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Sexual Harassment in the Law Enforcement Workplace

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By
Randy C. Reed

Arlington Police Department
Arlington, Texas
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ABSTRACT

Sexual harassment is relevant to contemporary law enforcement because of the ever growing number of complaints and the liability costs associated with violations. Many agencies today believe that the issue of sexual harassment was an issue of the 1960s and 1970s. This, in fact, is not true since sexual harassment complaints continue to be filed within police organizations.

The position of this researcher is that utilization of proper policies, training, and monitoring will reduce sexual harassment in police organizations. This author will evaluate the issues dealing with sexual harassment in the work place, which are policies, training, and monitoring of sexual harassment incidents. The law itself will be looked at to increase the understanding of sexual harassment. Using assorted case studies of sexual harassment, this author will try and bring an understanding of when, how, and why sexual harassment occurs in the law enforcement workplace, and how organizations are affecting the problem. From the analysis of the policies, training, and monitoring efforts, agencies should be able to adapt their current operating procedures to have a more effective policy.

The types of information used to support the researcher's position are a review of articles, Internet sites, periodicals, journals, etc. These supporting documents will illustrate the need for proper policies, training, and monitoring of sexual harassment within organizations. This researcher will also give examples of an assortment of different types of sexual harassment claims. The conclusion drawn from this position paper is that sexual harassment in police organizations is occurring and must be addressed to reduce the liability that can be suffered when ignored.

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INTRODUCTION

The issue of “sexual harassment” has been around longer than most people are aware or want to admit. History shows that sexual harassment has been occurring as long as women have been working outside the home. In the early years of the United States, when slavery was common, the female slaves were often sexually harassed while they worked, but this was overlooked. Most believe that the harassment only involves that which is directed toward women in the work place, but this has been found not to be true; men and homosexuals have been targets of sexual harassment also. Many people also believe that until just recently, the problem of sexual harassment in the work place has been addressed. However, this is not correct; it was just not enforced until recently. Now, in today’s work place, the mere utterance of the word “sexual harassment” can gain the attention of management. On the other hand, sexual harassment is a part of office politics just as much as going to the Christmas party and trying not to get overly intoxicated (Christian, 2008). The fine line of wanted and unwanted advances by workers is the dilemma that the courts have struggled with for many years and will continue to have to do.

One must have an understanding of what sexual harassment has been defined as. Sexual harassment has been defined as “a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964” (U.S. Equal Employment Opportunity Commission, n.d., “Facts About Sexual Harassment,” para.1). For violations of Title VII, employers must have 15 or more employees, and this includes the state and local governments of which police departments will fall under. Federal governmental branches must also conform to Title VII. What constitutes violations are “unwelcome

sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment" (U.S. Equal Employment Opportunity Commission, n.d., "Facts About Sexual Harassment," para. 2). Other means that violate Title VII are when the act "unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment" (U.S. Equal Employment Opportunity Commission, n.d., "Facts About Sexual Harassment," para. 2). There are a variety of ways for sexual harassment to happen within the work place. Victims of sexual harassment can be male or female, and they can be of the same sex as the abuser. The harassers can have any title within an organization, including "supervisor, co-worker, a worker or supervisor from another department, an agent of the employer, and even a non-employee, such as a delivery person or client" (U.S. Equal Employment Opportunity Commission, n.d., "Facts About Sexual Harassment," para. 3). The victim of sexual harassment does not have to directly be harassed; they may be a third person who is offended and may report without the knowledge of the person being harassed. It should be recognized that "the harassment does not have to cause economic injury or discharge the victim. The main factor is that the act is unwelcomed by the victim" (U.S. Equal Employment Opportunity Commission, n.d., "Facts About Sexual Harassment," para. 3).

The means and ways that the sexual harassment can occur are varied. The behaviors that are normally believed to contribute to the hostile work place are, "unfulfilled threats to impose a sexual quid pro quo, discussing sexual activities, unnecessary touching, commenting on physical attributes, and granting job favors to

those who participate in consensual sexual activity" (U.S. Department of Transportation, n.d., "Preventing Sexual Harassment," para. 3). While these are the normal means of sexual harassment, other types of behavior that has been overlooked by many employers are, "telling off-color jokes, displaying sexually suggestive pictures, using demeaning or inappropriate terms, such as "Babe", using indecent gestures, sabotaging the victim's work, and engaging in hostile physical conduct" (U.S. Department of Transportation, n.d., "Preventing Sexual Harassment," para. 3). This is not to say these are the only ways that sexual harassment can occur, but they are the most common types that have been reported over the years (U.S. Department of Transportation, n.d.).

As mentioned before the conduct must be unwanted, but it also helps if the victim makes known to the harasser that the conduct is unwanted and the victim wants the harasser to stop. The victim should also report the act, using the company's grievance procedure. One of the most common types of sexual harassment seen is "Quid pro quo" harassment, which occurs when some kind of benefit or punishment is determined by the supervisor and may involve the employee giving the supervisor something such as sex for a benefit or to avoid the punishment (Noe, Hollenbeck, Gerhart, & Wright, 2008). This is normally seen when sexual favors are required for the employee to advance or keep their job. Another example would be if a supervisor asks a female employee to wear something "sexy" for a meeting to impress the male employees. If the supervisor states or implies that it would be in the best interest of the employee, there would be a violation.

This author will bring an understanding of what constitutes sexual harassment in the work place with an attention to the law enforcement society. Advantages of strong

policies, training, and monitoring of sexual harassment incidents will help give an understanding of how to avoid sexual harassment. Analysis of the law will give additional understanding of sexual harassment and how agencies can avoid problems and law suits. Using the past assorted case studies of sexual harassment, this author will show that all employees and supervisors must be trained correctly and what to look for in the work place. Finally, from the analysis of the policies, training, and monitoring efforts, the author will illustrate what the best means to avoid sexual harassment complaints and law suits is.

POSITION

In today's work environment, with the use of emails and the forwarding of emails made so easy, often off-colored jokes, cartoons, or photographs can be sent to parties that are offended. The original email can be sent to one or two persons, but those people can forward the email to several. It may not have been the intent to send the email to a person who is offended, but the final outcome maybe that it was.

In the 1970s, cases began to be filed in courts across the nation. Two lawyers and activists, Catherine MacKinnon and Lin Farley, began working to have the courts see that there was a problem in the work place and women were being sexually harassed (Siegal, 2003). One of the first cases to reach the Supreme Court was in 1986. The case was *Meritor Savings Bank v. Vinson,* and the U.S. Supreme Court held, for the first time, that "unwelcome sexual advances at work create a hostile work environment which constitutes gender discrimination under Title VII of the 1964 Civil Rights Act" (Muhl, 1998, p.1). Before 1998, the only other Supreme Court decision was in the issue of *Harris v. Forklift Systems*. Here, the court declared that the

“psychological well-being of a plaintiff need not be seriously affected in order for the plaintiff to demonstrate that an injury has been suffered in violation of Title VII” (Muhl, 1998, p.1). In 1998, the Supreme Court reexamined the definition of sexual harassment and what sexual harassment may entail. The high court revisited the definition of what sexual harassment could be in 1998. By examining four major cases, the court evaluated several means by which sexual harassment may occur. First, the court determined “whether a claim of same-sex sexual harassment may be brought” (Muhl, 1998, p.1). The next point that the court determined was “what legal standard should be applied to determine whether employers are liable for sexual harassment committed by workers with supervisory power” (Muhl, 1998, p.1). Finally, the court looked at “whether a claim of quid pro quo ("this for that") sexual harassment may proceed without showing that the employee submitted to sexual advances or was harmed for refusing such advances” (Muhl, 1998, p.1).

In the case of *Oncale v. Sundowner Offshore Services, Inc.*, it was “ruled that Title VII prohibits sexual harassment between members of the same sex. The legal standards governing same-sex claims are identical to those used to evaluate a claim of sexual harassment by a member of the opposite sex” (Muhl, 1998, p.1). In this case, the court looked at who the target of the harassment was and used the same standard in their judgment as any other case of sexual harassment. The court also made it clear that a plaintiff must show that the harassment is more than just simple teasing and roughhousing between the same sex. With Oncale, the court saw that Joseph Oncale was subjected to sex related humilities while he was a roughneck on an oil rig in the Gulf of Mexico. The court also found that Oncale had reported the acts to managers

and nothing was done, thus the sexual harassment went unchecked, and it was a violation.

Gebser was a high school student in the Lago Vista Independent School District, who had an affair with a teacher (Muhl, 1998). Gebser and her teacher were caught having sex and the teacher was arrested and later terminated. Gebser later sued, seeking damages for the teacher's action. The court ruled for the district since Gebser had made no attempt to complain or tell anyone of the incident.

Upon looking at these cases, one major stream of thought can be seen. Prevention is the best tool in eliminating sexual harassment in the workplace. Employers are encouraged to take the steps needed to stop the sexual harassment from occurring. The policies and procedures of an organization must be communicated to all employees, and employers must ensure that these policies are followed and that violations will not be tolerated. Organizations must train their employees, from the newest person on the job to management. There must be a valid complaint process in place for the employees, and they must know how to file a complaint. The employees must also know that if they do complain, no action will be taken against them. Organizations must understand that retaliations against employees are a violation of the law.

Supervisors must be trained to take all complaints of sexual harassment seriously. Each case should be investigated and documented by supervisors; this not only protects the organization but also the employees involved if the allegation is found to be true or false. Supervisors should also be trained to look for the violations and take a proactive role to ensure the safety of their employees. Often, employees will try and

work it out on their own; the supervisor must not let this happen and should be the person who takes care of the employees needs. Strict record keeping is also important, and monitoring the policy in the organization is critical in combating sexual harassment within organizations.

Many states now require, by law, mandatory training in sexual harassment, and, for the most part, all companies in the U.S. do have some type of training. Supervisors and employees must be educated to tell harassers to "stop." Too often training is only done for new employees, but organizations must have reoccurring training for all levels within departments. If organizations fail to have requiring training, then the organization can be held liable just as the harasser in the case.

Sexual harassment charge filings continue to grow each year and do not appear to be declining anytime soon. The U.S. Equal Employment Opportunity Commission (n.d.) found that "In Fiscal Year 2007, EEOC received 12,510 charges of sexual harassment" ("Sexual Harassment Changes," para. 4). Of the total cases reported, 16% of the charges were filed by males. In many cases, the parties may never be heard in the courts. The EEOC addressed "11,592 sexual harassment charges in FY 2007 and recovered $49.9 million in monetary benefits for the charging parties and other aggrieved individuals," and this amount does not include monetary benefits obtained through litigation (U.S. Equal Employment Opportunity Commission, n.d., "Sexual Harrassment Changes," para. 4).

The U.S. is one of only a few countries with sexual harassment laws that often finds those persons from other countries do not understand what the problem is with being sexually aggressive. This is a source for the growing complaints of sexual

harassment in the U.S. as more immigrants move to the U.S. With their own cultures and beliefs, the views of immigrants of women may be under fire. In many countries, women have few rights, particularly in the Middle East and Asian countries; these groups continue to grow in population and may influence cases in the U.S.

A profile of victims shows that most are female and generally younger. The age group of 20's and 30's are generally the target with 24-34 being the most frequent. The less likely female group to be harassed are the married or widowed, while the more likely group is divorced, separated, or never married. Education does not seem to be a factor in who is harassed. With male victims, they are normally homosexual or younger than their female harassers (Carlson, 2001).

The general profile of the harasser is that they are male, older than victims, and married. The victim will find the harasser unattractive in most cases and will often be a co-worker. The most severe or frequent cases are normally supervisor to subordinate, and the harasser will normally bother more than one person. The motives fall normally into three categories: actual sexual desire, personal power, and social control. Often, it is suspected that all men harass, but this is not true. Less than 5% commit the offense. For female harassers, they are normally divorced or single and are younger than the victim (Carlson, 2001).

COUNTER POSITION

The most common error and argument of organizations with sexual harassment policies in place are that policy, training, and monitoring systems will safeguard the organization, thus they do not need to worry about sexual harassment complaints. Organizations must go beyond merely having a policy on paper. An effective prevention

program must be used, and explicit policy against sexual harassment that is widely and regularly disseminated to employees and consistently enforced is the means to ensure that policies will be adhered to (Susser, 1989).

Having a policy in place will be sufficient to guide against liability with organizations. While this argument seems to have merit, and in some cases having a policy will deter sexual harassment within organizations, the courts have taken a stronger stance that policy alone is not enough to guard against being liable. In the case of *Faragher v. City of Boca Raton*, it was "held that employers are subject to vicarious or strict liability for sexual harassment caused by a supervisor" (Muhl, 1998, p.1). If it can be found "where a hostile work environment is created through sexual abuse and threats by a supervisor with immediate or successively higher authority over an employee", then the organization will assume some liability in the complaint (Muhl, 1998, p.1). If a "supervisor takes a "tangible employment" action (for example termination, demotion, or loss of pay) against an employee after a sexual advance is refused," then the organization will be liable in the eyes of the courts (Muhl, 1998, p.2). If an employer can show the organization used "reasonable care to prevent and promptly corrected any sexually harassing behavior," then the employer may have a usable defense (Muhl, 1998, p. 2). The employer must also show that the "employee failed to take advantage of any preventive or corrective opportunities provided by the employer to otherwise avoid harm" (Muhl, 1998, p. 2). The Faragher case was brought under Title VII of the Civil Rights Act of 1964 when the employee was seeking a judgment against the employer for the organization being liable for an employee's actions in a sexual harassment case (Muhl, 1998).

Faragher was a lifeguard for Boca Raton and was sexually harassed by a supervisor from 1985 to 1990. Several reports were made to a training captain about the harassing behavior, but no action was taken. Another female lifeguard complained about the incident to the city personnel manager, but once again, no action was taken. Boca Raton had a policy against sexual harassment, but the city contended that a copy had never been supplied to the supervisor of Faragher. It was ruled that the city was liable since management of Boca Raton is responsible for their employees and should have known the actions of their employees. It also ruled that it is the obligation of the city to ensure that all policies are given to employees; in this case, Boca Raton failed to make any attempt (Muhl, 1998). In the case of *Burlington Industries, Inc. v. Ellerth,* the court determined "whether employees who neither submit to a supervisor's sexual demands nor suffer any tangible adverse job consequences may still sue for quid pro quo sexual harassment under Title VII" (Muhl, 1998, p. 2). While an "exact definition of "quid pro quo" is difficult to define, in the sexual harassment context, the phrase refers to a situation in which a supervisor makes a sexual advance and offers improvements in working conditions if it is accepted" (Muhl, 1998, p. 2). Ellerth did not complain about the sexual advances of her supervisor even when she knew of Burlington's policy against sexual harassment. In this case, the court found that even without Ellerth suffering any loss it was still the responsibility of the company to ensure that she was free from harassment, and it was not Ellerth's responsibility to show that the company was negligent (Muhl, 1998).

The courts have not always ruled for just the plaintiffs, in *Gebser v. Lago Vista Independent School District*, it was "ruled that a plaintiff may not recover damages for

teacher-student sexual harassment" (Muhl, 1998, p. 3). The court ruled that in order for Gebser to receive damages, "a school district official who has the authority to institute corrective measures on the district's behalf" must have been notified of the misconduct, and the school district's official must have been deliberately indifferent to the teacher's misconduct (Muhl, 1998, p. 3).

In these cases, policies were in place but no action was taken by employers when notified of policy violations. All reported cases should be addressed and investigated to ensure that no violations are occurring. Organizations must have means in place to ensure that all complaints will be considered serious and corrective action will occur. Avoiding complaints of sexual harassment will result in detrimental monetary loses for organizations even if policies are in place.

The Police Foundation, according to Polisar in 1985, conducted a national study and found that "67 percent of female officers were victims of sexual harassment" within police organizations (as cited in Sumner, 2007, p. 5). A 1998 study that focused on the western United States "surveyed 500 female officers and found that significant numbers of women in law enforcement experience sex-based problems," according to Polisar (1985) (as cited in Sumner, 2007, p. 5). Another study was conducted in 1995 by Polisar (1985), and it focused on female officers of several medium-sized police departments. It found that "68 percent responded "yes" to the question, "Have you ever been sexually harassed while on the job by a member of your agency?"(as cited in Sumner, 2007, p. 5). These studies show that sexual harassment within police organizations is occurring, and sexual harassment has continued even with policies in place (Sumner, 2007).

In a 2010 interview with Deputy Chief Barry Hines of the Arlington Police Department, Hines explained that, too often, organizations may have a sexual harassment policy that is very general and does not include guidelines that can be enforced. These organizations will ultimately open themselves up to higher liability since a general policy will not address the proper training or monitoring needed. Hines continued to say that a sexual harassment policy that is too restrictive will increase the number of complaints since any type of actions by an employee could be misunderstood and be considered sexual harassment (B. Hines, personal communication, May 2, 2010). Thus an organization must develop a sexual harassment policy that is appropriate to ensure the department and city will reduce instances of sexual harassment and reduce overall liability.

These studies have illustrated that there has been and there will be sexual harassment within police organizations. As more women and homosexuals enter into law enforcement, the potential for sexual harassment or hostile work environments will increase. Organizations must have updated policies, conduct the proper training, and monitor all complaints filed from all parties. Additionally, strong discipline must be the rule in sexual harassment cases within police organizations.

CONCLUSION

It can see that sexual harassment has been and continues to be a major issue in all types of organizations. Romances do occur in the work place, and they must not be confused with sexual harassment. With organizations, they must realize this and send a strong message on the difference between the two. Supervisors must understand that they are held to a higher standard and carry a greater responsibility within

organizations. Prevention and reoccurring training is the best means to avoid Title VII complaints. This will reduce the number of complaints and reduce the liability which organizations may incur. Organizations must send a clear message to all employees that harassing actions toward others will not be tolerated by any employee of the organization. Encouraging an open, respectful work place, being fair and consistent with everyone, and anticipating problems will be the steps to prevent sexual harassment or hostile work environments within organizations. Employers must take all complaints seriously and be aware of subtle as well as obvious aspects of discrimination and sexual harassment and take corrective action immediately.

Employers can do many things to protect themselves. Having a policy on sexual harassment, hostile work environments, and even dress codes will help reduce the issue of sexual harassment. While policies are a must for organizations, they must know that just having a policy is insufficient to guard against sexual harassment complaints. Organizations must train and monitor their employees for signs of sexual harassment and have in place reoccurring training for all employees and supervisors. The organization must investigate all complaints, not just transferring the victim or the harasser. Action must be taken quickly and rapidly to ensure the safety and welfare of the victim.

Finally, organizations must remember that when it comes to sexual harassment in the work place, it is up to the organization to change attitudes, which is beneficial but optional, but organizations must change behaviors, which is required, as it relates to sexual harassment (Webb, 1992). Nothing less can be expected of police organizations in today's law enforcement world when a costly lawsuit for sexual harassment can be

prevented. All employees, supervisors, and managers are obligated to be attentive to violations of sexual harassment policies. By doing so, police organizations will be in compliance and reduce the liability costs of sexual harassment complaints.

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