

Reforming DOJ's Response to Sexual Harassment

On paper, the Justice Department maintains a “zero tolerance” policy on sexual harassment, requiring supervisors “to take immediate and appropriate corrective action” to address all allegations. In practice, as Inspector General Michael Horowitz identified, the Department has “significant systemic issues” with components’ handling of complaints. These issues remain largely uncorrected, and many DOJ Gender Equality Network (DOJ GEN)¹ members can personally attest that sexual harassment remains a pervasive problem at DOJ.

Recommendations

DOJ GEN urges the incoming administration to enact new reforms, including the following:

- **Establish a table of penalties consisting of recommended disciplinary actions for sexual harassment to help standardize responses across DOJ.**

A 2017 [report](#) issued by the House Committee on Oversight and Government Reform revealed that the Justice Department is one of the few federal agencies to lack an agency-wide table of penalties. We believe this contributes to DOJ components’ inconsistent and often inadequate handling of substantiated sexual harassment cases, as illustrated in two damning reports from DOJ’s Office of the Inspector General (OIG). We agree with the Oversight Committee’s conclusion that any agency without an agency-wide table of penalties should create one.

- **End the practice dubbed “pass the trash,” whereby serious offenders are moved from one office to another rather than being removed.**

DOJ has a long and well-documented history of addressing substantiated allegations of serious sexual harassment by merely transferring offenders to other parts of the Department. This practice telegraphs a permissive attitude toward hazardous behavior and exposes employees in new offices to future incidents. We believe that a harasser who must be removed from a victim should usually be removed from the Department.

- **Provide employees who seek redress through the Equal Employment Opportunity process with access to a victim advocate.**

The EEO process is notoriously daunting and convoluted. And while DOJ is almost always represented by agency counsel in EEO cases, many DOJ employees cannot afford their

¹ DOJ GEN is an employee-run advocacy organization with approximately 700 members hailing from across the Department. Since 2016, it has worked diligently to promote the equal and supportive treatment of Department employees regardless of gender. To that end, DOJ GEN strives to eradicate pay inequities and sexual harassment, while encouraging the Department to increase its diversity and promote workplace flexibility.

own representation. Moreover, employment attorneys are often reluctant to represent federal employees due to statutory caps on compensatory damages and the unavailability of punitive damages. *See* 42 U.S.C. § 1981a(b). Providing employees with objective, trained advocates would encourage victims to come forward and help mitigate the EEO process's inherent power imbalance.

- **Ensure that reporting officials are properly trained.**

All individuals who handle sexual harassment complaints—e.g., supervisors, EEO officers, front-office or human resources staff—should be educated about sexual violence and trauma.

- **Conduct an agency-wide climate survey to assess the effects of sexual harassment and examine employees' perceptions about the Department's response to it.**

A 2017 Department of Interior [workplace survey](#) revealed that in a 12-month period, 35% of employees had experienced some form of harassment or assault, much of which was gender-based or sexual in nature. Nearly 30% of those who reported the behavior were punished for doing so and nearly 40% were encouraged to drop the issue. We believe that the Bureau of Justice Statistics or an outside contractor like RAND—which FEMA used to design a recent [survey](#) on gender- and race-based discrimination at the agency—should conduct a climate survey at DOJ, the results of which would better equip the Department to respond to the problem. DOJ GEN offers our assistance in helping the Department shape its response to the results of any such survey.

History

One of the reasons DOJ GEN was founded was to advocate for improvements to DOJ's longstanding problems responding effectively to sexual harassment allegations. After the #MeToo movement catapulted sexual harassment and abuse into the national spotlight, DOJ's mishandling of sexual harassment allegations become front-page [news](#). Stories about sexual harassment at components such as the [FBI](#), [BOP](#), [ATF](#), the [immigration courts](#), the [Office of Justice Programs](#), the [Criminal Division](#) and the [Civil Division](#) have appeared in national media outlets.

In 2018, then-Deputy Attorney General Rosenstein issued new [sexual harassment directives](#) for components. That was in response to Inspector General Horowitz's [Management Advisory Memorandum](#) to the DAG and OIG's 48-page [report](#) detailing specific, egregious incidents of sexual harassment and DOJ's mismanagement of them. The directives took some important steps by advising components to update procedures for reporting substantiated allegations to oversight bodies, educate employees about reporting avenues, examine the consistency of discipline, and create procedures for granting awards to those found to have committed sexual harassment. But they left components with far too much discretion in creating new policies and failed to include many crucial and common-sense reforms. To meaningfully

improve a system that still fails to protect victims and properly discipline perpetrators, the Department must do more.

What We've Done

DOJ GEN has pushed for reforms to DOJ's policies on sexual harassment over the last four years:

- Before DAG Rosenstein issued his sexual harassment directives, DOJ GEN provided his office—both in a [letter](#) and during an in-person meeting—a list of steps we believed DOJ needed to take in order to live up to its “zero tolerance” policy.²
- After Inspector General Horowitz issued the Management Advisory Memorandum and the 2018 report on sexual misconduct at the Civil Division, DOJ GEN hosted a moderated [discussion](#) with him before a packed audience in the Great Hall about how DOJ can reduce instances of sexual harassment and better handle allegations.
- DOJ GEN submitted comments to the U.S. Commission on Civil Rights for its investigation into sexual harassment in the federal government, and DOJ GEN's president testified at the Commission's hearing on the topic. The Commission referenced the comments and testimony in its 252-page report titled [Federal #MeToo: Examining Sexual Harassment in Government Workplaces](#). It is an essential resource on the topic.
- DOJ GEN has provided direct support to employees who have experienced or witnessed sexual harassment, supplying them with information about the EEO process and informal advice about reporting options. DOJ GEN's working group on sexual harassment has also devised creative and implementable solutions for components seeking to reform their policies and practices.

Sexual harassment is antithetical to DOJ GEN's goal of gender equality and the Department's mission of equal justice for all. We look forward to working with you on ways to make our workplace safer for everyone.

² DOJ should be mindful that characterizing a policy on sexual harassment as one of “zero tolerance” carries risks. The EEOC's 2016 task force report, which is available at <https://www.eeoc.gov/select-task-force-study-harassment-workplace>, helps explain why:

Although not intended as such, the use of the term ‘zero tolerance’ may inappropriately convey a one-size-fits-all approach, in which every instance of harassment brings the same level of discipline. This, in turn, may contribute to employee under-reporting of harassment, particularly where they do not want a colleague or co-worker to lose their job over relatively minor harassing behavior—they simply want the harassment to stop. Thus, while it is important for employers to communicate that absolutely no harassment will be permitted in the workplace, we do not endorse the term ‘zero tolerance’ to convey that message.

Further Reading

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Department of the Interior Work Environment Survey on Sexual Harassment (December 2017), available at https://www.doi.gov/sites/doi.gov/files/uploads/doi_wes_graphical_overview.pdf.

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