
Employer's Responses to Sexual Harassment

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December 2018

Sexual harassment is a pressing national issue in both the public sphere and many workplaces. Recent high profile allegations in the media, government, and prominent firms as well as the accompanying social movements (such as #TimesUp and #MeToo) have raised the visibility of sexual harassment, strongly suggesting that workplace sexual harassment has not been effectively addressed—or perhaps even taken seriously—by many employers.

In this report we examine employer responses and the outcomes of 46,210 Title VII sexual harassment discrimination charges filed between 2012 and 2016 with the [U.S Equal Employment Opportunity Commission](#) (EEOC) and state Fair Employment Practices Agencies (FEPAs). We also examine the EEOC's processing of the 33,304 Title VII sexual harassment charges filed solely with the EEOC.

After a summary of our main findings, we present a short introduction to the definition of sexual harassment under the law. This is followed by our estimates on the frequency of sexual harassment in U.S. workplaces and the progressively narrow process through which they become complaints and receive redress through the legal system. We then describe the process through which a sexual harassment charge is filed, including a description of the content of these charges.

We go on to describe the gender and race of sexual harassment charging parties as well as the industry breakdown of charges. This is followed by analyses of employer responses to sexual harassment allegations as well as EEOC processing of these complaints. Our final analysis examines the distribution of benefits to the charging party from sexual harassment complaints. We conclude with a recommendation that workplace sexual harassment needs to be managed by employers as a human resource problem, rather than as a legal threat.



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MAIN FINDINGS

- About 5 million employees are sexually harassed at work every year
 - The overwhelming majority (99.8%) of people who experience sexual harassment at work never file formal charges.
 - Of those who file formal charges, very few—we estimate less than 1,500 per year—go to court.
- Most employers react punitively toward people who file formal sexual harassment charges.
 - 68% of sexual harassment charges include an allegation of employer retaliation, this rate is highest for Black women.
 - 64% of sexual harassment charges are associated with job loss, and this rate is highest for White women and White men.
- Industries vary widely in their sexual harassment discrimination charge rates.
 - In all industries women are more likely than men to file charges, but this sex difference grows in male dominated industries.
- While the EEOC initially tends to judge sexual harassment charges as more likely than other discrimination complaints to sustain a finding of legal cause, most individuals benefit little from EEOC case processing.
 - 27% of employees who file a sexual harassment charge with the EEOC and continue to pursue redress, receive any benefit
 - 23% receive some monetary compensation
 - the average award is \$24,700, the median award is \$10,000
 - less than 1% of awards are over \$100,000
 - Only 12% of charges lead to a managerial agreement to change workplace practices
- Our conclusion from these results is that sexual harassment, and perhaps discrimination of all types, should be addressed proactively and affirmatively as managerial responsibilities, rather than leaving it to the targets of discrimination to pursue legal remedies as individuals.

WHAT IS WORKPLACE SEXUAL HARASSMENT UNDER THE LAW?

Sexual harassment at work is a form of employment discrimination that violates [Title VII of the Civil Rights Act of 1964](#). Title VII prohibits discrimination on the basis of race, color, religion, national origin, and sex. The legal status of sexual harassment discrimination was unclear until 1986 when the U.S. Supreme Court endorsed the view that sexual harassment was sex discrimination under Title VII in *Meritor Savings Bank v. Vinson*.

The legal standard for sexual harassment is generally higher than unwanted sexual behaviors. According to the EEOC, the government agency responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or employee, the law does not prohibit teasing, offhand comments, or “isolated incidents that are not very serious”.¹

¹ See U.S. EEOC, “Sexual Harassment” https://www.eeoc.gov/laws/types/sexual_harassment.cfm

Unwanted sexual behavior becomes illegal when it meets at least one of two legal standards. Under the *quid pro quo* standard there must be an implicit or explicit threat of some job related loss if the employee does not submit to a sexual encounter. Under the hostile workplace environment standard, the sexual encounter must be repeated or severe enough to create an intimidating or hostile work environment or result in an adverse employment decision. The harasser can be the target's supervisor, co-worker, or even a client or customer. Employers, however, are responsible for sexual harassment discrimination under the law.

In our analysis of all discrimination charges filed with the EEOC, including those submitted to the EEOC from state Fair Employment Practice Agencies, between 2012 and 2016 we find that 12% of all Title VII discrimination charges contained a sexual harassment allegation. Sexual harassment allegations are more common than all other discrimination issues, with the exception of firing, workplace terms and conditions, discipline, and non-sexual harassment.²

HOW PREVALENT IS SEXUAL HARASSMENT?

Estimating a workplace sexual harassment rate is difficult. The experience of harassment varies as a function of age, the invasiveness of the encounter, and the legal and bodily rights consciousness of the target. Self-reports of perceived workplace sexual harassment during the last year from the U.S. General Social Survey (GSS) suggest that each year approximately 5% of employed women and 2% of employed men experienced unwanted sexual behavior that they perceived as sexual harassment at work.³ The U.S. Equal Employment Opportunity Commission estimates that cumulatively across their careers up to 85% of women will be sexually harassed one or more times. Importantly, the EEOC also estimates that three out of four individuals who experience sexual harassment in the workplace never tell a supervisor, manager, or union representative about the incident.⁴ The experience of sexual harassment at work is widespread and compounds across the career for both men and women.

While many people experience sexual harassment at some time, relatively few report those experiences to the EEOC.⁵ Using the General Social Survey percentages multiplied by the U.S. workforce, we estimate that there are 5,117,835 people who believe they have experienced sexual harassment every year. In the charge records, we calculate that 9,242 charges of sexual harassment were filed with the EEOC or local FEPA on average each year from 2012-2016.

² Harassment includes conduct such as offensive jokes, slurs, threats, mockery, and interference with work performance that creates a hostile work environment. If the harassment is sexual in nature, such as unwelcome sexual advances, request for sexual favors, or other verbal/physical harassment of a sexual nature, it is considered sexual harassment.

³ Our calculations from the General Social Survey's Data Explorer (<https://gssdataexplorer.norc.org>) aggregated responses from years 2002, 2006, 2010, 2014 to the question "In the last 12 months, were you sexually harassed by anyone while you were on the job?"

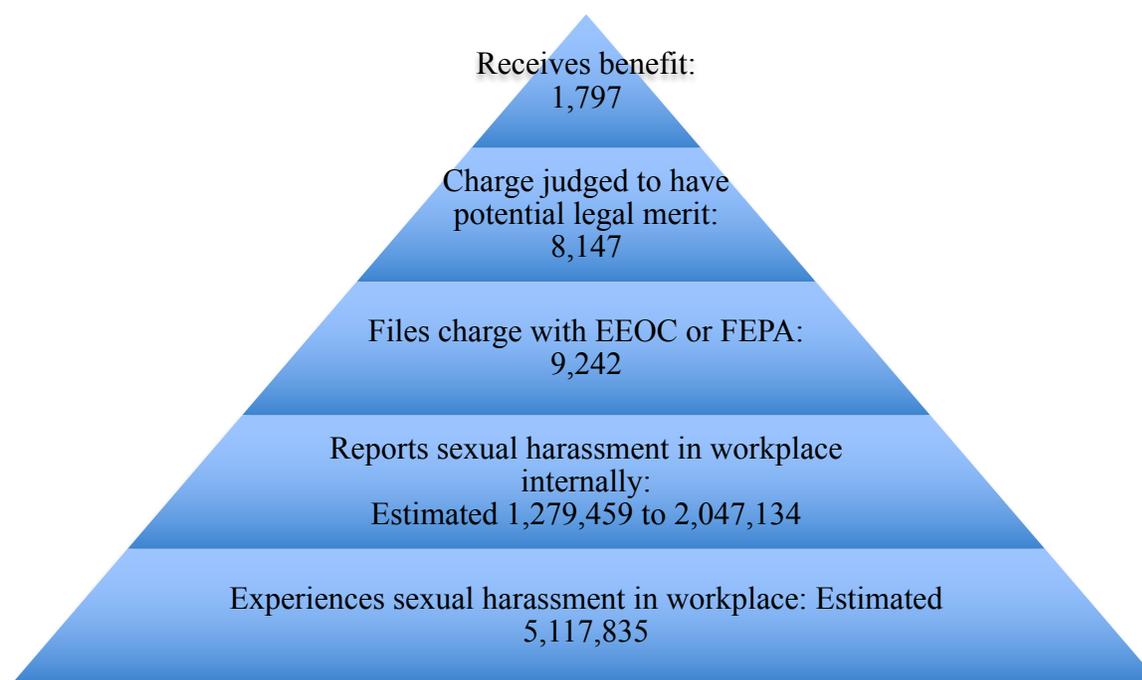
⁴ U.S. Equal Employment Opportunity Commission. 2016. "Select Task Force on the Study of Harassment in the Workplace." See EEOC report at https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm

⁵ In a small sample study of young women in Minnesota, 11% report being sexually harassed at work in the last year, only 3% of these women reported filing legal charges. McLaughlin, Heather, Christopher Uggen, and Amy Blackstone. 2017. "The Economic and Career Effects of Sexual Harassment on Working Women." *Gender & Society* 31(3):333-358.

Sexual harassment complaints represent only 0.18% of those who we estimate experienced sexual harassment at work.⁶ Since the legal standards are high, it is not surprising that only a very few file a charge. Not filing a charge may also make economic and social sense. As we report below, there are often severe negative consequences to filing a charge, and most people who do file a charge receive no benefits.

Figure 1: Dispute Pyramid for Targets of Workplace Sexual Harassment

(estimates are yearly averages for 2012-2016)



The process of filing a sexual harassment charge is illustrated in Figure 1 as a dispute pyramid.⁷ The stages in the pyramid reflect what Felstiner et al. (1980) have called the “naming, blaming, and claiming” process in which injurious experiences are transformed into formal grievances.⁸ The base of the pyramid represents the estimated 5.1 million workers who experience a workplace incident they perceived as sexual harassment. Of those who perceive their experience as sexual harassment (“naming”), somewhere between 25% and 40% of them, or 1.2-2.0 million employees, will report internally to a supervisor, union or human resource department

⁶ This rate of filing charges is lower than a similar estimate that just under 1% of racial discrimination experiences lead to EEOC charges. See *Rights on Trial: How Workplace Discrimination Law Perpetuates Inequality*, by Ellen Berrey, Robert J. Nelson, and Laura Beth Nielsen, 2017, University of Chicago Press. Our estimate is considerably smaller than the 2-13% estimated by Cortina and Berdahl (2008). See “Sexual Harassment in Organizations: A Decade of Research in Review”, by Lilia Cortina and Jennifer Berdahl 2008, *The Sage Handbook of Organizational Behavior*.

⁷ Miller RE and Sarat A, ‘Grievances, Claims, and Disputes: Assessing the Adversary Culture’ (1980) 15 *Law and Society Review* 525 Figure 1 does not include charges submitted to the California and Massachusetts Fair Employment Practices Commission but not submitted to the EEOC.

⁸ Felstiner W et al, “The Emergence and Transformation of Disputes: Naming, Blaming Claiming” (1980-81) 15 (3-4) *Law and Society Review* 631

(“blaming”).⁹ As noted above, an even smaller subset of about 9,200 people are in the EEOC and FEPA charge database, having moved forward with filing an official charge (“claiming”). This figure grows smaller either because the issue is resolved internally or the complainant chooses not to move forward with the case for other reasons such as fear, lack of resources or understanding of the law, or time to file a charge. In other words, 99.8% of people who experience sexual harassment at work never file a sexual harassment charge. Even among the subset of people who seek redress in the workplace upward of 99% never file a formal sexual harassment charge outside the workplace.

Most (8,147 on average per year) sexual harassment charges are judged by the EEOC to potentially be legally actionable when they are first filed, suggesting that the vast majority of sexual harassment discrimination charges are on their face credible and meet a set of procedural criteria including recency of the event. Frivolous charges are likely to be vanishingly rare. Despite this, only 1,797 charging parties per year receive any benefit through the EEOC’s processes of mediation and conciliation brokered by the EEOC between the employee and their employer. After formally filing a charge, a small proportion of charges divert from the EEOC and into the courts. Although we do not have a precise estimate, we believe that the numbers are similarly small for the civil court system.

While the conversion of sexual harassment experiences into workplace complaints or legal claims is complex, our estimates are clear that the majority of people who experience sexual harassment do not register complaints with their employers, and very few file formal charges. Past research suggests that the individuals who file charges first lodged complaints to their employers but did not get an adequate response or were punished for doing so.¹⁰

That same research suggests that most people who file discrimination complaints are not primarily seeking monetary damages, but often want their job back, the perpetrator punished, or to improve working conditions in their workplace for themselves and coworkers. Furthermore, past research has found that targets of sexual harassment typically attempt to remedy the situation on their own by ignoring it or confronting the harasser before reporting the harassment to a supervisor or to human resources. Overall, prior research suggests that targets of sexual harassment are not “trouble makers”, but simply trying to do their job.¹¹ Research has also found that people choose not to file sexual harassment complaints at work because they do not trust the process, do not expect it to be confidential, and/or expect retaliation.¹²

Formal charges of sexual harassment discrimination roughly represent the population of complaints where the charging party felt aggrieved, understood that they had rights under the law, felt safe enough to pursue a formal charge, believed that the severity of the encounters might rise to the high legal standards required to sustain a legal finding, and who had the

⁹ Op cit EEOC 2016, “Employee Responses to Harassment”

¹⁰ See Berrey et al. op cit.

¹¹ Roscigno, Vincent J. *The Face of Discrimination: How Race and Gender Impact Work and Home Lives*

¹² Dobbin, Frank and Alexandra Kalev “Can Anti-Harassment Programs Reduce Sexual Harassment?” *American Sociological Association Footnotes*. Vol. 46, No. 2.

resources to file a complaint.¹³ The problem of sexual harassment is obviously much larger than the incidence of legal charges. In fact, it is striking how rare sexual harassment charges are relative to the experience of unwanted workplace sexual encounters.

FILING A SEXUAL HARASSMENT CHARGE

Before an employee who believes they have been discriminated against can file a lawsuit against their employer, they first must submit a complaint to the EEOC or a local state Fair Employment Practices Agency (FEPAs).¹⁴

Discrimination charges may contain one or more legal basis for the complaint as well as at least one issue.

A **basis** is the legally protected category that the plaintiff claims was the basis of discrimination. Under Title VII of the 1964 Civil Rights Act and its extensions these protected categories include race, sex, color, religion, disability, age, and national origin. Sexual harassment claims will almost always include a sex basis. Additionally, the law prohibits retaliation against individuals who file a discrimination claim by protecting an employee's right to oppose unlawful discrimination, so retaliation is considered another basis.

An **issue** is the action or policy alleged to be discriminatory—the kind of discrimination that took place—such as firing, demotion, or **sexual harassment**. Charges often contain multiple bases and issues.

Figure 2 shows an example of a common sexual harassment discrimination charge. It includes two bases, gender and retaliation, and three issues: sexual harassment, firing, and discipline. For the charges filed in calendar years 2012-2016, we find that sexual harassment charges are nearly always on the basis of sex (97%).¹⁵ Sixty-eight percent of the time sexual harassment charges were linked to employer retaliation after the internal or external complaints of sexual harassment.¹⁶ Race/color discrimination was the next most frequent joint basis for a sexual harassment discrimination charge (12%).

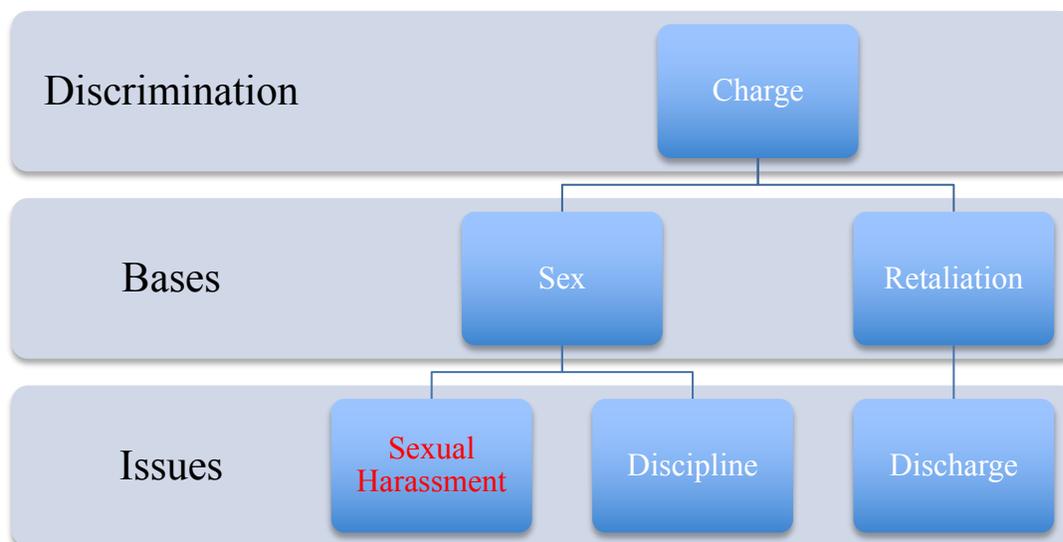
¹³ Sexual harassment charges to the EEOC and FEPAs represent charges holding employers responsible. In some states it is also legally possible to hold individuals responsible, but the extent to which this happens is unknown at present. https://www.eeoc.gov/eeoc/task_force/harassment/katz.cfm#_ftnref34

¹⁴Charges filed with either the EEOC or a FEPA are “dual filed”, so the EEOC database includes charges filed with a local FEPA, but the FEPA retains the charge for processing. In the course of this research we discovered that California and Massachusetts do not report all sexual harassment complaints to the EEOC. We supplement our estimates of the number of sexual harassment complaints from those two states with reported charges in yearly state level reports. Many of the charges filed with FEPAs and submitted to the EEOC do not include data on the race, sex, or other demographic characteristics of the charging party. For more on FEPAs, see <https://www.eeoc.gov/employees/feпа.cfm>. It is for this reason we limit our analysis of charge outcomes to EEOC filed charges.

¹⁵ An example of a sexual harassment complaint not filed on the basis of sex would be an employee experiencing harassing comments because of religious beliefs regarding sexual acts. In this case, the basis of the charge would be religion, while the issue is sexual harassment as the harassing comments were sexual in nature.

¹⁶ The processing data do not distinguish whether retaliation happened in response to a complaint in the workplace or the formal filing of a charge with the EEOC or state FEPA.

Figure 2: Example of Issues and Bases in a Discrimination Charge



Only 11% of sexual harassment charges were filed exclusively as sexual harassment complaints (i.e. contained sexual harassment as the only issue). The most frequent co-occurring issues were discriminatory job loss (64%), general harassment (28%), and terms and conditions of work (26%).¹⁷ Compared to all other Title VII charges that do not contain a sexual harassment allegation, sexual harassment charges are more likely to allege constructive discharge and intimidation (see Table 1). Constructive discharge refers to employer retaliation or sexual harassment severe enough to lead a reasonable employee to quit their job. Sexual harassment is infrequently associated with other discrimination complaints, such as discrimination in hiring, promotion, and pay discrimination.

After the charge is filed, the EEOC has several routes to resolving charges, any of which can lead to monetary or other benefits for the charging party. The EEOC offers charging parties and their employers a mediation process with a third party mediator to resolve a complaint before an investigation occurs.¹⁸ Charges are also sometimes settled during an investigation. After an investigation in which the EEOC finds reasonable cause to believe discrimination has occurred, the EEOC works to resolve a complaint through a conciliation process. If conciliation fails, either the charging party or the EEOC may file a lawsuit in court. Most charges are settled in the EEOC's mediation or conciliation processes or are dropped. A charging party may drop out of the EEOC process and request a right to sue letter or the charge may be closed for administrative reasons such as failure to locate the charging party, lack of jurisdiction, or the charging party requests withdrawal of the charge.¹⁹ In our data, 20% of sexual harassment charges were closed for these administrative reasons.

¹⁷ Job loss includes constructive discharge, layoffs, and suspension, in addition to firing.

¹⁸ See U.S. EEOC, "Resolving a Charge," <https://www.eeoc.gov/employers/resolving.cfm>, last accessed 9/18/18.

¹⁹ See U.S. EEOC, "Definition of Terms" <https://www.eeoc.gov/eeoc/statistics/enforcement/definitions.cfm>, last accessed 9/18/18.

Table 1: Co-occurring Discrimination Issues

	Sexual Harassment Charges	All Other Non-Sexual Harassment Title VII Charges
Benefits	1%	2%
Constructive Discharge	18%	6%
Demotion	3%	3%
Discharge	46%	54%
Discipline	11%	15%
Harassment	28%	27%
Hiring	1%	6%
Intimidation	8%	4%
Layoffs	1%	2%
Promotion	3%	7%
Suspension	4%	5%
Terms and Conditions	26%	29%
Wages	5%	7%
Other Issue	14%	20%

The EEOC reports that in fiscal year 2010, conciliation was successful for 27% of all discrimination charges, and the rate of successful conciliation increased to 38% of charges in fiscal year 2014.²⁰ Only a small number go to court, and only very rarely with the EEOC suing the employer. We do not know what this rate is specifically for sexual harassment charges, but in 2016 there were 91,503 discrimination charges filed with the EEOC and the EEOC took 114, about 0.1% of charges received, to court.

Charging parties can get a “right to sue” letter from the EEOC and bring a lawsuit to court via the private bar. One study estimates that 17% of charges of racial discrimination result in a lawsuit being filed by the charging party, but another estimates that less than 1% result in a lawsuit.²¹ If sexual harassment complaints are similar, these wildly divergent estimates suggest that between 90 and 1,571 sexual harassment lawsuits were actually filed in courts in an average year. Since we estimate that there are more than 5 million incidences per year, the clear conclusion is that the vast majority of workplace sexual harassment incidences never lead to an EEOC discrimination complaint and very few of these ever make it to court. This low rate of filing also suggests that the key responders to sexual harassment in workplaces are those who are harassed and their managers.

²⁰ See https://www.eeoc.gov/eeoc/newsroom/wysk/conciliation_litigation.cfm, last accessed 9/18/18.

²¹ Berrey et al. op cit for the higher estimate and the legal research service [Lex Machina](#) for the lower estimate.

WHO FILES SEXUAL HARASSMENT CHARGES?

Table 2 describes the demographics of charging parties for charges containing a sexual harassment allegation, all other non-sexual harassment charges alleging Title VII discrimination, and for the subset of sex-based discrimination complaints that do not include sexual harassment as an issue. Sex-based charges include those Title VII charges made on the basis of one's sex, male or female, as well as charges based on one's sexual orientation or gender identity.²²

Women filed 57% of all other (non sexual harassment) Title VII complaints, 75% of sex-based Title VII complaints, and 81% of all sexual harassment allegations. Though women are much more likely to experience sexual harassment at work and file a formal charge, men experience this issue as well: 19% of sexual harassment charges were filed by men.

Table 2: Title VII Employment Discrimination Charges by Demographic Group

	Percent of Not-Sexual Harassment Charges	Percent of Other Sex-Based Charges	Percent of All Sexual Harassment Charges	Percent of U.S. Labor Force
Women	57%	75%	81%	47%
Men	43%	25%	19%	53%
White Women	18%	35%	48%	36%
White Men	11%	10%	11%	43%
Black Women	35%	34%	27%	7%
Black Men	31%	15%	8%	8%
Other Race Women	3%	4%	5%	3%
Other Race Men	3%	2%	1%	4%

Note: Analysis excludes those missing race and sex data. Missing data is more common for race than sex and much more common for charges filed with a FEPA than the EEOC. For sexual harassment charges, 8% are missing sex data (3% of EEOC and 21% of FEPA charges are missing sex data) and 40% are missing race (28% of EEOC charges and 69% of FEPA charges).

Based on the General Social Survey estimates reported above, among those who experience sexual harassment at work, women are more likely than men to eventually file a formal charge. Women are 72% (with a confidence interval of plus or minus 1%) of those reporting experiencing sexual harassment at work on a survey, but 81% of those filing charges. We do not know if this represents differences in the seriousness of the harassment, more effective employer redress of sexual harassment complaints from men, or higher male reluctance to report.

Relative to other Title VII discrimination charges, sexual harassment charges are much more common among white women, roughly equally common among white men (who file absolutely fewer discrimination complaints than other status groups), less common among black women, and much less frequent among black men.

²² The EEOC charge data only includes two categories to classify charging party's sex.

Relative to their representation in the labor market overall, women report a disproportionate amount of workplace sexual harassment. Although they comprise 47% of the labor force, women file 81% of sexual harassment charges. Black women, in particular, report a disproportionately large percentage of workplace sexual harassment charges; they account for 7% of the labor force but file 27% of sexual harassment charges.

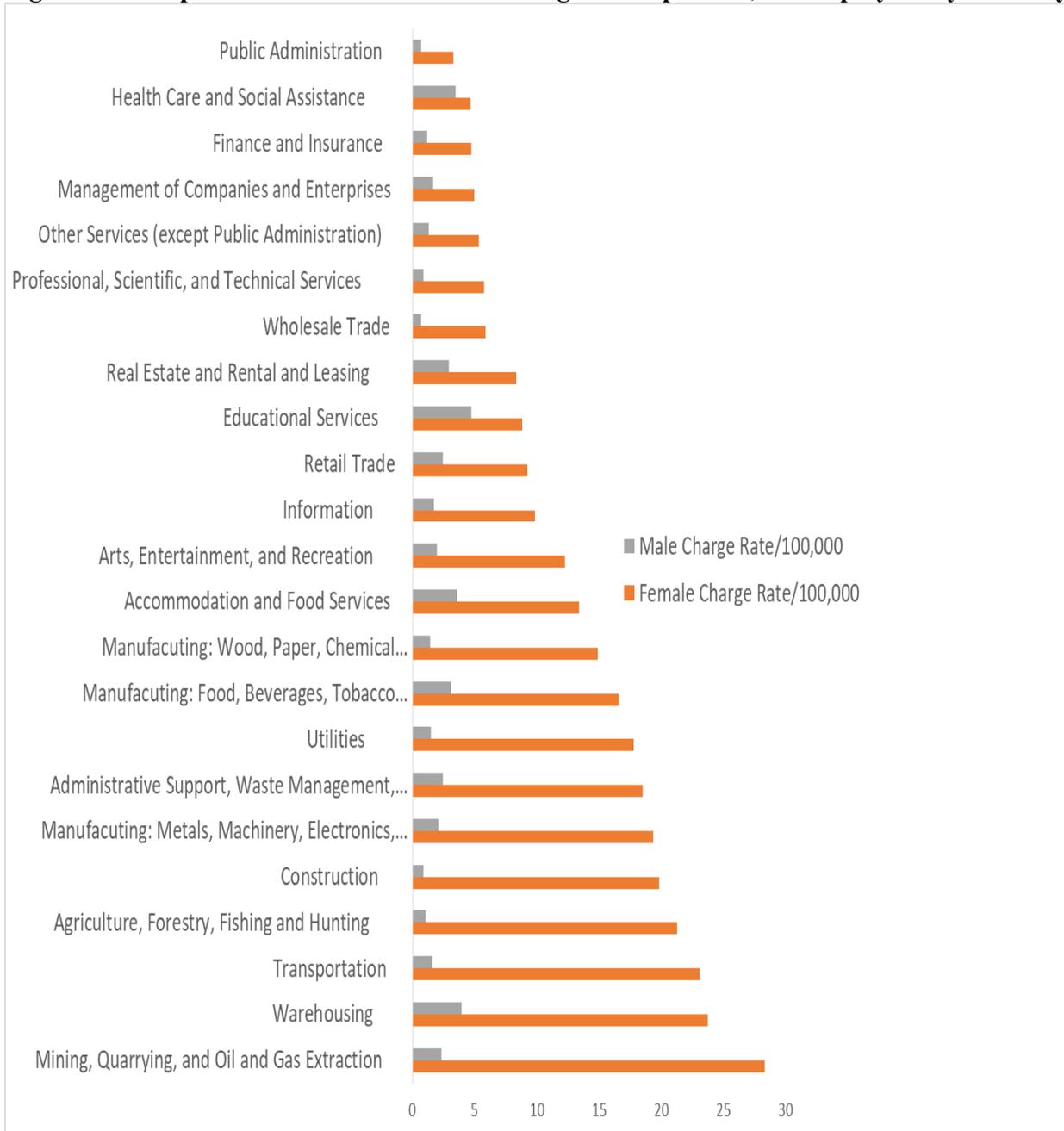
About half of all case processing reports are missing information on the industry of the workplace. Thus it is difficult to make precise estimates of industry variation in charge rates. Past research suggests that sexual harassment is more common in workplaces with a hyper-masculine culture and where management tolerates abusive behavior in general.²³ Given that the vast majority of sexual harassment experiences go unreported, we have no way of knowing if rates of reporting or the quality of managerial responses to internal complaints vary by industry. Given these limitations we have calculated rates by industry of sexual harassment reports to the EEOC and the state FEPAs. We calculate the rates by dividing the number of sexual harassment cases by the gender specific industry labor force.²⁴ Figure 3 displays these results.

Figure 3 is sorted by the female sexual harassment charge rate. Sexual harassment charges filed by women are least common in government, health care and social assistance and finance. They are most common in mining, warehousing, and transportation. In general female sexual harassment charges are higher in male dominated industries (correlation = .77). Male sexual harassment charge rates are lower than those filed by women in all industries. They are highest in educational services, followed by warehousing, accommodations and food service, and health care. Male charge rates are lowest in public administration, followed by wholesale trade, construction, and professional services. The rate of male sexual harassment charges is also associated with the sex composition of employment, with a weak tendency to be higher in industries with more women employees (correlation coefficient = .42).

²³ Fitzgerald, Louise F., Fritz Drasgow, Charles L. Hulin, Michele J. Gelfand, and Vicki J. Magley. "Antecedents and consequences of sexual harassment in organizations: a test of an integrated model." *Journal of Applied psychology* 82, no. 4 (1997): 578.

²⁴We first took the number of total, female and male sexual harassment charges in the EEOC's 2012-2016 database. We then sort these cases by industry. Industry is missing in 59% of cases. Assuming that industry is missing at random we inflate each industry count by dividing by .59. From the American Community Survey (ACS) we calculate the proportion male and female in each industry. We use Bureau of Economic Analysis (BEA) estimates of full-time equivalent employees in each industry. The BEA uses employer data to adjust for probable self-report error in industry of employment in household surveys such as the ACS. We also reason that discrimination charges are less likely from part-time employees, making full-time equivalent a more attractive operationalization of total industry employment. We estimate sex specific employment by multiplying total BEA employment by ACS percent male and female. Finally charge rates are calculated as the estimated number of sexual harassment charges in an industry between 2012-2016, divided by total five year full-time employment, times 100,000.

Figure 3. Sex Specific Sexual Harassment Charge Rates per 100,000 employees by Industry



WHAT ARE EMPLOYER RESPONSES TO SEXUAL HARASSMENT CHARGES?

Past research is clear that harassment, firing and retaliation are frequent employer responses to complaints of discrimination.²⁵ Our analysis shows that sexual harassment is no exception to this pattern. Sixty-eight percent of sexual harassment allegations include a charge of employer retaliation in the face of a discrimination complaint. Almost two-thirds of those filing sexual harassment charges (64%) report losing their jobs as a result of their complaint.²⁶ High instances of job loss and retaliation are present across race and sex categories (Table 3).

Most employer responses tend to be harsh both via retaliation and firing employees who complain. The very low proportion of employees who file sexual harassment complaints is very likely to be related to employers' typically punitive responses. We do not know whether the retaliation occurred after the targeted employee reported the sexual harassment internally or after the charge was filed with the EEOC or FEPA. However, what is clear is that complaining about sexual harassment is quite dangerous, inciting employer retaliation and firing in most instances.

White men and White women are more like to lose their jobs than are other groups. Black women, in contrast, are less likely to lose their job, although most do. Clearly filing a sexual harassment discrimination charge is no protection against job loss, and probably increased the likelihood that the charging party will lose their job.

Table 3: Employer Response to Sexual Harassment

	Lost Job	Experienced Retaliation
All	64%	68%
Women	65%	69%
Men	66%	68%
White Women	67%	68%
White Men	68%	68%
Black Women	59%	70%
Black Men	64%	65%
Other Race Women	63%	68%
Other Race Men	60%	68%

Employer retaliation is widespread, since two-thirds report it. It is highest for Black women, but almost as high for all groups. Retaliation for filing a charge of discrimination is explicitly prohibited by federal law, but is apparently normative in many workplaces. This pattern of

²⁵ Berrey et al. op cit and Vincent J. Roscigno, *The face of discrimination: How race and gender impact work and home lives*. Rowman & Littlefield Publishers, 2007.

²⁶ Job loss includes sexual harassment charges that also allege discharge, constructive discharge, or suspension. Constructive discharge refers to an employee being harassed by the employer into quitting.

extreme retribution fits what we have learned from past research, which finds that employers, following the advice of internal and external legal counsel, react to internal discrimination complaints with aggressive attacks on those who complain. This tactic is designed to isolate the charging party and to send a message to other workers that the cost of pursuing legal remedies to discrimination will be prohibitively high.²⁷

DOES THE EEOC TREAT SEXUAL HARASSMENT COMPLAINTS SERIOUSLY?

This section focuses on the processing of sexual harassment charges for the 33,304 Title VII sexual harassment charges filed directly with the EEOC.²⁸ When a charge is filed with the EEOC it is given an initial processing code indicating the likelihood that the charge has sufficient evidence to support a legal finding of employment discrimination. A code of “A” by the EEOC intake staff indicates that the complaint is likely to be able to demonstrate legal cause that discrimination occurred, and those charges are more likely to be investigated by the EEOC.²⁹

Table 4: Discrimination Processing Codes for Sex-Based Title VII Charges

Issue	A	B	C	Number of Charges
All Sex-Based Title VII Charges	23%	61%	16%	111,921
Sex-based Title VII Charges Containing Each Issue Type				
Sexual Harassment	33%	55%	11%	32,556
Intimidation	32%	57%	11%	5,747
Benefits	30%	59%	11%	1,692
Constructive Discharge	29%	56%	15%	11,342
Hiring	28%	56%	17%	4,800
Layoffs	28%	61%	11%	1,602
Other Issue	28%	60%	12%	17,334
Demotion	26%	63%	11%	3,789
Wages	26%	66%	8%	9,891
Terms and Conditions	25%	62%	13%	32,060
Harassment	24%	60%	16%	32,512
Discharge	23%	62%	15%	57,795
Discipline	20%	65%	15%	15,019
Promotion	19%	73%	9%	8,397
Suspension	19%	64%	17%	4,763

²⁷ Berrey et al. op cit.

²⁸ Processing categories are not available for charges filed with FEPAs.

²⁹ Cases seen as strategic priorities by the EEOC’s Enforcement Plan are also more likely to get processing category A. Such cases should also involve “an assessment that the strength and potential impact of the case supports the decision to proceed” <https://www.eeoc.gov/eeoc/plan/nep.cfm>.

The “B” code suggests legal cause may be present but additional information is needed, and they are more likely to be offered EEOC brokered mediation with the employer. The code “C” indicates that the intake staff judged that legal cause was unlikely, often because the filing deadline was missed or because the charge is not related to laws enforced by the EEOC.

In Table 4 we compare initial processing categories for Title VII sex-based charges by issue type for charges filed with the EEOC. Most discrimination charges of all types are initially assessed as either A or B. Overall, about one quarter (23%) are coded “A” and more than half (61%) of all sex-based Title VII charges are processed as type “B”. Category C charges are the smallest group of initial assessments (16%). Thus, most charges that make it to the EEOC are judged by intake staff to be potentially serious and to plausibly contain legal merit. This initial assessment of the potential merit of charges should not be surprising since very few discrimination experiences ever make it to the stage of filing formal discrimination charges.

Table 4 also compares all issues alleged in sex-based Title VII charges. Sexual harassment discrimination charges are the most likely of all sex-based Title VII charges to be processed as “A” (33%), followed closely by intimidation (32%). Both tend to have clear perpetrators and targets, making legal findings easier to establish.

EEOC initial processing tends to evaluate sexual harassment allegations as more likely to eventually demonstrate legal cause than other charges of Title VII or sex-based discrimination. While the EEOC initial charge processing assesses that the majority of all types of discrimination charges as potentially meritorious, combining A and B codes sexual harassment charges appear to present at least as much initial evidence of merit as other charges. There is no evidence here that the EEOC takes sexual harassment charges less seriously than other discrimination charges.

Table 5: Sexual Harassment Charges Processing Codes by Demographic Groups

	"A"	"B"	"C"
All	33%	55%	11%
Women	34%	55%	11%
Men	27%	57%	15%
White	34%	54%	12%
Black	29%	57%	14%
White Women	35%	54%	11%
White Men	28%	57%	15%
Black Women	31%	57%	12%
Black Men	24%	57%	18%
Other Race Women	33%	53%	14%
Other Race Men	23%	59%	19%

A charging party's race and gender may also influence the likelihood that a charge is categorized as legally actionable. Among sexual harassment charges filed with the EEOC, those filed by white women are more likely to be processed as "A" when compared to both black women and all men. Thirty-five percent of sexual harassment charges filed by white women were processed as "A" compared to 31% of those filed by black women. Cases filed by men of all races are seen as less legally actionable in initial processing.

DO CHARGES RESULT IN BENEFITS FOR CHARGING PARTIES?

This section focuses on the outcomes of sexual harassment charges filed with either the EEOC or state/local FEPA. These outcomes reflect settlements in which the charging party did not withdraw their charge and thus proceeded through mediation, negotiation/settlement, or conciliation.

Table 6: Percent of Discrimination Charges that received Some Benefit by Issue Type

Issue	All Title VII Charges		Sex-based Title VII Charges	
	% Got Benefit	Total Number of Charges	% Got Benefit	Total Number of Charges
Sexual Harassment	27%	33,037	27%	32,331
Constructive Discharge	21%	20,733	24%	11,415
Wages	21%	18,507	23%	7,800
Demotion	20%	8,529	24%	3,893
Intimidation	20%	12,531	23%	5,934
Layoffs	20%	4,659	23%	1,799
Benefits	19%	4,076	24%	1,689
Harassment	19%	78,601	21%	32,610
Other Issue	19%	56,429	22%	22,167
Terms and Conditions	18%	83,856	21%	33,231
Discharge	17%	161,515	20%	62,273
Promotion	17%	19,109	18%	7,218
Discipline	16%	45,017	18%	15,989
Suspension	16%	15,435	17%	5,136
Hiring	14%	15,856	19%	5,172

Table 6 shows the percent of charges that received any (monetary or nonmonetary) benefit by issue type. Among non-sexual harassment charges, between 14 and 21 percent of all Title VII charges and 17 to 24 percent of sex-based Title VII charges received a benefit.³⁰ Twenty-seven percent of sexual harassment charges received some benefit, again the highest percent of all issues.

³⁰ Outcomes were analyzed only for allegations that were closed for reasons other than administrative closure, 77% of all Title VII charges were non-administrative closure charges, 75% of all sex-based Title VII charges, and 71% of sexual harassment charges were closed by December 31, 2016.

Most people who file discrimination charges, including discrimination charges that the EEOC judges initially to be legally actionable, do not receive any benefit. At the same time sexual harassment charges stand out as more likely than other discrimination issues to secure some benefit. About a quarter of people who file sexual harassment charges, and do not withdraw their charge, receive some benefit under this process.

A complainant's race and gender are associated with the likelihood of a sexual harassment discrimination charge receiving a benefit. Sexual harassment charges filed by women, particularly White women, are more likely to receive a benefit compared to women of other races and to men. 29% of sexual harassment charges filed by White women received a benefit, compared to 23% of those filed by Black women, 21% by White men, and 18% by Black men (see Table 7).

Table 7: Benefit Outcomes for Sexual Harassment Charges by Sex and Race

	Percent received some benefit
All	27%
Women	28%
Men	22%
White	27%
Black	22%
White Women	29%
White Men	21%
Black Women	23%
Black Men	18%
Other Race Women	23%
Other Race Men	22%

The charges that proceed through mediation, conciliation, or (more rarely) court processes typically result in no compensation or a modest monetary compensation for the charging party. Very few cases lead to the changes at the workplace level that many charging parties seek (see Table 8). Almost 3 out of 4 (73%) sexual harassment charges produce no benefit of either kind for the charging party.

Table 8: Benefit Types for Sexual Harassment Charges

Benefit	Number	Percent
Monetary Benefit	5,088	15%
Monetary and Workplace benefit	2,701	8%
Workplace Change Only	1,195	4%
No Benefit	24,053	73%

Twenty-three percent of sexual harassment charges produce some monetary benefit for the charging party, and 12% result in a workplace-level change of some sort. Nearly 9 out of 10 (88%) sexual harassment charges do not lead to any required change in employer behavior or managerial practices. Eight percent of sexual harassment charges lead to both a monetary benefit for the charging party and some negotiated change in workplace managerial practices.

High profile media cases often focus on large monetary settlements for the targets of sexual harassment. For example, FOX News paid former broadcaster Gretchen Carlson \$20 million to settle her sexual harassment lawsuit against former FOX News CEO Roger Ailes. But outcomes for most sexual harassment charges are much smaller. Overall, charging parties who received monetary compensation for sexual harassment charges were awarded \$24,700 on average. Large monetary benefits are very rare—only 1% of charges resulted in monetary compensation over \$100,000 (Table 9).

Twenty-eight percent of those who filed a sexual harassment charge were represented by legal counsel. Those represented by legal counsel received higher compensation, \$38,732 on average. This is about 50% higher than those not represented by legal counsel. However, lawyers typically get a third of any settlement, reducing the added monetary value of representation. There is both a small monetary benefit to securing legal counsel and a higher probability (35% vs 20%) of receiving a monetary settlement.

Table 9: Monetary Compensation for Sexual Harassment Charges

Monetary Amount	All Sexual Harassment Charges		Represented by Legal Counsel		Not Represented by Legal Counsel	
	N	Percent	N	Percent	N	Percent
\$0	25,289	77%	4,951	65%	20,338	80%
\$1 - \$5,000	2,586	8%	333	4%	2,253	9%
\$5,001 - \$15,000	2,143	6%	740	10%	1,403	6%
\$15,001 - \$30,000	1,350	4%	655	9%	695	3%
\$30,001 - \$100,000	1,411	4%	797	10%	614	2%
\$100,001+	258	1%	173	2%	85	0%
Average Monetary Amount	\$24,700		\$38,732		\$17,205	
Median Monetary Amount	\$10,000		\$20,000		\$7,000	

Note: Average and median monetary amounts reported for closed charges which did not withdraw their charge for administrative reasons and who received any non-zero monetary amount.

Those represented by counsel are also more likely to allege job loss and retaliation (Table 10). This suggests that lawyers view sexual harassment cases that allege harsh employer response as more legally actionable and potentially lucrative.

Table 10: Negative Outcomes and Legal Representation

	Represented by Legal Counsel	Not Represented by Legal Counsel
Lost Job	69%	62%
Experienced Retaliation	76%	65%

Overall, charging parties in sexual harassment complaints typically receive nothing or a modest monetary settlement and no change in their workplace. Those who lost their job are only very slightly more likely to receive a monetary benefit, an average of \$24,700, which is unlikely to make up for the economic cost of the job loss. Even cases where the charging party experienced severe negative consequences like job loss, 73% of cases received no benefit.

CONCLUSION

Sexual harassment remains a persistent and serious threat to women and men in American workplaces. While the vast majority of those who experience sexual harassment in the workplace never report this harassment internally nor file a formal discrimination charge, those who do are typically confronted by harsh outcomes.

Our analyses of five years of sexual harassment charges filed with the EEOC and local FEPAs reveals that the majority of those who report sexual harassment experience retaliation (68%) and job loss (64%) while receiving little (\$24,700 on average), or more often, no compensation. Although the EEOC initially processes most sexual harassment charges as potentially legally actionable (88%), only a minority of cases (27%) result in any benefit. While past research has found the majority of those who file a charge do so in hopes to initiate change in their workplace, we find that only 12% of charges result in any workplace policy change. Thus, those who pursued legal remedies may be left feeling that the benefits they hope to receive are not the outcomes they experience.³¹

The current case processing practices at the EEOC and state FEPAs do not appear to be serving all charging parties well. Most cases appear legally plausible, but most receive no benefits. The EEOC has long worked under a backlog of cases. The EEOC's funding levels are simply insufficient to investigate and pursue all the discrimination cases they are presented with. At the same time the formal discrimination charge process probably generates substantial employment and revenue for defendant firm's legal teams.

While the contemporary legal process of workplace sexual harassment appears to lead to suboptimal results, the current social movements around sexual harassment certainly can play a role in empowering targets, changing managerial responses, and even preventing future workplace sexual harassment. Current activism has helped call attention to the pervasiveness of

³¹ Our interpretations of plaintiff's feelings rely on the accounts in Berrey et al. op cit.

sexual harassment and initiated conversation regarding sexual harassment in many workplaces. If those conversations lead to changes in managerial practices promoting respectful treatment in workplaces and the empowerment of employees who experience sexual harassment, then they may help prevent sexual harassment and create safer, less abusive, workplaces.

Given current practices the legal route is unlikely to produce this outcome. Sexual harassment, and perhaps discrimination of all types, might be better addressed by managers treating them as managerial responsibilities, rather than effectively outsourcing them as legal problems.³² The EEOC has made precisely this recommendation in its recent report on harassment and has introduced training in managerial practices and the creation of respectful workplaces to educate employers as to how to reduce sexual and other forms of harassment at work.³³ It is unclear how widespread or effective that training is, but it certainly seems a step in the right direction.

³² See Frank Dobbin and Alexandra Kalev. "Why diversity programs fail." *Harvard Business Review* (2016) for a summary of this research.

³³ <https://eeotraining.eeoc.gov/profile/web/index.cfm?PKwebID=0x25479b9f&varPage=attende>