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Sexual Harassment

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The social problem of sexual harassment has its origin in unwelcome male sexual conduct involving women at work. In the midst of a massive social movement for gender equality and the influx of more women into the workplace, feminists argue that male sexual power over women was a major impediment to women's success at work. Sexual harassment law attempted to address this social problem, and the 1970s were marked by the first formal complaints of sexual harassment in the United States. While its feminist roots keep sexual harassment policy primarily an issue for women, sexual harassment laws tend to be gender neutral, and the law has been expanded to include female harassment of men and same-sex harassment. In practice, however, women tend to be the primary users of sexual harassment law.

The Beginnings of Sexual Harassment Law

Early legal conceptions of sexual harassment in the United States located the conduct squarely at work and theorized two kinds of sexual harassment. The first is *quid pro quo* sexual harassment—a clear use of supervisory power over women to get sexual favors. The second kind of sexual harassment, *hostile environment*, does not necessarily involve the hierarchical abuse of power. This type of sexual harassment is characterized by a workplace that is intimidating, demeaning, offensive, and so pervasively and sexually hostile that women are unable to succeed or otherwise to be productive workers. These two types of sexual harassment were characterized as a kind of sex discrimination under the 1964 U.S. Civil Rights Act and ultimately incorporated into the 1980 Equal Employment Opportunity Commission (EEOC) guidelines. The first U.S. Supreme Court decision on sexual harassment, *Meritor Savings Bank v. Vinson* (477 U.S. 57, 1986), upheld the distinctions made between *quid pro quo* and hostile environment sexual harassment.

Development of Sexual Harassment Law outside the United States

As sexual harassment cases progressed through the U.S. courts, feminist academics, women in unions, and legal scholars traveled the world discussing the issue and exchanging ideas with feminists in Europe [p. 1368 ↓] and elsewhere. As in the United States, sexual harassment in European countries was an issue of employment, making it an appealing issue to the feminist factions of trade unions and to the “femocrats” working within government. The 1980 U.S. EEOC guidelines served to consolidate an early model for policy debates. For example, the Health Research Employees Association of Australia (1983) and the Charter for Equality for Women within Trade Unions (TUC) in the United Kingdom (1979) also defined sexual harassment as discrimination based on sex.

The European Union (EU) issued a resolution calling for Dignity for Women at the Workplace in 1984 and initiated a research study on sexual harassment in the European Communities. The European Council passed a nonbinding recommendation on sexual harassment in 1990, and the European Commission issued a code of conduct. Both served as policy models for the member states and for corporations operating within and beyond the EU's boundaries. In 2002, an update of the Equal Treatment Directive required member states to revise or adopt sexual harassment laws and to define sexual harassment as sex discrimination. By 2007, almost all 27 countries of the EU reported employment legislation dealing with sexual harassment. Asian countries, such as Bangladesh, Japan, the Philippines, Sri Lanka, Hong Kong, India, and China have reported adopting sexual harassment legislation. Even where the national government may not have a law regarding sexual harassment, local or provincial governments may adopt sexual harassment law.

Sexual harassment is addressed directly by specific laws and encompassed in other laws, such as civil rights statutes, equal treatment laws, and employment or labor laws. Within the field of labor law, some sexual harassment conduct is defined within the scope of laws directed at other social behavior, such as bullying (United Kingdom),

mobbing (Germany), and moral harassment (France). It is also included within some collective bargaining agreements.

Issues in Sexual Harassment Law

Sexual harassment laws have three primary characteristics: scope, legal context, and remedies. First, U.S. law characterizes sexual harassment to include both *quid pro quo* harassment and hostile environment harassment. This is not the case in all countries, although this inclusive scope is increasing. For example, France initially defined sexual harassment as existing only within a power relationship (supervisor over employee) and just recently prohibited coworker sexual harassment. The scope of sexual harassment law is also characterized by whether same-sex sexual harassment is included within the law.

Second, the legal context of sexual harassment varies. For many countries, sexual harassment as a legal violation is something that occurs in employment only. In the United States, this was in part necessary to place it within the purview of the 1964 Civil Rights Act, which addressed sexual discrimination in employment (as also in Australia, South Africa, and other places). Although Europeans in the 1990s tended to react against what they saw as puritanical U.S. ideas involving sex, the issue of sexual harassment occurring in the workplace was retained, as it joined with historical ideas of worker dignity in Europe. Today, most jurists conceptualize sexual harassment as an issue of civil rights (United States), an issue of the abuse of authority (France), or an issue of worker dignity (EU, Peru).

Finally, the remedies for sexual harassment vary widely. For the most part, the issue of sexual harassment arises and is resolved either formally or informally within the organization prior to reaching the legal system. One can file formal complaints with unions, state offices, tribunals, and labor and criminal courts. Some countries, such as France, Honduras, and Japan, classify some kinds of sexual harassment as criminal conduct. Whether harassers can be held personally liable for their conduct varies. The sanctions for harassers range from employment sanctions to financial and even criminal sanctions. Most civil sexual harassment laws hold employers liable for the

sexual harassment committed by their supervisors, although fewer include employer liability for clients of the organization.

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See also

- [Critical Feminist Theory](#)
- [Equality](#)
- [Feminist Legal Studies](#)
- [Gender](#)
- [Labor Law, Sociology of](#)
- [Sexual Orientation](#)

Further Readings

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