

SEXUAL HARASSMENT



#METOO

According to a Star Tribune MN Poll, nearly **2 out of 3 women** in the state of Minnesota have personally experienced sexual harassment. "It is estimated that over half of all women will experience some form of sexual harassment during college and/or their work lives" (Buchanan, 2008, p. 2). It is very difficult to track the true prevalence of sexual harassment because many women do not report. There are several reasons that victims do not report, some include "...the fear of retaliation or because they do not always recognize the offending behaviors as such" (Champion, 2010, p.3). In her Ted Talk, "How We Can End Sexual Harassment at Work," Gretchen Carlson stated that 71% of sexual harassment never gets reported. Many policies, including the whistle-blower policy, are set up to protect victims of sexual harassment from employer retaliation. However, there are many cases that victims experience negative backlash causing psychological, physical, occupational, and economic harm. These effects significantly impact a victim's life. The main focus for this policy brief is to increase efforts to prevent employer retaliation against victim employees. Decreased employer retaliation would increase reporting by victims of sexual assault and result in prevention of sexual harassment overall. Our recommendation is to assemble a task force to further investigate the complexities of sexual harassment in its entirety.

DEFINITION OF SEXUAL HARASSMENT

A form of gender discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- >A person's job, pay, or career is placed at risk
- >An employee's employment or career is placed in jeopardy
- >It creates an intimidating, hostile, or offensive work environment

Facts

85% of women surveyed reported they have experienced sexual harassment at work.

- NWLC

71% of sexual harassment **NEVER** gets reported.

-Gretchen Carlson

Minnesota state government agencies have **PAID OUT \$709,000** in settlements since 2015 related to seven sexual harassment cases.

-Brian Bakst

"We must believe women, stop blaming women, stop blaming ourselves, change the culture, and hold these predators accountable."

-Women's Foundation of Minnesota





#BeFierce

-Title VII of the Civil Rights Act of 1964, is the federal law that prohibits discrimination in the workplace. However, this law only protects employers with 15 or more employees and does not protect independent contractors. Raghu and Suriani (2017) discuss that under Title VII, it is an “employer’s” legal duty to protect their employees from sexual harassment. Realistically however, "Federal courts have interpreted this to mean that only businesses or organizations, and not individuals, may be held liable for sexual harassment pursuant to Title VII." Even if an employer takes action to reprimand or penalize the harasser, federal law does not permit victims to hold individual harassers directly and/or personally accountable for sexual harassment. "As a result... the harasser may suffer no consequences for his or her behavior" ⁹.

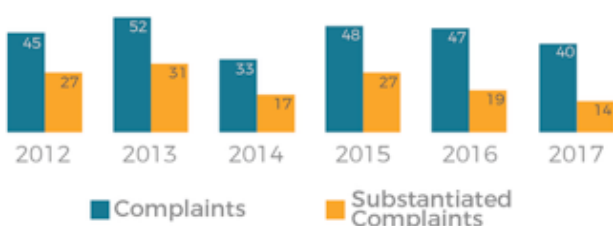
-The Sexual Harassment Prohibited Policy in Minnesota has the objective to "...create a work environment free from sexual harassment of any kind" ⁶. "Almost every state also has some form of workplace anti-discrimination law providing protections. Yet sexual harassment remains a widespread problem... in every kind of workplace setting and industry and at every level of employment" ⁹.

According to Minnesota Management and Budget by Myron Frans (2018), "The State of Minnesota believes all of its employees deserve a work environment that is safe, respectful, and supportive." Yet many individuals who have experienced sexual harassment have remained silent for years, because the risks of speaking out were too high. In recent months, many men and women have come forward and spoken out. "Victims were reluctant to make allegations of sexual harassment for a number of reasons, including fear of losing their jobs or otherwise hurting their careers, fears of not being believed, and the belief that nothing would be done about the harassment" ⁹.

Current laws designed to address sexual harassment are inadequate. As a result justice and redress are out of reach for most victims. Instead they, "...subjected victims to devastating economic, physical and psychological consequences while protecting predators" ⁹. There are longstanding gaps in federal law. Most of federal law focuses on remedying harassment after it has already happened, with little emphasis on preventing it in the first place ⁹.

There are also serious inconsistencies in federal and state laws regarding how situations are handled after the fact. "Minnesota state government agencies have paid out \$709,000 in settlements since 2015 related to seven sexual harassment cases" ¹. Within these settlements it is extremely common **NOT** to include admission of wrongdoing by the perpetrator ¹. There are a handful of Minnesota statutes that bar workplace retaliation, one example of these is the “whistleblower statute”. The Minnesota Human Rights Act (MHRA) also prohibits retaliation against claimants. The MHRA defines retaliation as "any form of intimidation, retaliation or harassment..."¹². However, Minnesota court jurisprudence has not shown this to be effective in workplace retaliation claims. The whistleblower statute does not protect employees who report suspected sexual harassment and MHRA does not prohibit an employer from retaliating against an employee for the actions of a third party ¹.

There were 266 sexual harassment complaints lodged against state employees from 2012 to 2017. Of those, 135 were substantiated. Twelve complaints are pending.



Source: Minnesota Management and Budget

MPRnews

"This is a critical moment to advance key policy initiatives to better protect workers, promote accountability, and prevent harassment."

-Maya Raghu & Joanna Suriani

#TimesUp

The initiative with the Times Up movement is looking to creating legislation that targets how sexual misconduct is treated. That includes prohibiting the use of nondisclosure agreements, which can be used to silent victims, the group said, according to the *Times*. "Harassment too often persists because perpetrators and employers never face any consequences," the Times' Up letter said. "This is often because survivors, particularly those working in low-wage industries, don't often have the resources to fight back"⁴. With many policy alternatives and responses to this social justice issue on the table, we recognize that an urgent need is to systematically study how reports are made, how investigations occur, and how consistently Minnesota's policies and laws are honored and applied in the real world. When addressing sexual harassment, prevention should be a primary goal for employers⁹. "While Title VII has been interpreted to provide employers with an incentive to adopt sexual harassment policies and training, such practices are not mandatory, and often fail to effectively prevent harassment"⁹. Sexual Harassment prevention is no short-term solution, it demands changes in attitude and behavior.

In a survey conducted by NCLS in October of 2017 it was concluded by experts in the field that a strong legislative sexual harassment policy should include the following:

1. New reporting system,
2. Changes in culture needed
3. A clear definition of "sexual harassment."
4. Examples of what behaviors are considered inappropriate in the workplace.
6. A policy that applies to legislators and staff, as well as nonemployees, such as lobbyists and outside vendors.
7. A diversity of contacts within the legislature to whom sexual harassment can be reported, allowing the complainant to bypass reporting to his or her direct supervisor.
8. A clear statement prohibiting retaliation for the filing of any claim.
9. A statement providing for confidentiality, to the extent possible, for all parties involved.
10. Specific examples of potential discipline, if warranted.
11. Opportunity of involving parties outside the legislature to assist in the investigation, if it is warranted or requested.
12. An appeal procedure.
13. A statement informing the complainant that she or he can also file a complaint to the EEOC and/or the state's Human Rights Commission.

"Employees must feel safe to report incidents, confident in the responsiveness of their supervisors, and certain of a fair and effective investigation process."

-Myron Frans

TIME'S UP on silence.
TIME'S UP on waiting.
TIME'S UP on tolerating
discrimination, harassment
and abuse.

#TIMESUP

In the United Nations Division for the Advancement of Women legislation handbook, it has identified several key areas that laws related to sexual harassment should address:

- Criminalize** sexual harassment;
- Recognize** sexual harassment as a form of discrimination;
- Recognize** sexual harassment as a violation of women's rights with health and safety consequences;
- Recognize** that harassment occurs in both vertical (such as between teacher and student or between manager and employee) and horizontal power relationships (such as between employees at the same level);
- Provide** effective criminal, civil, and administrative remedies for victims;
- Address** harassment in multiple sectors including public places, employment (formal and informal sectors), education, housing, commercial transactions, provision of benefits and services, and sporting activities.

#NoMore

"As the movement ignited by #MeToo shows, for too long, many women, and some men, have suffered workplace sexual harassment in silence, with little or no accountability for harassers. Now more than ever, corporate leaders and policymakers must step forward to go beyond simply responding to harassment, to refashioning systems, laws, and culture ensuring victims can obtain justice, predators are held accountable, and sexual harassment is eradicated"⁹. We support the state's recommendation that a task force be assembled to address sexual harassment. In February 2018 a task force bill to address sexual harassment was introduced. It is proposed that this task force must study and make recommendations on best practices on the following issues:

1. **Procedures** for reporting sexual misconduct; Balancing the need for victim privacy and public transparency.
2. **Training** on sexual harassment and workplace conduct; set clear expectations for professional behavior, request that participants sign a code of conduct agreement that includes accountability measures and provide options and information for reporting inappropriate behavior. An independent office is needed to receive reports of sexual harassment, investigate and enforce government policies. Recommendations also included studying the creation of an external hot line for reporting sexual harassment, adding guidelines for people who witness others being harassed and expanding training on sexual harassment.

I'm saying
NO MORE
to sexual assault.
Join me.

3. A **nonpartisan process** should be setup for receiving complaints of sexual harassment and investigating those complaints. The process must include, at a minimum, detailed reports by the investigator to designated legislators and staff and accountability measures to ensure all legislators and designated staff take prompt and appropriate action in response to a complaint.

4. Any other issues the task force determines relevant to ensuring that the State Capitol complex provides a safe and respectful environment and encourages a climate of zero tolerance for sexual harassment in the workplace.

This task force can significantly change the destructive culture surrounding sexual harassment. What better time than right now, because time is up. This issue is systemic and therefore it requires a systemic response.

What if it were your daughter, wife, sister, or mother? Would you say **#NoMore**?

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