

Student Complaints about Faculty or Staff: Best Practices for Prevention and Response in the #MeToo Era

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Today's Discussion Goals

1. Examine sexual harassment concerns involving faculty and staff under Title VII and Title IX
2. Collaboratively work through real-life inspired hypothetical case studies
3. Discuss some tangible and practical takeaways around prevention and response to consider on campus

Sexual Harassment – Title VII and Title IX

- Sexual Harassment – Workplace: 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, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment
- Sexual Harassment – Educational Context: Unwelcome, sex or gender-based verbal or physical conduct that is sufficiently severe, persistent, or pervasive such that it interferes with, denies, or limits an individual's ability to participate in or benefit from educational programs or activities



Quid Pro Quo Sexual Harassment

Quid Pro Quo Sexual Harassment exists when:

1. There are unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; and
2. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status; or
3. Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions adversely affecting such individual

Hostile Environment

Hostile Environment – Workplace: Where there is harassing conduct that is sufficiently severe, persistent, or pervasive that is unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Hostile Environment – Educational Context: Any situation in which there is harassing conduct that limits, interferes with, or denies educational benefits or opportunities, from both a subjective (the complainant's) and an objective (reasonable person's) view point. Determination of "hostile" is based upon the totality of circumstances.

Impact Of #MeToo Issue On Title IX Issues

- Shines a spotlight on previously hidden issues – raises awareness
- No more “Sacred Cows” – no one is too important to be immune from responsibility
- Practice of “Naming and Shaming” – how does university protect the rights of both parties in the era of social media?



Merging Law and Practice:
Moving Beyond Legal Compliance
on Campus

The National Moment



#MeToo 'silence breakers' are **Time** magazine's person of the year

TIME'S
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UP



Selected Risk Factors: EEOC Task Force on Harassment in the Workplace

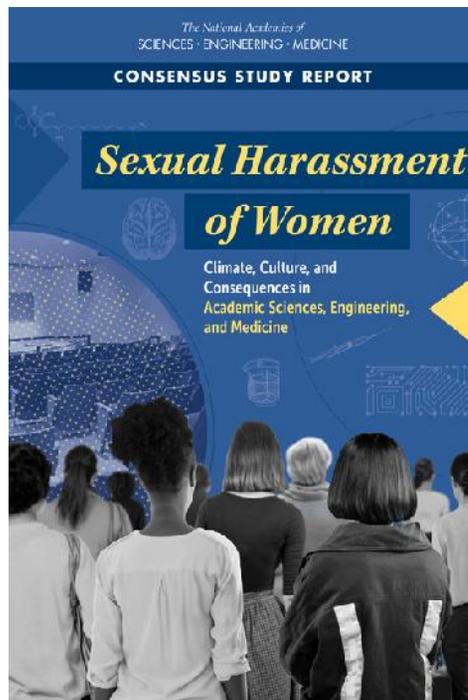
- Significant power disparities
- Homogenous workforce
- Workplaces with “high value” employees
- Coarsened social discourse outside the workplace
- Reliance on customer/client satisfaction
- Decentralized workplaces

https://www.eeoc.gov/eeoc/task_force/harassment/risk-factors.cfm

EEOC Task Force on Study of Harassment in the Workplace – Prevention Strategies

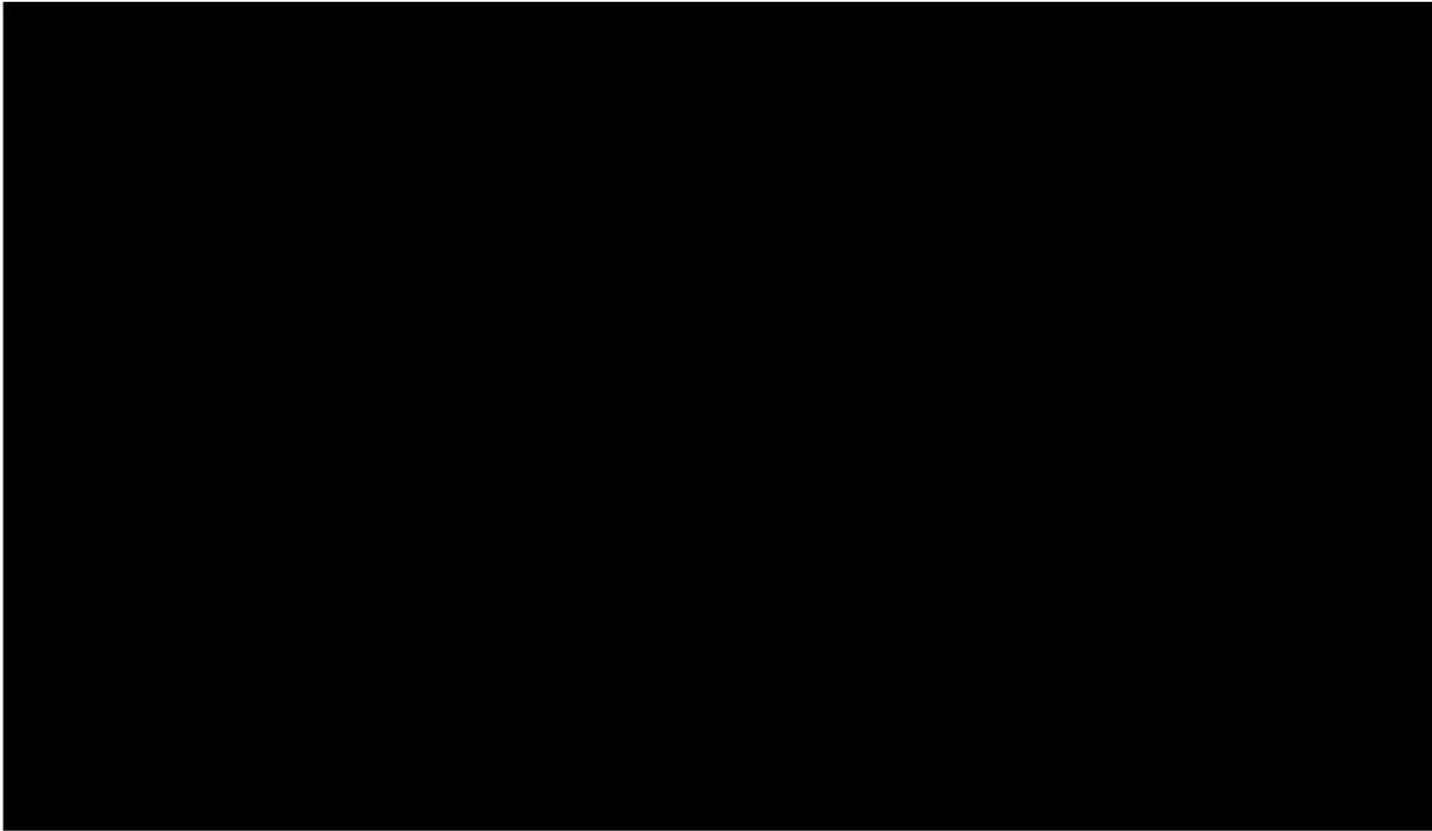
- Leadership
- Accountability
- Clear Policies and Procedures
- Training
- Developing a sense of collective responsibility

Sexual Harassment in Academic Sciences, Engineering and Medicine: June 2018 Report



- Harassment as pervasive
 - Especially gender harassment signaling “women don’t belong”
- Workplace climate single most important factor
 - Generalized incivility as major risk
- Recommendations include:
 - Reduce impacts of power differentials (multiple advisors, monitoring)
 - Diversify workplaces, especially leadership
 - Support individuals who report
 - Transparent accountability

That's Harassment



Prevention and Response Action Steps

- **Policy**
 - Clear and comprehensible is best
 - Be aware of other similar policies (all civil rights, civility, etc.)
 - Be aware of state law (CT=affirmative consent, etc.)
- **Procedures**
 - Which office investigates? What does the process look like? Do people know? Does investigating office have sufficient staff, training and resources?
- **Resources**
 - Confidential and Not Confidential (especially important for interim measures)
 - Parity for respondents (September 22, 2017 DOE Dear Colleague Letter/Interim Guidance)
- **Collaboration**
 - Committees for on and off-campus institutional stakeholders to discuss these issues
 - But keep individual case discussions “need to know”
- **Campus Surveys**
 - Students and employees

Training and Education – Some Considerations

- **In person and interactive**
 - Ideally somewhat small group – allow for interaction, engagement, case studies
- **Holistic**
 - Consider pairing other behavioral expectations with discrimination/harassment
- **Modern/relevant** with examples specific to the relevant workplace or student environment
- Increase participant **self-awareness**
- Provide response skills and **specific institutional resources** (not generic!)
- **Tailored sessions** for managers and student leaders (your front lines!) may be one of the most important investments you can make
- Include **bystander intervention** skill building

INCREASED
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graph LR; A[INCREASED AWARENESS AND WILLINGNESS TO COME FORWARD] --> B[GREATER NUMBER OF COMPLAINTS REGARDING BOTH SEXUAL MISCONDUCT AND CHALLENGES TO BEHAVIOR THAT MIGHT PREVIOUSLY BE REGARDED AS "GRAY AREA" OR CONSENSUAL]; B --> C[INCREASED NEED FOR TRAINING (ESPECIALLY BYSTANDER RESPONSIBILITY)];
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Case Study

A graduate student alumnus from five years ago posted last night on social media about a high-profile faculty member at a Connecticut university. As of 3pm today, the post already has received more than 200 likes and 50 comments. It references a longstanding Department Chair in the Chemistry Department who served as the alum's major advisor. It refers to "decades of abusive behavior targeted towards women, people of color, and those who identify as LGBTQ." The post uses the hashtag #metoo and invites alumni and current students to share their own stories, demanding that the school "finally take action and fire him!"

Many people are chiming in and the post is getting a lot of attention from students, staff and even other current faculty. Many comments from students in particular reference having been "warned" about him by other students and faculty and reference the chair making comments and "jokes" based on race, sex, national origin and more. In addition, at least two alumni appear to reference unwanted hugs, arms around the waist, kisses on the cheek and overall "creepy vibes" from the Chair in the laboratory setting, including longstanding rumors of an inappropriate sexual relationship in the early 2000's with a then-undergraduate student.

The post also tag's the school's Facebook page and Twitter handle. The school's communications team is getting many calls from reporters and the president's office has started getting calls from parents.

Audience Poll

What should the university do next?

- A. Nothing – this is an alumni complaint and the school therefore has no jurisdiction**
- B. Nothing – everyone knows social media “doesn’t count” for filing a complaint (if they were serious, they’d fill out the formal complaint form)**
- C. Other (let’s discuss...)**

Retaliation for Protected Activity

- Fear of retaliation is one of the greatest single barriers to individuals reporting concerns and participating in investigations, especially where allegations are about someone in a position of power
- Fear of retaliation can be especially potent in graduate and professional student settings where marked power disparities are present (damage to career and reputation, blame, disbelief)
- Examine your policy to determine what it says about retaliation. You may want to consider explicit language that reports are encouraged and retaliation is prohibited regardless of the outcome of any investigation. And then follow through on that in practice!
- An institution may not fire, demote, dismiss, harass or otherwise “retaliate” against an individual for reporting or filing a charge, participating in an investigation, or otherwise opposing discrimination