

**THE BILL BLACKWOOD
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS**

HOW TO WIN THE WAR ON SEXUAL HARASSMENT

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ABSTRACT

Sexual discrimination has existed since the beginning of time. It permeates all levels of our society; our homes and our work place. In 1991, sexual harassment came out of the closet and into the national spotlight. Two nationally exposed sexual harassment incidents; Anita Hill vs. Clarence Thomas and the U.S. Tailhook scandal caused a nuclear reaction that has affected most American workers today. They ignited a meltdown of gender roles and control. Traditional male domination and leadership practices were again questioned, perhaps with more credibility, and the victimization of the American woman was changed forever.

A direct result of these incidents was an overwhelming number of sexual harassment cases. We must realize that sexual harassment is alive and well and, it will not go away. Employers must make sexual harassment awareness and training a top priority in the work place. If employers do not heed the warning, they will pay for it in the form of lawsuits, poor job performance, job loss, impaired health and emotional turmoil.

The purpose of this research paper is to demonstrate to the Department of Public Safety and other applicable police agencies that sexual harassment continues to be a major problem with implications for significant monetary losses. The most effective method to address this issue is to disseminate information to all employees by providing a comprehensive policy and instituting an on-going training program.

A review of literature that included books, periodicals, court cases, newspaper articles, and pamphlets was conducted. Law enforcement agencies throughout the state were also surveyed as to existing policies and training programs.

The need for a more comprehensive policy statement to include examples of prohibitive behavior, training schedules, responsible party determination, and reporting mechanisms is clearly demonstrated. By broadening the scope of the policy, all employees will have this information easily accessible to them, and their understanding of what constitutes sexual harassment will be clarified. The impact of easily accessible, clear and concise descriptions of sexual harassment within the policy statement will eliminate confusion and clarify the issues to all employees. Training programs conducted on site throughout the state could also have an added benefit of impacting other police agencies by including their personnel in the presentation.

Introduction

Purpose

The purpose of this research paper is to demonstrate to the Department of Public Safety and other applicable police agencies that sexual harassment continues to be a major problem and that existing policies are ineffective in addressing this issue. The current Department of Public Safety policy is based strictly on the Equal Employment Opportunity Commission (EEOC) regulations on sexual harassment (Texas Department of Public Safety 1, 3-4).

Problem

This policy is inadequate because it does not provide an understanding of what constitutes sexual harassment as currently defined by the courts. This information is currently not available to all employees. Supervisors are the only employees scheduled for regular inservice every two years. The eight hour workshop addresses compliance with equal employment opportunity law and is presented by the Texas Commission on Human Rights. A two page section devoted specifically to sexual harassment is included with the focus of the presentation being a test with discussion on relevant definitions and issues (Texas Commission on Human Rights 1992). Sexual harassment must be continually addressed at all levels within the agency. Non supervisory personnel do not participate in any training sessions and sexual harassment training is not a part of new employee training.

Intended Outcome

A comprehensive review of literature was conducted that included current articles, publications, books, legal citations and books. The Texas Department of Public Safety and other police agencies throughout the state will benefit from the information obtained from this research. A reorganization of existing sexual harassment policies, and in some cases, the implementation of a training program will ultimately have a far reaching effect on these agencies.

This research paper will demonstrate the need to enhance the current policy to include a more concise definition with practical applications. A comprehensive sexual harassment policy and training program for all levels of the workforce will save the employer great monetary losses through less law suits, less time off being

taken and less physical and emotional pain (Sandroff 47). Sexual harassment continues to be one of the most relevant issues in America today. No one is immune, from law enforcement to the President of the United States (Asseso 1).

Historical, Legal or Theoretical Context

The social climate of the fifty's and the sixty's lent itself to male leadership and domination. Familial roles and gender roles were clearly defined and adhered to. People readily subscribed to their role in life and social structure. Men worked, women were mothers who stayed at home and took care of the children. The prevailing attitude was one of male superiority and female submissiveness and inferiority. Sexual harassment prevailed, however, it was accepted as, "that's the way it is" (Webb, Step Forward 3).

Beginning in the 1960's the basis for today's awareness of sexual harassment fell into place (Clark 539). Women began entering the workforce in large numbers. In 1959 there were twenty-two million women in the work place, by 1991 there were fifty-seven million. Societal views of men, women, work and family changed dramatically with the advent of the birth control pill. The sexual revolution had begun, and in its wake, women's movements began to prevail and to impact society.

In 1972, Congress passed the Equal Employment Opportunity Act, but it was not until 1974 when the Federal Courts heard the first cases of sexual harassment. In the case of Miller v. Bank of America (418 F. Supp.235 N.D. Ca. 1976) and the case of Corne v. Bausch & lomb, Inc. (390 F. Supp. 161 D Arizona 1975) and Barnes v. Train (13 Fair Empl. Prac. Cas. BNA 123 D.D.C. 1974) the courts interpreted sexual harassment based on sex as a personal matter between individuals, and not as actions directed at or affecting groups of people. This decision confirmed the attitude of male dominance over females still prevailed.

The 1976 case of Williams v. Saxbe (413 F. Supp. 654 D.D.C. 1976) established a cause of action for sexual harassment. The court ruled that the behavior in question had only to create an artificial barrier to employment that was placed before one gender and not the other. Thus, conditions of employment that were applied differently to men and women, such as sexual harassment, were forbidden under Title VII as sex discrimination.

Women's groups began demanding action, so consequently, the EEOC in 1980 issued regulations defining sexual harassment, stating that it was a form of sex discrimination prohibited by the Civil Rights Act. (US C.F.R.) In the 1986 case of Meritor Savings Bank v. Vinson (477 U.S. 57 1986), the U.S. Supreme Court ruled that sexual harassment on the job is illegal discrimination, even if the victim suffers no economic loss.

The evolutionary change in interpretation of what constitutes sexual harassment was one in which a tangible economic loss was suffered, to one in which a hostile environment was established. The U.S. Supreme Court also makes the employer accountable for any sexual harassment occurring in the workplace, whether or not the employer has any knowledge of it. The emphasis on whether a behavior is unwelcomed is an indicator to confirming whether sexual harassment exists.

Since the 1986 U.S. Supreme Court decision, several court decisions have re-defined what constitutes sexual harassment. In the 1991 case of Robinson v. Jacksonville Shipyards (760F. Supp. 1486 M.D. Fla. 1991), the Sixth U.S. Court of Appeals in Florida ruled that nude pin-ups in the workplace can constitute sexual harassment. In the 1991 case of Ellison v. Brady (924 F.29872 9th Cir. 1991), the Ninth U.S. Circuit Court of Appeals in San Francisco established the "reasonable woman" standard. Prior to this ruling, the court would ask whether a reasonable person would find a behavior offensive.

The 1993 case of Harris v. Forklift Systems, Inc., (114S.Ct.367 6th Cir. 1993) the U.S. Supreme Court ruled that there is no requirement of psychological injury, but Title VII comes into play before the harassing conduct leads to a nervous breakdown.

Today, and in the future, sexual harassment issues will be a major problem employees must face. This topic will remain relevant until society's attitude toward women changes.

Review of Literature or Practice

In the 1991 case of Ellison v. Brady (924 F.29872 9th Cir. 1993), the court ruled that a hostile work environment must be judged from the perspective of the victim. In this case, Kerry Ellison was employed by the I.R.S., a co-worker, Sterling Gray, asked her out to lunch, to which she accepted. A few months later, Gray began writing love letters detailing his love for her. Ellison filed a sexual harassment complaint with her employer,

citing a hostile work environment. The I.R.S. counseled Gray and transferred him. After three months lapsed, he was transferred back to Ellison's department without her knowledge. Ellison was granted a transfer, and soon after filed a lawsuit. The trial court dismissed the case using the "reasonable person" standard. The average person would not have found Ellison's workplace hostile. The Appeals Court reversed the decision and threw out the reasonable person rule. This case established the "reasonable woman" standard which states that sexual harassment will be based on what a reasonable woman would think.

The most well known authority today on this subject is Susan L. Webb. She has written extensively having published books, articles and presented workshops and seminars. She has also developed training programs widely used by the corporate world. She is the editor of a monthly newsletter, The Webb Report, which details and updates current trends in sexual harassment issues. Webb defines sexual harassment as a deliberate or repeated behavior of a sexual nature or of a sex-biased nature, that is unwelcome, not asked for, and not returned (Webb Step Forward 25).

Twelve Texas police departments were surveyed by telephone to ascertain the existence of a written policy on sexual harassment. A distinction of whether a policy was departmental or city - wide was made. Information on the length of the policy and the type and existence of a training program was also gathered. Twelve cities were randomly selected by population and placed into three categories:

1. Category A; cities with a population over 500,000; these included Dallas, Fort Worth, El Paso and San Antonio.
2. Category B; cities with a population over 100,000; this group included Abilene, Midland, Lubbock and Waco.
3. Category C; cities with a population over 25,000; included the cities of Bedford, Big Spring, Del Rio and Huntsville. See Appendix A For The Survey Instrument.

The survey results revealed several startling results. Two cities in Category C had no police department policy and no training programs in place. These cities utilize a city employee sexual harassment policy. Only four cities had any follow-up training for commissioned officers, and only one city had any follow-up training for non-commissioned personnel. The follow-up training for commissioned officers was incorporated into the regular

inservice training. In fact, the majority of employees in these police agencies were non-commissioned personnel. According to survey results the majority of employees do not receive training in sexual harassment.

This survey shows that sexual harassment is a major issue because all police departments surveyed have their own written policy or use a city policy. If this survey had been taken ten years earlier, It is doubtful if any department would have had a written policy. This survey , coupled with the current literature on the subject, illustrates that all employees, not just commissioned employees, need training and follow-up.

Discussion of Relevant Issues

To understand sexual harassment, we must look at the heart of the issue; "the power thing". The issues of control, power and domination are the defining thread interwoven in a harassment conflict. In today's workplace , men still have most of the power and are resisting any change as a way to protect their power base. A person is coerced into a situation under the guise of a social relationship , be it an actual physical encounter or a verbal exchange. It begins innocently enough when the victim signals initial acceptance of the situation to the harasser. This signal may be overt or simply a lack of action to discourage the aggressor. This initiates a relentless effort by the harasser to get his prey. To the victim, it has become a struggle, to the harasser, it has become a game. The boundaries for acceptable behavior become blurred.

Most experts in the field of sexual harassment agree that sexual harassment is really about power (Filipcak 25). According to Susan Webb, " the harasser either thinks or knows, consciously or unconsciously, that he or she has more power than the harassee. If not, there would be no harassment; the harassee could turn to the harasser and demand that it would stop and there would be no issue"(Webb, Step Forward 29).

When more women get decision making power, sexual harassment will become less prevalent. However, this will not happen overnight because the majority of women, especially in law enforcement, do not hold supervisory or management positions (Texas Department of Public Safety Strength and Minority Report 1). The federal government and the courts had to intervene in this power struggle to legally resolve the sexual harassment issue.

In 1980 the EEOC defined sexual harassment on the basis of sex as a violation of the law. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment.
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment (U.S. CFR 1604.11a).

In determining whether alleged conduct constitutes sexual harassment, the EEOC will look at the record as a whole and determine the legality of a particular action, on a case by case basis.

The first two conditions are what the courts have called *quid pro quo* (this for that); an employee is confronted with sexual demands to keep her job or obtain a promotion. The courts have called the latter condition hostile environment; sexually offensive conduct that permeates the workplace, making it difficult or unpleasant for an employee to do her job Henson V. City of Dundee (682 F. 2d897).

Sexual harassment is not a clear cut issue. Today, the courts must examine each case and determine if a particular behavior is considered to be sexual harassment. The courts must look at several factors; was the behavior sexual in nature, was the behavior unreasonable, was the behavior unwelcome and was the behavior severe enough to permeate the workplace (Petrocelli 2/2).

Behavior that is sexual in nature includes sexual suggestions, propositions or attempts to get sexual favors from an employee (Petrocelli 2/4). In the majority of cases the courts have ruled in favor of the plaintiff when a supervisor is the accused. When a co-worker is involved, the plaintiff must prove that the employer knew about the harassment. Hostility toward another sex can be classified as sexual harassment when it involves pranks, threats and intimidation. Behavior that is sexual in nature also encompasses sexual or pornographic material, foul language and sexual jokes that impregnate the workplace, causing a sexually contaminated workplace. This

behavior does not have to be addressed to a particular person but creates a hostile working environment Robinson v. Jacksonville Shipyards, Inc., (760 F. Supp. 1486 M.D. Fla. 1991).

When the behavior is subject to interpretation, reasonableness plays an important role. For example, when a woman reasonably defines what behavior is offensive to her, and a co-worker continues to display this behavior, then sexual harassment can occur.

The courts have ruled that behavior that is so severe throughout the workplace that it creates an intimidating, hostile, or offensive working environment, is sexual harassment (Petrocelli 2/18).

One of the most critical questions that must be asked is whether the behavior welcomed. In the workplace today, companies cannot prevent employees from having romantic relationships with one another. Sexual harassment may occur when two employees who have had a prior consensual relationship, decide to break it off and one of the individuals wants to continue the relationship. The ensuing behavior, aimed at reconciliation may become unwelcome behavior.

A person who gives in voluntarily to sexual demands out of fear of losing their jobs does not give up their right to file a sexual harassment claim Meritor Savings Bank v. Vinson (477 U.S. 57 1986). The determining factor is whether the employee welcomed the sexual advance or conduct, not whether she felt compelled to go along with it.

Employers must be proactive instead of reactive when addressing the issue of sexual harassment. They must take the initiative by implementing education programs to prevent problems before they arise. If employers would educate their employees in the commonsense approach (would you say or do it in front of your wife or parents?, would you say or do it in front of a friend of the same sex?, how would you feel if your mother, wife, sister, or daughter was exposed to this behavior?) to sexual harassment, there would be a reduction in sexual harassment complaints. The commonsense approach requires an employee to conduct a self-analysis of his behavior.

Prevention is the best tool for elimination of sexual harassment. An employer must have top management support, a comprehensive written policy, a good education and training program and effective complaint and disciplinary procedures (Walstedt 44,45).

What is the impact of sexual harassment? For employees who experience it, sexual harassment takes its toll in the form of mental and emotional stress and even loss of income, if victims leave their jobs or take leave without pay, as a result of their experience (The Webb Report May 1996 3,4).

In 1980 the U.S. Merit Systems Protection Board estimated that for the two years preceding that year's survey, sexual harassment cost the federal government \$189 million. For the two years preceding the 1987 survey, the cost of sexual harassment was estimated at \$267 million (The Webb Report May 1996 1).

Conclusion/Recommendation

The purpose of this research paper is to demonstrate to the Department of Public Safety and other applicable police agencies that sexual harassment continues to be a major problem and that existing policies are ineffective in addressing this issue. Sexual harassment issues are consistently making national headlines in the newspapers, magazines and television. Everyone is at risk, from the president of the United States, to the common worker.

In this writer's opinion, the Texas Department of Public Safety's sexual harassment policy is ineffective because it is based solely on EEOC regulations. This is inadequate because it does not provide an understanding of what constitutes sexual harassment as currently defined by the courts. The current policy is insufficient because it does not include examples of prohibitive behavior.

This research paper clearly shows that sexual harassment is alive and well and will not go away unless the employer takes a proactive approach to the problem. It is clearly evident that the court system will not tolerate sexual harassment in the workplace. Employers must realize that the issue of sexual harassment cannot be ignored. If a reactive approach is taken, the magnitude of monetary expenditures in the form of lawsuits, poor job performance and job loss will be devastating. By having a comprehensive policy statement and an effective training program, employers can virtually eliminate sexual harassment complaints.

If the Department of Public Safety adopts the attached recommended sexual harassment policy, all employees would be educated in sexual harassment issues and thus, less likely to engage in this illegal activity. They would also be more likely to report incidents of harassment to their supervisors. Since the Department of

Public Safety has offices located through out the state, it would also be beneficial to invite local police agencies to these training sessions. This would enable more law enforcement personnel to become better educated in the area of sexual harassment and have a larger impact on society. This interagency collaboration between Department of Public Safety personnel and area police officers would be beneficial to communities throughout the state.

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APPENDIX A

SEXUAL HARRASSMENT TELEPHONE SURVEY

	WRITTEN POLICY	DEPARTMENT OR CITY	LENGTH	TRAINING FOR COMMISSIONED			TRAINING FOR ALL EMPLOYEES		
				NONE	ONE TIME ONLY	FOLLOW UP	NONE	ONE TIME ONLY	FOLLOW UP
DALLAS	YES	DEPARTMENT	2 PARAGRAPHS		X			X	
FORT WORTH	YES	DEPARTMENT	4 PAGES			X		X	
EL PASO	YES	DEPARTMENT	1 PAGE		X			X	
SAN ANTONIO	YES	DEPARTMENT	1 PAGE			X		X	
ABILENE	YES	CITY	2 PAGES			X			X
MIDLAND	YES	DEPARTMENT	2 PAGES		X			X	
LUBBOCK	YES	DEPARTMENT	6 PARAGRAPHS			X		X	
WACO	YES	DEPARTMENT	4 PAGES		X			X	
BEDFORD	YES	CITY	2 PAGES	X			X		
BIG SPRING	YES	DEPARTMENT	2 PAGES		X			X	
DEL RIO	YES	CITY	2 PAGES	X			X		
HUNTSVILLE	YES	DEPARTMENT	4 PAGES		X			X	

APPENDIX B

**TEXAS DEPARTMENT OF PUBLIC SAFETY
SEXUAL HARASSMENT POLICY SAMPLE**

It is the policy of the Texas Department of Public Safety to prohibit sexual harassment among its employees.

Sexual harassment is a form of sex discrimination and is an unlawful employment practice under Title VII of the 1964 Civil Rights Act.

The Texas Department of Public Safety employees will abide by the Equal Employment Opportunities Commission (EEOC) Regulations.

The EEOC definition of sexual harassment is found in 29 code of Federal Regulations (CFR) 1604,11(a).

Harassment on the basis of sex is a violation of (the law). Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of sexually harassing, prohibitive behavior include, but are not limited to the following:

- * Written contact, such as sexually suggestive or obscene letters, notes, invitations.
- * Obscene or lewd sexual comments, jokes, innuendos, threats, slurs, epithets or suggestions about another employee's gender or sexuality.
- * Unwelcome flirtations, advances, leering, whistling, gesturing, staring at another's body, sexual propositions.
- * Displaying nude or sexual pictures, cartoons or calendars.
- * Physical contact such as intentional touching, pinching, brushing against another's body, impeding or blocking movement, assault coercing sexual intercourse.
- * Continuing certain behavior after a co-worker has objected to the behavior..

Sexual harassment includes using sexual behavior to control, influence, or affect the career, salary or work environment of another employee. For example, it is forbidden either to imply or actually withhold support for an

appointment, promotion or change of assignment, or suggest that a poor performance report will be given because an employee has declined a personal proposition.

The EEOC regulations also makes clear that most sexual harassment cases can only be resolved by looking at all the facts in context {29CFR 1604.11(b)}:

In determining whether alleged conduct constitutes sexual harassment, the EEOC will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidence occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

The Texas Department of Public Safety shall take all reasonable steps to see that this policy prohibiting sexual harassment is followed by all employees, supervisors and others who have contact with our employees. This prevention plan will include semi-annual training sessions for all employees, on-going monitoring at the worksite and a confidential employee survey to be conducted and evaluated annually. In addition, All new employees will receive training during orientation.

This organization will take an affirmative role in protecting its employees from sexual harassment. Should an instance of inappropriate behavior occur, it is the employee's responsibility to bring it to the attention of management. This includes employees who think that they are the recipient of sexual harassment and also those who believe that they have witnessed another employee's being harassed. If you believe you are being sexually harassed, take action immediately by:

- * Identifying the offensive behavior to the harassed and requesting that it stop.
- * Notify your supervisor or someone in management immediately.

Any employee found to have violated this policy shall be subject to appropriate disciplinary action, including warning, reprimand, suspension or discharge, according to the findings of the complaint investigation.

In order to protect against sexual harassment, the Texas Department of Public Safety offers an internal procedure for resolution of complaints to facilitate and encourage early resolution. The Federal Equal Employment Opportunity Commission and the Texas Commission on Human Rights are agencies established by the federal government to handle complaints of discrimination and sexual harassment. Once the internal complaint

procedures have been exhausted, employees are entitled to contact either of these agencies anytime they feel they have been subjected to an act of sexual harassment.