathematics (STEM) or blue collar occupations, are more likely to experience sexual harassment. However, these patterns could also suggest that having a gender balanced workforce may be more likely to foster a respectful workplace.

⁷⁶ The Department of Education and the Department of Health and Human Services are not included due to low sample size.

Figure 2. Percentage of Employees Experiencing Sexual Harassment, by Agency



Characteristics of Harassers

Federal agencies are responsible for protecting all employees from sexual harassment on the job, regardless of its source. As stated in 29 CFR § 1604.11(d), the agency can be held “responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.” Furthermore, under 29 CFR §1604.11(e), the agency may also be held responsible for sexual harassment by “non-employees” (such as customers and contractors) in the workspace, which is known as “third-party harassment.”⁷⁷

Information about the perpetrators of sexual harassment can help employers identify risks, target training and education, and focus accountability. Accordingly, the MPS 2016 asked those employees who experienced sexual harassment to select the one experience that had the greatest impact on them and to provide information about the harasser(s), including role, number, and sex. As shown in **Table 9**, respondents most frequently indicated that the harasser was another employee, often someone within the work unit. That is unsurprising—but it also indicates that more effective internal education and accountability are needed.

Table 9. Role of the Harasser

| Harasser | Total | Target | |
|---------------------------------------|-------|--------|-----|
| | | Women | Men |
| Immediate supervisor | 11% | 11% | 11% |
| Higher level supervisor | 12% | 13% | 11% |
| Coworker | 45% | 48% | 42% |
| Other employee | 27% | 27% | 27% |
| Customer/member of the public | 15% | 17% | 10% |
| Subordinate | 8% | 7% | 9% |
| Acquaintance, friend or family member | 3% | 4% | 3% |
| Criminal | 1% | 1% | 1% |
| Contractor | 5% | 6% | 2% |
| Other | 9% | 5% | 16% |

Particular attention should be given to supervisors and officials. Harassment by an employee in a position of authority is particularly problematic as other employees may infer that the agency tolerates sexual harassment by those in leadership roles, and that resisting or complaining is futile or risky.

Among remaining categories, customers or other members of the public were the most likely sources of sexual harassment. Harassment by members of the public creates a unique challenge given that these interactions are frequently transient, and the agency’s goal is to provide a service to the customer. However, agencies may remain liable for protecting employees against sexual harassment in the workplace, even by those it does not employ.⁷⁸ Therefore, agencies need to ensure—not only that they set expectations for how customers will treat employees, but also for how employees should respond to any inappropriate behavior. Further, the agency should convey to the employees that they will support them should they take the prescribed actions, such as providing a verbal warning and/or transferring the customer to a supervisor and, in appropriate cases, barring the customer. Notably, women were more likely than men to experience harassment from customers, which may reflect the high representation of women in health care provider and customer service positions.

⁷⁷ Warner, D.S. (1995) Third-party sexual harassment in the workplace: an examination of client control. *Hofstra Labor and Employment Law Journal*, 12(2), Article 6.

⁷⁸ U.S. Equal Employment Opportunity, Harassment, <https://www.eeoc.gov/harassment>, retrieved on June 10, 2022.

In terms of number and sex of the harasser(s), harassment by an individual was most common, and the harasser was male in approximately two-thirds of the instances described (**Table 10**). Harassment by a person or persons of the opposite sex than the person being harassed was typical, although harassment by employees of the same sex or mixed groups also occurred. For women, harassment by one man was by far the most common scenario, occurring in over two-thirds of the examples cited. Men were more likely to be harassed by women, though men or mixed groups were responsible for a substantial amount of the harassment.

Table 10. Sex and Number of the Harasser(s)

| Harasser | Total | Target | |
|-----------------------|-------|--------|-----|
| | | Women | Men |
| Male (Individual) | 58% | 68% | 27% |
| Female (Individual) | 16% | 7% | 41% |
| Males (Two or More) | 10% | 12% | 7% |
| Females (Two or More) | 2% | 1% | 7% |
| Both (Mixed Group) | 14% | 12% | 19% |

Finally, as shown in **Table 11**, women were most likely to be harassed by someone older or similar in age. Men were most likely to be harassed by someone similar in age.

Table 11. Age of the Harasser Relative to the Target

| Harasser | Total | Target | |
|----------------|-------|--------|-----|
| | | Women | Men |
| Older | 33% | 37% | 24% |
| Similar in age | 33% | 33% | 32% |
| Younger | 13% | 11% | 19% |
| Mixed ages | 20% | 19% | 25% |

These findings show that harassment is not limited to the prototypical harassment of a woman by an older man. Harassment can involve a variety of harassers and targets. Therefore, agencies cannot be complacent about sexual harassment that targets men, sexual harassment committed by women, same-sex sexual harassment, or harassment committed by coworkers or members of the public.

The Consequences of Sexual Harassment

The full costs of sexual harassment comprise the harm done to (1) the employees who experience harassment; (2) those who observe the harassment; (3) the organization; and (4) the public, which experiences degraded service or efficiency. Some of these costs may be direct effects of the sexual harassment; other costs may be indirect and therefore less obvious or measurable.

Comprehensive measurement of the costs of sexual harassment was outside the scope of this study, but past studies have examined various monetary costs and found them to be significant. For example, MSPB's 1995 study of sexual harassment estimated the two-year costs of sexual harassment that were related to job turnover, sick leave, and decreased individual and organizational productivity to exceed \$327 million. That estimate did not include labor costs, such as those associated with resolving informal and formal complaints, handling litigation, and overtime and benefits for employees who fill in for employees who are absent due to harassment.⁷⁹ It also did not cover costs associated with legal judgments or settlements.

Effects of Sexual Harassment on Employees

The MPS 2016 asked employees who indicated that they had experienced sexual harassment to describe what happened as a result of the harassment or their response to it. As seen in **Figure 3**, those employees were most likely to say that no changes occurred (35%). That suggests that the employee did not experience direct harm, but also that the employee was unaware of any negative consequences for the harasser. Overall, however, the response pattern suggests that repercussions were more likely for the targeted employee than for the harasser. For example, only 8% of employees believed that corrective action was taken against the harasser—the same percentage who responded that their work assignments or conditions improved. In contrast, approximately 14% of target employees thought their work assignments or conditions worsened and 13% said that they were denied a promotion, pay increase, good performance rating, or good reference. Further, 5% indicated that they were reassigned or transferred against their wishes. In essence, a substantial percentage of harassed employees believed that they experienced the prohibited personnel practice (PPP) of retaliation, in addition to the PPP of the initial sexual harassment (as a form of sex discrimination).

As a result of the harassment, approximately 22% of harassed employees noted that their productivity was reduced. For example, some of these employees indicated that they used annual leave (17%) and/or sick leave (17%)—either to avoid further harassment or because of health problems resulting from the initial harassment.

However, some employees find that temporarily avoiding the harasser or the workplace may not be sufficient. In fact, 6% transferred or quit.⁸⁰ Further, employees who experienced harassment more than once were more likely to express an intention to leave the organization: 37% of such employees indicated that they were “likely” to leave in the next year, compared to 24% among employees who had not experienced or observed harassment. That result is consistent with other research into the actions and intentions of employees who experience harassment or other forms of unfair treatment.^{81,82}

⁷⁹ U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Workplace: Trends, Progress, Continuing Challenges*, October 1995, pp. 23-27.

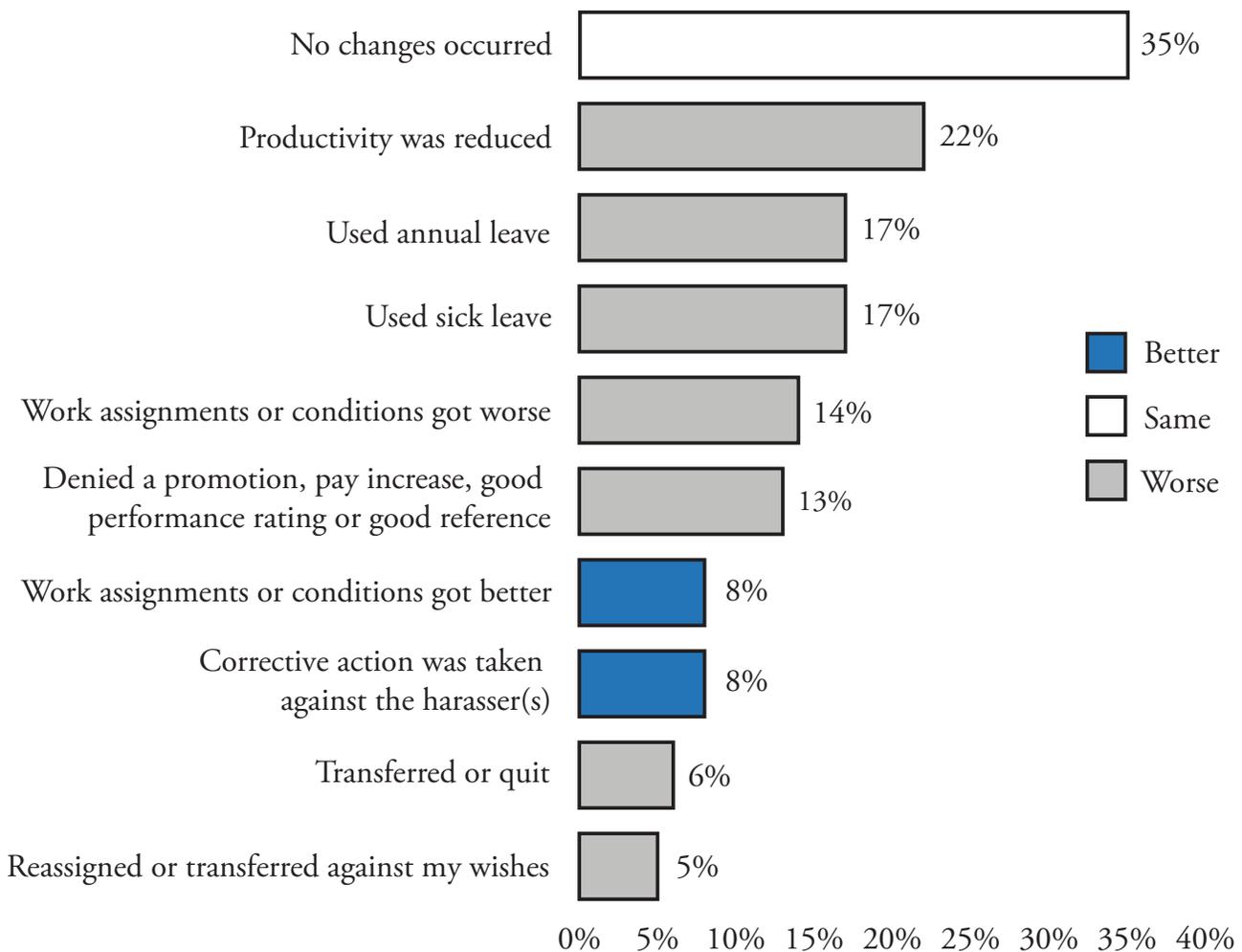
⁸⁰ This figure is probably a floor for the actual proportion of employees who left after experiencing harassment, as those who had already left the organization would not have been reachable via the email address obtained as part of the MPS 2016 survey sample. Therefore, this percentage likely reflects only those who transferred within the agency.

⁸¹ Fitzgerald, L.F., Drasgow, F., Hulin, C.L., Gelfand, M.J., & Magley, V.J. (1997). Antecedents and consequences of sexual harassment in organizations: a test of an integrated model. *Journal of Applied Psychology*, 82(4), 578-589.

⁸² Miner-Rubino, K. & Cortina, L.M. (2007). Beyond targets: consequences of vicarious exposure to misogyny at work. *Journal of Applied Psychology*, 92(5), 1254-1269.

The Consequences of Sexual Harassment

Figure 3. Employee Perceptions of the Results of the Sexual Harassment or Their Response to It⁸³



As devastating as sexual harassment can be to the target, the harm does not end there. It extends to observers.^{84,85} As shown in **Table 12**, employees who never personally experienced or witnessed sexual harassment were the most positive on these indicators of work satisfaction and engagement. In contrast, those who experienced sexual harassment more than once were the least satisfied. Further, those who observed repeated harassment also demonstrated notably decreased satisfaction with supervisors, managers, the organizational culture, and work stress. They were also less likely to feel inspired to do their best work or to recommend their agency as a place to work.

⁸³ Percentages in the table are the combined percentage of respondents replying “Strongly Agree” or “Agree” to the listed result.

⁸⁴ Miner-Rubino, K. & Cortina, L.M. (2007). Beyond targets: consequences of vicarious exposure to misogyny at work. *Journal of Applied Psychology*, 92(5), 1254-1269.

⁸⁵ Dionisi, A.M. & Barling, J. (2018). It hurts me too: examining the relationship between male gender harassment and observers’ well-being, attitudes, and behaviors. *Journal of Occupational Health Psychology*, 23(3), 303-319.

Table 12. Job and Organizational Satisfaction by Observation or Experience of Sexual Harassment⁸⁶

| | None | Observed | | Experienced | |
|--|------|----------|----------------|-------------|----------------|
| | | Once | More than Once | Once | More than Once |
| Satisfaction with supervisor | 77% | 69% | 60% | 62% | 59% |
| Satisfaction with managers | 60% | 52% | 44% | 44% | 40% |
| Satisfaction with organizational culture | 58% | 43% | 38% | 44% | 34% |
| Satisfaction with level of work stress | 55% | 50% | 39% | 46% | 36% |
| Inspired to do my best work | 71% | 60% | 51% | 63% | 52% |
| Recommend agency as a place to work | 69% | 66% | 51% | 56% | 46% |

It is also possible that sexual harassment and a more general dissatisfaction are the product of deficiencies in an organization’s leadership⁸⁷ and culture. In other words, ineffective leaders enable environments that are not only conducive to sexual harassment, but through their actions (or inactions) generate employee dissatisfaction with the workplace. Regardless, it is clear that damage to morale and productivity that is linked to sexual harassment (or by organizational conditions that tolerate it) may be widespread and long lasting.

Effects of Sexual Harassment on the Organization

Given the relationship between work satisfaction and engagement and performance,^{88,89} it is logical that harassment often damages the productivity of those who were harassed. In this manner, sexual harassment does not harm only *individuals*; it also harms *organizations*. Other ways that sexual harassment can harm an organization include—

- *Loss of talent.* When employees who have experienced or observed sexual harassment depart in search of a more professional and inclusive work environment, the agency loses their expertise, forfeits the return on investments in their development, and forgoes the employee’s future potential;
- *Impaired recruitment.* Sexual harassment decreases the likelihood that they will recommend their agency as a place to work. In an era of online platforms and social media, the power of an unhappy former employee to influence potential applicants is not limited to word-of-mouth;
- *Damage to reputation and public trust.* Allegations of agency negligence, indifference, or retaliation can create a costly and time-consuming public relations problem⁹⁰ and, more importantly, undermine public trust in an agency’s integrity and competence; and
- *Liability.* When sexual harassment leads to informal or formal complaints or grievances, the organization incurs costs to manage and resolve them. These costs can increase exponentially when misconduct is not properly or promptly addressed. For example, an agency may be responsible for lost pay, compensatory damages, and attorney’s fees.⁹¹

⁸⁶ Percentages in the table are the combined percentage of respondents replying “Strongly Agree” or “Agree” to a positively-worded statement about the listed aspect of the workplace.

⁸⁷ Hart, C., Dahl Crossley, A. and Correll, S.J. Study: When Leaders Take Sexual Harassment Seriously, So Do Employees. *Harvard Business Review*, December 14, 2018. <https://hbr.org/2018/12/study-when-leaders-take-sexual-harassment-seriously-so-do-employees>.

⁸⁸ U.S. Merit Systems Protection Board, *The Power of Federal Employee Engagement*, September 2008, pp. iii-iv.

⁸⁹ Partnership for Public Service and Boston Consulting Group. *A Prescription for Better Performance: Engaging Employees at VA Medical Centers*, March 2019, <https://ourpublicservice.org/publications/a-prescription-for-better-performance-engaging-employees-at-va-medical-centers/> retrieved on May 8, 2019.

⁹⁰ Does, S., Gundemir, S., & Shih, M. (2011, June). Research: how sexual harassment affects a company’s public image. *Harvard Business Review*. Retrieved from https://hbr.org/2018/06/research-how-sexual-harassment-affects-a-companys-public-image?utm_source=twitter&utm_campaign=hbr&utm_medium=social on October 11, 2018.

⁹¹ According to EEOC, in FY 2016, Federal agencies spent nearly \$118 million to resolve discrimination complaints across all legally protected bases under its purview: “\$3.3 million on pre-complaint settlements, \$46.6 million on EEO complaint investigations, and \$68 million in monetary benefits for findings of discrimination and complaint-stage settlements.” U.S. Equal Employment Opportunity Commission, *Annual Report on the Federal Workforce, Fiscal Year 2016*, p. 11.

Employee Responses to Sexual Harassment

Actions Taken by Targets of Harassment

An employee who experiences sexual harassment can respond in many ways, in the moment and afterward. The MPS 2016 listed nine specific actions that employees may take in response to harassment. These actions can be categorized as follows:

1. Actively responding to stop the harassment;
2. Avoiding the harasser; and
3. Tolerating the harassment.

Because each action has distinctive advantages and disadvantages, an employee's decisions will reflect considerations such as: the perceived seriousness of the harassment; the employee's knowledge of the actions and associated processes; trust in the organization and its officials; the likelihood of desired outcomes (such as an end to the harassment); and the likelihood of undesired outcomes (such as increased harassment or retaliation).

Active response. As seen in **Figure 4**, about 60% of employees who experienced harassment took a direct approach and asked the harasser to stop. That action is important, both to put the harasser on notice that the behaviors are not welcome⁹² and to provide a firmer foundation for complaint if the harassment continues.⁹³

As discussed earlier, a legal determination of sexual harassment requires that the harassing conduct meet stringent criteria, such as the degree to which it is unwelcome. Therefore, targets of harassment may have stronger cases where their responses were active and documented, which makes it easier for agencies to take action and/or for the EEOC or the courts to conclusively determine that discrimination occurred.

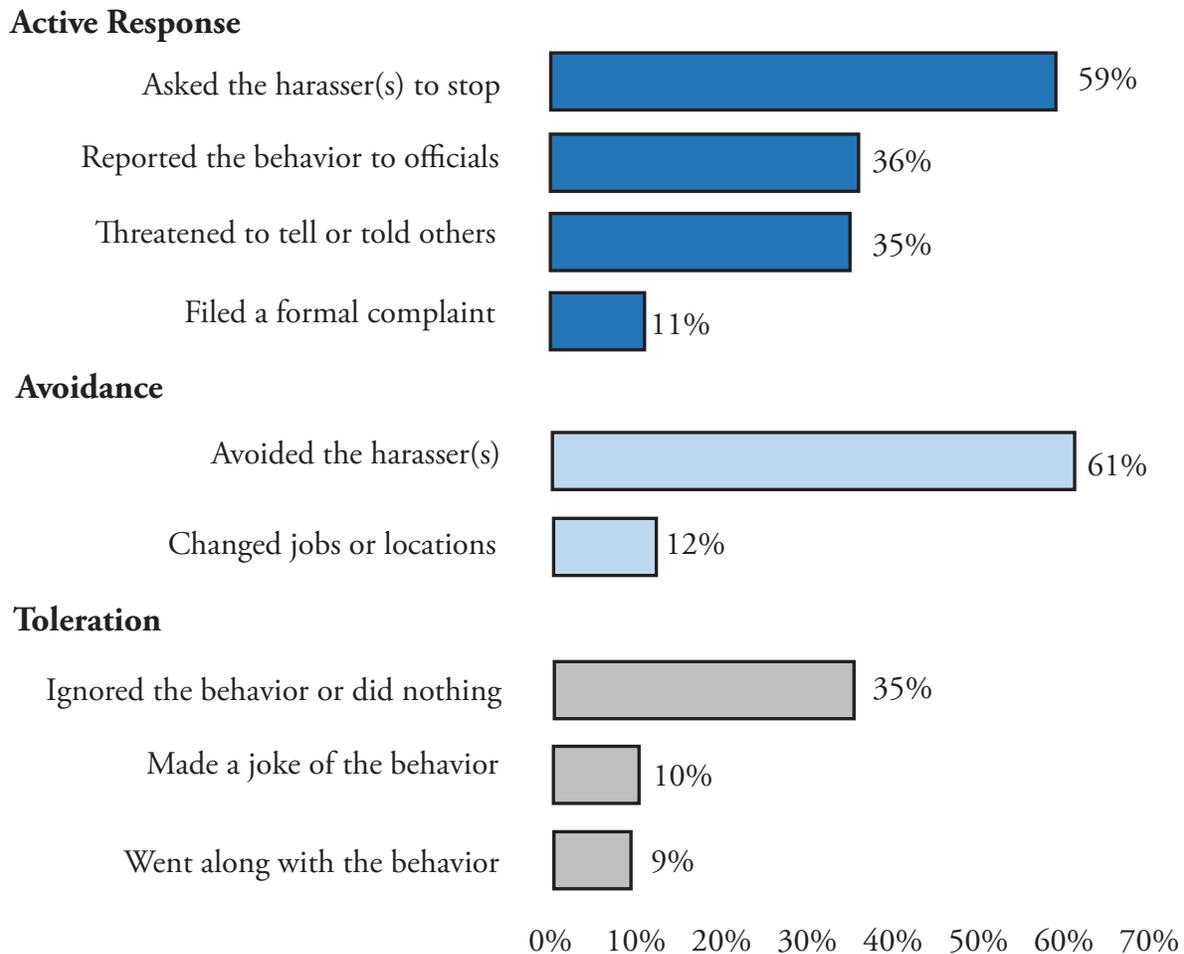
Slightly over a third of employees indicated that they reported the harassment to the supervisor or other authority (although this may be more problematic when one's supervisor is the harasser), while a third said they threatened to report the harassment. However, only about 11% of those who were harassed actually filed a formal complaint (e.g., equal employment opportunity complaint or a grievance).

⁹² U.S. Equal Employment Opportunity Commission, EEOC Facts About Sexual Harassment, <https://www.eeoc.gov/eeoc/publications/fs-sex.cfm>, retrieved on October 11, 2018.

⁹³ For example, in *Skinner v. Department of the Army*, (99 FEOR 3314, EEOC No. 01985850 (EEOC 1999)), the complainant initially joined in the sexual banter but later notified her superior that his behavior had "crossed the line" and was unwelcome. The EEOC found the agency was liable for the superior's subsequent misconduct because it did not take prompt and appropriate action. However, in other cases, the EEOC found that the complainants did not establish that the behaviors were unwelcome (*Litofsky v. Department of Justice, Federal Bureau of Prisons*, 111 LRP 73478, EEOC No. 0120100397 (EEOC OFO 2011) or also engaged in ribald behaviors (*Taylor v. General Services Administration*, 102 FEOR 1221, EEOC No. 01A10206 (EEOC OFO 2002), thereby undermining the argument that similar behavior from others was unwelcome.

Employee Responses to Sexual Harassment

Figure 4. Actions Taken in Response to Sexual Harassment



Reasons not to file a formal complaint can vary widely.⁹⁴ For example, an employee might consider it unnecessary, if informal actions had corrected the problem or the behavior did not (in the employee's mind) warrant further action at that time. In other instances, an employee might believe that filing a formal complaint would cause additional problems, such as retaliation, be futile, or not be worth the time and effort.

Avoidance. These beliefs help explain why approximately 61% of respondents said they avoided the harasser—and why 12% took avoidance even further, by changing jobs or locations. First, although it might provide relief from harassment, it does nothing to stop the harasser(s) from harassing others. Second, it may needlessly disrupt an employee's life and limit their career prospects. Finally, as discussed previously, the agency loses an employee's skills and commitment. Therefore, agencies should bolster efforts to educate about the prohibitions on retaliation, not only to discourage retaliation from occurring but also to encourage employees to feel safer coming forward to report sexual harassment.

Toleration. The least productive response to sexual harassment, from either the target or an observer, is to simply tolerate it because this can embolden the harasser who may interpret silence as condoning the behavior.⁹⁵ Although an active response is more common, the survey results show that many employees elect to tolerate sexual harassment, at least initially. Approximately one-third of respondents said they ignored the behavior or did nothing.

⁹⁴ U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Workplace: Trends, Progress, Continuing Challenges*, October 1995, p. 35.

⁹⁵ Durana, A, Lenhart, A., Miller, R., Schulte, B. and Weingarten, E. *Sexual Harassment: A Severe and Pervasive Problem*, September 26, 2018. <https://www.newamerica.org/better-life-lab/reports/sexual-harassment-severe-and-pervasive-problem/>

The survey results indicate that both men and women have become less likely to tolerate sexual harassment, and more likely to respond actively, as shown in **Table 13**. This is a positive development, both as a response to specific instances of harassment and as progress toward an organizational culture in which sexual harassment is not tolerated.

Yet avoidance has also become more common, suggesting that formal means of addressing harassment may be insufficiently communicated by agencies, distrusted by employees, or both. Therefore, frequent use of avoidance signals that Federal agencies could do more to educate employees about anti-harassment policies and actions and to increase employee confidence in established procedures for reporting and responding to harassment, as well as protections from retaliation.

Table 13. Actions Taken by Employees in Response to Sexual Harassment, 1994 and 2016

| Action | Women | | Men | |
|--|-------|------|------|------|
| | 1994 | 2016 | 1994 | 2016 |
| <i>Active Response</i> | | | | |
| Asked the harasser(s) to stop | 53% | 65% | 34% | 48% |
| Reported the behavior to officials | 17% | 40% | 12% | 28% |
| Threatened to tell or told others | 16% | 40% | 7% | 26% |
| Filed a formal complaint ⁹⁶ | 7% | 12% | 5% | 8% |
| <i>Avoidance</i> | | | | |
| Avoided the harasser(s) | 42% | 65% | 29% | 51% |
| Changed jobs or locations | 4% | 14% | 2% | 7% |
| <i>Toleration</i> | | | | |
| Ignored the behavior or did nothing | 57% | 34% | 64% | 39% |
| Made a joke of the behavior | 18% | 9% | 22% | 12% |
| Went along with the behavior | 8% | 8% | 10% | 13% |

Another pattern illustrated in **Table 13** is a continuing difference in how women and men respond to harassment. Women remain more likely than men to take an active or avoidant response, while men remain more likely than women to tolerate the behavior. This pattern may reflect the differences across gender in the type or severity of sexual harassment experienced, as previously shown in **Table 5**. However, it may also suggest that some men are conforming to social norms that discourage them from speaking up when they observe or experience harassment.

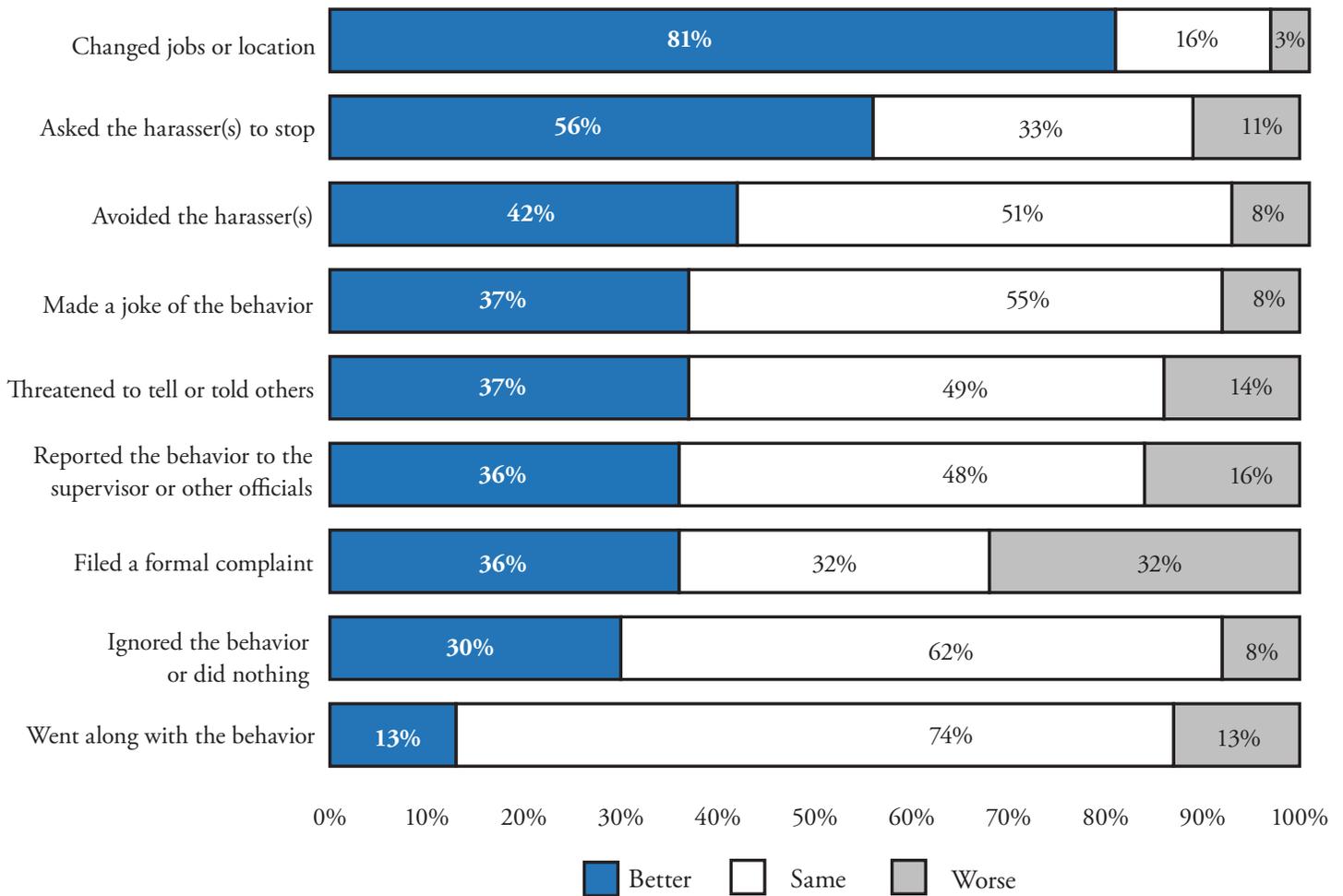
Perceived Outcome of Actions Taken by Target

As mentioned previously, an employee’s decisions on how to respond to sexual harassment are affected by their assessment of whether a particular action will improve or worsen the situation. As shown in **Figure 5**, employee experience suggests that some actions are more likely to be effective than others. The data also indicate that employees may have good reasons to consider the possible risks of any response to sexual harassment, such as retaliation by the harasser or others within the organization, given that some employees reported that the actions they took made their situations worse, rather than better.

⁹⁶ For a comparable 1994 item, we used the item “Did you take any formal action?”

Employee Responses to Sexual Harassment

Figure 5. Employee Perceptions of the Effect of Their Responses to Sexual Harassment



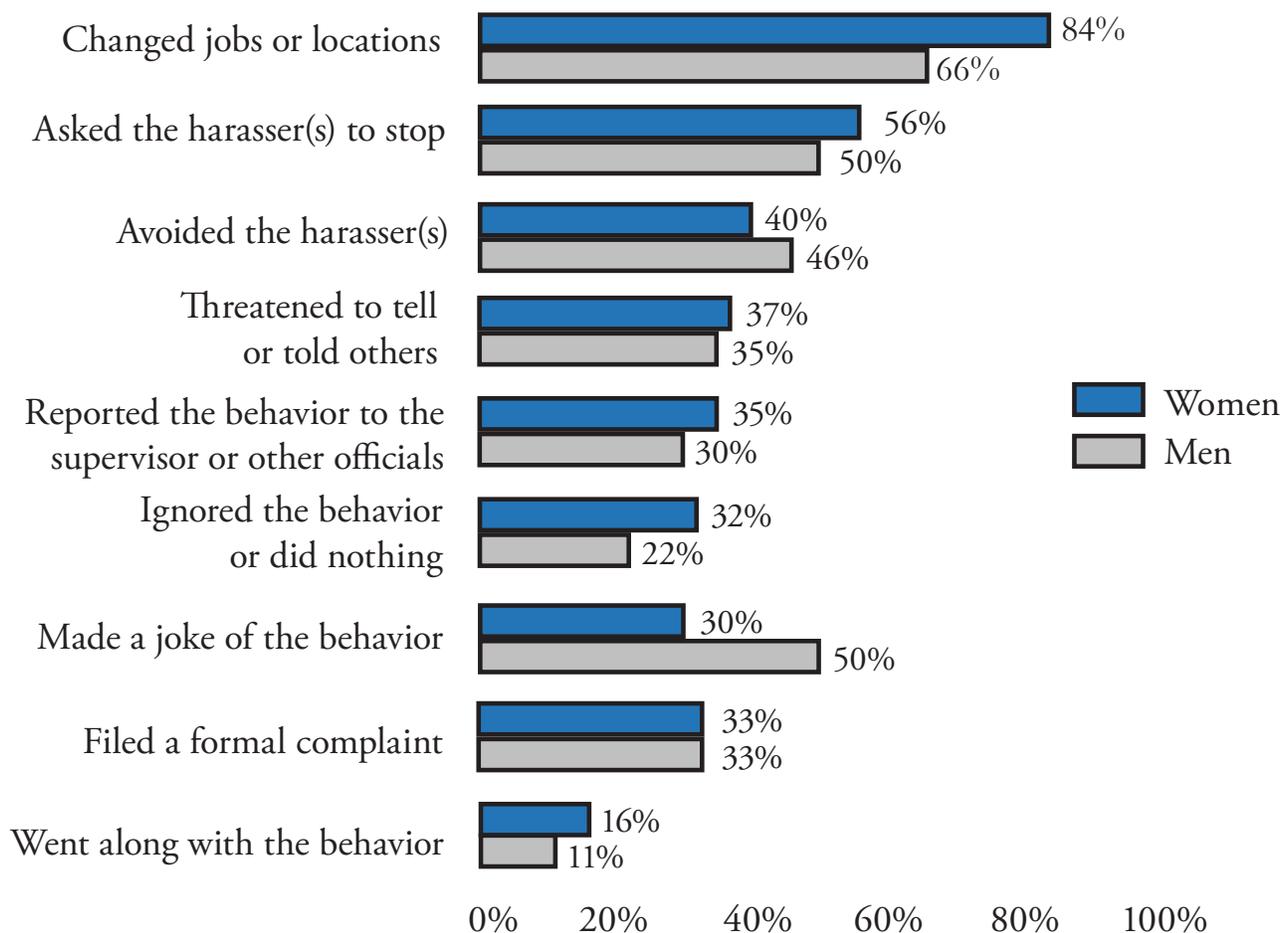
Employees who experience harassment may take several actions, starting with the least official and least assertive, then proceeding to stronger actions if necessary. For example, an employee may initially acquiesce to the behavior because of uncertainty about the harasser’s intent or ignore the behavior in hope that the lack of a response will discourage further harassment. However, employees who took such actions rarely found them effective.

More active response actions such as asking the harasser(s) to stop, threatening to tell or actually telling others, reporting the behavior to the supervisor or other officials, and filing a formal complaint, were more likely to be effective. Yet such actions were not without risk: some employees believed these actions made their situation worse. For example, although 36% stated that filing a formal complaint improved their situation, almost as many (32%) thought that it made the situation worse. That result suggests that some employees may not feel safe using formal channels.

Changing jobs or locations was the action that employees considered most effective in stopping (or at least escaping) harassment, perhaps because they feared retribution for taking more direct action or that their situation would worsen if they tolerated the behavior. Avoiding the harasser was also frequently viewed as effective. These perceptions are not surprising, but they are not reassuring. First, as noted previously, avoidance does nothing to stop the harasser. Second, avoidance is not a vote of confidence in the willingness or capacity of Federal agencies to respond constructively when employees bring harassment to their attention.

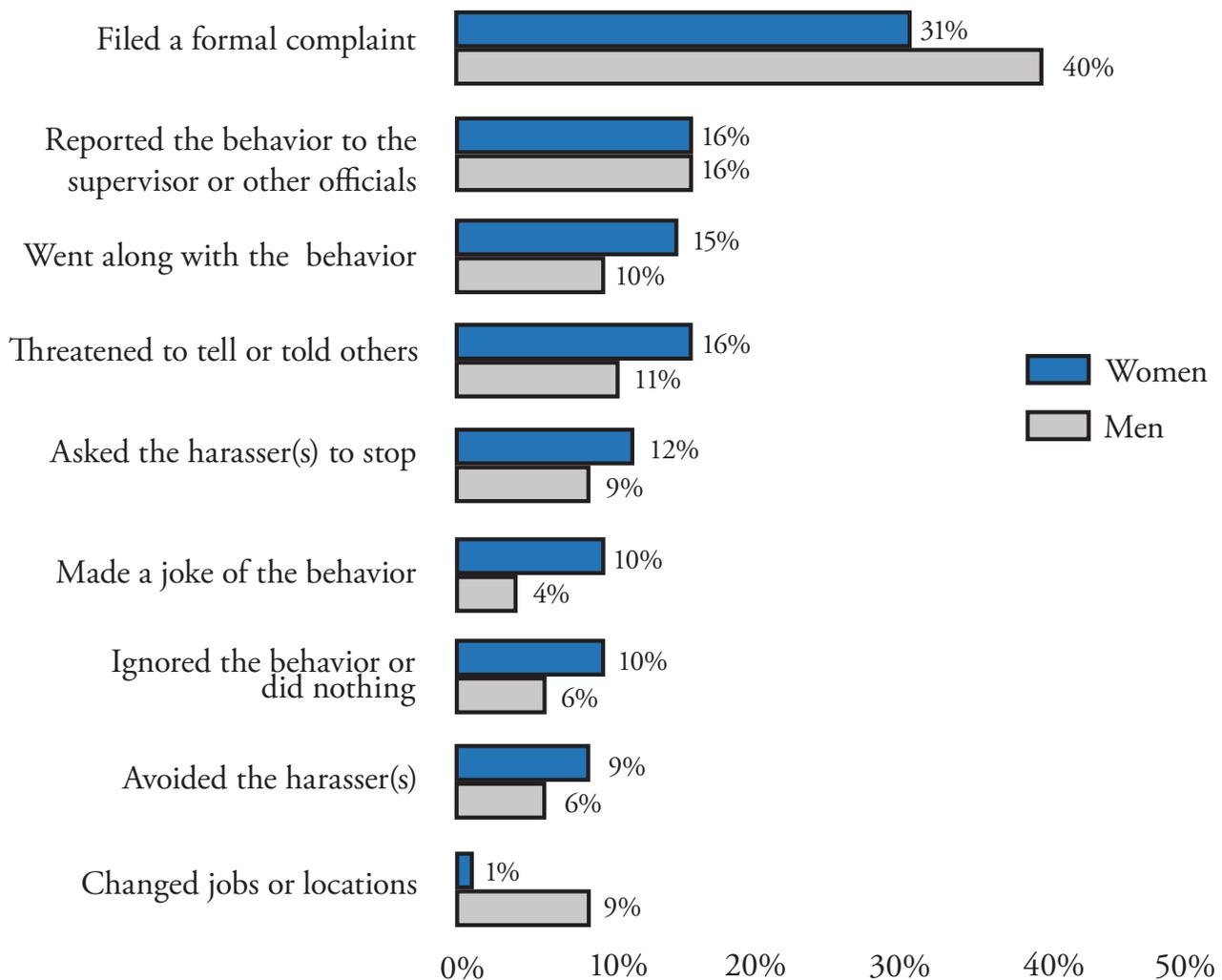
Men and women were in general agreement about the effectiveness of various actions taken in response to sexual harassment. However, there were a few notable exceptions. As shown in **Figure 6**, women perceived more benefit from changing jobs or locations, while men were more likely than women to think that making a joke of the behavior improved the situation. In contrast, men were more likely than women to believe that filing a formal complaint worsened their situation (**Figure 7**). As noted earlier, these reactions may reflect societal norms that encourage men to tolerate harassment and ridicule or even penalize them when they object.

Figure 6. Actions Viewed as Improving the Situation after Sexual Harassment



Employee Responses to Sexual Harassment

Figure 7. Actions Viewed as Worsening the Situation after Sexual Harassment



Role of Observers of Harassment

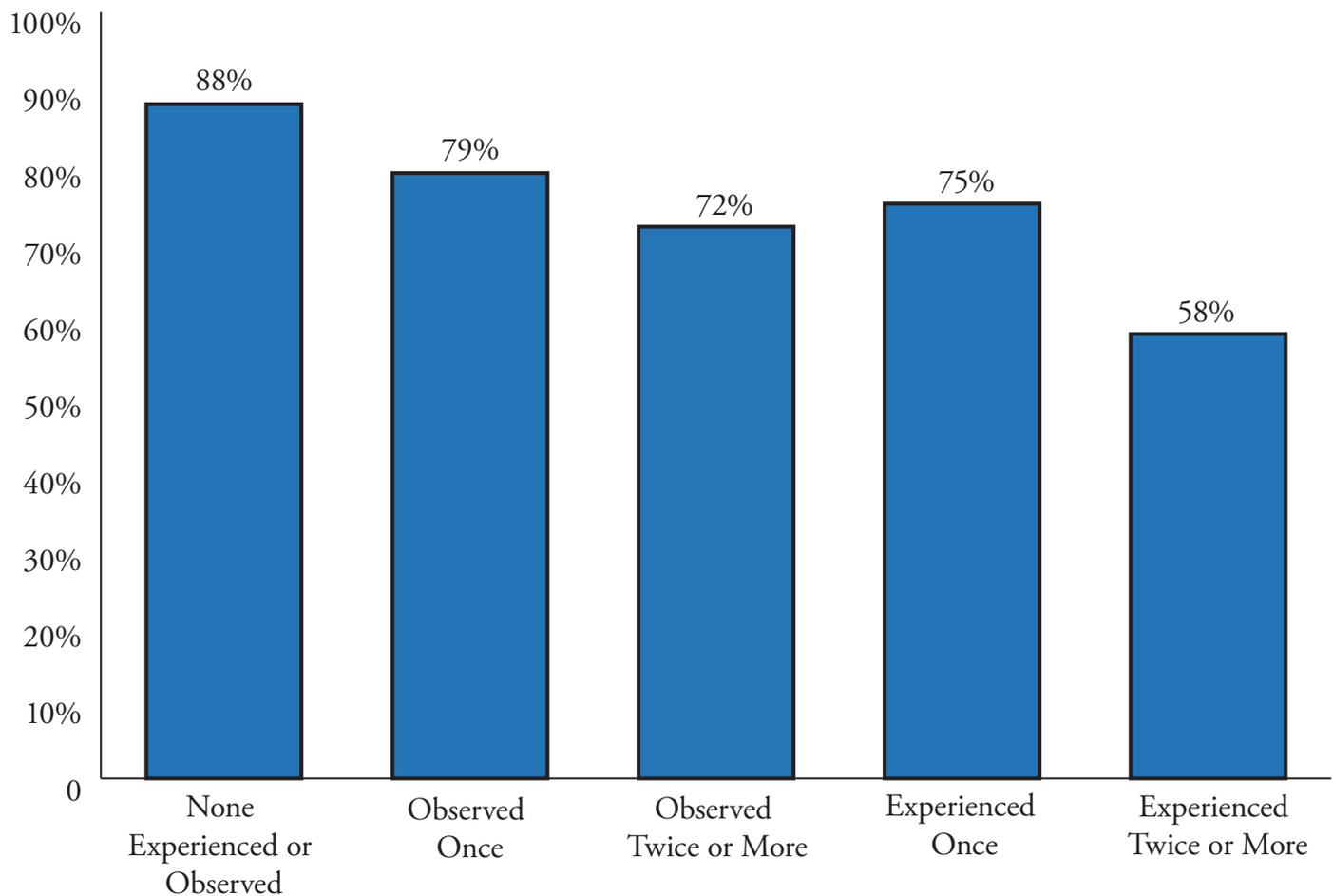
The target should not be viewed as the only person responsible for taking action in response to harassment. One quarter of employees said that they had observed (but not directly experienced) at least one instance of sexual harassment. That means that many people had an opportunity to aid a coworker by intervening or speaking up, reporting harassment, or serving as a witness.⁹⁷ Acting in the moment, by expressing disapproval to the harasser or offering support to the target, can be instrumental in stopping harassment, because harassers often interpret silence as acceptance or approval of their misconduct. Such action may also make the target of harassment more willing to assert their rights, confident in the support of others. However, coworkers should also be aware of the importance of not undermining the autonomy of the person they are trying to help. In other words, the most effective allies clarify with the target when they should take a supportive vs. more active role.⁹⁸

⁹⁷ Bowes-Sperry, L. & O'Leary-Kelly, A.M. (2005). To act or not to act: the dilemma faced by sexual harassment observers. *Academy of Management Review*, 30(2), pp. 288-306. <https://doi.org/10.5465/amr.2005.16387866>.

⁹⁸ Cheng, S.K., Ng, L.C., Traylor, A.M., and King, E.B. (2019). Helping or hurting?: understanding women's perceptions of male allies. *Personnel Assessment and Decisions* 5(2), Article 6. DOI: <https://doi.org/10.25035/pad.2019.02.006> Available at: <https://scholarworks.bgsu.edu/pad/vol5/iss2/6>.

In response to a question on the MPS 2016, 82% of all employees agreed that their coworkers would stand up for someone experiencing sexual harassment. However, as shown in **Figure 8**, that agreement was much lower among employees who had actually experienced or observed sexual harassment. This suggests that some employees who experienced harassment believed their coworkers had a chance to make a difference—and were disappointed that they did not do so. One barrier to intervention may be uncertainty about the nature of the behavior and uncertainty that action would be appropriate, effective, or welcome.⁹⁹ Training for those who observe harassment (frequently known as “bystander intervention training” or “ally training”) can make employees better able to assess workplace interactions and more confident in their responsibility and ability to help stop harassment.¹⁰⁰ As a result, these potential allies can better ensure that the target of harassment feels supported by their actions, as opposed to further disempowered by their intervention, if the target would prefer to handle the situation differently.

Figure 8. Agreement that Coworkers Would Stand Up for Someone Experiencing Sexual Harassment, by Experience or Observation of Sexual Harassment



⁹⁹ *Ibid*, p. 47.

¹⁰⁰ See <https://www.eeoc.gov/eeoc/newsroom/release/10-4-17.cfm> for information about two courses that EEOC has developed, “Leading for Respect” and “Respect in the Workplace,” to educate supervisors, managers and employees regarding how to actively assist a target of harassment.

Employee Responses to Sexual Harassment

Employee Perceptions and Use of Formal Reporting and Resolution Processes

In order to meet legal requirements and treat employees fairly, Federal agencies must successfully complete numerous responsibilities. These include: (1) establishing means (e.g., formal EEO complaint process) to resolve discrimination, including harassment, (2) informing employees about the processes, (3) making these processes accessible, (4) resolving complaints timely and objectively, and (5) refraining from retaliation against employees who use or participate in a complaint or grievance process. However, agencies vary in terms of how well they are viewed as fulfilling these obligations.

Therefore, in addition to asking employees who experienced sexual harassment how they responded to it and their perceptions regarding the effectiveness of these actions, the MPS asked **all** respondents to estimate the effectiveness of these actions in response to a hypothetical sexual harassment experience. As shown in **Figure 9**, there are notable differences between expectations of the broader population of employees when compared with those who had experienced sexual harassment. Federal employees are clearly aware of official channels for reporting sexual harassment and seeking corrective action for it. Further, among the responses listed on the survey, the majority of employees considered the formal, official actions likely to be the most effective. Fully 61% of respondents agreed that filing a formal complaint (e.g., EEO or grievance) would be “very effective.” “Report the behavior to the supervisor or other officials” was expected to be very effective by 54%. Those percentages are far higher than for the remaining actions, which are all “unofficial” in the sense of not involving management action or agency processes.

However, the actions and perceived outcomes of employees who actually experienced sexual harassment do not appear to reflect this apparent level of confidence in official channels. **Table 14** shows, for selected response actions, the percentage of employees who considered the action “very effective” (in the abstract), the percentage of employees who experienced harassment who took the action, and the percentage of employees (among those taking the action) who believed it improved their situation.

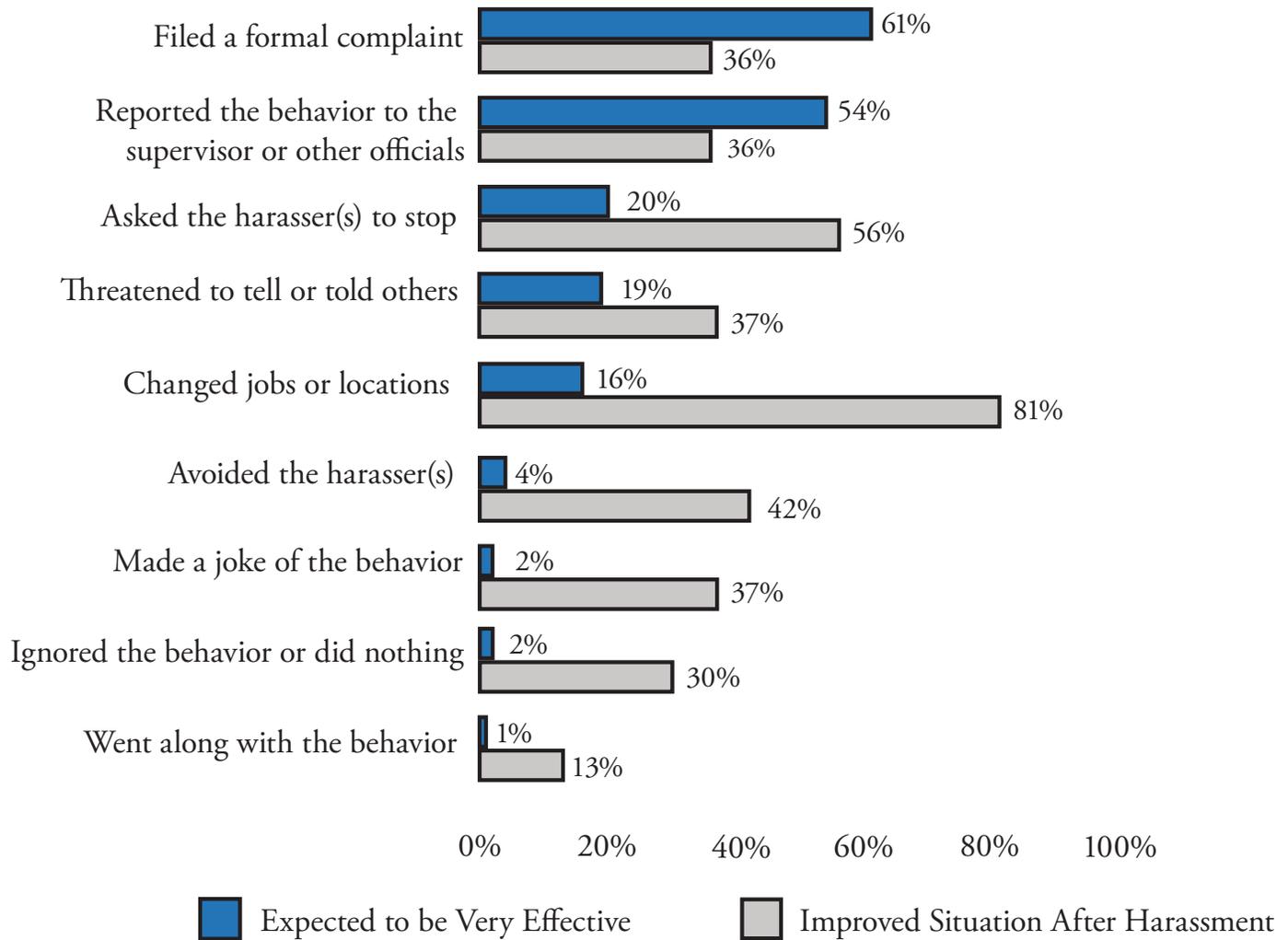
Table 14. Perceived Effectiveness and Outcomes of Actions

| Action | All Employees | Employees Who Experienced Harassment | |
|----------------------------------|-----------------|--------------------------------------|------------------------|
| | Very Effective? | Action Taken? | Made Situation Better? |
| File a formal complaint | 61% | 11% | 36% |
| Report the behavior to officials | 54% | 36% | 36% |
| Ask the harasser(s) to stop | 20% | 59% | 56% |
| Avoid the harasser(s) | 4% | 61% | 42% |
| Ignore the behavior | 2% | 35% | 30% |

As shown in **Table 14**, only 11% of our survey respondents who actually experienced sexual harassment said that they filed a formal complaint. That is far lower than the percentage of employees who took other actions, such as asking the harasser to stop or ignoring the behavior, that employees considered *less* likely to be effective. This pattern poses a question: Why are employees who experience sexual harassment comparatively unlikely to address it through established, formal processes? Survey data¹⁰¹ and complaint processing data provide some possible reasons.

¹⁰¹ MSPB's 1994 sexual harassment survey addressed this subject more fully than the MPS 2016. For more details, see U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Workplace: Trends, Progress, Continuing Challenges*, October 1995, p. 35.

Figure 9. Actions Respondents View as Effective in Response to Hypothetical or Experienced Sexual Harassment¹⁰²



One possible reason is that an employee considered a formal report or complaint unnecessary, because the harassment did not, in their view, warrant such action. For example, they might have viewed the behavior as unintentional, a one-time occurrence, or not troubling (though inappropriate). Another possible reason is that informal actions, such as asking the harasser to stop, succeeded. (Survey results show that this direct approach was taken, and succeeded, much more often in practice than employees expected.) However, the data also suggest other, more troubling reasons.

- *Fear of retaliation.* As noted above, retaliating against an employee for filing a grievance or an EEO complaint is illegal. But that prohibition cannot, alone, make employees willing to do so. First, a legal prohibition does not automatically remove the fear of retaliation from every employee's mind. Second, as shown in **Figure 5** and **Figure 7**, the prohibition is not always effective. Finally, a prohibition on retaliation does not preclude other undesired outcomes that do not necessarily constitute reprisal, such as strained relations with coworkers or an (even more) unpleasant work environment.

¹⁰² Figure 9 compares the responses of two different groups to two similar items. The blue bar shows responses of those who said they had not experienced any of the 12 sexual harassment behaviors and their expectation that the response would be "very effective." The gray bar shows the responses of those who experienced one or more of the sexual harassment behaviors and rated these actions as making their situation "better."

Employee Responses to Sexual Harassment

- *Complaint process timeframes, complexity, and outcomes.* An employee who experiences sexual harassment presumably wants the problem solved quickly. However, EEO complaints usually take considerable time to resolve. The process is unavoidably complex, as a final decision rests on a determination of whether the employing agency engaged in prohibited discrimination. Finally, EEO complaints only infrequently lead to a finding of discrimination. Below, we present and discuss some statistics on EEO complaint processing times and outcomes.¹⁰³

For Fiscal Year 2018,¹⁰⁴ Government wide average length of time from filing a formal complaint to selected milestones were as follows:

- Filing to completed investigation—189 days;¹⁰⁵
- Filing to closure—592 days;¹⁰⁶
- Filing to final orders fully implementing decisions by an EEOC Administrative Judge—1,336 days.¹⁰⁷

The implication is that an employee who experiences discrimination may continue to experience discrimination (with the possible addition of retaliation) for over three and a half years, on average before relief is ordered.¹⁰⁸ The end result appears to be at odds with the goals of the EEO process as it discourages some employees from filing formal complaints because they believe that justice would be, at best, significantly delayed. Therefore, the average processing time, in and of itself, can serve as a barrier to filing formal complaints when employees have suffered discrimination, including sexual harassment. These lengthy processing times are often attributed to limited agency and EEOC resources.¹⁰⁹ EEOC's adjudicatory resources should better correspond to the volume and difficulty level of incoming complaints. Similarly, agencies should devote appropriate resources, in terms of in-house expertise and/or contracted support, to expedite management investigations into harassment, rather than relying upon the formal EEO complaint process before initiating management investigations or taking appropriate remedial actions.

Employees may be further deterred by the low odds of obtaining relief through an EEO complaint. As illustrated on the next page in Figure 10, approximately 42% of EEO counselings concluded with a formal EEO complaint, while a similar percentage (43%) concluded with withdrawal or a decision not to file a complaint.¹¹⁰ About 13% concluded with a settlement agreement between the employee and agency. For an agency, settlements can arrive at an anticipated outcome more quickly (as when an agency settles a case when counsel concludes that the agency would be found liable) or to avoid the cost and conflict of continued litigation. For an employee, settlement may seem preferable to spending the time and money (e.g., attorney's fees) needed to challenge the agency's legal defense.

¹⁰³ This data covers complaints on all bases, as presented in EEOC's *Annual Report on the Federal Workforce, Fiscal Year 2018*. This is the most current report available from <https://www.eeoc.gov/federal-sector/reports> as of May 12, 2022.

¹⁰⁴ U.S. Equal Employment Opportunity Commission, *Annual Report on the Federal Workforce, Fiscal Year 2018*, <https://www.eeoc.gov/sites/default/files/2021-06/2018%20Federal%20Sector%20Report.pdf> as downloaded 5/6/2022.

¹⁰⁵ *Ibid*, p. 41.

¹⁰⁶ *Ibid*, p. 44.

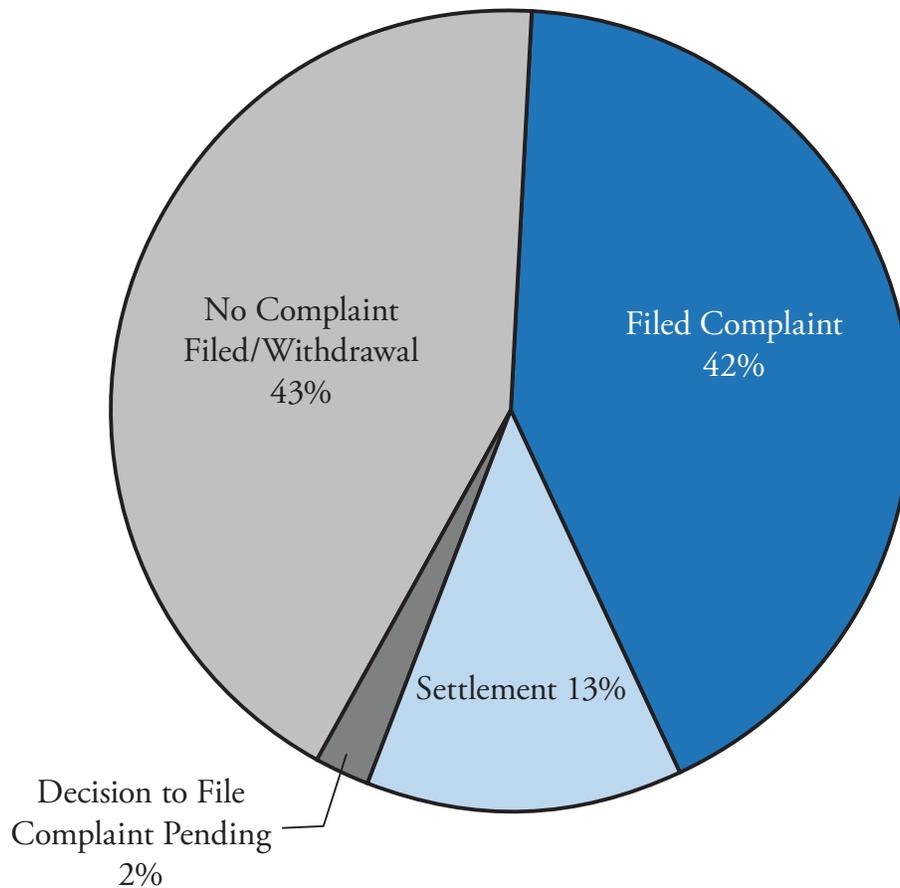
¹⁰⁷ *Ibid*, p. 49.

¹⁰⁸ The agency and/or the employee may have taken other actions in the interim. For example, the agency may have taken interim action to separate the harasser from the target or the target may have moved but is continuing their case.

¹⁰⁹ U.S. Government Accountability Office, *Equal Employment Opportunity: Pilot Projects Could Help Test Solutions to Long-standing Concerns with the EEO Complaint Process*, GAO-09-712, August 2009, pp. 19-21.

¹¹⁰ *Ibid*, p. 34-35. The figure shows outcomes for 37,042 completed counselings.

Figure 10. EEO Counseling Outcomes, FY 2018



The substantial proportion of counselings that end with no complaint filed or withdrawal from the EEO process suggests that agencies (and their employees) may benefit from identifying possible causes for this. Their findings could steer them to provide more training to employees on prohibited and inappropriate behaviors to prevent the underlying conflicts or to more effectively resolve conflicts (such as educating employees on complaint and dispute resolution options and processes).

The final outcomes for the complaints that were not resolved at the counseling stage show that complaints only infrequently end with the employee prevailing or obtaining a settlement. Among the 14,852 complaints closed in FY 2018,¹¹¹ only 139 (.9%) resulted in findings of discrimination.¹¹² Another 422 ended with settlement under alternative dispute resolution (ADR).¹¹³ If one assumes that settlement is a “win” for the employee, 3.8% closed complaints ended with a favorable outcome for the employee who filed the complaint.

However, a low rate of findings of discrimination does not equate to a high rate of “false allegations.”¹¹⁴ It means only that the high standard of proof (e.g., “severe” or “pervasive”) was not achieved. In turn, failure to meet the standard of proof does not equate to “no harassment occurred” or “no evidence could be found.” For example, witnesses may be nonexistent or unwilling to testify for fear of retaliation. Also, when the investigation is delayed or protracted, witnesses may become unreachable or their recollections unreliable.

¹¹¹ *Ibid*, p. 44.

¹¹² *Ibid*, p. 44. As noted earlier, these complaints are based on all legally protected bases as reported by agencies on the Form 462 to EEOC in FY 2018.

¹¹³ *Ibid*, p. 47.

¹¹⁴ Burr, C. (2011). False allegations of sexual harassment: Misunderstandings and realities, *Academic Matters*, October/November 2011. Retrieved from <https://academicmatters.ca/false-allegations-of-sexual-harassment-misunderstandings-and-realities/> on June 11, 2019.

Employee Responses to Sexual Harassment

More broadly, the data suggest that employees may not fully understand what matters the EEO process can effectively address, or how to successfully navigate the process. For example, it is possible that some counselings conclude with “no complaint filed/withdrawn” because the employee did not fully understand what a filing would entail. Similarly, a case might be lost at the latter stage because the employee did not effectively describe their experiences in terms of the relevant criteria. The data may also indicate that employees are more knowledgeable about the EEO process (noting that such knowledge is an explicit goal of the No FEAR Act and its training and communication requirements) than they are about other options that might stop harassment—before it warrants invoking the EEO process.

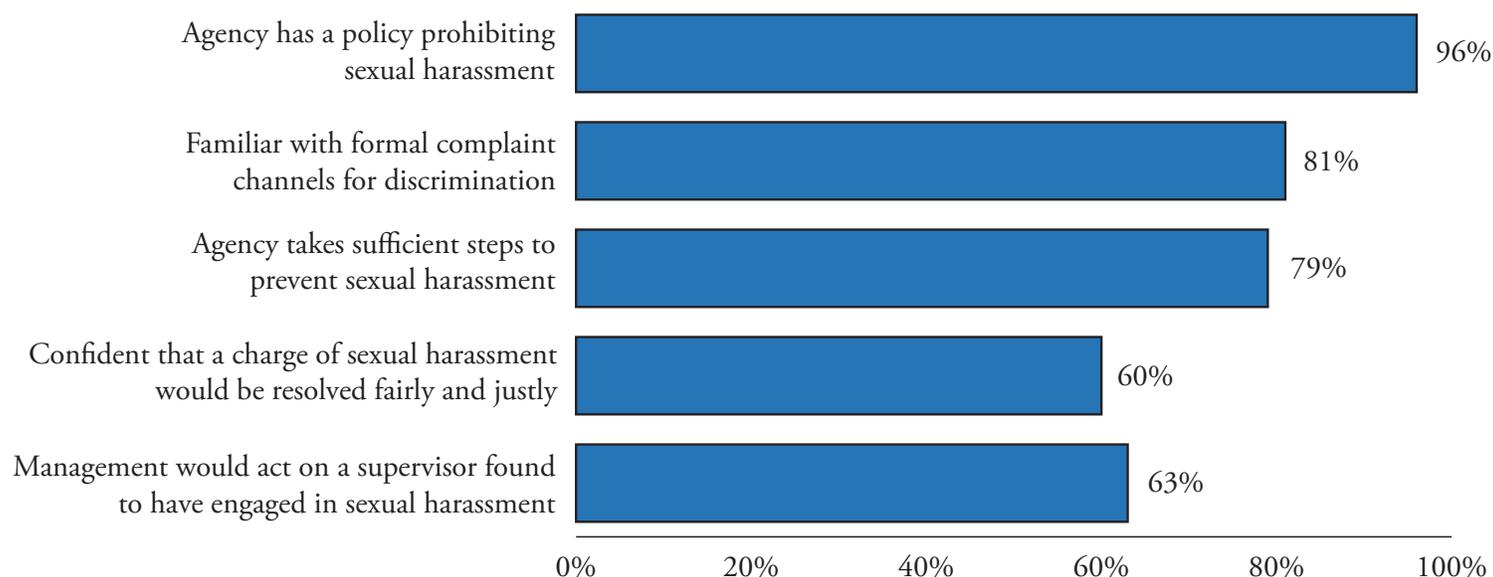
The data and discussion above do not mean that the EEO complaint process is operating improperly, or that employees should be discouraged from using it. However, it does suggest that agencies and employees are not well served by sole reliance on the formal process (and the underlying criterion of a violation of Title VII) to resolve all instances of sexual harassment. Alternatives to the formal process (integrated into that process or apart from it) could facilitate more timely and flexible resolution of many workplace conflicts. As discussed more fully in the recommendations, this will require agencies to establish those alternatives, educate employees about both formal processes and alternatives, and take steps to make employees confident in using the mechanism(s) of their choice.

Employee Perceptions of Agency Success Combating Sexual Harassment

To prevent and address sexual harassment, agencies must: (1) create effective policies and procedures; (2) educate employees regarding them; and (3) hold all employees accountable for adhering to them. Failure at any step can undermine achievement of a workplace free of harassment. Our research suggests that agencies have had varying degrees of success at each of these steps.

Agency success appears greatest in the area of policies. For example, as shown in **Figure 11**, the vast majority (96%) of Federal employees responded that their agency has a policy prohibiting sexual harassment, while only 1% disagreed and 3% said they did not know.¹¹⁵ This result corresponds with the No FEAR Act¹¹⁶ requirements that Federal agencies notify all employees regarding “the rights and protections available to them under the Federal Antidiscrimination Laws and Whistleblower Protection Laws.” Specifically, agencies must provide initial notice and training to new employees within 90 calendar days of entering on duty; re-issue notice to all employees annually; and provide refresher training at least every two years. Similarly, EEOC’s Management Directive 715 (MD-715) requires agency heads to “issue a written policy statement expressing their commitment to equal employment opportunity (EEO) and a workplace free of discriminatory harassment” upon each employee’s arrival and on an annual basis thereafter.¹¹⁷ Agencies have apparently succeeded in notifying nearly all employees regarding their sexual harassment policies—but “nearly all” is not “all.”

Figure 11. Employee Agreement with Agency Sexual Harassment Prevention and Response Efforts



¹¹⁵ Generally, we excluded responses of “Don’t Know/Not Applicable” from analysis and reporting because that response usually indicates that the employee does not have an opinion. However, for the two items on familiarity with agency policy and complaint procedures, lack of knowledge is relevant.

¹¹⁶ Under the authority of Public Law 107-174, 5 C.F.R. §724.202 describes the annual notice requirements and §724.203 summarizes the biannual training requirements.

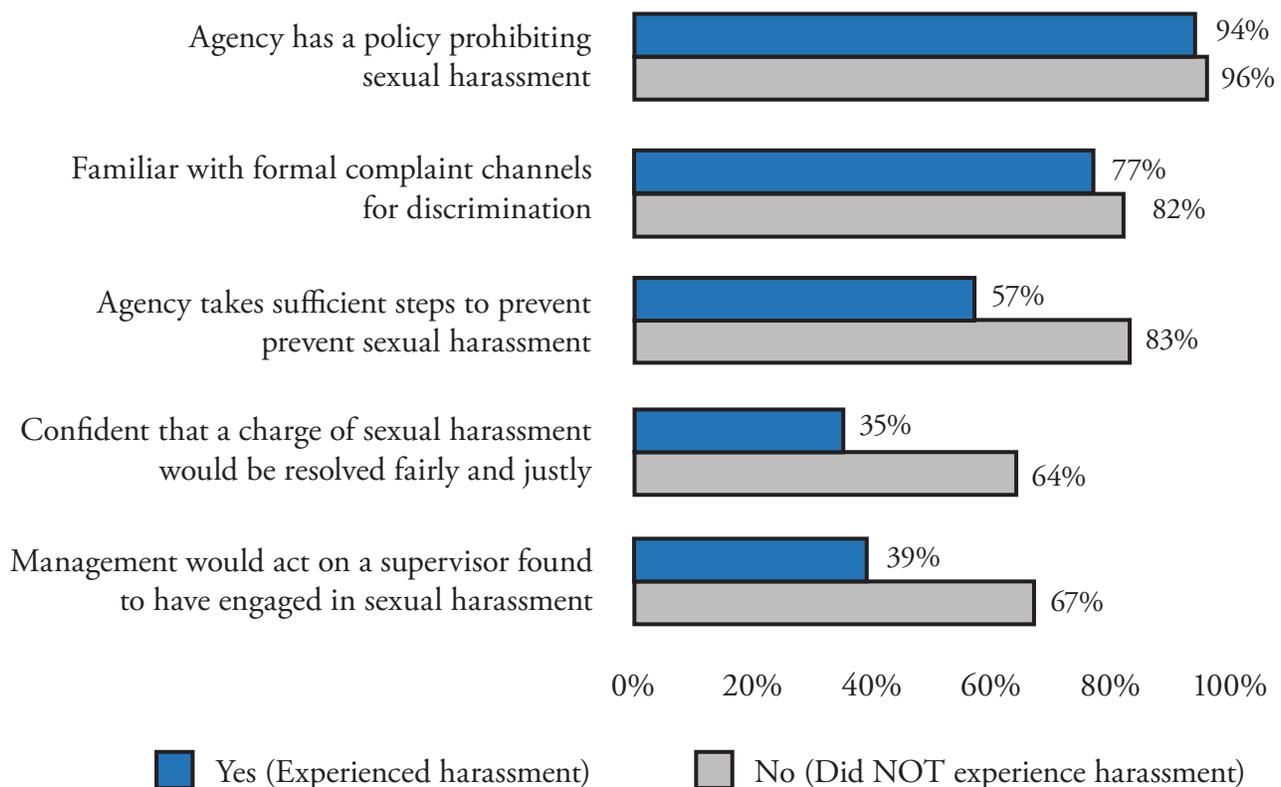
¹¹⁷ See <https://www.eeoc.gov/federal/directives/md715.cfm>, retrieved on November 29, 2018.

Employee Perceptions of Agency Success Combating Sexual Harassment

Despite the requirements that all Federal agencies have a formal complaint process and provide regular training to employees regarding how to use it, a somewhat lower percentage of employees (81%) responded that they are familiar with the formal complaint channels for prohibited discrimination. Moreover, establishing a policy and formal complaint channels and informing employees of them remains insufficient if it fails to actually deter sexual harassment. Additionally, only 60% of employees expressed confidence in a fair and just outcome if they were to file a sexual harassment complaint. Similarly, about 60% of employees agreed that management would take appropriate action against a supervisor who engaged in sexual harassment—meaning that a substantial minority lacked confidence in their agency’s ability and/or willingness to respond in accord with their policies to hold harassers accountable.

Further, there were striking differences between perceptions of employees who had experienced sexual harassment and those who had not. As seen in **Figure 12**, although responses were very similar about the presence of agency sexual harassment prevention policies, there were substantial disparities in views of the agency’s efforts to prevent and address sexual harassment. Those who had experienced sexual harassment were much less likely to agree that their agency successfully prevents sexual harassment or resolves sexual harassment complaints fairly, including when the harasser was a supervisor.

Figure 12. Employee Perceptions of Agency Efforts to Combat Sexual Harassment by Experience of Harassment



In summary, these results indicate that agencies have had widespread success in creating and publicizing policies that prohibit sexual harassment and have notified most employees of formal complaint channels for discrimination. However, creating policies and formal procedures and educating employees regarding them is relatively easy. The challenge remains in implementation and gaining employees' confidence that agencies will choose to do what is right—even if it is difficult—when sexual harassment occurs. That confidence remains lacking as evidenced by continued employee skepticism that agencies will resolve a charge of sexual harassment fairly or take action on a supervisor found to have engaged in sexual harassment, which indicates that some employees, particularly those who have experienced sexual harassment, see a gap between the professed policies and how they are operating. Practical steps to close that gap and achieve the broader goal of a workplace free of discrimination are discussed in the “**Supplement to the Recommendations: Implementing Practices and Issues**,” which follows the “**Conclusions and Recommendations**” section.

Conclusions and Recommendations

Four decades have passed since MSPB administered its first sexual harassment survey. During that time, society's understanding of what behaviors constitute sexual harassment has broadened, from sexual coercion and unwanted sexual attention to include gender harassment—those unwelcome behaviors (which may or may not be overtly sexual) that disparage or objectify others on the basis of sex. MSPB's 2016 survey on sexual harassment was designed to reflect this contemporary understanding, while permitting comparison with data from preceding surveys in 1980, 1987, and 1994. Additional perspectives were gathered from the research literature as well as experts in the EEO community to provide background regarding the current status of the process for responding to harassment, as well as possible improvements.

While this study was in progress, MSPB experienced an unprecedented period of lack of a quorum which prevented this report from being released. During that time, there were significant changes to how and where work was performed by many Federal employees. This was driven in large part by the pandemic leading to greatly increased telework among many Federal employees. Nevertheless, MSPB continued conducting research on the prevalence and types of sexual harassment experienced by Federal employees, as well as actions taken by Federal agencies to address it. These efforts included new, as well as recurring survey items related to sexual harassment on the 2021 Merit Principles Survey. Results from this research will be released in an upcoming publication.

Conclusions

Understanding of Sexual Harassment

Federal employees are increasingly likely to correctly identify behaviors that might be considered sexual harassment in the workplace. Further, opinions of men and women about behaviors that may be sexual harassment have converged, primarily because men are now more likely to agree that a behavior is or may be viewed as sexual harassment. That approaching consensus means that there is less room for misunderstanding and less opportunity for employees to inadvertently engage in behaviors that others interpret as sexual harassment.

Federal employees are most likely to recognize the following behaviors as sexual harassment: pressure for sexual favors or dates, offers of preferential treatment for sexual favors, unwelcome sexual teasing, jokes, comments or questions or other communications of a sexual nature, stalking, and sexual assault. That recognition may reflect familiarity with high-profile litigation involving these blatant forms of sexual harassment. However, employees increasingly realize that certain behaviors (e.g., exposing coworkers or customers to sexually-oriented talk or material or disparaging others based on their sex) may also constitute sexual harassment.

Prevalence of Sexual Harassment

Based on the survey, approximately 14% of Federal employees experienced one or more sexual harassment behaviors between 2014 and 2016. That average masks a continuing and clear difference by gender: women were more than twice as likely as men to experience sexual harassment, with a rate of 21% for women compared to 9% for men. Although these rates are substantially lower than the comparable rates from the 1994 survey, they still represent an unacceptable amount of sexual harassment in the Federal workplace.

To uphold the expectations of the merit system principles (MSPs), Federal employees—at all levels—must treat each other fairly and conduct themselves with integrity. The standards described in the MSPs preclude any type of sexual harassment, including the most prevalent ones, such as exposing others to sexually oriented conversations; unwelcome invasion of personal space; unwelcome sexual teasing, jokes, comments, or questions; derogatory or unprofessional terms related to sex or gender, and unwelcome sexually suggestive looks or gestures. Rates of sexual harassment for men and women vary across agencies. For women, the rate of sexual harassment

Conclusions and Recommendations

ranged from approximately 9% to 27%; for men, the rate was as low as 4% or as high as 15%. Various factors, including workforce demographics and policies, practices, and culture, likely influence each organization's rate of sexual harassment. This indicates both that constructive organizational practices and actions may reduce the incidence of sexual harassment, and that analyzing workforce data (and measures of sexual harassment) along demographic lines may help organizations identify risk factors and target interventions accordingly.

Perpetrators of Sexual Harassment

The survey data show sexual harassment can be committed by anyone present in the workplace—but also that it is (unsurprisingly) typically committed by an agency employee, often one in a position of power or authority. For example, 45% of those who experience sexual harassment attributed it to a coworker, 11% to an immediate supervisor, 12% to a higher level managers, and 15% to a customer or other member of the public. As with workforce demographics, careful collection and analysis of data can help organizations identify patterns or risk factors that can be addressed through targeted and tailored actions.

Employee Response to Sexual Harassment

An employee can respond to sexual harassment in three general ways:

1. Active response (e.g., asking the harasser(s) to stop or reporting the harassment);
2. Avoidance (e.g., avoiding the harasser—either temporarily in the workplace or long-term by leaving the organization); and
3. Toleration (e.g., ignoring the behavior or going along with it).

An employee may respond in more than one way, either in the moment or as the situation evolves or escalates. Although each type of response has a variety of possible advantages and disadvantages, active response tends to be more effective to actually stop harassment, for both the target and others. In contrast, avoiding the harasser may solve the problem for the initial target—but pass the problem on to the next target. Similarly, toleration may embolden the harasser to continue or escalate misconduct, because it provides no feedback that the behavior is unwelcome or wrong.

Employees in 2016 were more likely to take an active response, and less likely to tolerate sexual harassment, than those in prior survey administrations. Yet they were also more likely to resort to avoidance strategies, such as avoiding the harasser or even changing jobs. This implies that some organizations have failed to create a culture where employees feel safe to stand up to a harasser.

Further, although asking the harasser to stop and avoiding the harasser are different in important respects, they share a common characteristic: an attempt to resolve the situation without involving the organization or its officials. Although such an attempt can be a reasonable first step, targeted employees should not believe that they must shoulder the entire burden of stopping sexual harassment. Other survey results indicate that many employees believe that the costs of pursuing a formal complaint would exceed the benefits. This pattern suggests that organizations could provide more options to respond to sexual harassment and better support employees who choose an active response. It also suggests that many organizations need to strengthen existing channels and work to earn trust that harassment will be addressed. Increasing the likelihood that employees will speak up, rather than remain silent, could strengthen accountability and lead to better outcomes for all.

Effects of Sexual Harassment

Employees who experienced or observed sexual harassment noted that it harmed them and impaired mission accomplishment. Such employees may experience reduced productivity and may have to use annual leave or sick leave, either to avoid their harasser or to address illness resulting from the stress of being harassed. Ultimately, they may choose to leave or may be involuntarily reassigned or relocated. Additionally, sexual harassment in the workplace reduces satisfaction with numerous aspects of the workplace—not only for the target of the harassment, but also for observers.

Employee Perceptions of Agency Efforts to Combat Sexual Harassment

The survey revealed some positive results. Almost all Federal employees believed their agencies succeeded in creating policies prohibiting sexual harassment (96%) and most (over 80%) were familiar with the formal complaint channels for discrimination. Therefore, it is not surprising that nearly 80% of employees also thought their agencies took sufficient steps to prevent sexual harassment.

However, employees were less confident about the implementation and effectiveness of these policies and practices. Although the majority expressed confidence that a charge of sexual harassment would be resolved fairly and justly (60%) and that management would act on a supervisor who committed sexual harassment (63%), that is not good enough. Further, employees who had experienced sexual harassment were less likely (than those who had not) to believe their agencies would handle sexual harassment appropriately. Therefore, agencies should take the steps necessary to ensure that all employees are confident that they need not tolerate sexual harassment in their workplaces.

Recommendations

Although the survey results reflect progress towards a greater understanding and avoidance of sexual harassment in most Federal workplaces, agencies should continue to strive to develop and implement effective strategies to prevent sexual harassment. Additionally, they can establish procedures for how to better respond to harassment when it occurs, despite their best efforts. These strategies, procedures, and actions fall into three categories, as follows:

1. Policies and practices;
2. Education, and
3. Accountability.

MSPB's general recommendations are summarized below. The subsequent chapter, “**Supplement to the Recommendations: Implementing Practices and Issues**” discusses specific recommendations and issues in greater detail. We note that these categories (“prongs”) are interrelated and interdependent. For example, for agency policy to be effective, it must be clear and comprehensive—then communicated (through education) and enforced and evaluated (through accountability).

Policies and Practices

For agency leaders—

- Communicate through policy, and prompt individual action, that sexual harassment and other misconduct will not be tolerated nor will retaliation against employees who report sexual harassment or other retaliatory behavior. Agency leaders do not only exercise formal authority; they are also role models for expected behavior in their organizations.
- Hold accountable those found to engage in any form of retaliation against employees for their actions related to addressing sexual harassment.

Conclusions and Recommendations

For agencies—

- Ensure that policies on sexual harassment clearly and concisely summarize critical information, which includes: (1) the types of behaviors that are prohibited; (2) employee rights and responsibilities should harassment occur; and (3) where to find additional guidance.
- Distribute policies on a regular basis and make the policies and associated materials accessible, so they are prominent in employees' minds and readily available should the need arise. This information should be available to employees as soon as they enter the workforce and whenever they are promoted to new roles. Agency policy and guidance should also describe expected behaviors—what is optimal, in addition to what is appropriate—and not focus exclusively on prohibited or negative behaviors.
- Establish multiple channels for handling harassment, and ensure that employees are knowledgeable regarding those options, as well as the requirements of each, such as 45 days from the date of the alleged discriminatory act to initiate contact with an EEO counselor to preserve one's rights to file a formal EEO complaint, even after pursuing alternative methods of resolution.¹¹⁸ Ideally, those channels will collectively cover a full range of issues, and provide differing levels of formality and means of resolution. Once aware of harassment, agencies should promptly start the management investigation process. However, they should simultaneously notify employees of the 45-day deadline to seek EEO counseling through the agency's EEO program since these two processes may take place concurrently.¹¹⁹
- Ensure through policies and procedures that prompt and remedial action is taken when sexual harassment is reported. Agencies should not rely on the formal EEO complaint process before initiating management investigations or taking appropriate remedial actions.
- Provide appropriate training for those undertaking sexual harassment investigations.
- Encourage targets of harassment to report these behaviors and provide the support that they need throughout the process.
- Communicate cultural support for employees serving as allies in maintaining a healthy work environment and taking actions to report and stop sexual harassment.

Education

For agency leaders—

- Establish expectations for employee conduct through mandatory training as well as via direct communications regarding the intended work culture.

For Federal agencies—

- Provide timely training to all Federal employees (including interns and contract employees) on their rights and their responsibilities to foster a productive and professional workplace for all—one that is free of discrimination, harassment, and misconduct.
- Provide notice of basic policies and rights to employees on or immediately following entry on duty (EOD)—“first day of the job.” That notice should outline what to do if sexual harassment is observed or experienced.
- Provide basic information about agency policy (e.g., non-tolerance of sexual harassment and discrimination) and standards of conduct (e.g., expectations for behavior) to other individuals present in the workplace, such as contractors and visitors, to the extent practicable.

¹¹⁸ U.S. Equal Employment Opportunity Commission, Federal EEO Complaint Processing Procedures, <https://www.eeoc.gov/publications/federal-eeo-complaint-processing-procedures>.

¹¹⁹ EEOC, Federal EEO Complaint Processing Procedures, <https://www.eeoc.gov/publications/federal-eeo-complaint-processing-procedures>

- Develop training materials and requirements that address the responsibility of Federal supervisors, managers, and executives to prevent and address any form of harassment. Whenever possible, basic information, such as agency policy, should be provided before an employee assumes supervisory authority.
- Provide employees with training that prepares them to act or speak to stop potential sexual harassment. Such training should address employees as both potential targets of harassment and as potential observers of harassment. Prompt action from observers (“bystanders”) can be highly effective in stopping harassment and preventing escalation.^{120,121}
- Tailor training content, frequency, and delivery to an organization’s particular circumstances, including evidence and indicators about the prevalence and nature of sexual harassment. For example, an agency with a higher rate of sexual harassment may need greater investment in training, and more frequent and forceful messages about agency policy and employee accountability.
- Evaluate the effectiveness of sexual harassment prevention training—not only in terms of increasing employee knowledge, but also in terms of organizational outcomes, such as the prevalence of sexual harassment.

Because sexual harassment is a sensitive topic, and because changing behavior is harder than merely conveying knowledge, all agencies should be thoughtful about training methods, tone, and training sources and instructors. Finally, training requirements in this area mandate training that is both frequent and widespread. That may encourage agencies to reuse prior training material or courses to avoid investing additional time in developing refreshed training. However, this may have undesired consequences, which can include dated or inaccurate content, employee inattention, and employee belief that the organization does not take sexual harassment seriously.

Accountability

To foster a workplace free of harassment, anti-harassment programs and education initiatives must be supported and reinforced by accountability. As discussed, the results of this study indicate that the vast majority of Federal employees know that their agencies have policies prohibiting sexual harassment and offer formal procedures for reporting it. However, this knowledge has not translated into universal confidence that their employer will actually hold harassers accountable. From a broader perspective, employee uncertainty also suggests that agencies have not truly held themselves accountable for living up to their professed standards and policies. Actions to strengthen organizational and individual accountability include the following:

For Federal leaders—

- Serve as a role model for respectful treatment of others.
- Promptly address inappropriate behavior rather than waiting for harassment to escalate.
- Respond swiftly and appropriately to substantiated allegations of misconduct—even if they do not meet the stringent legal standards that are required to support a formal charge of sexual harassment.
- Acquire and evaluate data on the scope and nature of sexual harassment within the agency, to make informed choices about how to best prevent and address harassment.

¹²⁰ Dobbin, F. and Kalev, A. The promise and peril of sexual harassment programs. *Proceedings of the National Academy of Sciences*, 116(25), pp. 12255-12260.

¹²¹ U.S. Commission on Civil Rights, *Federal #MeToo: Examining Sexual Harassment in Government Workplaces*, Briefing Report, April 2020, pp. 139-141.

Conclusions and Recommendations

For Federal agencies—

- Hire, promote, and reward or discipline supervisors, managers, and other agency leaders on the basis of criteria that evaluate the ability to (1) manage people fairly and effectively and (2) foster a positive workplace that is free of harassment and discrimination.
- Demand that supervisors and managers serve as role models, in both their personal conduct and holding others accountable. The obligations of supervisors and managers include taking action when harassment is observed or reported, and refraining from retaliation (or the appearance of retaliation) against any employee who raises concerns about harassment or participates in a formal complaint process.
- Investigate and address allegations of sexual harassment fairly and promptly. Timely investigations are important to (1) prevent further harm; (2) provide a foundation for corrective action; (3) communicate that the agency is taking the matter seriously; and (4) deter future misconduct. Therefore, agencies should expeditiously initiate management investigations and take appropriate corrective actions rather than rely on the formal EEO complaint process to address sexual harassment.
- Base corrective action, including discipline for harassers, on the seriousness of the misconduct and the interests of the target(s) and the agency. Although there is a high legal standard (e.g., severe or pervasive) for the finding of sexual harassment through the EEO process, an agency is not constrained to this legal criterion in order to take action. Using a different criterion (for example, “inappropriate conduct”) allows an agency to quickly and forcefully address less serious sexual harassment behaviors before they become unlawful.¹²² It also empowers managers to act and stop behaviors that are inappropriate.
- Exercise transparency through their timely reporting and posting of accurate agency statistics.

For Federal employees—

- Ensure that all behavior is appropriate for the workplace.
- Consider options to stop any harassment that is experienced or observed.

Pursuing a multi-pronged strategy, as outlined above, will help agencies eliminate (or at least greatly reduce) sexual harassment in the Federal workplace. The result will be a more positive and productive work environment for all employees, and one that is better able to accomplish the organization’s vital missions.

¹²² However, agencies should exercise caution and avoid using a lesser charge for behavior that meets the definition of sexual harassment because this may: (1) mask problems with sexual harassment within an agency, (2) dilute a potential penalty by proposing a charge that carries a lesser range of penalties than a “sexual harassment” charge might, and (3) prevent agencies from providing appropriate remedial action to the target of the harassment.

Supplement to the Recommendations: Implementing Practices and Issues

As discussed previously, eradicating sexual harassment requires agencies to address three broad areas: policy and practice, education, and accountability. This section discusses the aspects listed below in greater depth, outlining approaches that may be particularly effective and implementation issues to consider.¹²³

Policy and Practice

- Multiple Channels for Reporting and Addressing Harassment
- Content of Agency Policies
- Distribution of Agency Policies—Timing
- Distribution of Agency Policies—Channels and Media

Education

- Who Should Receive Information and/or Training?
- Timing—When Should Training be Provided?
- Content—What Training Should be Provided?

Accountability

- Leadership and Culture
- Investigation, Employee Protection, and Corrective Action
- Measuring Prevalence—Assessing the Level of Sexual Harassment
- Practicing Transparency

Policies and Practices: Multiple Channels for Reporting and Addressing Harassment

Sexual harassment encompasses a wide range of behaviors and experiences. Both employees and agencies are best served if there are ways to report and stop these behaviors, including those that might not meet the high legal standard for sexual harassment, before they escalate. Informal or mediated processes can be utilized to resolve workplace conflicts more quickly and flexibly than a formal, adversarial process.¹²⁴ Also, employees' levels of trust and comfort may differ across processes and offices or officials. For these reasons, agencies should provide multiple channels for employees to report harassment, which have varying levels of formality, anonymity, and confidentiality. The most appropriate channel(s) may vary according to the nature of the harassment, but include—

- Direct reporting to the supervisor or a higher-level manager;
- Anonymous reporting (e.g., through a hotline);

¹²³ For EEOC's perspective on recommendations for preventing and correcting harassment, readers may also want to review *Promising Practices for Preventing Harassment*, EEOC-NVTA-2017-2, 11-21-2017, which can be found at <https://www.eeoc.gov/laws/guidance/promising-practices-preventingharassment>.

¹²⁴ Nevertheless, agencies must ensure that all employees are aware of the necessity to contact an EEO counselor "within 45 days of the matter alleged to be discriminatory" even if they plan to pursue an alternative to the formal EEO complaint process. <https://www.eeoc.gov/publications/federal-eeo-complaintprocessing-procedures>.

Supplement to the Recommendations: Implementing Practices and Issues

- Alternative dispute resolution (e.g., an ombuds program);
- An anti-harassment program; and
- The EEO complaint process.

Next, we discuss selected issues and implementing practices for some of these channels.

Direct Reporting—Issues and Limitations

Direct reporting can be convenient and comfortable for the employee (assuming they trust the supervisor or manager) and can empower the people closest to the problem to assess and solve it. However, the EEOC requires an alternative to the supervisor as the recipient of complaints of harassment¹²⁵ since this could compromise the perceived or actual thoroughness or objectivity of the investigation, for reasons such as—

- *Potential for conflict of interest.* First, when the alleged harasser is in the employee's chain of command, requiring the employee to report through their supervisor clearly presents an untenable situation.¹²⁶ Second, if the alleged harasser is a supervisor elsewhere in the organization, employees may assume that people in the supervisory chain will support each other, regardless of the facts or the nature of the misconduct. Third, even when the alleged harasser is an employee of the same organization, the supervisor may have (or be seen as having) a vested interest in protecting or supporting that person.
- *Capacity to conduct an investigation.* Even if there is no apparent conflict of interest, a supervisor may lack the time, authority, or skills (such as interpersonal skills and conflict resolution) needed to conduct a thorough and objective investigation.
- *Confidentiality and trust.* An employee who knows that the allegation will be discussed within the chain of command may elect to remain silent or leave, rather than report the harassment and risk inaction or retaliation, unless the employee trusts that the issue will be handled fairly and with an appropriate level of sensitivity.¹²⁷

For these reasons, EEOC policy requires that agencies provide (and permit employees to use) a channel other than direct reporting. A few alternatives, which offer differing levels of confidentiality and intended paths of resolution, are outlined below. Generally, an employee remains free to elevate the problem (e.g., pursue a formal complaint) if the issue is not resolved informally. However, as discussed earlier in this report, the formal EEO complaint process can be lengthy and screen out all but the most egregious cases. As a result, agencies should ensure that employees have—and are aware of—intermediate options for ending harassment.

Alternatives for Direct Reporting and Formal Complaints

Table 15 describes the typical design features of some channels that agencies utilize to resolve harassment.

¹²⁵ EEOC, Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors. EEOC Notice 915-002. June 18, 1999. Section V(C)(1)(c)(1).

¹²⁶ EEOC, *Model EEO Programs Must Have an Effective Anti-Harassment Program*, https://www.eeoc.gov/federal/model_eeo_programs.cfm, retrieved August 3, 2017.

¹²⁷ Trust may be a particular concern among women. Women are more likely than men to be targets of sexual harassment, but in most organizations, they are underrepresented in supervisory positions. In practice, then, a man will often be charged with investigating the alleged harassment of a woman by a man—and women might question whether the complaint will be taken seriously.

Table 15. Purpose and Features of Selected Channels to Resolve Harassment

| Channel/Program | Purpose | Typical Features and Considerations |
|-------------------------|---|---|
| Hotline | Allow employees to report harassment anonymously or confidentially | <ul style="list-style-type: none"> • May allow reporting information without divulging identity • May be staffed by agency employees or contractor (for efficiency or confidentiality) |
| Ombuds | Enable employees to raise and resolve workplace issues before they escalate or lead to a formal complaint | <ul style="list-style-type: none"> • Part of an agency alternative dispute resolution (ADR) program • Less formal and more flexible than compliant or grievance processes • Separate from the EEO office/function, to preserve independence and confidentiality • Ombuds staff objectively review circumstances and issues and attempt to mediate a solution |
| Anti-harassment Program | Stop harassing behaviors without engaging the formal EEO complaint process and the corresponding stringent criteria | <ul style="list-style-type: none"> • Identified by EEOC as a critical component of a model workplace program • Intended to eliminate harassing conduct on all legally protected bases (not just sex) and before it can become “severe or pervasive” • Location and structure vary; may be managed inside or outside the EEO office, but if within EEO needs to be walled off from the formal complaint process • Can support accountability (e.g., investigation could recommend or provide a basis for disciplinary action for the harasser) |

Policies and Practices: Content of Agency Policies

As discussed in the report, employee awareness of the existence of agency policies and procedures appears greater than their specific knowledge and their comfort with using formal mechanisms. Such shortfalls in specific knowledge and comfort contribute to the avoidable escalation of workplace conflicts arising from harassment. Selected measures to expand the reach and utilization of formal policies are presented below.

- Establish a model anti-harassment program that provides for early intervention and informal resolution of problems, such as an impartial ombuds, to complement more formal processes. Also, EEOC guidance¹²⁸ states that “anti-harassment policy and complaint procedures should contain, at a minimum, the following elements:
 - A clear explanation of prohibited conduct;
 - Assurance that employees who make claims of harassment or provide information related to such claims will be protected against retaliation;
 - A clearly described complaint process that provides accessible avenues for complainants;
 - Assurance that (the) employer will protect the confidentiality of the individuals bringing harassment claims to the extent possible;
 - A complaint process that provides a prompt, thorough, and impartial investigation; and
 - Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.”

¹²⁸ EEOC, *Model EEO Programs Must Have an Effective Anti-Harassment Program*, https://www.eeoc.gov/federal/model_eeo_programs.cfm, retrieved August 3, 2017.

Supplement to the Recommendations: Implementing Practices and Issues

- If the agency sexual harassment policy is long and complex, consider developing a primary policy document that provides essential information concisely, complemented by more detailed documents for reference and further reading.
- Ensure that agency policy documents provide comprehensive information addressing both workplace behavior (e.g., what constitutes sexual harassment) and selected response actions, such as how to file a complaint and how to be an ally to support the target of harassment.
- A general, compliance-oriented anti-harassment policy may provide insufficient information on sexual harassment prevention. Agencies with high rates of sexual harassment, or other challenges, may benefit from more focused attention to sexual harassment in policy documents—and in employee education, both general (e.g., orientation) and focused (e.g., antidiscrimination).

Policies and Practices: Distribution of Agency Policies—Timing

The baseline practice required to comply with the No FEAR Act is annual distribution of applicable anti-harassment policies, as well as notice to new employees within 90 days of entry on duty. Supplementing that schedule with distribution at additional times, to specific populations, can promote more timely and thorough understanding of the policy, set the tone for employee behavior and the broader work environment, reinforce agency and leadership expectations for professional conduct and a harassment-free workplace, and improve employee recall of (and ability to locate) agency policies and their content. Some possible practices to consider along these lines are listed below.

Distribution from Leadership

- Distribute the annual notice through a personal communication from the head of the agency, local director, and/or other leader(s).
- Redistribute the policy immediately following a change in leadership, to emphasize both continuity (e.g., for high standards of conduct) and the personal commitment of the new leader.

Distribution to Agency Employees

- Distribute the policy at entry on duty and upon any major change in role or responsibility.
- Distribute and discuss the policy during onboarding or orientation, assuring that those activities are conducted timely. If this orientation process is frequently delayed, communicate essential information immediately through other means.
- Phase the distribution and discussion of agency policies, covering “essential to know” basics immediately and providing more detailed information later.
- Establish and enforce deadlines for when employees receive (and acknowledge) policies and other important documents, communications or training.
- Make policies and supporting material accessible through other means (e.g., website, portal or document repository) so that information is available on demand.

Distribution to New Supervisors

Because supervisors exercise personnel authority and have heightened responsibility for preventing and responding to harassment and other forms of discrimination, they should receive particular attention.

- Require newly-selected supervisors to review agency policies before assuming supervisory responsibilities.
- Require supervisors and managers to acknowledge receipt and understanding of agency policies at entry on duty.

- Discuss agency policies and associated supervisory responsibilities in appropriate depth during supervisory orientation and training.

Policies and Practices: Distribution of Agency Policies—Channels and Media

As noted previously, an annual distribution of policies and materials does not guarantee that employees have sufficient information or understanding to guide their day-to-day conduct, or to respond (as a target or observer) to an instance of harassment. Below are some ways to reinforce agency policy, refresh employee knowledge, and make information available when an employee is most ready for it, or most needs it.

- Demonstrate top level commitment as the agency head distributes an annual message in support of expectations for behavior, as well as methods for resolving harassment. This message may be communicated through the means which is most suited to the speaker, such as email, memo or speech, but the critical point is to demonstrate personal buy in.
- Send email messages periodically or as linked with other events. Agency program offices or experts, such as EEO/Civil Rights Offices and Human Resources Offices, should distribute periodic or event-driven messages. For example, the EEO Director could send an all-employee email that provides additional information regarding rights and remedies for harassment. These communications can also remind employees of the location of reference materials and other resources.
- Utilize training opportunities for transitions (e.g., training provided to newly promoted supervisors) and incorporate information regarding increased responsibilities for preventing and addressing harassment.
- Provide policies, guidelines, and reference materials in multiple formats, through multiple media (e.g., paper memorandum, bulletin boards, agency portal or intranet) to ensure widespread access in a timely manner.

Education: Who Should Receive Information and/or Training?

As illustrated by results from the MPS 2016, anyone in the workplace may be a target—or perpetrator—of harassment. Therefore, agencies should provide information and training to all individuals who are in the workplace.¹²⁹ Education should be keyed to roles and risks. **Table 16** provides an example of this approach, illustrating how the scope and depth of information and training should increase as presence in the workplace and responsibilities increase.

¹²⁹ However, agencies should keep in mind that those who have experienced sexual harassment (or other forms of abuse) may find this training to be triggering. Therefore, accommodations should be made to provide a professional, more individualized alternative in this situation.

Table 16. Trainees and Content of Training

| Who (Role and Examples) | What |
|--|--|
| Visitors and customers <i>Examples: members of the public seeking information, employees of other organizations (e.g., delivering goods), building staff performing maintenance, individuals meeting agency employees, individuals receiving agency services.</i> | <ul style="list-style-type: none"> • Basic expectations for conduct • Federal Government non-tolerance of sexual harassment |
| Interns and contractors <i>Examples: paid or unpaid interns, contractors who are employees of another organization under contract with the government.</i> | As above, plus– <ul style="list-style-type: none"> • Individual rights and responsibilities |
| Nonsupervisory employees | As above, plus– <ul style="list-style-type: none"> • Agency policy • Specific expectations for conduct • Complaint processes • Expectations and actions as observer of sexual harassment |
| Supervisors and officials | As above, plus– <ul style="list-style-type: none"> • Responsibility for preventing harassment and communicating and enforcing agency policy • Responsibility for monitoring employee conduct and workplace interactions • Responsibility to intervene and report when harassment is observed • Responsibility for receiving and acting on complaints • Requirements for constructive response and non retaliation |
| Managers and executives | As above, plus– <ul style="list-style-type: none"> • Responsibility for holding subordinate supervisors accountable for their actions, and to a higher standard, due to the nature of their responsibilities • Responsibility for reviewing and acting upon analyses regarding the prevalence of harassing behaviors and other forms of discrimination |

Education: Timing—When Should Training be Provided?

Like communication of agency policies and procedures, it is most effective and efficient to provide training on both an event-driven and periodic (recurring) basis. Training schedules and cycles should be informed by both the employee’s need and readiness for information and the particular needs and circumstances of the agency (e.g., the prevalence or nature of sexual harassment). **Table 17** illustrates important stages of employment and the type and depth of training that may be appropriate to that stage.

Event-Driven Training

Table 17. Events and Corresponding Training

| Stage/Event | Training |
|--|---|
| Pre-Hire (during the recruitment and selection process) | EEO Policy states the Federal Government’s stand against discrimination. Expectations for employees’ behavior could be added. Further, the selection process may consider evidence contrary to these expectations. Notice of a harassment-free workplace can serve to attract new hires who are seeking a work environment that fosters diversity, equity and inclusion, while also screening out potential harassers. |
| Initial hire (entry on duty-EOD) | Basic, integrated into employee orientation or provided shortly after EOD. The training provides an introduction to agency policies and procedures and provides contacts or resources in the event the employee experiences or observes harassment. |
| Onboarding (weeks following EOD) ¹³⁰ | Same areas as covered at EOD, with more thorough treatment of— <ul style="list-style-type: none"> • Agency policy and procedures • Behaviors that constitute sexual harassment • Expectations for behavior and conduct • Appropriate actions in response to experiencing or observing harassment |
| Periodic training | Designed to provide more advanced skills and to serve as a refresher for earlier training. Examples might include: <ul style="list-style-type: none"> • Bystander training • Respectful workplace |
| Change in role—placement in supervisory or leadership position | Prior to moving into a role of greater responsibility, the employee should be educated on and acknowledge their greater responsibilities as a supervisor, manager, or executive. Training should be provided for supervisors and other officials, as outlined in the prior section, <i>Education: Who Should Be Trained?</i> If supervisory training is periodic, agencies should take measures to ensure that the new supervisor receives policy documents and is “on notice” about expectations for personal conduct and preventing and responding to harassment. |

However, there are other factors that should drive the timing and frequency of training. As one example, a team that has experienced or observed sexual harassment may require immediate attention to provide guidance for moving forward. Or at the organizational level, an agency with higher than average sexual harassment rates may need more frequent training to recalibrate expectations for behavior.

¹³⁰ In some organizations, orientation or onboarding is an infrequent event that may occur long after EOD. If that is the case, essential information should be provided directly to the employee on or immediately following EOD, rather than waiting for an orientation in the distant or uncertain future.

Supplement to the Recommendations: Implementing Practices and Issues

Recurring Training

As discussed previously, the No FEAR Act (5 C.F.R. §724.202 and §724.203) covers discrimination on all legally protected bases, as well as protection for whistleblowers, and requires agencies:

1. To issue a notice regarding their rights and remedies under antidiscrimination laws and whistleblower protection laws to all employees
 - a. within 90 days of EOD and
 - b. annually thereafter;
2. To provide training on this topic to employees
 - a. within 90 days of EOD and
 - b. at a minimum of every two years.

As compared to the event-driven training discussed in the prior section, the recurring training covered by the No FEAR Act serves as a minimum for the training requirement. However, agencies should remember that this training serves purposes beyond compliance, and that there may be good reason to provide training with greater frequency, or greater depth, than is dictated by law or regulation because the benefits may outweigh the costs. For example, an agency may see indications (such as a high or increased incidence of sexual harassment, or a particularly serious incident) that an immediate reminder of agency policy (and expected behavior) is needed. We also note that reminders or refreshers that are more frequent than required can signal leadership seriousness about maintaining an environment free of harassment, and remind employees to monitor their own words and actions. Restated, agencies should draw a distinction between “as required” and “as needed” and aim for the higher levels to improve the work environment for all.

Education: Content—What Training Should be Provided?

Below are some suggestions regarding how to provide and deliver substantive and effective training on sexual harassment. Information provided by agencies suggests that most training related to sexual harassment is compliance-driven (e.g., designed to meet the nominal requirements of the No FEAR Act), brief, and (consequently) of limited depth, although there were some exceptions.

The general principle is that the depth, format, and length of training should be matched to organizational and employee needs related to sexual harassment prevention and response. Those needs will be informed by employees’ existing levels of knowledge and their conduct in the workplace. For example, less-intensive education may be sufficient in an organization with only very limited sexual harassment, while an organization with higher levels (or serious incidents) will need to do much more.

Additionally, although agencies may be inclined to gain efficiencies by repeating the same material with each training cycle, they should review the training each time to ensure the content remains current. Failing to do this can perpetuate out-of-date information, while also conveying that the organization does not view this as a priority. Further, employees are more likely to provide only cursory attention to information that they believe they have seen before, even if they do not accurately remember the specific content.

Some agencies provide very realistic content for their training by drawing upon examples of harassment that occurred within the agency. These scenarios provide a realistic situation that the employees can relate to and better understand what types of behaviors that they should avoid, what they should do if they observe them, and perhaps even the consequences for those involved in similar conduct.

Purposes of Training

Training on sexual harassment can serve one, several, or all of the following purposes:

1. Compliance—meeting a requirement established in law, regulation, or agency policy;
2. Knowledge—conveying facts about a subject, such as agency policies related to harassment and nondiscrimination, the definition of sexual harassment, and behaviors that may constitute sexual harassment;
3. Notice—establishing a record, for purposes of compliance or accountability, that an individual has been provided with certain materials or information;
4. Culture—conveying information about the organization’s expectations and values, and its vision for employee conduct and the work environment;
5. Behavior—guiding and influencing decisions and actions in the workplace, such as how to avoid sexual harassment and how to respond to sexual harassment.

As noted above, most training on sexual harassment appears to focus on the first three purposes. Those purposes are important, but given that sexual harassment still occurs at an unacceptable frequency, it is clear that both culture and behavior also need attention. Similarly, an evaluation of the effectiveness of the training should go beyond a “check the box” exercise. As discussed later, measurement should be driven by the training objectives, which should include changing outcomes in the workplace.

Topics of Training

Sexual harassment prevention training should likely include topics such as:

- A personal statement of the agency leader’s commitment to a workplace free of discrimination and support for acting to report and respond to harassment;
- An understandable definition of sexual harassment, including examples of behaviors that may constitute sexual harassment;
- The rights and responsibilities of an employee who experiences or observes sexual harassment;
- An overview of the actions and channels that can resolve situations involving sexual harassment, both informal and formal, and how to identify those actions that might be most appropriate and effective;
- A clear explanation of steps and requirements (e.g., forms and filing deadlines) for formal processes, such as the EEO complaint process;
- Assurance that employees who make claims of harassment or provide information related to such claims will be protected against retaliation;
- A discussion of the range of consequences for committing sexual harassment, to deter sexual harassment.

Below, we discuss one type of training that may warrant attention, and four issues (format and delivery, tone, sources and instructors, and evaluation) that can make the difference between training that is effective and training that is ineffective or counterproductive.

Supplement to the Recommendations: Implementing Practices and Issues

Bystander Training—Helping Employees Respond to Sexual Harassment

Sexual harassment can be addressed more quickly and effectively when employees know what they can usefully do when they experience or observe sexual harassment—and when they are confident that their actions can make a positive difference and will not lead to retaliation or other repercussions.

In this vein, EEOC has designed two training courses, “Leading for Respect” and “Respect in the Workplace,” that are designed to help supervisors and managers (and others) actively assist a target of harassment.¹³¹ Training of this type is often described as “bystander” training because it focuses on individuals who observe harassment. However, the objective is to encourage those individuals not to stand by, but to act to stop the misconduct.

Issue—Training Format and Delivery

The scarcity of funds and employee time may pressure agencies to address mandates, such as No FEAR Act training, as quickly and efficiently as possible. That may lead to training material that is standardized and delivery mechanisms that are automated. Although that approach is seemingly efficient, it may not be effective. Training that is designed (and intended) only to “check the box” is unlikely to change behavior, or to materially reduce the incidence and costs of sexual harassment. Below, we discuss some training formats that may be more effective in achieving those more ambitious goals, which require training that is designed and delivered to engage employees’ full attention—and to make employees active participants in their own education.

- *Instructor-led seminars.* Training led by a knowledgeable and thoughtful instructor has particular value for sensitive topics. The instructor can make employees more comfortable with discussing difficult issues and asking questions—and can provide answers that are both authoritative (“correct”) and responsive. Employees may also be more likely to follow and retain information presented in person, compared to reading a written policy or clicking through a slide presentation.
- *Scenarios.* Video vignettes or written case studies derived from actual cases or complaints (anonymized to protect individual privacy) can help employees connect abstract policies and principles to realistic situations. Using scenarios, trainers can diagnose and discuss what went wrong and what should have happened. Scenarios can also incorporate consequences. For example, concluding with a postscript on “What happened to the harasser?” can reinforce the message that employees who engage in harassment will be held accountable.
- *Role-playing exercises.* Role-playing provides employees with low-risk opportunities to practice or consider how they might respond, either as a target or observer of sexual harassment. Realism is key—the situations in such an exercise must be ones that an employee might plausibly encounter. This means that exercises should cover subtle forms of harassment, and not be limited to egregious and obvious forms. Otherwise, employees might be misled to define sexual harassment too narrowly (believing that sexual harassment is limited to the most extreme behaviors) or be ill-prepared to respond to subtler (but still inappropriate) behaviors.

Issue—Tone of Training

The tone and methods of training should be appropriate to the subject. Because sexual harassment is a serious matter—and something that many employees will have personally experienced—agencies should be extremely cautious about the use of humor or levity, either to engage employees or lighten the atmosphere. Such use may convey the impression that management is insensitive or does not take sexual harassment seriously.

¹³¹ See EEOC Launches New Training Program on Respectful Workplaces, EEOC Press Release dated October 4, 2017, <https://www.eeoc.gov/newsroom/eec-launches-new-training-program-respectful-workplaces>, downloaded 5/12/2022.

Issue—Sources and Instructors

Greater attention to sexual harassment has resulted in a proliferation of organizations and individuals who offer to develop or deliver training. The quality and cost of the training and the instructors can vary widely. We recognize that agencies may lack the capacity or funds to develop or deliver high-quality training to all employees. That may necessitate reliance on external providers, and it can be difficult for agencies to objectively evaluate the quality and cost-effectiveness of the training and trainers. Nevertheless, agencies that outsource any aspect of training must be prepared to describe their needs clearly and evaluate proposals carefully. An inter-agency collaboration might help the Federal Government develop affordable, high-quality training, by pooling resources and expertise and achieving economies of scale. Even then, every Federal agency will need to identify its particular needs, ensure that they are fully addressed, and take steps to provide employees with important agency-specific information (such as procedures or points of contact).

Issue—Training Evaluation

As discussed, training can have several purposes, and can vary in quality. Evaluation is essential for organizations to know how well training is working and consider how it might be improved.

A best practice in the learning and development community is to evaluate training at the most sophisticated level possible.¹³² For sexual harassment training, those levels (in ascending order) can be described, and could be implemented, as follows:

1. Do employees like the training (e.g., how do employees rate the training and the instructor's knowledge)?
2. Do employees have greater knowledge after the training (e.g., measured via a pre-test and post-test)?
3. Did workplace behaviors actually change (e.g., was there a decreased incidence of sexual harassment behaviors as measured through employee surveys, or indicated by reporting mechanisms)?
4. Did other measures of a positive workplace culture improve (e.g., decreased turnover, more positive responses to survey items regarding feeling respected, increased productivity)?

Issue—Reusing Training Content or Courses

Agencies should be cautious about reusing training courses or modules. Efficiency, consistency, and quality are important, and those considerations can make it tempting to repeat prior training. However, reuse also presents some risks. First, reuse without review can result in employees receiving information that is inaccurate or dated. Second, it can convey organizational indifference to both the subject and to employees, by implying that the organization does not care if the training is current or compelling. Finally, it can compromise learning, because employees are more likely to “tune out” information that they have already seen.

Accountability—Leadership and Culture

Senior Leadership Role and Actions

Top leadership sets the tone, for both individual conduct and organizational expectations and norms. Leadership actions that promote an inclusive, respectful organizational culture and non-tolerance of discrimination and harassment include—

- Sign—and, to the extent practical, personalize—policy statements and official communications to indicate personal commitment to agency policy;

¹³² Kirkpatrick D.L. (1976). Evaluation of training. In R.L. Craig (Ed.), *Training and development handbook: A guide to human resource development*. New York: McGraw Hill.

Supplement to the Recommendations: Implementing Practices and Issues

- Treat employees at all levels, from direct reports to front-line employees, with courtesy and respect (i.e., be a role model);
- Require direct reports to treat their subordinates with respect, and hold them accountable if they do not;
- Seek opportunities to personally engage with employees, both one-on-one and in groups (e.g., town hall meetings);
- Take prompt action when harassment is observed or reported;
- Seek and review evidence on the incidence of harassment and progress toward an inclusive, discrimination-free workplace;
- Respond calmly and constructively to allegations of harassment (e.g., a formal complaint) and to information that is possible evidence of harassment or broader problems (e.g., higher attrition rates for women);
- Emphasize to subordinate managers that retaliation for reporting harassment, whether formally or informally, is both illegal and inappropriate.

Fostering a Culture of Accountability

Supervisors and managers are central to a workplace free of harassment and discrimination, both as officials responsible for preventing and responding to instances of harassment and as carriers and examples of the organization's values. Supervisors and managers should be selected, trained, and rewarded or disciplined with this in mind. Specific actions that agency leaders can take to implement this general practice include—

- Hiring and promoting supervisors and managers on their demonstrated ability to manage people effectively and create a positive work environment;
- Clearly communicate expectations for personal conduct and official responsibility, and provide supervisors and managers with the training and support needed to meet their responsibilities; and
- Taking appropriate action, which may range from discipline to removal, on a supervisor or manager who commits or fails to act on harassment.

Accountability—Investigation, Employee Protection, and Corrective Action

This section discusses three related aspects of accountability: investigation (determining and documenting what has occurred), protecting individuals who report harassment, and corrective action (both to make whole individuals who experienced harassment, and to hold accountable individuals who committed harassment or failed to respond appropriately).

Issue—Timely, Thorough, and Objective Investigations

Organizations should promptly investigate allegations of sexual harassment—regardless of the position or level of the person who alleges harassment, or the position or level of the individual(s) accused of harassment. A timely and sound investigation provides a factual foundation for the organization to (1) stop further harassment; (2) provide relief to the target; (3) act on any misconduct (e.g., initiate disciplinary action); (4) deter retaliation and future incidents of harassment.

As discussed previously, EEO complaints can take considerable time to investigate, and findings may be framed in terms of Title VII definitions and standards. For those reasons, agencies should not rely on the EEO process to initiate or support corrective action, for either complainants or harassers. That may mean allowing organizations to propose and take personnel actions on the basis of actions not labeled or framed in terms of Title VII.

Issue—Protecting Employees Against Retaliation

Retaliating against an employee who resists or reports sexual harassment is illegal, both as a violation of Title VII and a prohibited personnel practice. It is also ill-advised, because it discourages employees from raising important issues and contributes to an unproductive and unhealthy work environment. As shown earlier in **Figure 2**, employees believe that retaliation occurs all too often. Moreover, the survey results suggest that agency responses to harassment sometimes disadvantage the target, even if that was not intended.

- Measures that can prevent intentional retaliation include the following—
- Educate supervisors and managers about the prohibitions against retaliation.
- Communicate—and enforce—an expectation that supervisors and managers will refrain from retaliation.
- Proceed with care in situations that present an increased risk of actual or perceived retaliation.

Two situations that may pose such a risk are discussed below.

- *Situation: the alleged harasser is the target's supervisor or higher-level manager.* Here, useful steps may include counseling those in the supervisory chain (including the alleged harasser) about refraining from retaliation and avoiding actions that might create the appearance of retaliation. In some situations, it may be best to insulate the employee from working directly with the alleged harasser (if the employee requests or agrees to this measure). That might be accomplished through temporary or permanent reassignment to another supervisor. Another option is to reassign the alleged harasser, or to remove supervisory duties, during the investigation. Such reassignment would both protect the target from retaliation and limit the opportunity to influence or intimidate potential witnesses.
- *Situation: the alleged harasser is the target's coworker or peer.* Here, one concern is equity—whether the supervisor can or will treat the affected employees fairly, particularly the target. Another concern is managing relationships and morale within the work unit. Possible actions include separating the employees during the investigation. That separation can be accomplished through changing work assignments, work sites, or work locations of either the alleged harasser or the target, if and only if the target is agreeable to the changes pertaining to them, lest this be viewed as retaliation. Some agencies appear to use telework, as an option for the target to consider, both to provide this separation as well as a respite from an uncomfortable work environment.

In either situation, the objectives are to provide relief, to avoid disadvantaging the target, and to avoid actual or perceived retaliation. The target's interests and preferences are relevant to all these objectives.

Issue—Responding to Substantiated Harassment

Information from agencies and previous research identifies some issues to consider when determining how the agency will respond to harassment, both generally and in specific instances.

- Guidelines for disciplinary action. Some agencies have developed policies regarding how to respond to specific types of substantiated harassment. These policies may include a table of offenses and penalties, which feature a range of possible actions keyed to particular offenses and/or situations. Several organizations indicated that they have such a table and believe that it clarifies expectations and consequences, and facilitates fair and proportionate discipline for all employees, regardless of who they are.¹³³ However, such standardization also has possible disadvantages.¹³⁴ One is that the table might be read, by officials or third parties, to limit flexibility and the ability to impose appropriate discipline by forbidding any action not specified in the table.

¹³³ A report by the U.S. Department of Justice, Office of the Inspector General, *Review of the Handling of Sexual Harassment and Misconduct Allegations by the Department's Civil Division*, Evaluation and Inspections Division, 17-03, published May 2017, provides a discussion of this on pp. 16-19.

¹³⁴ U.S. Government Accountability Office. (2018). *Federal Employee Misconduct: Actions Needed to Ensure Agencies Have Tools to Effectively Address Misconduct*, GAO-18-48, <https://www.gao.gov/assets/700/693133.pdf>.

Supplement to the Recommendations: Implementing Practices and Issues

- “Zero tolerance” policies. Some agency EEO representatives advocate a “zero tolerance” policy and an associated tables of offenses and penalties to guide its implementation. Agencies considering such a policy should be clear to themselves, and to employees and stakeholders, about what “zero tolerance” means. “Zero tolerance” is often interpreted as harsh repercussions, such as removal, for any offense. But zero tolerance may describe a broader principle: that a disciplinary action (selected from a range of permissible actions) be taken in response to substantiated harassment. This form of zero tolerance may encourage a proportionate yet consistent response to incidents of harassment, while reinforcing to employees that action will be taken. However, there may be an inherent risk in any form of zero tolerance: it may discourage employees from reporting sexual harassment if they believe they will be blamed for the harasser’s punishment.
- Selecting and documenting disciplinary action. After receiving the findings of an investigation or inquiry, the supervisor (or other deciding official) should exercise careful judgment to determine what level of response is warranted. Given that the range can be extensive—from a verbal warning to removal, the supervisor should document the reasons for the discipline chosen and ensure that the employee who committed the harassment is aware of the consequences of any subsequent harassing behaviors.

Accountability: Measuring Prevalence—Assessing the Level of Sexual Harassment

Measurement and analysis are essential components of organizational accountability. Data and measures can help agencies gauge progress, identify strengths and vulnerabilities, and take actions to strengthen culture, prevention, or response. Use of a variety of data sources can provide a clearer and fuller understanding of agency progress in eliminating sexual harassment. Different data sources can provide different perspectives and pose distinctive challenges. Below, we discuss two types of data and issues in data collection and use.

Complaint Data

Information from EEO complaints can provide useful information on patterns, trends, and investigation and resolution processes. However, it is difficult to interpret the meaning of number of EEO complaints and upward or downward changes in that number.¹³⁵ Consequently, complaint data alone cannot provide a reliable measure of the prevalence of sexual harassment.¹³⁶

Survey Data

Survey data can provide a broad-based and reliable measure of employee experience for which there is no good substitute. However, there are several issues that agencies must consider and address when surveying employees on a sensitive subject such as sexual harassment.

- *Confidentiality, data collection, and data use.* Employees will be reluctant to provide truthful responses if they fear retaliation or exposure. That reluctance can be heightened when data collection or analysis might identify a respondent, such as when an agency collects detailed demographic information or “drills down” into results within small organizational components. Although “drilling down” might diagnose issues in a particular organization or identify problems with particular supervisors, such scrutiny can also make employees less likely to respond honestly—if they respond at all. Employee trust that responses will be kept confidential, supported by an agency commitment to review responses only in the aggregate, is critical.

¹³⁵ For example, an increase in complaints could mean an increase in harassment behaviors, but it could also reflect increased education or greater employee willingness to file complaints, as a result of increased trust that a complaint will be handled appropriately.

¹³⁶ Evaluating only formal EEO complaints excludes concerns and issues resolved through other means, such as an ombuds or anti-harassment program.

- *Definition and measurement.* Because employees have diverse backgrounds and experiences, their definition and understanding of sexual harassment may vary widely. Rather than simply asking “Have you experienced sexual harassment?” a survey should describe and present specific behaviors to provide a more reliable measure and a deeper understanding of employees’ experiences. That approach may also help employees overcome a reluctance to label themselves as a “victim” of sexual harassment because of embarrassment or biases regarding who could be a target of sexual harassment.
- *Time boundaries.* To better understand the current situation and environment, a survey should have clear and reasonable time boundaries. For example, it is more useful to ask about behavior that has occurred recently (e.g., within the past year or the past two years) than to ask about everything that has happened in the past 10 years, or over an entire career. Recent experience is more relevant to current practices and policies, and employees generally have more accurate and fuller recall of relatively recent events.
- *Analysis across gender and other risk factors.* Data should be collected and analyzed by gender (i.e., separate measures calculated for women and men) and by other known risk factors, to the extent practicable.¹³⁷ That reduces the likelihood that results are misleading and increases the practical value of the data collected. For example, a combined measure that covers both women and men would mask substantial differences in the rates at which women and men experience harassment. It may also conceal risk factors, such as the gender composition of the organization or its components. (For example, women are at a higher risk of being harassed when they are greatly outnumbered by men in their agency or work group.)
- *Resources and independence.* Many organizations lack the staff, expertise, or technology to develop and administer a confidential, well-designed survey that will yield usable data. That may necessitate outsourcing survey development and administration to an objective third party. However, as noted before, confidentiality and employee trust are critical, regardless of who conducts the survey.

Accountability—Practicing Transparency

Publicizing information on findings and actions in specific instances of harassment can help agencies demonstrate that (1) they take sexual harassment seriously; (2) reporting harassment can, indeed, lead to relief rather than retaliation; and (3) accountability for employees who commit, or countenance harassment is real. Below, we outline a practice that can promote transparency and note some issues to consider when developing or implementing a transparency-oriented practice.

Practice—Publicizing Findings and Outcomes

Some agencies, particularly those with many harassment cases, publicize brief summaries of actual harassment cases.¹³⁸ The cases are generally those where harassment was substantiated, and the summaries are sanitized and anonymized. The summary may describe the outcome for the harasser(s) and responsible officials.

In addition to making accountability real, case summaries can reinforce information provided in training (such as behaviors that constitute harassment) and serve as a deterrent, by reminding employees that misconduct does indeed have consequences. In this way, transparency may make some employees think twice and desist or refrain from harassment.

¹³⁷ One organization noted that they had incorporated the risk factors discussed in EEOC’s June 2016 report from the *Select Task Force on the Study of Harassment in the Workplace* into training for managers.

¹³⁸ Agencies may want to request permission from the target of the harassment before sharing even anonymized summaries to avoid discouraging employees from reporting sexual harassment if they fear they will lose their privacy.

Supplement to the Recommendations: Implementing Practices and Issues

Issue—Confidentiality and Privacy

Agencies are obliged to preserve confidentiality and to protect individual privacy to the extent possible. Those obligations are not limited to the target of harassment (complainant or grievant) but extend to witnesses (individuals who testify in a complaint proceeding) and the harasser. Failure to honor those obligations, or to treat the individuals involved in a case with due respect, may result in legal challenges (from individuals or their representatives)¹³⁹ or lead people to conclude that the agency cares more about its image than about employee privacy or confidentiality.

Issue—Unintended Incentives and Outcomes

Transparency can also create unintended incentives and outcomes. For example, the prospect of a local problem being publicized (even in sanitized form) could motivate an official or organization to conduct a cursory investigation or close a case too quickly. Similarly, it is reasonable for senior managers to monitor complaint filings and their status and resolution. However, that may encourage subordinate managers to reduce the number of open complaints by resolving them inappropriately, as outlined above, or by discouraging employees from filing complaints in the first instance. The purpose of transparency is to acknowledge and deter harassment. But carelessly implemented, transparency may instead create or strengthen incentives to silence or separate the person alleging the harassment.

¹³⁹ Katz, E. (2019). VA faces multi-faceted challenges to its attempts at firing and accountability reform. *Government Executive*, June 11, 2019.

Appendix A. MSPB Merit Principles Survey 2016

Methodology

The U.S. Merit Systems Protection Board (MSPB) has the statutory responsibility to assess the health of Federal merit systems and the authority to conduct studies of the Federal civil service [see 5 U.S.C. 1204(a)(3) and 5 U.S.C. 1204(e)(3)]. MSPB administers a periodic Merit Principles Survey to help carry out those studies. The studies, including summaries and analyses of data from the MPS, are officially submitted to the President and Congress and shared with Federal policymakers and agencies.

Survey Design and Sampling

Typically, the MPS contains a combination of core items that MSPB tracks over time and special-purpose items developed to support a particular study. This survey differs from the Federal Employee Viewpoint Survey administered by OPM in several respects, including: a focus on merit system principles and Government-wide civil service issues; administration every few years instead of annually; and a smaller sample. Agency participation in the MPS was mandatory, but individual response to the survey was voluntary.

Survey Content

The MPS2016 comprised three distinct surveys (“paths”), denoted Path 1, Path 2, and Path L. Path 1 and Path 2 were directed to both line employees and supervisors; Path L was directed to supervisors only. The major topics in each survey path are listed below. All the topics, with one exception, were selected and developed by MSPB. One topic (ethics, on Path 2) was included in the MPS at the request of the U.S. Office of Government Ethics (OGE). Items for that topic were developed by OGE and adapted by MSPB for integration into the MPS.

Path 1

- Employee Engagement
- Work Environment
- Career Entry and Career Interests
- Fair Treatment
- Preventive Measures and Compliant Resolution
- Workplace Violence
- Workplace Aggression/Harassment
- Career Interests
- Classification and Pay Factors
- Prohibited Personnel Practices
- Non-Disclosure Agreements and Policies
- Workplace Conflict
- Respondent Demographics
- Ethics
- Sexual Harassment

Path 2

- Your Work and Workplace
- Your Supervisor
- Work Behaviors
- Employee Engagement
- Employee Performance
- Work Tasks
- Emotional Labor

Appendix A. MSPB Merit Principles Survey 2016 Methodology

Path L (Leadership)

- Respondent Demographics
- Being a Supervisor
- Managing Performance
- Performance Appraisal
- Supervisory Tasks and Skills
- Managing Poor Performance
- Managing Conduct
- Managing Supervisors
- HR Responsibilities and Services

Survey Sampling

MSPB developed a sampling strategy, using a stratified random sample, to provide a reliable measure of Government-wide opinion among permanent, full-time civilian Federal employees. The sample was stratified by Federal agency (and agency bureau or component for selected agencies) and supervisory status (nonsupervisor, supervisor, or executive).

MSPB drew the survey samples from the Enterprise Human Resources Integration (EHRI), a repository of information on Federal employees developed and maintained by the U.S. Office of Personnel Management. The sample was drawn in summer 2015, and included nearly 126,000 employees from 25 Federal agencies, representing all major Departments and selected large independent agencies. However, ultimately the Department of Health and Human Services could not be surveyed, for technical reasons, reducing the sample to 24 agencies:

- Agriculture
- Air Force
- Army
- Commerce
- Defense
- Education
- Energy
- Environmental Protection Agency
- Federal Deposit Insurance Corporation
- General Services Administration
- Homeland Security
- Housing and Urban Development
- Interior
- Justice
- Labor
- National Aeronautics and Space Administration
- Navy
- Office of Personnel Management
- Securities and Exchange Commission
- Social Security Administration
- State
- Transportation
- Treasury
- Veterans Affairs

Survey Administration

MSPB notified participating Federal agencies and selected stakeholders (e.g., major Federal employee unions) of the survey to request their support. The survey was administered electronically (over the Internet) by a support contractor in an environment that complied with Federal Government information security and accessibility standards.

Employees were invited to complete the survey via an email message that contained a link unique to the individual employee. Invitations were sent to nearly 114,000 of the 126,000 employees initially selected (as an invitation was not sent if the employee had left the agency or did not have a valid email address).

Employees were informed, through the invitation and other media, that their participation was voluntary and that their responses were confidential. MSPB also assured participants that it would not disclose data that could be used to identify an individual employee.

The MPS was launched in July 2016, with periodic reminders to complete the survey, and closed in September 2016.

Response Acceptance, Rate, and Weighting

After the survey closed and the support contractor transmitted survey data to MSPB, MSPB reviewed the response records to determine whether they would be accepted. For Path L, the initial criterion was holding a supervisory position, based on a screening item asking the respondent whether they supervised civilian Federal employees. For all paths, the final criterion was completing a minimum number (approximately ten percent) of the non-demographic items asked of all respondents in the designated survey path.

MSPB then estimated a response rate (shown in Table 18), calculated by dividing the number of accepted responses by the estimated number of invited employees who were eligible to complete the survey.

Table 18. Response Rates for the MPS 2016

| Version | Eligible | Accepted | Response Rate |
|---------|----------|----------|---------------|
| Path 1 | 37,452 | 14,515 | 38.8% |
| Path 2 | 37,397 | 14,473 | 38.7% |
| Path L | 32,654 | 13,058 | 40.0% |
| (TOTAL) | 107,053 | 42,046 | 39.1% |

To provide useful measures across lines of agency and supervisory status, MSPB oversampled (i.e., surveyed a higher proportion of) some groups, including supervisors, executives, and employees in smaller agencies. Accordingly, MSPB calculated response weights to produce results that are representative of Government-wide employee opinions. Generally, tabulations and analysis should use the weighting variable (STRAT_WEIGHT) included in the survey datasets. Results presented in official reports are weighted unless stated otherwise.

Survey Representativeness

For selected dimensions, MSPB compared the proportion of respondents from a particular demographic group (based on survey responses) with the estimated proportion of employees in that group in the survey population (based on OPM's EHRI). MSPB concluded that representation of major demographic groups was acceptable and that the survey results are reasonably representative of the population from which they were drawn.

Appendix A. MSPB Merit Principles Survey 2016 Methodology

Margin of Error

MSPB estimated margins of error and the confidence levels for each item on each of the three paths. At a 95 percent confidence level, the margin of error for most items was at or below 1 percentage point (**Table 19**). The margin of error varies, based on the structure of the survey item and the number of employees responding to the item (some items were asked only of a subset of participants, based on their reported experiences or opinions).

Table 19. Estimated Margins of Error for the MPS2016

| Version | Average | Range |
|---------|---------|---------------|
| Path 1 | 1.1% | 0.30% - 8.80% |
| Path 2 | 1.0% | 0.50% - 4.40% |
| Path L | 1.2% | 0.30% - 3.10% |

Appendix B. Comparison of MSPB Sexual Harassment Survey Items

Table 20. Sexual Harassment Behavior Items Included on MSPB Surveys

| Factor | Item | | | |
|---------------------------|--|--|--|--|
| | 2016 | 1994 | 1987 | 1980 |
| Unwanted Sexual Attention | 1. Unwelcome communications (e.g., emails, phone calls, text messages, social media contacts) of a sexual nature | Unwanted letters, telephone calls, or materials of a sexual nature | Unwanted letters, telephone calls, or materials of a sexual nature | Unwanted letters, phone calls, or materials of a sexual nature |
| Unwanted Sexual Attention | 2. Unwelcome invasion of personal space (e.g., touching, crowding, leaning over) | Unwanted deliberate touching, leaning over, cornering, or pinching | Unwanted deliberate touching, leaning over, cornering, or pinching | Unwanted deliberate touching, leaning over, cornering, or pinching |
| Unwanted Sexual Attention | 3. Unwelcome sexually suggestive looks or gestures | Unwanted sexual looks or gestures | Unwanted sexual looks or gestures | Unwanted sexually suggestive looks or gestures |
| Sexual Coercion | 4. Pressure for sexual favors | Unwanted pressure for sexual favors | Unwanted pressure for sexual favors | Unwanted pressure for sexual favors |
| Sexual Coercion | 5. Pressure for dates | Unwanted pressure for dates | Unwanted pressure for dates | Unwanted pressure for dates |
| Gender Harassment | 6. Unwelcome sexual teasing, jokes, comments or questions | Unwanted sexual teasing, jokes, comments or questions | Unwanted sexual teasing, jokes, comments or questions | Unwanted sexual teasing, jokes, comments or questions |
| Gender Harassment | 7. The presences of sexually oriented material in any format (e.g., photos, videos, written material) | | | |
| Gender Harassment | 8. People having sexually oriented conversations in front of others | | | |
| Sexual Coercion | 9. Someone offering preferential treatment in the workplace in exchange for sexual favors | | | |

Appendix B. Comparison of MSPB Sexual Harassment Survey Items

| Factor | Item | | | |
|---------------------|--|--|-------------------------------------|--|
| | 2016 | 1994 | 1987 | 1980 |
| None ¹⁴⁰ | 10. Different treatment based on sex/gender (e.g., quality or nature of assignments) | | | |
| Gender Harassment | 11. Use of derogatory or unprofessional terms related to a person's sex/gender | | | |
| Sexual Coercion | 12. Stalking (unwanted intrusion e.g., physically or electronically into your personal life) | Stalking (unwanted following or intrusion into your personal life) | | |
| Sexual Coercion | 13. Rape or sexual assault or attempted rape or sexual assault | Actual or attempted rape or assault | Actual or attempted rape or assault | Actual or attempted rape or sexual assault |

¹⁴⁰This item was excluded from the sexual harassment scale; it was used as a measure of sex discrimination.

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Sexual Harassment in Federal Workplaces: Understanding and Addressing the Problem