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Sex-Based Harassment and Symbolic Compliance

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Abstract

With the rise of the #MeToo movement, there has been a groundswell of attention to sex-based harassment. Organizations have pressured high-level personnel accused of harassment to resign, or fired them outright, and they have created or revised their anti-harassment policies, complaint procedures, and training programs. This article reviews social science and legal scholarship on sex-based harassment, focusing on definitions and understandings of sexual (and sex-based) harassment, statistics on its prevalence, the consequences of harassment both for those who are subjected to it and for organizations, and explanations for why sex-based harassment persists. We then discuss the various steps that organizations have taken to reduce sex-based harassment and the social science literature on the effectiveness of those steps. We conclude that many organizational policies prevent liability more than they prevent harassment, in part because courts often fail to distinguish between meaningful compliance and the merely symbolic policies and procedures that do little to protect employees from harassment.

1. INTRODUCTION

In 2017, the #MeToo movement gave rise to a broad societal awakening regarding the pervasiveness of sex-based harassment in the workplace. On various social media outlets, myriad previously silent women and a few men told their harrowing experiences of harassment, and in some cases assault and rape, by those who had power over their work and careers. Some high-profile employers responded by firing prominent men in the wake of numerous credible accusations of harassment and by creating or updating their anti-harassment policies, complaint procedures, and training programs. Similarly, in the educational realm, there has been a groundswell of attention to sexual harassment and campus sexual assault, resulting in revision of campus policies implementing Title IX and the firing of a few prominent professors and deans. But what do we know about the effectiveness of these efforts and more generally about the problem of sex-based harassment both in the workplace and in educational settings?

This article reviews the law and social science literature on sex-based harassment, focusing primarily on workplace harassment but with some attention to harassment in educational settings. We begin by discussing the problem of harassment, focusing on the multiple and conflicting understandings of sex-based harassment among both legal scholars and social scientists, on the prevalence of harassment, and on the consequences of harassment for those subjected to it. We then turn to explanations for harassment, first addressing psychological explanations that focus on the characteristics of harassers and then discussing organizational explanations that focus on the structural characteristics of the workplace that make it more or less conducive to harassment. Finally, we examine the failures of both organizations and law in responding to sex-based harassment. We suggest that the actions that organizations have taken in response to law and the #MeToo movement are more symbolic than substantive and that they largely fail to address the institutional conditions that give rise to workplace harassment. Further, we argue that although sex-based harassment is illegal, there are numerous obstacles to obtaining legal redress in court.

Although this review focuses on sex-based harassment, we note that harassment on the basis of race, religion, national origin, and disability is also problematic both in the workplace and in other social settings. We also note that although the term sexual harassment is most commonly used in the social science literature and in the law, some scholars have used the term sex-based harassment instead (e.g., Berdahl 2007; Schultz 1998, 2018). We use the terms interchangeably in this review, generally adopting the term that each author uses when discussing the literature. However, we suggest in our conclusion that the term sex-based harassment more accurately describes the nature of harassment, because sex-based harassment is not generally about sexuality but rather is about "behavior that derogates an individual based on sex" and is a mechanism for protecting one's status in the gender hierarchy (Berdahl 2007, p. 641).

2. THE PROBLEM OF SEX-BASED HARASSMENT

2.1. What Is Sexual Harassment?

Although the term sexual harassment came into common parlance only in the 1970s, the problem dates back centuries (Cortina & Berdahl 2008, Segrave 1994). African American women endured sexual coercion during chattel slavery, free women in domestic service frequently faced sexual advances by men in the households in which they worked, and there are accounts of unwanted physical touching in the workplace as early as the late nineteenth century (Siegel 2004). But it was not until the 1970s that social movement activists brought widespread public attention to the problem of sexual harassment and both legal scholars and social scientists began to write about it (Farley 1978, MacKinnon 1979). From the late 1970s on, legal scholars and social scientists began

to focus on the problem of sexual harassment in the workplace, prompting debates about how sexual harassment should be understood and how it should be studied. We begin by discussing the legal evolution of sexual harassment law, including debates among legal scholars, focusing first on the workplace context and then on education. We then turn to the social science scholarship on sexual harassment and how it has both influenced and been influenced by legal developments.

2.1.1. The evolution of workplace sexual harassment law. Attention to sexual harassment in the modern era arose out of social activism at Cornell University (Schultz 1998, Siegel 2004). In 1975, Working Women United (WWU), a group of activists in Ithaca, New York, held a speak-out on sexual harassment, which they defined as "the treatment of women workers as sexual objects" (Silverman 1976–1977, p. 15). Another WWU activist, Lin Farley (1978, pp. 14–15), defined sexual harassment in her 1978 book *The Sexual Shakedown* as "unsolicited nonreciprocal male behavior that asserts a woman's sex role over her function as a worker." In 1979, legal scholar Catharine MacKinnon (1979, p. 1) published *Sexual Harassment of Working Women*, in which she defined sexual harassment as "the unwanted imposition of sexual requirements in the context of a relationship of unequal power."

MacKinnon's work had an important impact on the evolution of legal protections against sexual harassment. Although the Civil Rights Act of 1964 banned discrimination on the basis of sex, the Act did not explicitly mention sexual harassment. Early efforts to bring sexual harassment cases were generally unsuccessful (MacKinnon 1979). Courts dismissed claims either because they did not see sexual harassment as discrimination on the basis of sex or because they were reluctant to hold employers liable for sexual harassment by supervisors or coworkers (Schultz 1998). Initially, courts argued that harassment amounted not to discrimination because of sex but rather—because not all women were harassed—to discrimination on the basis of refusal to provide sexual favors. This reasoning, which came to be known as the sex-plus rationale, reflected a notion of sexual harassment as a private dispute arising out of sexual desire on the part of males within the context of a heterosexual relationship (Schultz 1998, Siegel 2004). Other courts were reluctant to hold employers liable for sexual harassment by individual supervisors or coworkers on the grounds that employers should not be liable for the acts of their subordinates (Edelman 2016).

The tide began to turn in the late 1970s. In 1976, the US District Court for the District of Columbia found in *Williams v. Saxbe* (D.D.C. 1976) that an employer could be liable for sex discrimination under Title VII where a supervisor retaliates against an employee for refusing sexual advances. In 1977, in *Barnes v. Costle* (DC Cir. 1977), the DC Circuit became the first federal appellate court to recognize sexual harassment and, in so doing, to explicitly reject the sex-plus logic. Barnes, a black woman, was repeatedly subjected to requests for sexual relations and promises of enhanced employment status if she complied. When she refused, she was stripped of her job duties and her position was eliminated. The district court rejected her claim, arguing that she was discriminated against not on the basis of sex but because she refused to engage in a sexual affair with her supervisor. The circuit court, however, held (in contrast to the sex-plus line of cases) that Title VII should be interpreted broadly and that the practice in this case was clearly a form of discrimination on the basis of sex.

The publication of MacKinnon's *Sexual Harassment of Working Women* in 1979 had a major impact on both the Equal Employment Opportunity Commission (EEOC) and the courts. MacKinnon articulated two forms of sexual harassment. The first was quid pro quo sexual harassment, exemplified in *Barnes*. The second was more radical. MacKinnon argued that hostile work environment harassment, where there is sexualized workplace conduct that interferes with job performance, such as unwanted sexual commentary or contact, should be understood as a violation of Title VII even where there is no tangible economic loss. She argued that hostile work

environment harassment was part of the power dominance through which male sexuality placed women in a subordinate position in the workplace.

In 1980, the EEOC for the first time adopted guidelines that specified that harassment on the basis of sex is a violation of Title VII and recognized both types of sexual harassment that MacKinnon discussed: quid pro quo and hostile work environment harassment.[1] The EEOC guidelines defined harassment as "unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature" [29 C.F.R. §1604.11(a)].

In 1981, the DC Circuit again advanced the legal definition in *Bundy v. Jackson* (DC Cir. 1981), which involved sexual harassment in which there was not tangible economic loss. Bundy alleged that her supervisor made repeated advances and questioned her about her sexual proclivities. The district court ruled in favor of the employer because the supervisor had not taken any harmful economic action against Bundy. Citing MacKinnon's 1979 book, however, the circuit court held that workplace sexual harassment could constitute sex discrimination under Title VII even without tangible economic loss.

The US Supreme Court first took up the issue of sexual harassment in 1986 in *Meritor Savings Bank v. Vinson* (1986). Plaintiff Mechelle Vinson, who was represented by Catharine MacKinnon, alleged that the bank's vice president, Sidney Taylor, demanded sexual favors and that she had had sex with him many times. She did not use the bank's grievance procedure because she feared reprisals. The court, clearly influenced by MacKinnon's work, held that "[w]ithout question, when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex" [*Meritor Savings Bank v. Vinson* (1986), p. 64].[2] The court also suggested in dicta that an effective anti-harassment policy and a grievance procedure might protect an employer from liability when a supervisor harasses an employee.

Twelve years later, the Supreme Court made that dicta law. In 1998, in *Faragher v. City of Boca Raton* (1998) and *Burlington Industries, Inc. v. Ellerth* (1998), the court created an affirmative defense that allowed employers to avoid liability in hostile work environment cases when the employer "knew or should have known about the [harassing] conduct and failed to stop it" [*Ellerth* (1998), p. 759]. The affirmative defense applies to hostile work environment cases either involving coworker harassment or where the harasser is not the victim's direct supervisor. In 2013, the Supreme Court broadened the scope of the affirmative defense in *Vance v. Ball State University* (2013), which made the affirmative defense available even in cases where the harasser is the victim's supervisor, as long as the supervisor does not have authority to take tangible employment actions.

Legal scholar Vicki Schultz (1998, 2003, 2018; Soucek & Schultz 2019) has been critical of the way in which MacKinnon framed the problem of sexual harassment. Labeling MacKinnon's approach the "sexual desire-dominance paradigm,"[3] Schultz argued that MacKinnon's approach erroneously characterizes sexual harassment as a problem of sexual desire and male dominance rather than as a form of sex-based discrimination: a means of undermining and excluding women in the workplace to preserve the workplace as a domain of masculinity. Schultz (1998) argued that MacKinnon's focus on sexuality at least initially led the courts to restrict the conception of

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[1] The EEOC states,

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. [45 Fed. Reg. 74676 (Nov. 10, 1980), codified at 29 C.F.R. §1604.11]

[2] Mechelle Vinson suffered no tangible economic loss but had been subjected by her supervisor to fondling and repeated demands for sexual intercourse and had been raped several times.

[3] In a recent piece, Soucek & Schultz (2019) relabel the MacKinnon approach as the "sexual desire paradigm."

hostile work environment harassment to behavior that is sexual in nature, thus omitting the many forms of gender-based hostility that are experienced more regularly. She argued that the emphasis on sexuality has led courts to overlook myriad aspects of work culture that disadvantage women, such as sex segregation, gender stratification, marginalization of women, and nonsexual forms of mistreatment.

Schultz's position has been recognized in judicial doctrine and in the EEOC position on sexual harassment. In 1998, in *Oncale v. Sundowner Offshore Services* (1998), the Supreme Court held not only that same-sex harassment is actionable but also that workplace harassment need not be explicitly sexual to be actionable and that the defining attribute of harassment is that the misconduct occurs because of sex. In 2016, the EEOC released a report by the Task Force on the Study of Harassment in the Workplace. The EEOC report recognizes multiple types of harassment: sex-based harassment, gender identity–based and sexual orientation–based harassment, race and ethnicity–based harassment, disability-based harassment, age-based harassment, religion-based harassment, and, finally, intersectional harassment. Under the definition of sex-based harassment, the EEOC (2016, p. 9) includes "gender harassment," which "can include sexually crude terminology or displays. . .and sexist comments." The current EEOC definition of harassment states,

> It is unlawful to harass a person because of that person's sex. . . . Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general. (EEOC n.d.)

2.1.2. Sexual harassment law in education. Sex-based harassment in the context of education is governed by Title IX of the Education Amendments of 1972, a comprehensive federal civil rights law that applies to any school that receives federal funds and prohibits sex discrimination in education. Title IX, which in many ways follows the logic of Title VII doctrine (Ali 2011), defines sexual harassment as "unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal, or physical conduct of a sexual nature." Title IX also covers sexual violence, which refers to sexual acts perpetrated against a person's will or where a person is incapable of giving consent. As in Title VII, schools can be liable for hostile environment sexual harassment: The Department of Education's 2001 *Revised Sexual Harassment Guidance* on Title IX law suggests that sexual harassment in schools creates a "hostile educational environment" (DOE 2001).[4]

Like the EEOC, the US Department of Education Office for Civil Rights has acknowledged the existence of gender-based harassment, a term they use to refer to harassment that is not of a sexual nature. Its 2001 *Revised Sexual Harassment Guidance* stated that "gender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program" (DOE 2001, p. v). But it also minimized gender-based harassment, stating that "we believe that harassment of a sexual nature raises unique and sufficiently important issues that distinguish it from other types of gender-based harassment" (DOE 2001, p. v).

The 2011 Dear Colleague Letter from the US Department of Education again defines sexual harassment in sexual terms, noting only in a footnote that Title IX also prohibits gender-based harassment that does not involve conduct of a sexual nature (Ali 2011). Several appellate cases

[4]Two Supreme Court cases helped to define sexual harassment under Title IX. In *Gebser v. Lago Vista Independent School District* (1998), the court held that schools that receive federal funding can be liable for money damages if a teacher sexual harasses a student or if an official with authority to address harassment either has actual knowledge of the harassment or is deliberately indifferent in responding to the harassment. In *Davis v. Monroe County Board of Education* [526 US 629 (1999)], the court held that a school may be liable for harassment by another student if the conditions of *Gebser* are met.

have affirmed that Title IX covers gender-based harassment even in the absence of conduct of a sexual nature.[5] Notably, however, the Trump administration has worked to narrow the definition of sexual harassment under both Title VII workplace harassment laws and Title IX protections for students (Feuer 2017, Hemel & Lund 2018).[6]

2.1.3. Social science scholarship on the meaning of sex-based (or sexual) harassment. The social science literature that has evolved since the late 1970s has been largely consistent with the Schultz approach in that it tends to see sex-based harassment as an expression of power and gender-based hostility rather than of sexuality and recognizes nonsexual forms of harassment as a form of sex-based harassment. In 1976, psychiatrist Carroll M. Brodsky (1976, p. 2) defined sexual harassment as "treatment that persistently provokes, pressures, frightens, intimidates, or otherwise discomforts another person."[7] A few years later, in response to a request for anecdotes of harassment from a national sample of college women, Till (1980) suggested five general categories of sexual harassment: (*a*) generalized sexist remarks or behavior; (*b*) inappropriate and offensive sexual advances; (*c*) solicitation of sexual activity in exchange for some form of reward; (*d*) coercion of sexual activity accompanied by threats of punishment; and (*e*) sexual assaults. He also found that most harassment was recurrent and that most victims suffered in silence, felt ashamed, were too afraid to take action, did not think they would be believed if they complained, and felt that to do so would be futile. Even when women did report their harassment, these reports rarely resulted in action because organizations sought to protect the due process rights of the accused.

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[5]A 1988 case, *Lipsett v. University of Puerto Rico* [864 F.2d 881 (1st Cir. 1988)], involved a female surgical resident who was repeatedly subjected to demeaning behavior, denied opportunities afforded to her male peers, and eventually discharged from the program. The First Circuit court held that the standards governing sexual harassment claims under Title IX were the same as for Title VII and explicitly stated that educational organizations could be held liable under Title IX for both quid pro quo and hostile environment harassment. In the same year, in *Hall v. Gus Construction Co.* [842 F.2d 1010 (8th Cir. 1988)], the Eighth Circuit took up the issue of gender-based harassment that was not sexual in nature. That case involved two women who worked at a construction site. They were subjected to various kinds of abuse, including experiencing men urinating in their water bottles and in the gas tanks of their cars, being denied privacy when they would relieve themselves, and being ignored when they complained about carbon monoxide fumes in the truck they were using. The women eventually quit their jobs and filed suit for sexual harassment and constructive discharge. When the trial court found in favor of the women, the company appealed, arguing that the trial court had failed to distinguish the behavior that was sexual in nature from the nonsexual behavior. The appellate court held that harassment can be actionable even if the harassment is not sexual in nature.

[6]A notice of proposed rulemaking from the Trump Department of Education in 2018 criticized an Obama-era guidance on Title IX for having an "overly broad" definition of sexual harassment and has proposed to change the definition from one modeled after the Title VII definition to "behavior [that is] so severe, pervasive, and objectively offensive that it denies the victims equal access to education" (DOE 2018). The Trump administration has revoked protections for transgender students who may be harassed on the basis of their gender identity for using women-only or men-only school bathrooms, rescinded a 2016 Dear Colleague Letter that allowed transgender students to use the bathroom that aligned with their gender identity (Lhamon & Gupta 2016), and replaced it with a Dear Colleague Letter that requires transgender students to use the bathroom correlated with their sex assigned at birth (Battle & Wheeler 2017). At the time of the Trump administration guidance, the US Supreme Court had been scheduled to hear a case regarding transgender students' rights to use the bathroom associated with their gender identities (*Gloucester County School Board vs. G.G. Ex Rel. Grimm* [137 S.Ct. 1239 (2017)]. The court, however, returned the case to a lower federal court for reconsideration in light of the Trump administration guidance. In August 2019, in *Grimm v. Gloucester County School Board* [400 F.Supp.3d 444 (E.D. Va. 2019)], the US District Court for the Eastern District of Virginia rejected the Gloucester system's argument that allowing transgender students to use the bathroom appropriate to their gender identity violated the privacy of other students.

[7]One year before the book was published, Brodsky had married Herma Hill Kay, a prominent feminist legal scholar.

Building on Till's work, Fitzgerald et al. (1988) developed the Sexual Experiences Questionnaire (SEQ), a survey that asked approximately 1,700 college students whether they had experienced each of five types of harassment that were based on Till's (1980) study. Like Till, Fitzgerald and colleagues found that sexual harassment was common both in the workplace and in education and that the problem included gender-based harassment as well as sexual coercion and unwanted sexual attention. Later work by Fitzgerald et al. (1988), however, reduced the forms of sexual harassment to three: sexual bribery and coercion, seduction and sexual imposition, and gender harassment. Fitzgerald et al. (1988, p. 157) defined gender harassment as "generalized sexist remarks and behavior."

Fitzgerald et al. (1995) further refined the three types of harassment using a revised version of the SEQ, which explicitly incorporated the 1980 EEOC guidelines and legal conceptions of sexual harassment. Based on survey data, they proposed and tested a model showing that the psychological dimensions of sexual harassment cohere around three types: gender harassment, unwanted sexual attention, and sexual coercion. They defined gender harassment as "a broad range of verbal and nonverbal behaviors not aimed at sexual cooperation but that convey insulting, hostile, and degrading attitudes about women" (Fitzgerald et al. 1995, p. 430).

The first two categories overlap with the legal concept of hostile work environment sexual harassment, whereas the third category is consistent with the legal concept of quid pro quo harassment.

Later scholarship found inconsistencies in measurements based on the SEQ, citing both reliability and validity problems (Gutek et al. 2004). Gutek and colleagues claim that studies based on the SEQ report as sexual harassment behavior that would never be considered illegal, although scholars who used the SEQ were careful to note that the SEQ did not measure illegal sexual harassment (Fitzgerald et al. 1997a, p. 580). Although many studies included gender harassment in their conception of sexual harassment, some found that behaviors that are sexual in nature are more likely to be characterized as sexual harassment than are behaviors that are sexist but not sexual, especially by men (Adams et al. 1983, Fitzgerald 1991, Gutek et al. 1983, Ormerod 1987).

Whereas psychologists tend to emphasize the experience of targets of harassment, sociologists tend to characterize harassment as an exercise of power and exclusion (Berdahl 2007, Katz et al. 1996, Reskin & Padavic 1994, Welsh 1999). Welsh (1999, p. 170), for example, writes, "At its core, sexual harassment is often about letting women know they are not welcome in certain workplaces and that they are not respected members of the work group." Berdahl (2007, p. 641) defines sex-based harassment as "behavior that derogates, demeans, or humiliates an individual based on that individual's sex," including "seemingly sex-neutral acts, such as repeated provocation, silencing, exclusion, or sabotage." Sociologists also emphasize the nexus of harassment to broader cultural patterns and social structure (e.g., Blackstone et al. 2009, Kalof et al. 2001, Morgan 1999, Padavic & Orcutt 1997, Quinn 2000, Rogers & Henson 1997, Rospenda et al. 1998, Uggen & Blackstone 2004).

One of the most important recent statements about sexual harassment comes from a 2018 report by the National Academies of Sciences, Engineering and Medicine (NASEM 2018) titled *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine*. The report defines sexual harassment as including three categories:

> (1) gender harassment (verbal and nonverbal behaviors that convey hostility, objectification, exclusion, or second-class status about members of one gender), (2) unwanted sexual attention (verbal or physical unwelcome sexual advances, which can include assault), and (3) sexual coercion (when favorable professional or educational treatment is conditioned on sexual activity). (NASEM 2018, p. 2)

The vast majority of social science scholarship, then, includes behaviors that are nonsexual (often called gender harassment or gender-based harassment) within the definition of sex-based harassment. Although much of the social science literature emphasizes the prevalence of gender harassment, many of the examples focus on unwanted sexual behavior or commentary.

2.2. The Prevalence of Sex-Based Harassment

In part due to varying definitions of what constitutes sex-based harassment and in part due to varying consciousness of harassment, measuring the prevalence of harassment has been difficult (Cortina & Berdahl 2008, Fitzgerald et al. 1997a, Gutek et al. 2004, Lengnick-Hall 1995, Uggen & Blackstone 2004). Studies that directly ask respondents about their experience of sexual harassment yield lower results than studies that provide the respondent with a list of experiences that the researcher defines as sexual harassment (Ilies et al. 2003), presumably because women are reticent to label offensive experiences as sexual harassment (Gutek 1995, Magley et al. 1999). A meta-analysis of 71 studies of workplace sexual harassment involving 84 independent samples from 1967 through 2000 found that direct query methods produced an average incidence rate of 24% in probability samples and 51% in convenience samples, whereas the experience-based surveys showed an average incidence rate of 58% in probability samples and 84% in convenience samples (Ilies et al. 2003).

EEOC charges provide another measure of the prevalence of sex-based harassment, although they include only those instances where the person affected by harassment has filed a formal complaint. The EEOC reports that, of the 90,000 charges it received in 2015, one-third included an allegation of workplace harassment, including charges of unlawful harassment on the basis of sex, race, disability, age, ethnicity/national origin, color, and religion. Of the total number of charges received in fiscal year 2015 that alleged harassment from employees working for private employers or for state and local government employers, approximately 45% alleged harassment on the basis of sex. Of the total number of complaints filed in 2015 by federal employees alleging harassment, approximately 44% of these reports were on the basis of sex (EEOC 2016).

The 2016 EEOC Select Task Force on the Study of Harassment in the Workplace, which is based on a meta-analysis of multiple studies, reports that depending on the measure and the type of sample, between 25% and 85% of women report having experienced workplace sexual harassment. Women report lower rates of sexual harassment when the term is not defined explicitly and much higher rates when asked about being the target of specific sexually based behaviors. Convenience samples yield much higher reported rates of sexual harassment than do probability samples (EEOC 2016). A 2018 report based on the General Social Survey estimates that more than five million employees are sexually harassed each year (McCann et al. 2018).

The prevalence of sex-based harassment is also very high in the educational realm. A 2005 study by the American Association of University Women found that 62% of all undergraduates had experienced sexual harassment, more frequently by peers than by faculty or staff (Hill & Silva 2005). Of college women, 20–25% experienced either completed or attempted rape during their college careers (Fisher et al. 2000, Natl. Inst. Justice 2007). Rosenthal et al. (2016) found that 38% of female graduate students and 23.4% of male graduate students experienced harassment by faculty or staff. Faculty and staff are frequently subject to harassment as well: Ilies et al. (2003) report that 58% of female academic faculty and staff experienced harassment (when asked about experiences), a rate of harassment higher than in most other workplaces and second only to the military. As in the employment context, gender-based harassment was the most common form of sexual harassment for female faculty and staff in academia (Rosenthal et al. 2016, Schneider et al. 1997), especially at lower levels of the organizational hierarchy (Grauerholz 1989, O'Connell & Korabik 2000).

The "Measuring #MeToo" study, a nationally representative survey of 2,219 adults, found that 81% of women and 43% of men reported some form of sexual harassment or assault in their lifetime (UCSD 2019). The study found that more than 75% of women and 35% of men report having experienced verbal sexual harassment. Sexual harassment occurs across multiple spaces: 68% of women reported experiencing sexual harassment in a public space such as on the street or in a store, 38% of women reported experiencing sexual harassment in their workplace, 31% in their homes, 37% in a nightlife venue, and 38% in a school. Among men, 23% reported experiencing sexual harassment in a public space, and 14–15% reported experiencing it at school, a residence, or their workplace. Among those who reported having experienced harassment, 83% of women and 75% of men had experienced harassment in more than one location. The survey also asked respondents whether they had ever been accused of harassment: Only 2% of men and 1% of women reported having been accused of sexual harassment or assault. But more people self-reported engaging in sexual harassment or assault than the number of people accused of doing so.

Importantly, the incidence of sex-based harassment is higher among minority women than among white women (Berdahl & Moore 2006, Bergman & Drasgow 2003). Bergman & Drasgow (2003) found that white women reported the fewest instances of sexual harassment, followed by Asian women, then Hispanic and Black women, with Native American women reporting the highest average incidences. The incidence of sexual harassment is also more common among women in male-dominated jobs, among temporary workers and employees in lower administrative positions (Maass et al. 2003), and among women who identify as feminist (Holland & Cortina 2013).

2.3. Consequences of Sex-Based Harassment

Research has shown that those who experience sex-based harassment suffer negative emotional, physical, and workplace consequences. A meta-analysis of 41 studies and a combined sample of 70,000 respondents confirmed that those who have experienced harassment suffer in terms of their physical and psychological health (Willness et al. 2007). Another meta-analysis of 93 samples and a combined sample size of 73,877 working women found that high-frequency but low-intensity types of harassment, including gender harassment and sex discrimination, were more detrimental to women's health than were high-intensity but low-frequency types of harassment, such as sexual coercion (Sojo et al. 2016).

The psychological effects of sex-based harassment include negative mood, low self-esteem, and psychosomatic and cognitive symptoms (Barling et al. 1996, Leskinen et al. 2011, Schneider et al. 1997). Sexual harassment results in worsening mental and physical health (Quick & McFadyen 2017), including greater incidence of depression, stress, and anxiety and generally impaired psychological well-being (Bergman & Drasgow 2003; Bond et al. 2004; Cortina et al. 2002; Culbertson & Rosenfeld 1994; Fitzgerald et al. 1997a,b, 1999; Glomb et al. 1999; Lim & Cortina 2005; UCSD 2019). The rate of anxiety and depression associated with sexual harassment is especially exacerbated for those who identify as gay, lesbian, or bisexual and for people with disabilities (UCSD 2019).

Studies of physical health consequences are more limited, but harassment has been associated with an increase in headaches, exhaustion, sleeping problems, gastric problems, nausea, respiratory complaints, musculoskeletal pain, and change in body weight (Barling et al. 1996, Culbertson & Rosenfeld 1994, De Haas et al. 2009, Fitzgerald et al. 1997a, Piotrkowski 1998, Wasti et al. 2000). In the education context, both male and female graduate students who have experienced harassment are more likely to experience posttraumatic symptoms, and females also experience a diminished sense of safety on campus (Rosenthal et al. 2016).

The workplace consequences of sex-based harassment are also significant. Sex-based harassment at work tends to result in a decrease in workplace satisfaction and commitment, withdrawal from the workplace, and a decline in mental and physical health. Employees who have experienced sex-based harassment tend to be less satisfied with their jobs (Bond et al. 2004, Cortina et al. 2002, Fitzgerald et al. 1997a, Glomb et al. 1999, Harned et al. 2002, Holland & Cortina 2013, Lim & Cortina 2005, Magley & Shupe 2005), in particular with interpersonal relationships with supervisors and coworkers (Sojo et al. 2016, Willness et al. 2007).

Women who experienced gender harassment scored significantly lower on work satisfaction and demonstrated lower job performance than women who had not been victims of harassment (Schneider et al. 1997). Women who have experienced retaliation for complaining about harassment are especially subject to negative work consequences (Cortina & Magley 2003). Women's job interview performance suffers when there is subtle sexual harassment during an interview, including when the interviewer asks questions of a sexual nature (Woodzicka & LaFrance 2005).

Sex-based harassment also creates a more stressful environment for coworkers, who are often aware of their colleagues' experiences (Glomb et al. 1997). Glomb et al. (1997, p. 309) use the term "ambient sexual harassment" to refer to a general level of sexual harassment experienced by others in a work group. Ambient sexual harassment tends to increase team conflict and decrease team cohesion and financial performance (Raver & Gelfand 2005).

As women experience more instances of harassment, they feel less committed to the organization (Barling et al. 2001, Bergman & Drasgow 2003, Fitzgerald et al. 1999, Schneider et al. 1997) and blame the organization for their experiences (Willness et al. 2007). Employees who experience sex-based harassment are also more likely to distance themselves from work without quitting (Barling et al. 2001, Cortina et al. 2002, Fitzgerald et al. 1997a, Glomb et al. 1999, Holland & Cortina 2013) and to take time off, use sick leave, or retire early (Barling et al. 1996, Cortina et al. 2002, Fitzgerald et al. 1997a, Glomb et al. 1999, Holland & Cortina 2013, Lim & Cortina 2005, Schneider et al. 1997). Similarly, in the education context, students who experience harassment suffer academically and either participate less in campus activities or drop out of school altogether (Dansky & Kilpatrick 1997, Duffy et al. 2004, Fitzgerald 1991, Huerta et al. 2006, Lee et al. 1996). Experiencing harassment as a bystander also has negative effects on students (Hitlan et al. 2006).

There are important intersectional dimensions to the impact of harassment. Nonwhite women who have experienced harassment report lower job satisfaction and commitment than do similarly situated white women (Bergman & Drasgow 2003). Woods et al. (2009) found in an experiment that black females who experienced cross-racial sexual harassment reported that the event was more upsetting, embarrassing, and threatening than did women who experienced intraracial sexual harassment. A survey of 476 Latinas found that their experiences of harassment were more severe in climates that tolerated racial, sexual, and sexual–racial harassment (Cortina et al. 2002). Sexual orientation also matters: Rabelo & Cortina (2014) found that harassment based on sexual orientation almost always coincided with gender-based harassment and that LGBTQ (lesbian, gay, bisexual, transgender, and queer/questioning) employees were more likely to report harassment experiences that referenced both sexuality and gender as opposed to harassment that targeted only sexuality.

3. EXPLANATIONS FOR SEX-BASED HARASSMENT

Explanations for harassment fall into two broad categories: (*a*) social-psychological theories that emphasize characteristics of perpetrators that make them more likely to harass and (*b*) organizational explanations that focus on characteristics of the workplace that make them conducive to harassment, as well as broader sociocultural conditions that infiltrate the workplace.

3.1. Social-Psychological Explanations for Sex-Based Harassment

Psychological research on sex-based harassment emphasizes characteristics of harassers, mostly men, that may predispose them to engage in sex-based harassment. For example, studies have found that men who harass tend to exhibit high levels of authoritarianism and low levels of agreeableness, openness to experience, and empathy (Begany & Milburn 2002, Maass et al. 2014). Men who have adversarial sexual beliefs (meaning that they view men and women as adversaries) are more likely to harass (Dekker & Barling 1998, Murrell & Dietz-Uhler 1993). Men who see males as dominant are more likely to harass, especially when women challenge their dominance (Pryor 1987, Pryor et al. 1993). Men who hold ambivalent and/or hostile views toward women are more likely to tolerate sexual harassment (Russell & Trigg 2004). Men may view their own power or status as making them more attractive to women and may therefore misconstrue women's friendliness as encouraging sexual behavior (Johnson et al. 1991, Perilloux et al. 2012).

In a series of articles, Fiske & Glick offer a more complex model of the determinants of harassment that is based on a broader theory of gender relations. The combination of power differences and gender ideology generates ambivalent attitudes by each sex toward the other. Their Ambivalent Sexism Inventory (Glick & Fiske 1996) captures hostile sexism (antipathy toward women) and benevolent sexism (positive but patronizing views of women), which affect the likelihood and nature of sexual harassment (Fiske & Glick 1995; Glick & Fiske 1996, 2001).

Various situational factors may increase the likelihood of harassment. Men may be especially likely to harass in situations that threaten their masculinity (Hitlan et al. 2006, Maass et al. 2003) or where they believe they are unlikely to be caught (Dekker & Barling 1998, Pryor et al. 1993). Not surprisingly, harassers are less likely to see sexual harassment as a problem and are more likely to see women as falsely accusing men to gain attention (Dekker & Barling 1998).

3.2. Organizational Explanations for Harassment

Organizational explanations identify characteristics of work and the workplace that are conducive to sexual harassment, most of which pertain to organizational climate, power differences or the gender makeup of the workforce (Dobbin & Kalev 2018, Fitzgerald et al. 1997a, Willness et al. 2007). Status and power differences in organizations tend to replicate status and power differences in society more generally, which also contribute to harassment (Cockburn 1991, Farley 1978, MacKinnon 1979, Padavic & Orcutt 1997, Rospenda et al. 1998).

Where management and professional positions are held predominantly by men, and where women are predominantly in subservient positions, it is more likely that an organizational culture will develop in which harassment is tolerated (Bond 2014, Dobbin & Kalev 2018, Gutek et al. 1990, Ilies et al. 2003). Where men have more contact with women, sexual harassment is more likely, although contact alone does not explain the frequency of harassment (Gutek et al. 1990). Younger women are more likely to experience harassment (Gutek & Dunwoody 1987). As has become clear since the #MeToo movement began, workplaces that place too much value on "high-value" employees—usually men who are highly regarded in their field or who bring in disproportionate amounts of business—are conducive to harassment because less-powerful employees are afraid to challenge their advances or to complain (EEOC 2016).

Although sex-based harassment typically involves more-powerful men harassing less-powerful women, women who hold positions of authority may be subject to "contrapower harassment" because they challenge the presumptive superiority of men (McLaughlin et al. 2012, Rospenda et al. 1998). Men may respond to women in power by seeking to demonstrate their masculinity through harassment (Maass et al. 2003). Similarly, women who are unusually assertive may be subject to more harassment (Das 2009).

Occupational sex segregation and gender-role differentiation are also conducive to sexual harassment, whereas gender diversity tends to curb sexual harassment (EEOC 2016, Fitzgerald et al. 1997a, Kabat-Farr & Cortina 2014, Lach & Gwartney-Gibbs 1993). Women in male-dominated work groups and nontraditional jobs are more likely to experience harassment than are women in more gender-balanced workgroups (Gutek et al. 1990, Kanter 1977, Roos & Reskin 1984). For example, female construction workers (Whittock 2002) and female African American firefighters (Yoder & Aniakudo 1996) are more likely to suffer harassment. The literature on occupational sex segregation supports Schultz's (1998) contention that sex-based harassment is more about preserving the workplace as male territory than it is about sexuality (cf. Gruber 1998, Kabat-Farr & Cortina 2014).

Psychologists use sex-role spillover theory to suggest that, especially where women are underrepresented in the workplace, gender becomes more salient and men think of women not as work colleagues but as potential sex partners (Burgess & Borgida 1997, Kabat-Farr & Cortina 2014). McLaughlin et al. (2012) suggest, however, that women in male-dominated workplaces may be more likely to interpret sexual commentary as harassment than are women in more gender-balanced workplaces.

Failure to conform to stereotypical worker norms matters not just for women but for workers with disabilities and workers of minority nationalities or cultural backgrounds, who are also more subject to harassment (EEOC 2016, Fain & Anderton 1987, Meares et al. 2004). Undocumented workers may be particularly vulnerable to harassment (EEOC 2016). Workers in certain industries, such as sales (Morgan & Martin 2006) and restaurants (Lerum 2004), are more subject to harassment. Organizational culture also matters (Blackstone et al. 2009). More supportive work cultures with greater coworker solidarity and sympathetic supervisors tend to have lower incidences of harassment (Chamberlain et al. 2008).

Sex-based harassment is more likely where there are limited opportunities for managers to observe behavior. Thus, decentralized workplaces, such as retail stores or distribution centers, make harassment more likely, as does work that occurs in isolation, such as night-shift or janitorial work (EEOC 2016). Harassment is also more likely at workplace social events that involve alcohol (Bacharach et al. 2007) and where work is monotonous; where workers are not actively engaged in their work; and where work occurs in isolated locations, so that there are fewer potential witnesses (EEOC 2016).

Considering the sociological literature and psychological explanations for sex-based harassment together, it seems clear that workplace characteristics—in particular, gender imbalances in power—create the circumstances under which harassment is more likely, whereas psychological factors help to explain variation in men's propensity to harass.

4. SYMBOLIC STRUCTURES AND LEGAL FAILURES

Because individuals who experience sex-based harassment can bring formal legal actions against employers or colleges and universities, the law—in theory—should motivate organizations to take actions to prevent harassment and should protect individuals who experience harassment. Many organizations have rushed to create or update their anti-harassment policies since the #MeToo movement. Nevertheless, as we show in this section, the creation of anti-harassment policies, complaint procedures, and training programs began well before the #MeToo movement. The social science literature suggests, however, that these anti-harassment structures do not necessarily reduce harassment in organizations, but that they do reduce organizations' likelihood of liability in court.

4.1. Organizational Responses to Law

In the late 1970s, when sexual harassment was first identified as a problem in organizations, organizations had already begun implementing antidiscrimination policies and grievance procedures as a means of demonstrating attention to civil rights law (Edelman 1992, 2016; Edelman et al. 1999, 2011). In 1980, the EEOC for the first time advocated that organizations take preventive measures against sexual harassment in its "Guidelines of Discrimination Because of Sex" but did not specify what those preventive measures should be (Edelman 2016).

Personnel professionals began to tout the risk of legal liability due to sexual harassment, which led organizations to follow the model of structural elaboration they had instituted in response to civil rights laws (Edelman 1992) by creating anti-harassment policies and grievance procedures as well as training programs for both employers and managers (Dobbin & Kalev 2019, Dobbin & Kelly 2007, Edelman 2016). Organizations began to create these structures in the early 1980s, but they diffused rapidly after the Supreme Court's 1986 *Meritor* decision, in which the court for the first time stated (albeit only in dicta) that the presence of an effective anti-harassment policy and complaint procedure might protect an employer from liability (Dobbin & Kalev 2019). Following that *Meritor* decision, moreover, employers became far more likely to mobilize their anti-harassment policies and complaint procedures as defenses to allegations of sexual harassment (Edelman et al. 1999).

Both the creation of anti-harassment structures and the use of those structures as defenses to allegations of sex-based harassment were buttressed by the human resource (HR) profession. The Society for Human Resource Management and management consultant organizations began to argue that these measures should insulate organizations, even though early court decisions rejected that argument. The EEOC also supported the idea that these structures should insulate organizations, albeit only for hostile work environment sexual harassment (Edelman 2016).

By 1998, when the US Supreme Court decided the *Faragher* and *Ellerth* cases, which for the first time specified that these organizational policies would constitute an affirmative defense for employers against allegations of sexual harassment, 95% of companies had created sexual harassment grievance procedures, 80% of organizations offered sexual harassment training for managers, and approximately 55% of employers offered sexual harassment training for employees (Dobbin & Kalev 2019). Anti-harassment training also gained traction in organizations (Dobbin & Kelly 2007), which led to a multibillion-dollar industry in anti-harassment and diversity training (Bisom-Rapp 2001). Similarly, public school districts (Short 2005) and universities (Cabrera 2020, Kihnley 2006) have institutionalized anti-harassment policies and complaint procedures.

4.2. Symbol and Substance in Organizational Responses to Sexual Harassment

Edelman and her colleagues (Edelman 1992, 2016; Edelman et al. 1999, 2001, 2011) have argued that the structures that employers create in response to the legal environment (which include anti-harassment policies, complaint procedures, and anti-harassment training programs) are often more symbolic than substantive. Edelman (2016, p. 5) explains that these symbolic structures range from "symbolic and substantive" to "merely symbolic." Where leaders take harassment very seriously and genuinely work hard to develop or sustain a workplace culture in which all employees feel included and valued, these structures are both symbolic and substantive. But where leaders fail to set a strong example or to make clear that the anti-harassment rules are to be taken seriously, anti-harassment policies and procedures can become merely symbolic and exist alongside a culture in which harassment is common (Edelman 2016, 2018).

4.2.1. Sexual harassment complaint procedures. Although most employers today have created sexual harassment complaint procedures, these procedures are often ineffective because

employees are reticent to use them (Bumiller 1988, Edelman 2016, Fitzgerald et al. 1997b). The sociolegal literature shows that people who experience harassment or other forms of discrimination are extremely reluctant to file complaints. Indeed, only approximately one in four women subjected to sex-based harassment report it using an organizational complaint procedure, and far fewer file an official complaint with the EEOC (EEOC 2016, p. v). There are numerous reasons for the low rate of reporting. Many people who experience harassment fear that their complaints would not be taken seriously or that they would be subject to retaliation if they were to complain (Bumiller 1988). Others find the process of filing a formal complaint and enduring an investigation and hearing distasteful; they simply want the harassing behavior to stop (Fitzgerald et al. 1995). Some employees report that filing a complaint would cast themselves as victims, whereas they prefer to think of themselves as survivors (Bumiller 1988). Women, in particular, are aware that success and promotion in organizations depend on being a team player, which often means putting up with unwanted sexual commentary, touching, or worse, rather than complaining about it (Marshall 2005, Quinn 2000). Further, HR professionals frequently discourage women who inquire about filing a complaint from framing their complaints as sexual harassment, instead suggesting that the behavior is not sufficiently severe or pervasive to constitute sexual harassment or that it is simply an instance of poor management or of interpersonal conflict (Edelman et al. 1993; Marshall 2003, 2005). Women also invoke legal frames, using a rough form of legal reasoning that encourages them to believe that conduct is not sexual harassment unless it is sufficiently serious and frequent (Marshall 2003). Potential complainants, then, are regularly discouraged from pursuing their complaints.

Even when people who have experienced harassment do file complaints, however, organizational complaint handlers may be less concerned with protecting the rights of victims to a work or school environment free of harassment than they are with avoiding lawsuits by perpetrators for defamation or other violations of perpetrators' rights. Organizational complaint handlers, who are often HR professionals, have an inherent conflict of interest in that they must not only adjudicate the complaint but also protect the organization from liability (Edelman et al. 1993, Edwards 1993, Kihnley 2006). Complaint handlers who frequently challenge management are likely to be viewed skeptically by those in control of their future employment prospects. Thus, complaint handlers are often reluctant to label behavior as harassment.

Complaint handlers generally try to resolve complaints, but they rarely do so in a way that recognizes rights violations or punishes offenders (Edelman et al. 1993). Instead, complaint handlers tend to reframe complaints of harassment as instances of poor management or as interpersonal difficulties (Edelman et al. 1993, Kihnley 2006, Marshall 2005) and to reframe rights as needs, which privatizes and delegalizes the complaint (Edelman & Cahill 1998, Edelman et al. 1993). Marshall (2005), who examined sexual harassment complaints in a university setting, similarly found that complaint handlers frequently told those who sought their help that their experiences were not sufficiently severe or pervasive to be considered sexual harassment. Complaint handlers, moreover, often ignore power disparities, which are inherent in the organizational hierarchy (Gutek 1992, Edelman & Cahill 1998, Edelman et al. 1993).

Complaint handlers are more likely to resolve complaints through educational or therapeutic means or by transferring complainants to another unit than they are to punish those accused of harassment (Edelman et al. 1993). Bisom-Rapp (2001) discusses employers' concerns about defamation lawsuits and about avoiding litigation as reasons for reframing harassment complaints as management problems. In fact, at least in the Title IX context, students who have been disciplined after complaints of sexual harassment or assault have begun to bring lawsuits (facilitated by lawyers for men's rights organizations) alleging that universities are liable for violating perpetrators' due process rights (J. Cabrera, unpublished manuscript).

4.2.2. Sexual harassment training programs. As with sexual harassment complaint procedures, research on sexual harassment training programs often finds them ineffective. Bingham & Scherer (2001) found in an experimental study that students randomly assigned to a sexual harassment training program were more knowledgeable about law prohibiting harassment and university policy than students who had not undergone the training, but that students who had undergone training were no more likely than those who had not to perceive sexually harassing situations. Further, males who participated in the program were significantly less likely than nonparticipating males and all females to view coercion of a subordinate as sexual harassment. Males who had undergone training were also significantly less likely to report sexual harassment to authorities than nonparticipating males and all females and were more likely to blame the victim. In short, the only benefit of the program was to increase knowledge about the legal and policy aspects of harassment, but the training program seemed to have a backlash among participating males, who became less likely to recognize and report harassment and more likely to blame the victim.

Sexual harassment training programs, moreover, may reinforce stereotypical beliefs about gender. In an interview-based study, Tinkler (2012) found that anti-harassment training sessions activate gendered stereotypes of women as passive, emotional, and duplicitous as well as gendered patterns of interactions. Men who underwent training became critical of women for being duplicitous and inviting attention or being overemotional, whereas women expressed concern that strong rejection of sexual attention could jeopardize their positions in the workplace and tended to blame the university for failing to respond adequately to the problem of harassment. Similarly, in an experimental study, Tinkler et al. (2007) found that exposure to a sexual harassment policy tended to activate beliefs about male superiority to women.

Mandatory sexual harassment training, moreover, may provoke a backlash. Tinkler (2007) found that even when people expressed support for legal sanctions against sexual harassment, they showed widespread resistance toward anti-harassment training programs. Similarly, Dobbin & Kalev (2017) show that diversity training, which is closely related to sexual harassment training, is often ineffective, especially when mandatory. Training may temporarily enable those who go through it to gain a better understanding of the situations that are legally impermissible, but they can evoke longer-term backlash against women (who, ironically, can be blamed for the burden of mandatory training).

The EEOC Taskforce (EEOC 2016) concluded that there have been too few studies of sexual harassment training effectiveness to say definitively that it works, and there is clearly some evidence that it may be counterproductive. The rush to anti-harassment training programs in the wake of the #MeToo movement may be well-intentioned, but research suggests that it will not produce a dramatic reduction in workplace sexual harassment and may even exacerbate the problem.

Dobbin & Kalev (2019) studied the impact of anti-harassment programs among 805 companies from 1971 to 2002. Premised on the idea that effective anti-harassment programs would help firms to retain women managers, they analyzed the impact of anti-harassment programs on the representation of white and minority women in management. They found that sexual harassment complaint procedures actually reduced the number of women managers, as did anti-harassment training for employees. Anti-harassment training for managers, however, did increase the number of women managers. They also found that sexual harassment complaint procedures may backfire by inciting retaliation against women who complain.

Some studies do, however, find anti-harassment programs to be effective. In an experiment examining the effect of anti-harassment training on attitudes among students, for example, Lonsway et al. (2008) found that students with exposure to trainings were less likely to believe in classic

myths about sexual harassment, such as the ideas that women fabricate or invite sexual misconduct, that women enjoy harassment, or that women have ulterior motives for filing claims of sexual harassment. In a study of 372 college students, Potter et al. (2011) found that bystander intervention programs may help students to recognize situations involving sexual violence and to feel comfortable taking action in such situations. Messages presented on an ongoing basis as part of social marketing campaigns may be more effective than one-time prevention programs (Baynard et al. 2018, Potter 2012).

4.3. The Failures of Law

The sociolegal literature offers numerous reasons for how and why law is ineffective at reducing sexual harassment. Most importantly, just as victims of harassment rarely use internal complaint procedures, the vast majority of those who experience harassment never file a formal report. McCann et al. (2018) report that 99.8% of people who experienced sexual harassment at work never filed formal charges, and that even among those who sought redress within their organization, more than 99% never filed a formal legal complaint. McCann et al. also report that the vast majority of sexual harassment cases filed with the EEOC are reported to be legally actionable, yet very few benefit from the EEOC's efforts to conciliate complaints. Those employees who do complain, moreover, are very frequently subject to retaliation. Of employees who report sexual harassment to the EEOC or local Fair Employment Protection Agency, 68% experience retaliation and 64% experience job loss. Further, only 27% of cases filed with the EEOC result in benefit to the victim, even though 88% are ruled legally actionable, and the median award is only $10,000.

Legal redress through the courts is unavailable to the large number of employees who are subject to mandatory arbitration clauses (Colvin 2017, Edelman 2016, Gough 2014, Hemel & Lund 2018, Resnik 2015). More than half of nonunion, private-sector employees are subject to mandatory arbitration provisions in their contracts, which require them to bring workplace-related claims in arbitration proceedings rather than in court (Colvin 2017), resulting in inferior outcomes than had they gone to court (Gough 2014).

Where targets of harassment do file lawsuits, many are settled out of court, often with nondisclosure agreements that protect repeat offenders (Ayres 2018). Of those that are not settled, the vast majority are dismissed through either defendants' motions to dismiss or summary judgments (Berrey et al. 2017, Edelman 2016, Sperino & Thomas 2017). When cases do go to trial, defendants attempt to introduce evidence of plaintiffs' past sexual behavior to influence judges or to induce plaintiffs to give up or settle (Krieger & Fox 1985) or argue that women bring harassment upon themselves (Brownmiller 1975). In the minority of cases in which plaintiffs win in court, they face capped damages and low monetary awards (Hemel & Lund 2018; McCann et al. 2018).

Plaintiffs often lose their lawsuits, moreover, because judges defer to organizations' symbolic structures—in particular, anti-harassment policies and complaint procedures—even in cases where those structures are clearly ineffective (Edelman 2016, Edelman et al. 2011, Nakamura & Edelman 2019). Judges tend to defer to anti-harassment policies and complaint procedures, inferring nondiscrimination from the mere presence of those structures without scrutiny of whether those procedures are effective in reducing sexual harassment or, in some cases, with knowledge that the structures are not effective (Edelman 2016, Edelman et al. 2011, Nakamura & Edelman 2019).

Judicial deference to anti-harassment structures began well before the 1998 *Faragher* and *Ellerth* decisions. But once those decisions formally created an affirmative defense that applies when employers have in place a sexual harassment policy and a complaint procedure, and when the employee unreasonably fails to use that procedure, judicial deference to these structures increases dramatically in the district court cases, even in cases where employees reasonably fear retaliation or are discouraged from using the procedures by management (Edelman 2016, Edelman et al.

2011, Nakamura & Edelman 2019). Thus, organizations' rush to create anti-harassment policies, complaint procedures, and training programs in the wake of the #MeToo movement appears to do more to give organizations legitimacy and to protect organizations from liability than they do to protect their members from sexual harassment (Dobbin & Kalev 2019, Dobbin & Sutton 1998, Edelman 1992, Edelman et al. 1999, Kihnley 2006, Marshall 2005).

5. CONCLUSION

The story of sex-based harassment is one that brings together social movements, legal advocacy, and academic research. The law and the social science literature has converged on an understanding of sex-based harassment that includes not only sexual coercion and unwanted sexual attention but also harassment that is not sexual in nature. Sex-based harassment is less an expression of sexuality or sexual dominance than it is of power, gender-based hostility, and a means of maintaining gender hierarchies in organizations. For these reasons, we think the term sex-based harassment is preferable to the more commonly used term sexual harassment.

The literature shows that sex-based harassment is common both in the workplace and in educational settings and that it has severe negative consequences both for the mental and physical health of those who experience it and for the culture and productivity of work and educational organizations. Research shows that sex-based harassment is largely due to gender inequality in the workplace, although variation in the propensity to harass may be explained by psychological characteristics of men, including authoritarian tendencies, a view of men and women as adversaries, and hostility toward women.

Although there is a vast and growing social science literature on the prevalence, causes, and consequences of sex-based harassment, we know too little about how to produce harassment-free workplaces or educational environments. The #MeToo movement led many organizations to create or revise their anti-harassment policies, complaint procedures, and training programs, but these procedures are too often more symbolic than substantive and may even produce a backlash. A significant reduction in the incidence of sex-based harassment will require, at a minimum, greater gender equality at all levels of organizations.

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