

IQ SERVICE REPORT

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SEXUAL HARASSMENT: SUCCESSFUL POLICY IMPLEMENTATION

Since 1986 the Supreme Court has considered sexual harassment a form of sex discrimination, yet local administrators continue to face challenges in applying the policy. Commonly held myths present conceptual obstacles and societal factors cause uncertainty in applying federal guidelines. Research shows that employees, in greater numbers than they report to their employers, believe themselves to be harassed and are uncertain about aspects of policy and procedures. Harassment policies themselves have provisions that undermine successful implementation.

This report outlines the myths and challenges facing local administrators, pinpoints provisions that undermine policy, provides policy language from several local governments to clarify model policy, and provides a checklist for local administrators for improving their own policies. This report will help local administrators improve their harassment policies and move toward decreasing the incidence of sexual harassment in the workplace.

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Sexual Harassment: Successful Policy Implementation

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Almost fifteen years have passed since the landmark sexual harassment case *Meritor v. Vinson* (1986) made it clear that sexual harassment is a form of sex discrimination and therefore prohibited.¹ Yet the subject continues to be viewed with trepidation by accomplished local government managers and human resource administrators, and the implementation of the sexual harassment policy continues to be fraught with problems. Although public administrators have had to work diligently to eradicate discriminatory practices dealing with race, age, national origin, and equity pay as well as sexual harassment, more than one human resource manager has confessed with frustration that sexual harassment policy has proved the most difficult to implement successfully.

There appear to be powerful myths that challenge and undermine the ability of administrators to carry out sexual harassment policy successfully and achieve the desired goal of reducing sexual harassment in the workplace. These myths run the gamut from a common perception that sexual harassment is “in the eye of the beholder”—and that men and women will never agree on what constitutes prohibited behavior—to the more complex interplay of perceptions of appropriate gender behaviors that operate in a social context differently from at work. Sexual harassment also developed as a prohibited behavior in a manner quite unlike other discrimination policy, probably to the detriment of successful policy implementation.

In this report we

- Discuss briefly how sexual harassment is defined
- Highlight several important landmark Supreme Court cases
- Outline some of the myths and challenges that make sexual harassment policy implementation difficult

Note: Research for this report has been supported by the Michigan Municipal League, the State Policy Center at Wayne State University, and Eastern Michigan University.

- Report research findings that clarify policy issues
- Provide recommendations designed to reduce the incidence of sexual harassment.

Survey data cited in this report are taken from two studies conducted by the authors. One was an in-depth survey of two public sector organizations: a public university and a medium-sized city.² The other study, conducted under the Michigan Municipal League's auspices, surveyed the policies and training practices of the member municipalities of the league.³ The latter survey had a high response rate and is thus a recent statewide snapshot of public sector sexual harassment policies and practices.

DEFINITIONS AND PROHIBITED BEHAVIORS

Sexual harassment includes both quid pro quo harassment and the existence of a hostile work environment. Quid pro quo harassment means the “harassed has been denied job benefits, such as a promotion or salary increase . . . because sexual favors were not granted; or the harasser has taken away job benefits (e.g., discharge or demotion) because sexual favors on the part of the employee were not forthcoming” or were made a condition of employment.⁴ Quid pro quo harassment occurs when a supervisor makes unwelcome sexual demands on a worker either in exchange for a job benefit or as a condition of employment. Behaviors protected by this category of sexual harassment range from refusal to provide sexual favors to refusal of persistent demands for dates. Courts have settled cases in which the employee has suffered retaliation for these behaviors or has reason to believe such retaliation could be forthcoming even when it has not occurred (*Burlington Industries v. Ellerth*).⁵

A hostile work environment has been defined by the Equal Employment Opportunity Commission (EEOC) to exist where the following conditions are

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present: (1) the claimant belongs to a protected group, (2) the behavior was unwelcome and harassing, (3) the harassment was based on sex, (4) the harassment affected a condition of employment, and (5) the employer knew or should have known about the harassment and did not take proper action.⁶ A hostile work environment has also been defined to include harassment based on gender but not necessarily of a sexualized nature.⁷

If the behaviors persist and negatively affect the individual complainant, the employer can be liable.

The 1998 Supreme Court case *Oncale v. Sundowner Offshore Services, Inc.* extended the prohibition of sexual harassment to males in a same-sex harassment case, potentially widening the application of hostile environment cases to any worker, whether in a protected class or not.⁸ This kind of sexual harassment occurs when either supervisors (without threats of retaliation), co-workers, outside vendors, or clients engage in behaviors that affect the complainant's conditions of employment.

The behaviors do not necessarily have to be directed toward a complaining employee. For example, an employee in the midst of a work group that is accustomed to displaying pictures of a sexually explicit nature or sharing sexually explicit jokes, even if these are not directed toward the employee, may successfully complain about a hostile work environment. If the behaviors persist and negatively affect the individual complainant, the employer can be liable.

If employees were to define sexual harassment quite differently from the courts or the EEOC, it might explain why sexual harassment policy is hard to implement. Employees, however, are in substantial agreement about what behaviors actually constitute sexual harassment, and this consensus for the most part spans the gender divide.

- 90 percent of the employees questioned agreed that physical assault, demands for sex accompanied by threats (quid pro quo), unwanted pressure for sexual activity and/or dates, unwelcome touching, and subtle pressure for sex constituted forms of sexual harassment.
- 80 percent or more agreed that sexual remarks about clothing or body and pressure for dates were forms of sexual harassment.
- More than 70 percent agreed that unwelcome staring and sexually related language constituted sexual harassment.
- Between 53 percent and 65 percent agreed that staring, pinups, touching, and sexual jokes could be forms of sexual harassment.

Within this general framework, however, some differences in definitions of sexual harassment based

on gender, age, and those holding "traditional gender views" exist. A traditional gender view includes strong agreement with the following statements:

- The problem of sexual harassment is overrated.
- In sexual matters women often do not mean no when they say no.
- Sexual harassment situations should be handled informally if at all possible.
- Administrators should stay completely out of sexual harassment cases.

Given a list, women define more items as harassment than men do. Older employees and those holding more traditional gender views have narrower definitions of sexual harassment, characterizing fewer potentially harassing behaviors as sexual harassment. However, it remains evident that an overwhelming majority of employees define sexual harassment behaviors in a manner consistent with the definitions developed by the EEOC. More agreement among male and female employees exists than is commonly thought.

RELEVANT COURT CASES

Cases chosen here for discussion do not constitute a complete overview of case law in the area of sex harassment. They were chosen because of their importance to the development of model policy that reduces employer liability and encourages the elimination of prohibited behavior in the workplace. In addition, two of these cases provide guidance for developing model procedures that can aid in the proper investigation of sexual harassment.

The first of these cases is *Meritor Savings Bank FSB v. Vinson* (1986).⁹ It is considered a landmark decision because the Supreme Court stated that sexual harassment was a form of sex discrimination and, as such, was prohibited as another example of disparate treatment in the area of employment benefits or as a condition of employment.¹⁰ This case also incorporated both quid pro quo and hostile-environment incidents within the definitions of sexual harassment and, therefore, sex discrimination.

Harris v. Forklift Systems, Inc. (1993) clarified, to some degree, whether a plaintiff had to suffer severe psychological or economic damage from encountering a hostile work environment.¹¹ Earlier case decisions had differed on this point. On the one hand, the courts did not wish to support claims that appeared to have little impact on the plaintiff's employment or psychological health. On the other hand, for the courts to begin to decide who was "severely" damaged by particular events did not appear to be wise. In *Harris*, the Supreme Court ruled that plaintiffs had to demonstrate they had been affected in a detrimental way by hostile behaviors in the workplace, but they did not have to prove they had suffered an injury. Thus "harm" became a more flexible and ambiguous concept.

Burlington Industries, Inc. v. Ellerth (1998) and *Faragher v. City of Boca Raton* (1998) were handed down at the same time.¹² Together the cases provided both a cautionary tale and a clear mandate that employers could not simply promulgate a policy and leave it at that. The court took a decidedly negative view of employers that did not implement their sexual harassment policies properly.

The clear mandate . . . is that sexual harassment policies . . . must be disseminated appropriately and provide for due process.

Plaintiffs in both cases claimed constructive discharge—that is, they were forced to resign because of intolerable, sexually threatening working conditions. In *Burlington*, the plaintiff was threatened but promoted during her tenure on the job. In *Faragher*, the plaintiff was subjected to physical and verbal harassment.

The court found in *Burlington* that Ellerth had reason to believe the threats uttered against her and, in addition, the harasser was her supervisor's supervisor. In *Faragher*, the court found fault with Boca Raton's failure to disseminate its policy, and with the fact that the policy required the plaintiff to report the harassment to the individual who was harassing her and provided no other avenues or recourse.

The clear mandate for employers provided by both *Faragher* and *Burlington* is that sexual harassment policies must be disseminated appropriately and provide for due process. If the employee unreasonably fails to make use of the properly written and properly disseminated policy, the employer has an affirmative defense against charges of sexual harassment. The clear message of these cases is that administrators must make sure that policies include procedures that provide reasonable alternatives not difficult to use, employees are conscientiously informed about these procedures, and employees have reason to believe that the policy will be enforced. Procedure is as critical as policy.

MYTHS THAT UNDERMINE POLICY SUCCESS

Powerful myths and challenges impede successful implementation of sexual harassment policy. These myths and challenges are explored below to clarify and simplify procedures for administering sexual harassment policy.

The Eye-of-the-Beholder Myth

Sexual harassment is in the eye of the beholder, and agreement on what behaviors are forbidden is impossible.

Although an overwhelming majority of employees substantially agree on the specific behaviors that constitute sexual harassment, age and gender differ-

ences and traditional gender values affect employees' definitions. But perceptions tend to differ only regarding behaviors that are commonly called gray areas. For example, unwelcome comments and staring were generally believed to constitute sexual harassment. There was less agreement, however, about sexual jokes.

If unwelcome behavior is directed at an individual, whether it has sexual content or not, fellow workers will focus on the unwelcomeness of the behavior. When it comes to jokes, however, work groups generally use them to socialize, to lighten the atmosphere, to share. Jokes are not always sexual in content (and, in fact, are just as likely to have racial, gender, or ethnic overtones). Problems arise, however, if one member of a work group finds the jokes so offensive as to constitute a hostile environment, or if the jokes take on specific targets in the group and are deliberately provocative. It is difficult to judge ahead of time when "office talk, as usual" can turn into an ugly situation.

Research has also found that young men in particular reject behaviors as sexual harassment more than older men or women do, even though employees who hold traditional gender values tend to be older males and females. A generational difference appears to be operating, with both young male employees and older male and female employees rejecting a wider range of behaviors as sexual harassment.

The We-Have-It-Covered Myth

If we have a sexual harassment policy that (1) incorporates EEOC language and (2) is well publicized (as Burlington suggests) and (3) we have received no complaints, we can safely assume the policy is working.

This too is a myth that operates to weaken the effectiveness of sexual harassment policies. One of the reasons these policies have been so difficult to administer is that individuals experiencing sexual harassment resist reporting it. Employees who responded to a questionnaire about why they did not report sexual harassment articulated powerful reasons for not seeking remediation by reporting the harassment:¹³

- Embarrassment about the situation (65 percent)
- Fear of retaliation or further harassment (68 percent)
- Concern about losing their jobs (53 percent)
- Fear they would not be believed (44 percent).

The recent case of Lt. Gen. Claudia Kennedy of the U.S. Army is instructive. This powerful, successful woman achieved high status in a traditionally male-dominated organization. That organization had been under scrutiny for incidents of sexual harassment and had taken pains to publicize its sexual harassment policy and procedures for filing sexual harassment complaints. Yet for more than three years General Kennedy did not report the harassment she said she had suffered from her superior, Maj. Gen. Larry Smith,

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and did so only when she learned he was going to be promoted to a position in which he would be responsible for investigating sexual harassment complaints. The *New York Times* reported that “many women in uniform fear making accusations of sexual harassment because doing so often leads to close examination of their personal lives and harms their careers because they are labeled as troublemakers.”¹⁴

[F]or limiting exposure to liability, . . . institute evaluative procedures to see that the policy is operating properly.

Another common situation is that of a popular male supervisor, working with a tight-knit group of men and women, who targets one of the women as the recipient of his unwelcome sexual advances. Before reporting the situation, the woman asks herself, “Will they believe me?” Victims in similar situations who have reported such harassment have indicated that their female co-workers do not believe them, and neither do their male co-workers.

The main problem is that sexual harassment involves sex, which has bedeviled relationships between individuals since time began. It is not easy, therefore, to find ways to convince victims of sexual harassment that reporting will improve their situation. And one situation poorly handled will scare off other employees who have had similar experiences.

Therefore, it is not sufficient to implement a model policy and make sure it is well publicized. It is incumbent on employers, for good policy as well as for limiting exposure to liability, to institute evaluative procedures to see that the policy is operating properly. Evaluation could involve periodic confidential employee surveys to measure

- Policy and process satisfaction
- The incidence of unreported cases of sexual harassment
- Evaluations of supervisory handling of complaints.

Evaluating how supervisors handle complaints may be most critical. Research demonstrates that policy and process satisfaction of the complainants and of other employees who have observed the sexual harassment or know the individuals reporting the harassment is affected by how supervisors have handled complaints in the past.

The No-News-Is-Good-News Myth

If we have few complaints of sexual harassment, we can assume that little harassment exists in our organization.

For at least twenty years, researchers have discussed the dynamics of victim denial as it relates to sexual harassment. The reaction to Anita Hill, who accused Supreme Court nominee Clarence Thomas of

harassment, illustrates that victim denial may be difficult to accept by administrators who investigate but never experience such situations.¹⁵

Studies suggest that victim denial operates for a variety of reasons. We do not want to see ourselves as victims, as losers, as weak, as poor sports. Acknowledging that we are victims implies that we have lost control of our circumstances and are now vulnerable to the unwelcome actions of others. As in other traumatic experiences, it may take a long time to acknowledge that one is a victim of sexual harassment. A victim may have to pass through several stages of personal feelings and recognition before acknowledging what has actually happened:¹⁶

- Confusion and self-blame
- Fear and anxiety
- Depression and anger
- Disillusionment and recognition.

Passive coping strategies may focus on denial, diminishing the importance of incidents, finding excuses for the harasser, defining or redefining the behavior as not harassment, or blaming oneself. Or, if possible, the victim may try to appease or avoid the harasser.¹⁷

Harassers, however, rarely pick on only one victim. After allegations from one person are lodged, they are frequently followed by allegations from others. Or, as with General Kennedy or Anita Hill, allegations may be lodged years later when the victim feels less vulnerable or sees a situation (such as the promotion of the alleged harasser) that can no longer be tolerated.

The It's-All-Work-and-No-Play Myth

There is a natural separation between our private lives and our workplace lives.

Sexual harassment policies might be difficult to implement because of the prevalence of sexualized social behavior and its spillover into the workplace. This may present a powerful impediment to modifying sexual and gender behaviors in the workplace, especially if most employees believe that personal relationships among co-workers are not the concern of the organization.¹⁸

The term spillover refers to the social context of sexual behavior. People meet at work, date co-workers without the issue of sexual harassment ever occurring, and marry people they meet through work. Viewed this way, the workplace is saturated with sexual context. Thus, although there is no excuse for putting work relationships into a context of race, age, or ethnicity, it is harder to keep a separate and clear line demarcating all aspects of behavior when two consenting adults working together are involved in a romantic relationship or are married.

The fact that young men in particular have a definition of sexual harassment that is narrower than other groups of workers fits this concept of spillover.

Behaviors in a social context support young men seeking to form romantic-sexual connections with young women. For young men, however, it is apparently harder to separate appropriate behavior in a social context from behavior in a work-social context. Thus there is less sensitivity to and support of sexual harassment policy from young men than from other workers.

The Covered-by-the-Courts Myth

Because our policy conforms to EEOC guidelines and current court decisions, we must be safe.

A serious institutional challenge to successful implementation of sexual harassment policy derives from the way the legal concept of sexual harassment has been articulated, model policy developed, and proper procedures defined. The EEOC and the courts have largely set the boundaries.

The EEOC, given its understaffing and snail's pace in developing final rules on many policies, provides a relatively weak institutional base. Also important are the effects of waiting for the Supreme Court to rule on whether an activity or action is prohibited, of the uncertainty of a jurisdiction's liability for behavior top administrators knew nothing about (vicarious liability), or of uncertainty about the defendant jurisdiction's burden of proof and the level of proof that must be offered to provide an affirmative defense. A whole area of evolving law is affected when court cases are the primary way that sexual harassment has been defined and model procedures have been either identified by the EEOC or given the force of law.

Sexual harassment as a form of sexual discrimination is not explicitly mentioned in the 1964 Civil Rights Act. The Supreme Court extended the definition of sex discrimination to include sexual harassment in the *Meritor* case in 1986, but it has taken close observation and study of subsequent court decisions for conscientious public administrators to fill in the details. No other legally prohibited behavior has been folded into discrimination law in this case-by-case manner, and the slow progression of decisions has raised barriers to successful implementation of sexual harassment policy, particularly if top administrators in the organization continue to view the policy area as controversial.

The We've-Got-Good-Managers Myth

Because our supervisory personnel are good managers in other areas, they must be able to deal effectively with sexual harassment complaints.

Sexual harassment policy implementation is a distinct area of expertise. Capability of handling other forms of interpersonal problems or issues in the workplace provides little preparation for taking and investigating complaints of sexual harassment. Most supervisors will be faced with the problem only a few times. Because training for supervisors in how to deal with the often tense parties to a sexual harassment com-

plaint, how to take and process complaints, how to conduct an investigation, how to interview witnesses, and even how to engage in appropriate discipline is often seriously wanting in the public sector (discussed further on page 9), the potential for problems is great and the expectation that a normally successful manager will emerge unscathed is remote.

The role of supervisors is too important to be left to chance.

Otherwise good managers may not deal effectively with sexual harassment policy implementation because of the critical role of complaint-intake and supervisory personnel in the policy implementation process. Research has linked satisfaction with sexual harassment processes, willingness to use complaint procedures, and perceptions of the outcomes of investigations to the supervisor's reaction to the complaint. If the complainant is blamed, not taken seriously, or if another problem occurs, all further perceptions of the process and outcome will be negative, particularly for women. The role of supervisors is too important to be left to chance.

The Other-Cities-Are-Doing-It Myth

Because our policies are similar to those used in other local governments, they must be fine.

Complications arise from the existence of common but ineffective procedures in many public sector policies. In the past, the public sector lagged behind the private sector in developing and instituting sexual harassment policies,¹⁹ but a recent survey showed that this lag no longer exists. Seventy-three percent of communities responding to the survey had specific sexual harassment policies, while another 17 percent covered sexual harassment in some other type of local policy (through either union contracts or personnel handbooks).²⁰ Most of the policies (67 percent) followed EEOC guidelines in defining sexual harassment, and those that differed were often attempting to make the EEOC language clearer. Beyond that promising foundation, however, the survey revealed the existence of common but ineffective procedures in many public sector policies and ineffective or incomplete training of supervisory personnel.

COMMON MUNICIPAL SEXUAL HARASSMENT POLICIES: PROGRESS AND PITFALLS

The myth that other local governments are doing what our locality does is particularly important for local government administrators and thus warrants a fuller discussion. Much model policy comes from the experiences and policies used in other communities. In the case of sexual harassment policy, however, what most communities are doing will neither lead to effec-

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tive implementation of sexual harassment policy nor reduce the incidence of sexual harassment—the ultimate goal.

What follows is a summary report, a snapshot, of sexual harassment policies in the cities and villages of Michigan; the summary highlights the policy deficiencies discovered in the course of the survey and provides specific language from city policies to illustrate model elements of policy that overcome the common deficiencies found elsewhere.

Extent of Sexual Harassment Training

The presence and quality of sexual harassment training in cities and villages in Michigan appear to be somewhat mixed. Cities are no more likely than villages to train employees; units with larger populations are more likely to have more comprehensive training programs. Training tends to occur outside the confines of the formal sexual harassment policy. Overall, 45 percent of cities and villages train all employees on the local sexual harassment policy. Fewer communities report training for top managers and supervisory personnel. Only 27 percent have trained top management and 35 percent have trained all supervisory personnel on the sexual harassment policy. Only 2 percent of the actual harassment policies mention that training must or will take place.

The Michigan cities of Midland, Alpena, and Albion have model sexual harassment policies in many respects. Midland mandated that all supervisors had to be trained within two months of the effective date of the new policy being implemented, and it required that information about the policy be disseminated to all employees by the end of the third month of the initiation of the policy. In Alpena, regardless of whether a violation is found, no violation is found, or no determination about a complaint is possible, the city lists as one of its options in resolving a complaint that it may take

other appropriate measures to assure that this policy, and the employer's commitment to enforcing this policy, is reiterated in the workplace, such as re-publication of the policy and in-house training relating to the policy (Sections IV.A.8, B5 and C5).

The content of training programs also varies significantly across cities in Michigan:

- 62 percent of the training programs include discussions about definitions of sexual harassment.
- 58 percent of the training programs focus on how supervisory personnel should handle and process complaints.
- Only 25 percent of the training programs include information and guidelines on how to interview witnesses and those otherwise involved in the investigation process.

Communities without formal sexual harassment policies were asked whether they have at least discussed the topic of sexual harassment with employees and supervisors in some manner. Of those communities without formal policies,

- 13 percent had discussed the issue with employees
- 6 percent had had discussions with supervisors
- Only 5 percent had had discussions among top management about sexual harassment.

This lack of discussion mirrors the pattern above: greater attention is given to employees regarding sexual harassment but less to the supervisory personnel most likely to address complaints and implement solutions.

[T]his is a policy area complicated by social and psychological dimensions that present myriad missteps for the unwary. . . .

Because of the pivotal role of supervisors in handling complaints and in employee satisfaction with the process and outcome, it is important to include in local policies that handling sexual harassment complaints is part of the evaluation of supervisory personnel. In 84 percent of the responding communities, supervisors are held accountable for receiving complaints and not reporting them later; but in only 29 percent of the responding communities do supervisor evaluations address how complaints are handled. A firm reiteration of the reporting requirement can be found in language from the harassment policy of Alpena, Michigan:

All department heads and supervisory personnel shall be expressly responsible for immediately reporting to the City Manager any occurrence they witness or become aware of in any area of the city workplace (Section V.C., p. 3).

Thus, although complaints must be reported, there appears to be little formal assessment of the quality of supervisory reaction and behavior short of a complaint by one of the parties involved. The lack of assessment supports the myth of complacency—the belief by management that, if supervisory personnel are good managers in other areas, they will automatically deal effectively with sexual harassment complaints. Indeed, this is a policy area complicated by social and psychological dimensions that present myriad missteps for the unwary, and few local governments make the necessary effort to inform supervisors about these realities and provide strategies for dealing with them.

Sexual Harassment Reporting Procedures

Although the policies in most communities include the basic framework of EEOC language, the processes and procedures contained therein vary considerably. Al-

most all policies clearly address reporting procedures and specifically identify where and how to report sexual harassment; 70 percent offer multiple reporting avenues but tend to limit them to the immediate supervisor and the office of human resources. Thus, options exist but are not so numerous that the process becomes too complicated and record keeping too complex. The city of Midland, for example, provides that

Any employee who believes he or she is working under conditions described in Section 5.1 [where sexual harassment is defined] shall immediately report the conditions or behavior to his or her supervisor. If the supervisor is the source of the alleged sexual harassment, the employee shall report the conditions or behavior to the department head or Personnel Director (Section 7.2).

Another option appears in Albion's procedures:

You shall promptly (within 10 days after the alleged harassment or unwanted conduct) report any incident of harassment to any supervisor AND the City Manager even if you have discussed it directly with the individual(s) involved. In cases involving the City Manager, employees may report any incident to the Labor Committee (Section V.B., p. 3).

Thirteen percent of the communities allow reports to only one person. This requirement can be problematic if the complainant is of the opposite gender or otherwise uncomfortable with that one individual. In addition, the Supreme Court in *Burlington* specifically objected to the requirement that Ellerth had to report harassment to the supervisor when the harasser was her supervisor's supervisor. The court noted that the victim can have little confidence that the employer will take steps to stop the harassment. Another 14 percent of the cities have so many reporting options (more than three or four) that keeping track of the process and quality control become almost impossible. Because most policies (84 percent) hold supervisors accountable for not reporting or not acting on complaints of sexual harassment, a multiplicity of individuals receiving complaints makes this accountability harder to enforce.

Timing of Reporting and Conducting the Investigation

Issues of timing are less well addressed in the Michigan policies.

- 37 percent do not mention a statute of limitations on complaints.
- 46 percent include vague language that complaints should be made "as soon as possible after the incident."
- 17 percent of the policies impose specific limits on filing complaints.

- 14 percent of the policies require that the "victim" file a complaint within ten days of the incident.
- 3 percent have time limits of more than ten days.

The inexactness of timing is surprising given that many responding communities have unionized employees with contracts that call for beginning, ending, and process timelines for contractual grievances. Administrators are thus quite used to dealing with complaints with strict guidelines.

In addition, some of the sexual harassment policies that do provide specific timelines might run into difficulties because the timelines are either excessively short or long. A requirement that the complainant must file a report within 48 hours presents complications for employees—firefighters or police—who work unusual shifts. Some policies provide filing timelines that coincide with the statutory deadline of 180 days, raising the possibility that administrators could be hit simultaneously with an internal complaint and a statutory complaint. Such a long timeline does not allow resolution of an internal complaint before the complainant goes to a public forum.

Timelines for conducting an investigation are also unclear in many cases:

- 56 percent of policies do not mention a time frame for beginning and concluding investigations.
- Another 30 percent contain a vague statement about timing: investigations must take place in "a reasonable amount of time" or "as soon as possible."
- 12 percent indicate that investigations must start within ten days of the complaints.
- 2 percent have time requirements that exceed ten days.

Even fewer local policies prescribe specific time frames for reporting findings to the complainant:

- 93 percent of policies make no mention of any time requirements for completing the investigation and/or reporting to parties involved.
- 1 percent include a vague time reference "requiring" that findings be reported as soon as possible.
- 5 percent of the policies provide a specific period within which findings of the investigation must be reported back to the parties involved.
- 3 percent require reporting within ten days.
- 2 percent have specific time requirements that exceed ten days.

Confidentiality

Although confidentiality is a critical concern to employees (and is discussed on page 10), only half of the local policies make any mention of confidentiality, even to say that it is a goal of the organization in implement-

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ing the policy. The other half declare that all aspects of the process will be kept confidential. But no policies include sanctions for breaches of confidentiality.

One difficulty is that the investigative process itself breaches confidentiality. The city of Albion recognizes this conundrum:

While we will make every effort to be sensitive to privacy issues, in the course of an investigation we will discuss relevant information with appropriate parties on a need-to-know basis (Section VI.B.).

The city of Alpena provides a similar disclaimer:

To protect the interests of the complainant, the person complained against, witnesses, any others who may report incidents of discrimination or harassment, and all other persons affected, confidentiality will be maintained to the extent practicable and appropriate under the circumstances (Section III, fourth paragraph).

Retaliation

Possible retaliation for making complaints is also a common concern and keeps many victims from reporting sexual harassment in the first place. Fifty percent of the policies make no mention of protection against retaliation, and 47 percent indicate that retaliation will not occur or will not be tolerated. But only 3 percent include specific sanctions if retaliation occurs.

Speaking to the Accused

Some experts believe that policies should avoid a situation where a complainant is forced to talk to the accused in an effort to “mediate” the problem. Local policies appear to be sensitive to this concern; most (90 percent) make no mention of discussions between the two parties. However, 10 percent of the policies “encourage” complainants to discuss the matter with the accused; only 1 percent of the policies require this to take place prior to formal investigations.

False Accusations

False accusations concern many employees, particularly male employees, and often diminish support for the policy. Stories about the vengeful spurned lover seem to circulate faster than stories about the predatory harasser. Few policies make any mention of false accusations; 87 percent of the policies do not address the issue, 7 percent warn employees about making a false accusation, and only 6 percent include sanctions. Midland’s policy, however, cannot be any clearer: “Any employee who is found to have raised deliberate false allegations shall be subject to discipline” (Section 8.5).

Composition of the Investigation Team

Most policies (64 percent) do not include any reference to the composition of the complaint investigation team. The lack of detail about the investigation team implies that an investigation may be carried out by only one person; it also raises uncertainty that investigations will be handled in a uniform manner by a uniform set of actors. Although 36 percent of the policies identify which actors will make up the investigation team, only one policy indicated that the team must be composed of individuals of both genders. The city of Midland provides language that is sensitive to not only gender issues but also possible cohort partisanship:

The Personnel Director shall have the authority to assign and direct an investigation team, and approve all subsequent disciplinary action. Teams shall consist of both a male and a female, and at least one of the team members must be from outside the department (Section 8.1).

Reporting Specifics Back to the Complainant

The extent of information reported to the complainant appears important to fostering satisfaction with the policy process. Adequate information provides closure and reinforces the feeling that the policy serves to reduce further harassment. Most policies, 74 percent, are silent on this issue; 14 percent indicate the complainant will receive the results of the investigation (i.e., whether or not the claims were substantiated). Typical of this type of provision is the language from the city of Midland: “All complaints of harassment will be investigated and the results of the investigation will be reported back to the complaining party” (Section VI.A, p. 3).

Only 12 percent of the policies indicate that the complainant will be informed of both the results of the investigation and the plan of action or remediation.

WHAT DO EMPLOYEES WANT?

Do employees themselves create a body of resistance by failing to support sexual harassment policies? What do employees want to see in a sexual harassment policy? Do employee preferences raise further challenges to successful policy implementation?

[E]mployees show a remarkable consensus on what they would like to see in a sexual harassment policy. . . .

In addition to their consensus on defining sexual harassment behaviors, employees show a remarkable consensus on what they would like to see in a sexual harassment policy:

- 94 percent agreed that the employer should investigate allegations of sexual harassment.

- 89 percent agreed that all parties (complainant, accused, and witnesses) should be interviewed.
- 43 percent agreed that the accused should be dismissed if the charges are substantiated; although 40 percent were unsure about dismissal, many indicated that the seriousness of the charges would have to be taken into consideration.
- 92 percent disagreed with the notion that the employer should stay out of such cases.
- 44 percent preferred that the situation should be handled informally if possible; another 20 percent were unsure about this.

Although the majority of employees do not support dismissal as a punishment for proved allegations, women are more likely than men to support dismissal. Women are also more likely to support due process and progressive discipline in investigating allegations. Most troubling, more employees than supervisors are likely to support due process and progressive discipline.

The greatest sources of dissatisfaction with policy and procedure were with perceptions about fairness, concerns about confidentiality, and fears that nothing would be done to deal with allegations of sexual harassment or that charges would not be taken seriously. Particularly devastating were reported cases in which the supervisor blamed or raised questions about the integrity of the complainant. Employees were also uncertain whether the policy reduced the incidence of sexual harassment and gave the complainant a sense of closure by providing enough information about the disposition of the complaint.

Employees recommended more education on policy and procedures and more protection for both the complainant and the accused. Regardless of gender, age, or commitment to traditional gender values, employees supported the additional protections. Concerns about confidentiality of the process reflect directly on the inadequacy of supervisor training in handling sexual harassment complaints, highlighting once more the critical importance of appropriate training of supervisory personnel.

RECOMMENDATIONS FOR POLICY AND PROCESS

Most cities and villages have sexual harassment policies, include definitions of harassment that meet federal guidelines, and train most employees regarding the policy and harassment in general. Below these surface similarities, however, the fairly wide variation in policy and procedure suggests that policies are not all created equal, and such variation is ripe for imperfect and problematic implementation. Many of the variations in local policies do not match model or ideal standards. What needs to be done?

Train

Training is a critical component of successful sexual harassment policy implementation. Training makes employees aware of policies and increases policy use through reporting of sexual harassment. Training should also go a long way in addressing common sources of dissatisfaction with and fear of sexual harassment processes—that nothing will be done, that the victim will be blamed, that retaliation will occur, that confidentiality will be violated, that processes will not be fair, and that matters will not be handled in a sensitive manner. In short, widespread and consistent training, focusing on the central aspects of policy implementation, is absolutely required. It is a significant concern that fewer than one-half of responding communities train all employees and that only one-third train supervisors and top managers.

Training is a critical component of successful sexual harassment policy implementation.

Regular training should cover sensitivity issues, investigation processes, legal rights and protections, evidentiary standards, means of encouraging reports, and listening skills. For those cities and villages that train their employees, the training seems relatively complete. Most not only cover definitional issues but also provide supervisors with instruction on handling and processing complaints. However, more local governments need to include specific training on interviewing witnesses and conducting investigations.

Evaluate

Because the role of supervisors in taking and acting on sexual harassment complaints is a pivotal one for the implementation process, particularly for women, who are most likely to be reporting, how well each supervisor fulfills this role should be an integral part of the supervisory evaluation process. It is rare, however, for a city or village to formally evaluate supervisors on their handling of sexual harassment complaints although most local officials say they hold supervisors accountable for dealing with complaints of sexual harassment and supervisors are required to report them. Thus most cities do not have a procedure that ensures quality control among supervisors.

Establish Channels for Reporting

Recommendations regarding reporting channels for sexual harassment suggest that organizations can affect both perceptions of confidentiality and the likelihood that harassment will be reported. In short, policies should limit the number of people involved in sexual harassment investigations, although never to just one person, and ensure that there are at least two access

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points for reporting. Obviously policies must also clearly identify reporting options and processes. The majority of policies contain explicit reporting instructions and tend to offer a choice of at least two people to report to: an employee in human resources or the immediate supervisor (or the supervisor's supervisor if the supervisor is the accused). But more than one-quarter (27 percent) of communities either limit reporting options to only one person or have so many options that complexity is increased and confidentiality threatened. As far as reporting is concerned, however, communities appear to be promulgating policies that are close to the models.

Form an Investigation Team

Who is responsible for investigating sexual harassment complaints is also important; obviously different actors can have responsibility for taking reports and conducting investigations. Several recommendations have been made about investigations—that they be conducted by a team instead of an individual, that members of the team include individuals of both genders, and that many employees be trained to be part of a team in order to increase awareness of and confidence in the process. The number of persons involved in any particular investigation should be limited in order to increase confidentiality. Most policies are silent about the nature of the investigation and who will do the investigating. Thirty-six percent of the policies identify which actors will be on the team, but only one policy speaks about gender makeup.

Establish Deadlines

To prevent delays, sexual harassment policies should include time frames for processes. Explicit time frames enhance perceptions that policies and processes are as fair as possible and thus increase reporting. But only 14 percent of policies specify a time frame during which investigations must begin, and only 8 percent identify when results must be reported back to the parties. On the other hand, 17 percent of the policies impose a time limit on the complainant, specifying how much time can elapse between incident and reporting. In some cases, guidelines require reporting within ten days.

Policies are more likely to set limits on the complainant than on organizational processes. This is a problem for several reasons. For policies to be perceived as fair and to function to limit future harassment, processes must occur in a timely and uniform manner. Policies mandating that complaints must be investigated as soon as possible (30 percent) or not mentioning time frames at all (56 percent) clearly do not meet this goal. Placing time limits on reporting harassment is also problematic. It is obvious that some statute of limitations is necessary; reports years after the fact do not make sense from a variety of perspectives. However, the idea that a victim will be ready to report harassment within ten days may be inherently unrealistic.

First, many employees do not initially perceive or acknowledge that they have been harassed. Research suggests that acknowledging harassment can be a long and uncertain process. Employees must then learn about complaint procedures and become confident enough to use them—a process that also takes time. In short, organizations that place very quick time frames on reporting may reduce reports but not harassment.

Maintain Confidentiality

It is a problem that half of the sexual harassment policies make no mention of confidentiality goals or protections and none includes any sanctions for breach of confidentiality. In previous surveys, fears about and knowledge of leaks and breaches of confidentiality were often mentioned as reasons for harassment not being reported and for dissatisfaction with the policy process. Fear of breaches of confidentiality is one reason to limit the number of individuals involved in the process. And it should also lead organizations to create, publicize, and invoke punishment for those breaching confidentiality protections and publicize the punishment imposed on those who have leaked. Absent any mention of confidentiality or any sanctions, nothing in the policy provides employees with a sense that confidentiality is either important or will be protected. Similarly, because fear of negative consequences causes many victims to not complain or to shy away from formal processes, statements about and protections against retaliation are also an important component of policy. As with confidentiality, discussion of retaliation is often missing from public sector policies. While 47 percent of policies say retaliation should not occur, only 3 percent provide sanctions if it does.

Provide Support

Although employees worry about confidentiality issues, retaliation issues, fear, embarrassment, and being blamed for reporting, the emotional stress the complaint process engenders could be reduced by offering employee assistance plan (EAP) services when they are available to employees. Supervisors should be trained in proper procedures for referring to EAP those individuals involved in complaints, without exposing the employer to liability concerns with respect to American with Disabilities Act (ADA) claims.

In addition, both the complainant and the accused may feel cornered and alone once a complaint has been filed and is being investigated. There are ways to overcome this, and one of the best is to provide ombudspersons for both the complainant and the accused. The term ombudsperson is used deliberately instead of advocate because an ombudsperson's function is not to champion one of the parties or judge the complaint. Rather the role of the ombudsperson includes providing factual information on what the process and procedures involve, what the consequences are for violating the procedure, what avenues can be

provided for stress reduction, and how to proceed with providing support witnesses within the limits of confidentiality. Ombudspersons should not have a reporting relationship to the human resources staff, and each ombudsperson should match the gender of the complainant and the accused.

Provide Feedback

Few policies indicate what if anything will be reported back to the complainant; nearly three-quarters (74 percent) are silent on this issue. Providing some sense of what happened and what was done increases policy satisfaction by creating a sense of closure—fostering perceptions that the policy is serving to reduce further harassment and that harassment is taken seriously by the organization. Organizations should disseminate to all employees general data on complaints processed, training sessions/workshops held, results of continuing employee attitudinal/satisfaction surveys, general disciplinary outcomes, numbers of cases substantiated, and a very clear summary of disciplinary options if charges are substantiated. Complainants should receive even more detailed information. Fewer than 15 percent of the local policies examined either report back the results of investigations or indicate the actions that will be taken if charges are substantiated. Such a situation is likely to leave employees questioning whether anything was actually done about harassment and therefore will lower reporting rates.

SUMMARY

The sins of local government sexual harassment policy are clearly those of omission, not commission. Few policies include any elements that have been identified as being detrimental to effective processes. Instead, many policies are silent on aspects that are critical to successful implementation. This silence has two important potential repercussions. First, because of the lack of explicit guidelines, processes may vary on a case-by-case basis. There are no assurances that each complaint and investigation will be handled in the same way according to the same time frame. Second, lack of codification on deadlines, on sanctions for violation of policy, and on protections for confidentiality is likely to make employees feel less confident about policies and procedures. This lack of confidence will likely result in a disparity between occurrence and reporting of sexual harassment (individuals will be less likely to report harassment) and in uncertainty and unhappiness about the quality and impact of the policies.

On the basis of this discussion and the above recommendations, a checklist is provided for administrators to gauge the health of their sexual harassment policies. But even the best policy on paper will not suffice unless the will to administer it properly accompanies it. We hope the checklist provides the impetus to evaluate how well your policy operates in reality.

Sexual Harassment Policy Checklist

Policy Statement

1. Follows EEOC guidelines
2. Provides clarifying examples

Procedures

1. Provides timelines for
 - Complaints to be filed
 - The investigation to begin
 - The investigation to conclude
2. Provides reporting back to the parties to the complaint
3. Provides support for the parties to the complaint
 - Where available, EAP services offered
 - Trained employee ombudspersons are assigned to complainant and accused
4. Confidentiality concerns are addressed
5. False accusation concerns are addressed
6. Retaliation concerns are addressed for the parties and witnesses
7. Gender sensitivity issues are addressed about the investigation team
8. Gender sensitivity issues are addressed about the complaint recipients
9. There are sufficient but not too many alternatives for reporting complaints
10. Supervisors are held responsible for implementing the policy
11. Supervisors are evaluated on their effectiveness in carrying out the policy
12. Provides for periodic reporting back to employees about the effectiveness of the policy

Education

1. Policies and procedures are reviewed periodically with all employees
2. Policies and procedures are reviewed with new employees close to hire date
3. Supervisors receive appropriate training in applying the policy, including
 - Effective investigation procedures
 - Effective listening procedures
 - EAP referral policies
 - Sensitivity to employee fears of embarrassment, blame, and retaliation
4. Top managers receive appropriate training to oversee policy implementation

Evaluation

1. Periodic surveys are distributed to gauge
 - Employee satisfaction with the policy
 - Effectiveness of the education, reporting, and investigation processes.

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NOTES

1. *Meritor Savings Bank FSB v. Vinson*, 477 U.S. 57; 106 S.Ct. 2399 (1986).
2. Laura A. Reese and Karen E. Lindenberg, *Implementing Sexual Harassment Policy: Challenges for the Public Sector Workplace* (Thousand Oaks, Calif.: Sage Publications, 1999); survey data and conclusions cited in this report are from this article unless noted otherwise.
3. Reese and Lindenberg, "Local Government Sexual Harassment Policy and Training: Models Versus Reality" (unpublished paper presented at the annual meeting of the American Society for Public Administration, San Diego, Calif.: April 2000).
4. Paul S. Greenlaw and John P. Kohl, "Proving Title VII Sexual Harassment," *Labor Law Journal* 43, no. 2 (March 1992): 164–5.
5. *Burlington Industries v. Ellerth*, 118 S.Ct. 2257 (1998).
6. Robert D. Lee Jr. and Paul S. Greenlaw, "The Legal Evolution of Sexual Harassment," *Public Administration Review* 55, no. 3 (July/August 1995): 359.
7. *McKinney v. Dole*, 765 F.2d 1129 (D.C. Cir., 1985); *Hall v. Gus Construction Co.*, 842 F.2d 1010 (8th Cir., 1988); *Harris v. Forklift Systems, Inc.*, 115 S.Ct. 367 (1993).
8. *Oncala v. Sundowner Offshore Services, Inc.*, 118 S.Ct. 998 (1998).
9. *Meritor Savings Bank FSB v. Vinson*.
10. Robert D. Lee Jr. and Paul S. Greenlaw, "Employer Liability for Employee Sexual Harassment: A Judicial Policy-Making Study," *Public Administration Review* 60, no. 2 (March/April 2000): 125.
11. *Harris v. Forklift Systems, Inc.*
12. *Burlington Industries v. Ellerth; Faragher v. Boca Raton*, 118 S.Ct. 2275 (1998).
13. *Sexual Harassment: Research and New Resources* (New York: National Council for Research on Women, 1991); Reese and Lindenberg, *Implementing Sexual Harassment Policy*, 68.
14. "General Urges Women to Tell of Harassment," *New York Times*, 13 May 2000, sec. A, 1, 9 (emphasis added).
15. B. Lott, M. E. Reilly, and D. Howard, "Sexual Assault and Harassment: A Campus Community Case Study," *SIGNS* 8 (1992): 296–319; C. S. Ross and R. E. England, "State Government's Sexual Harassment Policy Initiatives," *Public Administration Review* 47, no. 3 (May/June 1987): 259–62; S. E. Taylor, I. V. Wood, and R. R. Lichtman, "It Could Be Worse: Selective Evaluation as a Response to Victimization," *Journal of Social Issues* 39 (Summer 1983): 19–40; J. N. Cleveland and K. McNamara, "Understanding Sexual Harassment: Contributions from Research on Domestic Violence and Organizational Change," in *Sexual Harassment in the Workplace*, ed. M. S. Stockdale (Thousand Oaks, Calif.: Sage Publications, 1996): 217–40.
16. J. A. Salisbury, A. B. Ginorio, H. Remick, and D. M. Stringer, "Counseling Victims of Sexual Harassment," *Psychotherapy* 23 (Summer 1986): 316–24.
17. M. S. Stockdale, "What We Know and What We Need to Learn About Sexual Harassment," in *Sexual Harassment in the Workplace*, 3–25; L. F. Fitzgerald, "Sexual Harassment: The Definition and Measurement of a Construct," in *Ivory Tower*, ed. M. A. Paludi (Albany, N.Y.: State University of New York Press, 1990): 21–144.
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19. S. M. O'Millian, *What Every Employer Should Be Doing About Sexual Harassment* (Madison, Conn.: Business and Legal Reports, Inc., 1986).
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ADDITIONAL INFORMATION

Books and Articles

- Ehrlich, S. C. "The Investigation Process." In *Sexual Harassment on Campus*, ed. B. R. Sandler and R. I. Shoop. New York: Allyn & Bacon, 1997.
- Equal Employment Opportunity Commission. *Guidelines on Discrimination Because of Sex*. Washington, D.C.: GPO, 1990.
- Lee, Robert D. Jr., and Paul S. Greenlaw. "Employer Liability for Employee Sexual Harassment: A Judicial Policy-Making Study." *Public Administration Review* 60, no. 2 (March/April, 2000).
- Merit System Protection Board. *Sexual Harassment in the Federal Workplace: Trends, Progress, and Continuing Challenges*. Washington, D.C.: GPO, 1995.

Web Sites

- <http://www.colorado.edu/UCB/AcademicAffairs/conflict/sexuhara.html>. The sites available through the links on this page offer information about the legal and social issues surrounding sexual harassment: legal definitions, sample cases, and recent court rulings.
- <http://www.edc.org/WomensEquity/edequity/hypermail/0013.html>. This Web site focuses on Title IX and sexual harassment court cases with links available to pleadings and opinions. Title IX regulations are available as well.
- <http://www.lawguru.com/search/lawsearch.html>. More than 500 legal search engines can be located from this Web site.
- <http://www.wapa.gov/CSO/eeo/sexharas.htm>. This site is intended to provide federal government employees with information about harassment, equal employment, affirmative action, and the discrimination complaint process.
- <http://www.findlaw.com>. At this site, one finds local laws, cases, and codes on sexual harassment.
- <http://www.EEOC.gov>. This site has general EEOC laws, regulations, and policy guidelines for both employers and employees.

OTHER ICMA PUBLICATIONS

Drug Testing, Sexual Harassment, Smoking: Employee Rights Issues. Addresses local government's responsibility to understand and uphold the rights of its employees regarding these three issues. Consequences of violating legal rights of employees can be serious, and the report highlights local government's responsibilities in implementing federal law. Each topic is presented separately. 21 pages. Item no. 40130. \$14.95. MIS Report, 1988. To order, call 800/745-8780.

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