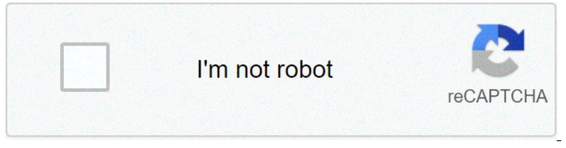

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Sexual harassment hot

Although most organizations have long had training programs and grievance procedures in place to address the problem of workplace sexual harassment, today some 40% of women say they've been harassed at work—a number that hasn't changed since the 1980s. The Research The authors examined the programs and procedures used by more than 800 U.S. companies from the 1970s to the early 2000s and discovered that most of them had done more harm than good. The Way Forward Employers should redesign training programs so that they treat all workers as victims' allies rather than identifying some of them as potential perpetrators. And they should supplement legalistic grievance procedures with less-formal complaint systems to provide victims with quick responses that don't spark retaliation. The term sexual harassment spread through academic circles in the 1970s and began to gain traction as a legal concept in 1977. That year the feminist legal scholar Catharine MacKinnon put forward the argument that workplace harassment constitutes sex discrimination, which is illegal under the Civil Rights Act of 1964. Federal judges had previously rebuffed this idea, but by 1978 three courts had agreed with MacKinnon, and in 1986 the Supreme Court concurred. The watershed moment for the concept came in 1991, during the Supreme Court nomination hearings for Clarence Thomas, when Anita Hill accused Thomas of having sexually harassed her while she was his assistant at the Equal Employment Opportunity Commission. Hill's televised testimony rocketed sexual harassment into public awareness and prompted many women to come forward with their own stories. Recognizing the extent of the problem—and growing increasingly worried about their legal and public-relations exposure—many companies decided they had to address it. They moved fast. By 1997, 75% of American companies had developed mandatory training programs for all employees to explain what behaviors the law forbids and how to file a complaint, and 95% had put grievance procedures in place for reporting harassment and requesting hearings. Training and grievance procedures seemed like good news for employees and companies alike, and in 1998 the Supreme Court ruled in two separate cases that companies could protect themselves from hostile-environment harassment suits by instituting both. For a couple of decades most organizations and executives felt good about this: They were dealing with the problem. But sexual harassment is still with us, as the #MeToo movement has made clear. Today some 40% of women (and 16% of men) say they've been sexually harassed at work—a number that, remarkably, has not changed since the 1980s. In part that could be because women are now more likely to use the term "harasser" than "cad" for a problem boss. But given how widespread grievance procedures and forbidden-behavior training have become, why are the numbers still so high? That's an important question, and we recently decided to try to answer it. We did so by taking a serious look at what happened at more than 800 U.S. companies, with more than 8 million employees, between the early 1970s and the early 2000s. Did the programs and procedures that these companies introduced make their work environments more hospitable to women? We focused in particular on how those initiatives affected the number of women in the managerial ranks. We tested two hypotheses: First, if the programs and procedures are working, they should reduce the number of current and aspiring female managers who leave their jobs because of sexual harassment—and thus we should find more women in management over time. Second, if the programs and procedures are backfiring, current and aspiring female managers should be leaving their jobs in even greater numbers, and the overall number of women in management should be declining. Our study revealed some uncomfortable truths. Neither the training programs that most companies put all workers through nor the grievance procedures that they have implemented are helping to solve the problem of sexual harassment in the workplace. In fact, both tend to increase worker disaffection and turnover. To us the takeaway seems clear: The programs and procedures that the Supreme Court favored in 1998 amount to little more than managerial snake oil. They are doing more harm than good. We have to do better. The good news is that our study revealed ways in which we can. The Trouble with Harassment Training Does harassment training that focuses on forbidden behaviors reduce harassment? Apparently not. When companies institute this kind of training, our study revealed, women in management lose ground. To isolate the effects of these programs, we used advanced statistical techniques to account for other changes in a firm, its industry, and its state that might be affecting the numbers of women in management. We found that when companies create forbidden-behavior training programs, the representation of white women in management drops by more than 5% over the following few years. African American, Latina, and Asian American women don't tend to lose ground after such harassment training is instituted—but they don't gain it either. White women make up three-quarters of all women in management and half of all women in the workforce, so as a group they bear most of the training backlash. Research shows that harassment training makes men more likely to blame the victims. Why would training designed to educate employees about harassment create a backlash? That seems counterintuitive. The problem is with how the training is presented. Typically it's mandatory, which sends the message that men have to be forced to pay attention to the issue. And it focuses on forbidden behaviors, the nitty-gritty, which signals that men don't know where the line is. The message is that men need fixing. Start any training by telling a group of people that they're the problem, and they'll get defensive. Once that happens, they're much less likely to want to be a part of the solution; instead they'll resist. That's what happens with harassment training: Research shows that it actually makes men more likely to blame the victims and to think that women who report harassment are making it up or overreacting. No surprise, then, that in a 2018 study carried out by the Pew Research Center, more than 30% of men said that false claims of sexual harassment are "a major problem." And no surprise that 58% of women who had been harassed said that not being believed is a major problem. This dynamic plays out in predictable ways—one of which is that men, put on the defensive, make jokes about the training scenarios and about harassment itself. The phenomenon is so common that the writers of The Office devoted an entire episode to it. At one point Pam, the receptionist, wearily tells the camera, "Usually, the day we talk about sexual harassment is the day everyone harasses me as a joke." What about men who are prone to harass? The reason we make training mandatory is to reach those men. Does training help them, at least? No. Research shows that men who are inclined to harass women before training actually become more accepting of such behavior after training. Even so, what do companies usually do when they find men culpable in a grievance process? Sentence them to more training. Six states, including California and New York, now require all employers to provide harassment training to all workers. George Orwell, meet Franz Kafka. Training Alternatives If the typical harassment training leads to the loss of female managers and makes the bad guys a little worse, it's probably time to start thinking about more-effective types of training. We've identified two in our research. Bystander-intervention training. This is the most promising alternative we've come across. Sharyn Potter and her team at the University of New Hampshire's Prevention Innovation Research Center have long conducted interesting experiments with it on college campuses and military bases, where harassment and assault are rampant. A dozen years ago they piloted a college bystander-intervention program that has since been used on more than 300 campuses. In 2011 it was adapted for the U.S. Army. In their programs, Potter and her team start with the assumption that trainees are allies working to solve the problems of harassment and assault rather than potential perps. Everybody's job is to nip misbehavior in the bud. It's the "If you see something, say (or do) something" approach. Properly trained bystanders interrupt the sexual joke. They call out the catcallers. They distract the drunk pair who have just met but are set to leave the party together. The approach is surprisingly effective. Students and soldiers who have taken part in bystander training consistently report that it has helped them know what to do when they see signs of a problem. Most important, even months after the training, trainees are significantly more likely than others to report having intervened in real-life situations. Word is getting out about the merits of bystander training. Potter now chairs a nonprofit that develops programs for organizations of all sorts. The U.S. Air Force has developed its own. When the city of New York mandated in 2018 that all employers provide harassment training, it also required them to cover bystander intervention and offered a model online program that is free to employers. Unfortunately, the whole program lasts only 45 minutes and covers five topics, including forbidden behaviors. That's a far cry from what studies have found to be effective for college students and military personnel: several hours of live training that focuses on bystander intervention. Manager training. Training delivered exclusively to managers is also quite effective. In our study, companies that adopted distinct manager-training programs saw significant gains in the percentage of women in their managerial ranks, with white women rising by more than 6%, African American and Asian American women by 5%, and Latinas by 2%. Manager training works because it presents harassment as a challenge that all managers must deal with. In that way it resembles bystander training. Participants, men and women alike, are encouraged to imagine what they might see other people doing wrong; the focus is deliberately not on what they themselves might do wrong. Trainers advise participants on how to recognize early signs of harassment and how to intervene swiftly and effectively to prevent escalation. Our research shows that men pay attention during manager training. Why? In part because they feel they're being given new tools that will help them solve problems they haven't known how to handle in the past—and in part because they're assumed to be potential heroes rather than villains. Everybody's in it together, learning how to recognize and curb dubious behaviors in ways that will improve the overall work environment. The Trouble with Grievance Procedures The evidence on forbidden-behavior training is clear: It isn't helping us address the problem of workplace sexual harassment. But what about legalistic grievance procedures? Every Fortune 500 company we've looked at has a grievance procedure. These procedures were first cooked up by lawyers to intercept victims who were planning to sue, and then were adapted to protect companies against suits by the accused. But they haven't improved the situation for women. After the companies in our study implemented them, in fact, the total number of women working in management declined. The biggest declines occurred in companies with few female managers. That's because women are more likely than men to believe reports of harassment. When there are few female managers to receive reports, victims who complain are sometimes given the third degree, which prompts them to quit. At companies with the fewest female managers to begin with (those in the lowest quartile), the introduction of harassment grievance procedures led to significant declines, over several years, of 14% among African American, 10% among Latina, and 10% among Asian American female managers. The negative effects were smaller at companies with more women in managerial roles, and they disappeared in organizations with the most. Numbers of white women in management weren't affected by grievance procedures. Craig Cutler/Trunk Archive Why did women of color suffer most? Studies show that they are significantly more likely than white women to be harassed at work. Because these women bear the brunt of harassment, as a group they file the most complaints—and, naturally, suffer the most when grievance procedures backfire. But why do those procedures backfire? The answer, according to a variety of studies, is retaliation against victims who complain. One survey of federal workers found that two-thirds of women who had reported their harassers were subsequently assaulted, taunted, demoted, or fired by their harassers or friends of their harassers. This kind of retaliation has long-term effects. Women who file harassment complaints end up, on average, in worse jobs and poorer physical and mental health than do women who keep quiet. And retaliation may be the only thing many victims get after filing a grievance, because most procedures protect the accused better than they protect victims. Part of the problem is that confidentiality rules are unenforceable and thus can't prevent retribution. Both the accused and their accusers are told that the complaint is confidential because the accused is innocent until proven guilty. Those accused often think they are free to tell their friends, and managers who hear complaints may also tell others, looking for either corroboration or support for the accused. No matter how word gets out, friends of the accused may retaliate. After an Ohio waitress complained of harassment, the female manager she told revealed her complaint to coworkers, who subjected the waitress to nonstop jokes. Another part of the problem is evidentiary rules. Many companies use the "beyond a reasonable doubt" standard to determine guilt, not the lower "preponderance of evidence" standard that the courts use for harassment claims. That makes it nearly impossible to prove guilt without a confession or a witness. Even if the accused is found guilty, confidentiality generally applies to the ruling, and thus word doesn't get out that, say, women should steer clear of Jerry. Women who reported their harassers were subsequently assaulted, demoted, or fired. Yet another is a reluctance to punish perpetrators. Companies sometimes offer to transfer victims to other departments or locations, but they almost never actually transfer or fire the accused, because they worry that the accused will sue. Instead they typically mandate more training. Many companies even keep verdicts secret from accusers, which can lead to a perverse outcome: A victim who has "won" her case sees her harasser roaming the halls, and believing that this means she has lost it, she becomes dispirited or frustrated or angry and decides to leave her job. But victims who face retaliation often quit well before the process is complete. That's what happened in September 2019, after Broti Gupta, a writer for the CBS sitcom Carol's Second Act, complained of intimate touching by an executive producer with the network, which had just revised its complaint system to improve the treatment of accusers. HR went legalistic and approved new rules to keep producers and writers apart. Gupta quit, saying she'd been cut out of the creative process in retaliation. Margee Magee, a writer who took her side, told the New York Times, "All we wanted was for him to watch like a 45-minute harassment video. None of this had to happen." The evidence is unambiguous: Our current grievance system puts victims at a distinct disadvantage, through unenforceable confidentiality rules, a high evidentiary bar, and punishments that leave harassers in place. Moreover, everybody knows that the system is rigged. That's why HR officers often counsel victims against filing grievances—and why studies show that only about one in 10 victims makes a formal complaint. The messages you can read in posts at #WhyIDidntReport say it all: They won't believe me. They'll put me through a sham hearing. The guy will get off. He'll try to get back at me. His buddies will think I did something to deserve it. Accusers have only two real options: report harassment and suffer the consequences, or don't report it. It's a lose-lose situation. Alternative Complaint Systems If the current system isn't working, how can you and your organization do better? We've identified a few good options. The ombuds office. This is an entity that sits outside the organizational chain of command and works independently to resolve sexual harassment complaints. An ombuds (formerly ombudsman) system is informal, neutral, and truly confidential—only the ombuds officer needs to know of the complaint. This approach has two advantages over the current system: It allows accusers to determine whether to make their complaints known to the accused, and it avoids legalistic hearings entirely. Consider what happened at MIT, the first major employer in the United States to address the problem of sexual harassment directly. In 1973 the university created an ombuds office to handle harassment and related complaints, and by the early 1980s the office was receiving 500 complaints a year. In the 1980s, when the program was well established, more than 90% of those who took their claims to the office wanted an informal, confidential process; 75% worried that a formal complaint would bring reprisal, rejection, or the silent treatment from their bosses, coworkers, or even their own families, and said they didn't want their harassers punished—they just wanted the problem to stop. MIT worked with complainants to give them what they wanted. As a result, the university today brings forward lots of complaints, many of which it resolves to the victims' satisfaction. According to Mary Rowe, a labor economist and adjunct professor of negotiation who served for 42 years as the head of MIT's ombuds office, employers who genuinely want to expose and address harassment in the workplace must offer this sort of alternative to formal grievance systems. Why? Because victims don't want to bring formal complaints, and only one in 100 complaints, Rowe says, can survive the rigors of a legalistic grievance process. If such a process is the only option, most victims simply won't come forward. Ombuds offices have spread across academia, law firms, and major news organizations over the past few decades. To help resolve harassment problems, these offices should make explicit that employees can come to them confidentially with their claims and concerns. When the University of Pennsylvania announced that victims of harassment could use its existing ombuds office, complaints and resolutions jumped. These offices are becoming more popular in the rest of the corporate world: Thirteen percent of U.S. companies have them, to handle issues ranging from bullying to termination. Among these are American Express, The Cheesecake Factory, McKinsey, Nike, Chevron, Mars, and Uber. The Cheesecake Factory created its office in response to sexual harassment complaints in 2009. In 2017, after an Uber employee published a scathing blog about the company's culture of harassment, Uber hired the former U.S. attorney general Eric Holder to investigate. Holder recommended creating an ombuds office to encourage employees to bring problems forward, and Uber's board did just that. The rise of #MeToo has brought a sea change in the attitudes of executives: See no evil has been replaced by Bring it on, as they realize that it's better to know about problems than to pretend they don't exist. What's most important about the ombuds system is that it puts victims in the driver's seat. If they don't want the accused to know they're talking, that's OK—the ombuds can hear them out confidentially and help them think through their options. Ombuds offices hold no formal hearings, are guided by no rules of evidence, and impose no restrictions on discussing the problem with others. Moreover, by tracking complaints by department and location, they can identify problem spots that need attention and alert leaders. They track complaints more effectively than grievance officers can, because people actually bring complaints to them. Setting up an ombuds office isn't hard. You need ground rules for complaint handling, which a professional officer can help you design, working along International Ombudsman Association guidelines. (A tip: You should be explicit about the fact that the ombuds will help with harassment.) You can even turn to one of the Silicon Valley start-ups that now offer online complaint systems. One of them, tEQuitable, operates a virtual ombuds office. Employers can subscribe to the service, which is confidential and gives their employees access to written advice online. If they need more than that, the company makes trained experts available for phone conversations. It doesn't report individual harassment complaints to employers, but it sends aggregate stats to executives, allowing them to identify hot spots. Corporate ombuds offices do the same. Voluntary dispute resolution. For an alternative that falls somewhere between a formal grievance procedure and an ombuds office, consider a dispute-resolution system that relies on mediation. In this model, mediators hear claims, notify the accused, and try to find solutions that satisfy both sides. Some employers use professional mediators; others train their own workers to do the job. The system is less adversarial than a legalistic grievance procedure. This often suits victims, many of whom simply want their harassers to cut it out. But the victim must feel comfortable being identified to the accused, and both parties must be committed to finding a solution. Obviously, this approach doesn't work for the most egregious cases of harassment, for which the only sensible solution is to fire the perpetrator. The U.S. Postal Service has long done interesting work with dispute resolution for discrimination and harassment complaints. For a while it experimented with outside professional mediators, and later it trained employees to do the job. Both options have worked well. Here's how the USPS system works: After an accuser has filed her (or his) complaint and submitted a request for mediation, the accused is required to come to an initial meeting with the mediator, who in some cases is joined by a union rep as co-mediator. Participation is entirely voluntary for the accuser, and the accused may opt out of mediation after that first meeting. Mediation sessions are scheduled within two to three weeks and typically last three or four hours. Most participants feel good about how these sessions are conducted. The USPS has done exit surveys of all participants without breaking out accused and accusers, on the dispute-resolution principle that no party is on trial. They show that more than 90% of respondents are satisfied with their mediator's impartiality and with how they were treated during the process, and at least 60% are satisfied with the outcome. This alternative system led to a four-year decline of more than 30% in formal discrimination and harassment filings. The advantage of voluntary dispute resolution is that accusers can decide at key points in the process whether to proceed. Once the process is initiated, if they feel the accused isn't engaging in good faith, or that the complaint needs to be handled in a more legalistic way, they can bow out and file a formal grievance. An option to avoid. Mandatory arbitration is all the rage today in Silicon Valley and on Wall Street. When an employer adopts mandatory arbitration, all current employees and new hires are required to sign away the right to sue for any employment-related dispute, including claims of harassment. In exchange they are promised that any claim they file will be turned over for independent review to an external arbitrator who will hear both sides of the dispute and render a binding decision. Mandatory arbitration is all the rage because it best protects from litigation. That may sound like dispute resolution, but it's far from it. Signing the arbitration contract means agreeing to keep any dispute confidential, to abide by arbitrators' decisions, and to refrain from taking employment disputes to court. If victims feel that arbitration isn't working, they have no recourse to a formal grievance system. And they don't choose the arbitrator, which may put them at a disadvantage: Because arbitrators hope to be hired again by the company, they may be reluctant to find it seriously at fault. If an arbitrator had ordered a California hospital chain to pay a harassment victim $168 million, as a federal court did in 2012, would the chain still be using that arbitrator? In 2018 the New York State Legislature decided that employers shouldn't be able to require employees to sign away their right to sue under the Civil Rights Act, and it outlawed mandatory arbitration. But in 2019 a federal judge overrode that decision. So mandatory arbitration remains legal, and the number of companies requiring it is on the rise. By a recent estimate, more than a fifth of private-sector workers are now subject to mandatory arbitration. Employees are pushing back, however. In late 2018, 20,000 Google employees walked out in protest, and in response Google agreed to end mandatory arbitration for sexual harassment cases. Then, in early 2019, the company ended all mandatory arbitration. Perhaps that will spur other companies to follow suit. But to date mandatory arbitration is the only option of the three listed above that has really caught on. That's not because it serves victims well but because it does the best job of protecting companies from litigation. Will either of the more promising alternatives catch on? As long as the courts require grievance procedures, companies won't scrap them in favor of those alternatives. That's fine, because victims should always have a formal grievance system available as a last resort. But everybody would surely be better off if most harassment claims were addressed through a live or virtual ombuds office or a dispute-resolution system. Changing the Culture The changes we propose address shortcomings of the programs that the Supreme Court backed in 1998. But reducing harassment will require more than that. It will require changing the culture of your organization so that fighting harassment becomes part of your mission. You'll need to engage as many people as possible in the effort and create systems of accountability that get everyone involved in oversight. Three tools offer promising ways to do that: train-the-trainer programs that turn employees into harassment experts; harassment task forces that put employees in charge of diagnosing problems and designing solutions; and openly published numbers so that everyone can track progress. Train-the-trainer programs. Employees who volunteer to be trained as harassment trainers tend to become leaders committed to changing the culture. This approach is less expensive than using outside trainers, and it's much more effective than tick-the-box online courses. A harassment task force can tailor solutions to the needs of a given company. Promisingly, it's getting some traction. Sharyn Potter's team at the University of New Hampshire uses a train-the-trainer model to address assault and harassment on college campuses. The University of Michigan has developed a fine-tuned model as part of its diversity-recruitment training. The U.S. Air Force has adopted a train-the-trainer model to deal with sexual assault, dating violence, and domestic violence throughout its ranks. Whether you train 10 trainers or 1,000, you've created a group of experts committed to change. If you hire a train-the-trainer organization, however, choose carefully: Some still spend most of their time on the failed forbidden-behavior curriculum. Harassment task forces. When we conducted research on diversity programs, we discovered that establishing a task force is the single best way to improve diversity in the workplace. It also promises to help curb harassment by engaging more people. A CEO might commission a harassment task force and ask department chiefs to join it or send a lieutenant. The task force can look at HR data on harassment complaints, interview people across the company about their experiences, study company data on what kinds of workers are quitting, and more. Once the members have figured out what and where their company's specific problems are, they can brainstorm solutions and take them back to their own departments. Maybe they'll decide that work teams need to be mixed up so that women aren't so often outnumbered. Maybe they'll decide that the company needs to get more women involved in recruitment or more men involved in conducting harassment training. The beauty of this approach is that it allows solutions to be tailored to the needs of a given company. Who better to dream up those solutions than people who know the workplace and the culture? And how better to align your managers and employees with the goal of stemming harassment than by putting them on the task force? That's a lesson straight out of Psych 101: The best way to convert people to your cause is to get them to help you with it. Published numbers. There's something to the adage "You can't manage what you can't measure"—or in this case, "what you don't measure." If you publish data that exposes a problem, managers will focus on it, and solving the problem will become part of the culture. Uber was acting on this principle when it published the number of sexual assaults that allegedly took place in its vehicles in 2018. Tech firms have acted on it by publishing data on diversity in their workforces, and Intel recently published pay data for men and women, whites, and people of color. Emilio Castilla, of MIT's Sloan School of Management, has conducted cutting-edge research demonstrating the efficacy of this approach when it comes to pay. Your ombuds office could post the number of complaints, broken down by department. An annual employee survey could surface problems by department and location. Most managers have no idea how their own departments are faring, because people rarely file formal complaints. Shining a light on where problems lie can change the culture. CONCLUSION Courts have been allowed to dictate how companies handle harassment for too long. Rates of harassment haven't budged for decades. The work that we and others have done suggests that we can't solve the problem by tagging all men as potential harassers in training sessions or by making victims navigate a complaint system designed to prevent the accused from suing. The research suggests that what's most helpful is to design training that treats all workers as victims' allies and gives them problem-solving tools, and to design complaint systems that provide the typical victim with a quick response that doesn't spark retaliation. In the end, though, we need to change corporate cultures to get more people involved in solving the problem. Culture is ultimately created by leaders. They need to publicly take responsibility for the problem and try to solve it on their teams, setting an example for all managers. Increasing the numbers of female managers and executives may help as well, because women are less likely to react negatively to training and more likely to believe victims who come forward with complaints. That might encourage victims to come forward and make it more likely that they get satisfaction from the complaint process. A version of this article appeared in the May–June 2020 issue of Harvard Business Review.