

SEXUAL HARASSMENT

Psychological Research Can Help Attorneys Evaluate Unwelcomed Conduct

By Richard M. Samuels, Ph.D.

Many victims of sexual harassment will file civil lawsuits against their perpetrators and the organizations in which the harassment occurred. Attorneys familiar with the psychological research regarding sexual harassment are better equipped to determine if they should accept a particular case or provide strategies for representation, should they take the case.

Charges of sexual harassment have become more common in recent years as a result of the guidelines published by the U.S. Equal Employment Opportunity Commission. In 1980, the EEOC issued guidelines declaring sexual harassment a violation of Section 703, Title VII, thus establishing criteria for determining when unwelcome conduct of a sexual nature constitutes sexual harassment, defining the circumstances under which an employer may be held liable and suggesting affirmative steps an employer should take to prevent sexual harassment. The EEOC has applied the guidelines in its enforcement litigation, and many lower courts rely on them.

The EEOC's Policy Guidance on Current Issue of Sexual Harassment dated March 19, 1990, provides guidance on issues, including determining whether sexual conduct is unwelcome, evaluating evidence of harassment, determining whether a work environment is sexual hostile, holding employers liable for sexual harassment. Once these charges are confirming, damage claims will often follow. The use of psychological evidence can often be pivotal in the outcomes of such cases, aiding the attorney in the representation of his or her client.

Sexual Harassment Categories

There are three general categories of offensive sex-related behaviors. They include gender harassment, unwanted sexual attention and sexual coercion.

First, gender harassment is not sexual in the usual sense of erotic invitations, but rather consists of crude, offensive and derogatory sex-related behavior. Such behavior includes obscene jokes and sex-related insults that serve to convey offensive or insulting attitudes about women. This behavior sends a hostile message to female employees that they do not belong in this particular workplace. Such hostility is directed at women simply because they are women and is by far the most widespread form of harassment found in work organizations.

Second, unwanted sexual attention consists of unwanted, unsolicited, and nonreciprocal sexual attention and behavior that, although unwelcome by the recipient, is not tied to any job condition or reward.

Third, sexual coercion refers to implicit or explicit attempts to extort cooperation by the promise of job-related rewards or threats of punishment. Sexual coercion parallels the legal category of quid pro quo, whereas gender harassment and unwanted sexual attention represent the behavioral components of a hostile environment.

Bad Psychological Effects

Sexual harassment often results in serious consequences its victims from embarrassment, anxiety and lowered self-esteem to full-fledged psychological disorders such as major depressive disorder and post-traumatic stress disorder.

In addition to anxiety and depression, sexual harassment victims have described physical symptoms including headaches, sleep disturbance, eating disorders, gastrointestinal problems, nausea, weight loss or gain, feelings of guilt, and crying spells.

The Institute for Research on Women's Health declared that sexual harassment constitutes a serious threat to a woman's psychological and physical well-being. The National Council for Research on Women noted that the American Psychiatric Association recognizes harassment as a severe stressor. Women who have been sexually harassed have significantly lower levels of general psychological adjustment and are more likely to develop symptoms of post-traumatic stress disorder than the general population.

Experiencing sexual harassment, even at low levels of frequency and intensity, can often lead one to a decline in psychological well-being and elevations in psychological distress, up to and including many major emotional disorders. Significantly, the impact of sexual harassment may not manifest itself until many years later. Although not every individual who is exposed to such reactions are more common than not and appear to be the normal consequences to such an experience.

Taking Action Last Option

An attorney may be surprised to discover that the client may have been subjected to sexual harassment for many years before finally taking action. Despite the widespread nature of sexual harassment and the seriousness of its consequences, most victims do not report it. In fact, the typical response of women who are harassed is to simply endure the situation and hope that it will somehow "go away."



A discrepancy exists between how people believe they would respond to harassment if they were exposed to it and how victims actually respond to it. The majority of women say they would respond, but the overwhelming majority of sexual-harassment victims would simply endure it. However, about one quarter of victims said they ignored the behavior or put up with it; many were afraid to tell their fathers, husbands, boyfriends, or brothers for fear that these men may, in anger, retaliate, thus threatening their job.

If few individuals actually confront their harasser, even fewer take formal action such as reporting the action to management or filing a formal complaint. Less than twenty percent of victims are likely to report their harassment to anyone in authority. Filing formal complaints is less likely still, with estimates ranging from 2 to 12 percent of victims, according to the U.S. Merit Systems Protection Board. About 45 percent of female victims may also employ a variety of assertive responses to communicate to the perpetrator that the harassment is unwelcome, usually making a direct request that the offender stop the behavior and leave them alone.

By far, a sexual harassment victim's most infrequent response is to bring a formal complaint or file a lawsuit. Sexual harassment victims turn to such strategies as a last resort when all other efforts have failed. Not surprisingly, the least confrontational responses are the most common - victims in the workplace are more likely to talk with a supervisor than file a formal complaint, and legal claims are by far the least common response.

An issue often faced by the attorney representing a sexual harassment victim is, "why didn't she just report it when the harassment began?" Faced with the question, sexual harassment victims give a variety of answers. Many victims believe that nothing can or will be done, while others are reluctant to cause problems for the offender. The most common reasons given, however, are fear of retaliation, not being believed, damaging one's situation, or being shamed and humiliated. Unfortunately, such beliefs are often well founded.

Contrary to conventional wisdom, assertive responses such as confronting the harasser or filing a complaint are not only frequently ineffective, but often actually make matters worse. Research has shown that individuals who have experienced frequent harassment and used confrontational coping strategies tended to experience more negative outcomes than did others. An attorney's knowledge of these facts can help to deflect assertions by a defendant's counsel with such questions as, "If things were so bad, why didn't you report the harassment sooner?"

Company Behavior Critical

In addition, the harassment victim may have to deal with an environment in which inappropriate sexual attention is tolerated or where the organization does not have in place strong policies and clear procedures for dealing with sexual harassment. Company behavior that appears to tolerate harassment, and simply being in an environment where other women are being harassed, can produce psychological distress equivalent to that of being directly harassed.

Companies without a strong sexual-harassment policy are highly vulnerable to litigation, as this information is widely disseminated today by consulting firms, professionals (including attorneys and psychologists), and publishing and media concerns. These sources provide policies, investigative procedures, and training methods that are designed to protect employees from the risk of sexual harassment in the workplace. Ignorance of the law is no defense.

Sexual harassment is not limited to men harassing women. Although it is the most common type, in my 27 years of practice, I have evaluated or treated both men and women for symptoms of emotional distress because of their victimization from sexual harassment. The harassment has included male-to-female, female-to-male, male-to-male, and female-to-female variants. Frequently, complaints are filed after the individual has been subjected to sexual harassment for an extended period. The victim gradually breaks down under the strain with symptoms worsening over time until they can no longer function on the job.

Several victims whom I have evaluated have suffered so greatly they have become eligible to receive disability payments, as they are so traumatized that they can no longer work in their former field. Psychological evaluation, including psychological testing, can detect symptoms supporting a plaintiff's claim of emotional distress and project the long-term impact on the victim's life.

Defense counsel may also be able to use psychological data to determine if personality features and pre-existing conditions have magnified the victim's symptoms. Knowledge of these factors may then be used in the defense of a client accused of sexual harassment by reducing damage awards.

In closing, when sexual harassment issues are litigated, psychological input can exert a significant effect upon the outcome of the case for both plaintiffs and defendants.



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