

Seattle University ILL



ILLiad TN: 42741

Borrower: TKF

Lending String: FPS,*WSE,TXI,TTS,PVA,VVJ

Patron:

Journal Title: Journal of forensic psychology practice.

Volume: 4 **Issue:**

Month/Year: 2004**Pages:** 65-78

Article Author: Susan Bisom-Rapp, Margaret S. Stockdale, Maureen O'Connor & Barbara A. Gutek

Article Title: Coming to Terms with Zero Tolerance Sexual Harassment Policies

Imprint: Binghamton, NY : Haworth Maltreatment & Trauma Press, ©2001-

ILL Number: 170716631



Call #: PERIODICAL

Location: Lemieux Library LEML-PERIODICAL 5 Available

NO ODYSSEY

Charge

Maxcost: 0.00IFM

Shipping Address:

Interlibrary Loans
Thomas Jefferson School of Law Library
1155 Island Avenue
San Diego, California 92101
United States

Fax:

Ariel:

Email: engo@tjssl.edu

NOTICE: Warning concerning copyright restrictions. The Copyright Law of the United States (Title 17, U.S. Code) governs the making of photocopies or other reproductions of copyrighted material.

Coming to Terms with Zero Tolerance Sexual Harassment Policies

Margaret S. Stockdale, PhD
Susan Bisom-Rapp, JSD, LL.M.
Maureen O'Connor, JD, PhD
Barbara A. Gutek, PhD

ABSTRACT. Although the term "zero tolerance" (ZT) has been used to describe sexual harassment policies, among other policies against undesired behavior, for several years, a zero tolerance industry has mushroomed since the Supreme Court fashioned the "affirmative defense" in their twin 1998 sexual harassment decisions. We take a critical look at policies noting that no clear definition exists, although either "absolutist" or "symbolic" classes of definitions appear to guide ZT proponents. As such ZT policies run the risk of increasing backlash against women, obfuscating proactive organizational climates, and emphasizing "form" over "substance." We recommend that employers look at the root causes of sexual harassment and provide leadership in role modeling egalitarian, respectful work environments. *[Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <http://www.HaworthPress.com> © 2004 by The Haworth Press, Inc. All rights reserved.]*

Margaret S. Stockdale is Associate Professor of Psychology, Southern Illinois University Carbondale. Susan Bisom-Rapp is Associate Professor of Law, Thomas Jefferson School of Law. Maureen O'Connor is Assistant Professor and Chair of the Psychology Department, John Jay College of Criminal Justice, City University of New York. Barbara A. Gutek is Director of the Institute for Research on Woman and Gender, and Professor of Psychology, University of Michigan.

Address correspondence to: Margaret S. Stockdale, Department of Psychology, Southern Illinois University Carbondale, Carbondale, IL 62901-6502 (E-mail: pstock@siu.edu).

Journal of Forensic Psychology Practice, Vol. 4(1) 2004
<http://www.haworthpress.com/web/JFPP>
© 2004 by The Haworth Press, Inc. All rights reserved.
Digital Object Identifier: 10.1300/J158v04n01_05

KEYWORDS. Zero tolerance policies, sexual harassment, *Faragher/ Ellerth* affirmative defense, leadership

Since the Tailhook sexual harassment incident of 1991, zero tolerance has been an increasingly popular buzzword to succinctly explain what organizations should do to eradicate sexual harassment and a host of other discriminatory or unwanted and legally troublesome forms of behavior in the workplace, such as racial discrimination and harassment, workplace violence, fraud, and drug use. Such guidance has become especially ubiquitous in the five years since the Supreme Court handed down twin landmark sexual harassment decisions (*Burlington Industries v. Ellerth*, 1998; *Faragher v. City of Boca Raton*, 1998). In those cases, the Court fashioned an affirmative defense for employers whose supervisors have engaged in sexual harassment that has not resulted in a tangible employment action against a subordinate. The employer may avoid liability by demonstrating both: "(a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise" (*Burlington Industries v. Ellerth*, 1998, p. 176).

In response to these rulings, and perhaps the fear of costly settlements or judgments and public relations concerns, a veritable zero tolerance industry has mushroomed in the past several years. Consultants and lawyers have developed and widely disseminated zero tolerance policies against harassment in the workplace as their number one antidote to protect an organization from costly employee litigation (e.g., Cornish, 1998; Eyres, 2002; Greenebaum, Doll, & McDonald, 2002; Moore & Fingar, 1999). "The linchpin in preventing and defending sexual harassment claims is a 'zero tolerance' policy," say the attorneys of one firm (Powers, Kinder, & Keeney, 1999). Another firm recommends that "corporate management communicate the 'zero tolerance' policy to all employees on an annual basis" (Maatman & Cowman, 1998). One is hard pressed to find defense attorneys willing to weigh in against zero tolerance (ZT) programs. A recent search uncovered just a few cautionary articles, which warned that a harasser fired under a zero tolerance policy might sue for wrongful discharge (Sulloway & Hollis, 1999; Silbergeld, 1997).

With support for zero tolerance so widespread, one might conclude that such policies are proven effective methods for discouraging and

eliminating sexual harassment from the workplace. Yet such is not the case. Instead, a zero tolerance approach has been widely embraced without clear definitions or particulars of the approach, without considering the potential pitfalls of the policies, and without empirical support for their efficacy in preventing or addressing sexual harassment in the workplace. In this essay, we scrutinize these three gaps in the promulgation and practice of zero tolerance policies, looking at what we know empirically versus what is still speculation at this point. In so doing, we also take a preliminary look at how zero tolerance policies and concepts have emerged in the case law. Finally, we suggest alternative frameworks based on research findings that can help organizations eradicate sexual harassment.

WHAT IS ZERO TOLERANCE?

Zero tolerance, a concept that first appeared in the early 1980s, is generally used to describe a broad range of strict, relatively inflexible governmental and private institutional policies prohibiting societal ills such as drug abuse, environmental pollution, violence, homelessness, skateboarding, trespassing, and racial intolerance (Henault, 2001; Peden, 2001; Skiba & Peterson, 1999).

Zero tolerance has not been consistently defined nor consistently implemented. Companies are increasingly exhorted to develop zero tolerance sexual harassment policies to protect them from liability (see, e.g., Abel & Claxton, 1998; Buhler, 1999; Konop, 2001, Moore, Herff, Gatlin-Watts, & Cangelosi, 1998), though they are given little specific guidance and zero tolerance is rarely defined. The defining feature of such a policy seems to be rigidity. Having determined that a proscribed act has occurred, an administering authority is given little discretion to tailor an appropriate response. Instead, punishment, often quite severe, is dispensed without regard to the proportionality of the transgression or any mitigating circumstances.

Where definitions can be gleaned, there is little consistency. We have discerned two general classes of definitions.¹ The first, which we dub the *absolutist approach*, (e.g., Baker & Daniels, 1998; Berta, 2002; Deliket & Swanson, 1999; Konop, 2001) conceptualizes zero tolerance as either a broad based prohibition of "all conduct with sexual overtones" (Schultz, 2003), or a policy requiring the strongest possible penalty, termination, when investigation reveals that harassment has occurred in the legal sense (Perkovich & Rowe, 2000). In a text de-

signed for practicing managers, Orlov and Roumell (1999) exemplify this type of definition:

A zero tolerance statement should be the first element in your policy . . . Your company, and you personally, must set an example by aggressively conveying the message that sexual harassment is strictly prohibited and will never be tolerated in any form. It is even advisable to go one step further by including a statement that no inappropriate sexual conduct will be tolerated, even if it does not rise to the level of sexual harassment in the legal sense. Sing it loud and clear and practice it every day with your workforce, remembering that *zero tolerance* means "never." (p. 45)

We found a second type of ZT definition in currency as well, an approach we call the *symbolic approach*. This class of ZT definition appears to be used to signal to stakeholders, such as employees, the legal community, or the public, that the company takes sexual harassment seriously, and by extension, should be shielded from liability. For example, employers have been told that a basic element of an anti-harassment policy is "a clear strong statement of the employer's commitment that it will not tolerate sexual harassment, such as a 'zero tolerance' statement from the employer's top management"(Outten, Moss, & Ruan, 2001, p. 201).

Symbolic approaches to ZT are not necessarily wrong, in our view. Symbolic approaches may permit flexible responses (e.g., not always having to terminate the perpetrator, or having ways to distinguish between trivial and serious offenses). Some of the employers engaged in such signaling are actually doing a good job at substantively curing harassment. Managers at Mitsubishi, an employer subject to a landmark settlement with the Equal Employment Opportunity Commission emphasizing the adoption of a zero tolerance approach to sexual harassment, note that the approach "indicates a corporate attitude that any complaints will be dealt with swiftly and equitably"(HRWire, 2000). Given its recent, highly publicized sexual harassment problems, Mitsubishi may be particularly concerned about any possible hostility in the work environment. Indeed, the automaker agreed to allow three court-appointed monitors observe its efforts to eradicate sexual harassment, and in May 2001 received a clean bill of health from them (Aronson, 2002).

Yet the symbolic definition is a potentially dangerous one as well. Its presence may be too easily conflated with employer good faith and its

absence with an employer uninterested in the conditions it subjects its employees to. It may be tempting for employers to symbolically adopt ZT language purely for litigation prevention without really addressing the root causes of harassment and discrimination.

In summary, there appears to be no clear, concrete consensus about the meaning and scope of zero tolerance sexual harassment policies. Employers are simply advised to have a zero tolerance policy, but are left to interpret for themselves what this means. Management consultants who advocate zero tolerance policies all agree that, especially in light of the *Ellerth/Faragher* affirmative defense, it is imperative to have a strong “zero tolerance” policy in order to protect companies from potential liability. What is missing, however, is a critical look at the implications of such policies in practice. Below we attempt such a critique.

POTENTIAL PITFALLS OF ZERO TOLERANCE POLICIES

The concept of a zero tolerance policy is attractive to those who do not simply wish to protect employers from liability but also wish to eradicate sexual harassment from the workplace. Zero tolerance seems to say what we hope it means: No harassment will be tolerated, and all infractions will be punished. Zero tolerance is a catchy term, and it fits with the current culture of intolerance for wrongdoing. The idea of zero tolerance would seem to go over well with those of us who have been trying to raise consciousness about gender issues in the workplace—if you don’t know where to draw the line, we’ll draw it for you: No sexual behavior in the workplace—period. But simplicity has its hidden costs. We focus on three potentially undesirable consequences of zero tolerance: the possibility that zero tolerance can (a) increase backlash against those who strive for gender equality, (b) undermine an organization’s credibility when actions inevitably fail to meet ZT standards, and (c) direct greater attention to form rather than substance.

Sexism and Backlash. One of the dangers inherent in a rigid formulaic response to complicated human behavior is that punitive measures may well be taken in response to a range of offending behaviors, from serious to trivial. Such a response can produce a backlash against the reforms, such as some believe occurred in reaction to gender equality gains in the 1970s and 80s (see, e.g., Russell, 1974; Whaley, 2001). Whether such a backlash actually occurs or not, it is certainly the perception of targets of harassment that they do not want to be stigmatized as a “complainer.” In fact, evidence suggests that, generally speaking,

most women do not formally file sexual harassment complaints (percentages of women complaining range from approximately 5 to 24, depending on the study), and many do not even tell others at work about their experiences (see, e.g., Brooks & Perot, 1991; DuBois et al., 1998; Fitzgerald, Swan, & Fischer, 1995; Gutek, 1985; Schneider, Swan, & Fitzgerald, 1997; USMSPB, 1981; 1995). The low level of reporting appears to be the case even among relatively recent studies conducted when employers are increasingly likely to have adopted a formal sexual harassment policy and set up mechanisms for enforcing it. For example, a survey of approximately 5,000 federal employees conducted by the U.S. Merit Systems Protection Board (1995) found that only 12% told a superior or took formal action. Given this empirical reality, if absolutist ZT policies are strictly enforced, then it puts women into the uncomfortable, and perhaps untenable, position of having to report even minor incidents in order to present a credible case and avoid dismissal under the affirmative defense, as well as creating the impression that women must be treated with kid gloves.

Policies vs. Actions. Hulin, Fitzgerald, and Drasgow (1996) discussed the concept of "organizational tolerance for sexual harassment" which they define as the shared perceptions among relevant group members of the contingencies between unwanted social-sexual behavior and organizationally imposed consequences. A climate that is tolerant of sexual harassment is one where group members believe that it would be risky for a woman to complain of sexual harassment, that she would not be taken seriously, and that nothing serious would be done to the initiator (perpetrator). Hulin et al. found, in their study of a large public utility company, that concentrated efforts to eliminate sexual harassment (e.g., prevention and training efforts) helped establish a climate of intolerance for sexual harassment.

It makes sense that zero tolerance policies should go a long way in helping to create climates that are intolerant of sexual harassment. However, zero tolerance may set a standard that is too difficult to achieve, and therefore undermine the efforts to positively influence the climate and change behavior. Climates are not formed on the basis of written rules and procedures, but on the alignment or lack thereof between behavior and policy. Once employees sense that managers do not really practice zero tolerance, then not only will the climate be perceived as tolerant of sexual harassment, but the organization may lose credibility among its employees and other stakeholders. The U.S. Navy had its share of public-relations nightmares when their cover-up and mishandling of the Tailhook incident ran counter to their official zero tolerance

policy (Violanti, 1996). However, to date, there is very little empirical research on how well zero tolerance policies are administered, how effective they are in creating gender equality, whether they foster or inhibit target complaint, and whether they deal at all with the underlying context and causes of sexual harassment in the workplace.

Form over Substance. In a previous article, one of the authors (SBR) noted that organizations are encouraged to implement various policies and procedures that will protect them from equal employment law litigation (Bisom-Rapp, 1999). Examples include making sure that performance appraisals document negative as well as positive job performance (to justify termination decisions), proliferating training programs, and paying excruciating attention to policy. The presence of these policies and procedures themselves often signal triers of fact that the company takes EEO (including sexual harassment) seriously and, therefore, should not be held liable for damages that have occurred within its bounds. Bisom-Rapp argued that employers pay more attention to bulletproofing themselves against liability than to actually creating discrimination-free work environments that encourage all employees to reach their full potentials. Zero tolerance fits the bill for tough-sounding policies that signal organizational resolve to eliminate sexual harassment, but they may mask an inability to get at the root cause of sexual harassment or to promote healthy workplaces. In other words, zero tolerance policies may help organizations get off the hook, but they may not resolve the underlying problems.

Sherwyn, Heise, and Eigen (2001) analyzed the first 72 post-*Ellerth* and *Faragher* opinions involving employers' motions for summary judgment to determine, among other things, the effectiveness of various features of the affirmative defense which have promulgated the ZT zeitgeist. The only critical factor that predicted summary judgment in favor of the employer was whether the employer had articulated and disseminated a sexual harassment policy that made alternative reporting mechanisms available to their employees and which had no other defects. Going beyond these steps, such as providing in-house training and establishing a crisis hotline for employees, did not bolster an employer's case. In fact, practices that might have served to encourage employees to complain had a detrimental effect on employers' outcomes. The message, then, is to put a strong policy in place but don't work too hard to make it usable. We are concerned, in keeping with the study's conclusions, that the proliferation of zero tolerance policies may do nothing more than provide an easy signal to the court that the employer has established an affirmative defense, which then gives the employer a sig-

nificant but not necessarily warranted edge on the litigation playing field.

HOW HAVE ZT POLICIES FARED IN THE COURTROOM?

Although little empirical evidence exists that addresses ZT efficacy, we were able to take a preliminary look at how companies with ZT policies fare in the court. This analysis, albeit based on a very small population of cases, shows that ZT may, in fact, signal compliance with the affirmative defense. We found 14 relevant cases where an employer asserted the existence of a zero tolerance policy as a defense to liability. In three of those cases, the employer failed to avoid liability despite maintaining a zero tolerance policy (*Gaines v. Bellino*, 2002; *Kennedy v. Walmart*, 2001; *Gaspard v. J & H Marsh & McLennan*, 2000). These cases turned on the issue of the effectiveness (or lack thereof) of the proffered policies given delays of between three to ten months in investigating egregious harassment that was evidently occurring.

Much less attention was paid to policy effectiveness and overall workplace culture, however, in eleven of the cases in which a zero tolerance policy precluded liability for harassment that the plaintiff had experienced. Some of the cases involved employer investigations and/or disciplinary action in response to an employee complaint (e.g., *Borrero v. Collins Building Services*, 2002; *Olsen v. H.E.B. Pantry Foods*, 2002; *O'Dell v. Trans World Entertainment Corp.*, 2001; *Schemansky v. California Pizza Kitchen, Inc.*, 2000; *Hall v. Hebrank*, 1999; *Stalnaker v. K-Mart Corp.*, 1996). In others, the existence of the policy coupled with the employee's failure to complain about the harassment constituted the liability shield (e.g., *Woodward v. Ameritech Mobile Communications*, 2000; *Taylor v. Texas Dept. of Criminal Justice*, 2000). Although it is difficult to draw conclusions based on so small a sample, such results seem to underscore the validity of ZT advocates' claims that these policies, when administered diligently when a complaint is filed or when the plaintiff fails to complain, are effective litigation prevention devices. Did the ZT policies put an end to the harassment without avoiding the pitfalls noted above? We don't know. But, to date, it appears that proffering a ZT policy puts the firm on the winning side of a law suit: a strong incentive to adopt the ZT approach (see West, 2002).

**COMING TO TERMS WITH ZERO TOLERANCE
AND CREATING EFFECTIVE STRATEGIES
TO ELIMINATE SEXUAL HARASSMENT**

Although the policies may be effective compliance mechanisms, examining the zero tolerance movement cannot help but give one pause. The campaign itself seems unable to generate a clear and consistent definition of zero tolerance, creating confusion among those whose job it is to administer the policies, those who labor under them, and the legal decision-makers who must determine whether under the circumstances of a given case, an employer's actions regarding such a policy entitle it to avoid liability under the *Ellerth/Faragher* affirmative defense.

To the extent that ZT is conceptualized as an absolute prohibition of conduct with sexual overtones, the movement eclipses how serious harassment actually manifests itself in the workplace, and obscures as well the economic disadvantage experienced by working women (Schultz, 2003; Schultz, 1998). In the process, such an approach to harassment prevention stigmatizes women branding them as hypersensitive and in need of protection (Fisk, 2001).

If zero tolerance is defined as requiring the termination of the perpetrator whenever harassment is determined to have occurred, it will preclude employers from fact-sensitive responses to the workplace problems they encounter. Furthermore, it does not guarantee that all sexual harassers will be punished. Although the zero tolerance policy leaves little leeway in determining what to do should harassment occur, a way to avoid meting out the punishment prescribed by this one-size-fits-all solution is to determine that the specific behavior in question cannot be proven to have occurred or it did not meet the organization's definition of sexual harassment.

The second category of zero tolerance definition fares no better than the first. Using the term symbolically to indicate that the employer takes sexual harassment seriously runs the risk of endorsing a form-over-substance approach to achieving workplace equality (Bisom-Rapp, 2001). There is danger in enshrining the terminology and certain procedural formalities in the case law as a touchstone for employer good faith, for it deflects attention away from two important issues. Specifically, the fetishizing of harassment policies neglects how most victims respond to harassing situations, which, as the research literature shows, is to use informal coping mechanisms rather than to resort to formal process (Beiner, 2001a; Beiner, 2001b; Krieger, 2001; Grossman, 2000; Fitzgerald, Swan, & Fischer, 1995; Gutek, 1985). Moreover, blindly ac-

cepting zero tolerance rhetoric without critically evaluating the pitfalls of such policies slows the progress of determining what really should be done to eliminate harassment.

Is there a better approach? In writing about zero tolerance in K-12, Nan Stein (2001) states that instead of zero tolerance, organizations should practice "zero indifference." Instead of rigidity and bullet-proofing, organizations should strive to address the root causes of harassment such as indifference to sexism, institutional barriers to equality, and inept management. The prevailing theories of the causes of sexual harassment (e.g., Gutek's Sex-Role Spillover theory, 1985; Pryor's Likelihood to Sexually Harass theory, 1987; and Hulin et al.'s Climate theory, 1996) all implicate factors that are under organizational control. Sexualized, gender-skewed workplaces, high power differentials between women and men, indifferent or condoning supervision, and a history of neglect are all ingredients in the primordial soup of harassment. We concur with Bell, Quick, and Cycyota (2002) that organizations should strive to become healthy entities that possess an "open, trusting, affirming culture of mutual individual respect" (p. 162). We offer some evidence-based advice on how to begin to develop healthy, harassment-free organizations.

First, policies do matter. Several researchers have established empirical relationships between the existence and enforcement of sexual harassment policies and reduced rates of sexual harassment (Gruber, 1998; Hulin et al., 1998; Offermann & Malamut, 2002). Training is important too (see Gutek, 1997; Hill & Phillips, 1997); however, there have not been sufficient, adequate evaluations of training programs to understand how and under what conditions training is effective. More important, however, is leadership. Leaders role model behavior that will be emulated by employees. Leaders who condone sexist treatment of women send signals to likely perpetrators that their behavior will be tolerated (Pryor, Geidd, & Williams, 1995). Active leadership endorsement is critical for effective organizational change. Leaders have the power and resources to enforce sexual harassment policies, but they can also show their disdain or disinterest by tolerating behavior that violates the policy.

Most importantly then, leaders set the climate. Offermann and Malamut (2002) analyzed the Department of Defense's 1995 sexual harassment survey to look at the role that leaders' commitment to stopping sexual harassment had on encouraging targets to report sexual harassment, satisfaction with the complaint process and on respondents' job satisfaction and organizational commitment. Leaders' commitment to stop-

ping harassment was critical to these outcome measures above and beyond the mere presence of official policies and procedures designed to reduce harassment. Moreover, the analyses suggested that policies and procedures were only minimally effective in improving the climate. Leaders needed to show their commitment to eradicating sexual harassment in order for women to feel confident enough to report their harassment experiences and for restoring their job satisfaction and commitment to the military.

Is embracing zero tolerance the best way—or even a good way—to foster a work environment where both sexes can and will thrive, or is it merely effective litigation bullet-proofing? Perhaps that should be the ultimate question addressed to those who have so enthusiastically promoted ZT.

NOTE

1. The *absolutist* class can be broken into two definitions—one addressing severe punishment for any credible/proven harassment, the other addressing the comprehensiveness of the behavior that is not tolerated. But, for purposes of this paper, we are labeling these as *absolutist* approaches characterized by strong and unwielding response to harassment.

REFERENCES

- Aronson, P. (2002, May 8). Mitsubishi: From harassment king to model. *Daily Report*. (Fulton County), 1.
- Baker & Daniels (1998). Sexual harassment—The Rubik's cube of employment law. *Indiana Employment Law Letter*, 8(12), 6-.
- Beiner, T. M. (2001a). Sex, science, and social knowledge: The implications of social science research on imputing liability to employers for sexual harassment. *William & Mary Journal of Women & Law*, 7, 273-339.
- Beiner, T. M. (2001b). Using evidence of women's stories in sexual harassment cases. *University of Arkansas Little Rock Law Review*, 24, 117-145.
- Bell, M. P., Quick, J. C., & Cychota, C. S. (2002). Assessment and prevention of sexual harassment of employees: An applied guide to creating healthy organizations. *International Journal of Selection & Assessment*, 10, 160-167.
- Berta, D. (2002, Dec. 16). Sexual harassment remains nagging issue for foodservice industry. *Nation's Restaurant News*, 36(50), 1,16.
- Bisom-Rapp, S. (1999). Discerning form from substance: Understanding employer litigation prevention strategies. *Employee Rights and Employment Policy Journal*, 3, 1-64.

- Bisom-Rapp, S. (2001). An ounce of prevention is a poor substitute for a pound of cure: Confronting the developing jurisprudence of education and prevention in employment discrimination law. *Berkeley Journal of Employment & Labor Law*, 22, 1-47.
- Borrero v. Collins Building Services, Inc.*, 2002 WL 31415511, at *6 (S.D.N.Y.).
- Brooks, L., & Perot, A. R. (1991). Reporting sexual harassment: Exploring a predictive model. *Psychology of Women Quarterly*, 15, 31-47.
- Buhler, P. M. (1999, April). The manager's role in preventing sexual harassment. *Supervision*, 60(4), 16-18.
- Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).
- Cornish, T. (Ed.) (1998). *Zero Tolerance: An Employers Guide to Preventing Sexual Harassment and Healing the Workplace*. Washington, D. C.: Bureau of National Affairs.
- Delikat, M., & Swanson, L. (1999). Sexual harassment litigation: The changing legal landscape. *Practicing Law Institute Litigation and Administrative Practice Course Handbook Series 604*, 7-45.
- DuBois, C. L. Z., Knapp, D. E., Faley, R. H., & Kustis, G. A. (1998). An empirical examination of same-and other-gender sexual harassment in the workplace. *Sex Roles*, 39, 731-749.
- Eyres, P. S. (2002). How to prevent sexual harassment claims from obstructing your operations. *Public Employment Law Report*, 7(15), 4.
- Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).
- Fisk, C. L. (2001). Humiliation at work. *William and Mary Journal of Women and the Law*, 8, 73-95.
- Fitzgerald, L. F., Swan, S., & Fischer, C. (1995). Why didn't she just report him? The psychological and legal implications of women's responses to sexual harassment. *Journal of Social Issues*, 51, 117-138.
- Guines v. Bellino*, 173 N.J. 301 (2002).
- Gaspard v. J & H Marsh & McLennan*, 105 F. Supp. 2d 537 (E.D. La. 2000).
- Greenebaum Doll & McDonald, P.L.L.C. (2002). Is Your Harassment Policy Effective? *Kentucky Employment Law Letter*, 13(2), 3.
- Grossman, J. L. (2000). The first bite is free: Employer liability for sexual harassment. *University of Pittsburgh Law Review*, 61, 671-740.
- Gruber, J. E. (1998). The impact of male work environments and organizational policies on women's experiences of sexual harassment. *Gender & Society*, 12, 301-320.
- Gutek, B. A. (1985). *Sex and the workplace*. San Francisco, Jossey-Bass.
- Gutek, B. A. (1997). Sexual harassment policy initiatives. In W. O'Donohue (Ed.) *Sexual Harassment: Theory, Research, Treatment*, NY: Allyn & Bacon, 185-198.
- Hall v. Hebrank*, 102 F. Supp. 2d 844, 856-58 (S.D. Ohio 1999).
- Hemphill, H., & Haines, R. (1998, July). Confronting discrimination in your workplace. *HR Focus*, 75(7), S5-S6.
- Henault, C. (2001). Zero tolerance in schools. *Journal of Law and Education*, 30, 547.
- Hill, D., & Phillips, J. J. (1997). Preventing sexual harassment. In J. J. Phillips (Ed.), *Measuring Return on Investment, Vol 2*. (pp. 17-35).
- Hulin, C. L., Fitzgerald, L. F., & Drasgow, F. (1996). Organizational influences on sexual harassment. In M. S. Stockdale (Ed.), *Sexual Harassment in the Workplace*:

- Perspectives, Frontiers, and Response Strategies* (pp. 127-150). Thousand Oaks, CA: Sage.
- Kennedy v. Wal-Mart Stores, Inc.*, 15 Fed. Appx. 755 (10th Cir. 2001).
- Konop, B. (2001, Aug.) Publicize your sexual harassment policies. *Credit Union Magazine* 67(8), 87-88.
- Krieger, L. H. (2001). Employer liability for sexual Harassment—Normative, descriptive, and doctrinal interactions: A reply to professors Beiner and Bisom-Rapp. *University of Arkansas Little Rock Law Review*, 24, 169-198.
- Maatman, G., & Cowman, J. (1998). Recent Supreme Court cases on sexual harassment: loss control and risk management strategies for employers. *Andrews Sexual Harassment Litigation Report*, 4(10), 3.
- Mitsubishi makes strides in eliminating pervasive sexual harassment, (2000, January 1). *HR Wire*.
- Moore, D. J., & Fingar, M. A. (1999). Life in the workplace after Faragher—Advice for preventing and avoiding employer liability for sexual harassment. *Metropolitan Corporate Counselor*, 6, 18.
- O'Dell v. Trans World Entertainment Corp.*, 153 F. Supp. 2d 378, 389-90 (S.D.N.Y. 2001).
- Offermann, L. R., & Malamut, A. B. (2002). When leaders harass: The impact of target perceptions of organizational leadership and climate on harassment reporting and outcomes. *Journal of Applied Psychology*, 87, 885-893.
- Olsen v. H.E.B. Pantry Foods*, 196 F. Supp. 2d 436, 440 (E.D. Tex. 2002).
- Outten, W. N., Moss, S., & Ruan, N. (2001). Practice pointers on opposing the affirmative defense that the employer took reasonable steps to prevent sexual harassment: Perspective of a plaintiff's attorney, *Practicing Law Institute Litigation and Administrative Practice Course Handbook Series*.
- Orlov, D., & Roumell, M. T. (1999). *What every manager needs to know about sexual harassment*. New York: AMACOM.
- Peden, P. M. (2001). Through a glass darkly: Educating with zero tolerance. *Kansas Journal of Law & Public Policy*, 10, 369-390?.
- Perkovich, R., & Rowe, A. M. (2000). "What part of 'zero' don't you understand?": The arbitration of sexual harassment discipline and 'zero tolerance' policies. *Willamette Law Review*, 36, 749-785.
- Powers, Kinder, & Keeney (1999). Prevent sexual harassment the right way. *Rhode Island Employment Law Letter*, 4(4), 6.
- Pryor, J. B. (1987). Sexual harassment proclivities in men. *Sex Roles*, 17, 269-290.
- Pryor, J. B., Giedd, J. L., & Williams, K. B. (1995). A social psychological model for predicting sexual harassment. *Journal of Social Issues*, 51, 69-84.
- Russell, D. (1974). *The politics of rape*. New York: Stein and Day Publishers.
- Schemansky v. California Pizza Kitchen*, 122 F. Supp. 2d 761, 778-80 (E.D. Mich. 2000).
- Schneider, K. T., Swan, S., & Fitzgerald, L. F. (1997). Job-related and psychological effects of sexual harassment in the workplace: Empirical evidence from two organizations. *Journal of Applied Psychology*, 82, 401-415.
- Schultz, V. (1998). Reconceptualizing sexual harassment. *Yale Law Journal*, 107, 1683-1805.

- Schultz, V. (2003, in press). The sanitized workplace. *Yale Law Journal*, 112.
- Sherwyn, D., Heise, M., & Eigen, Z. J. (2001). Don't train your employees and cancel your "1-800" harassment hotline: An empirical examination and correction of the flaws in the affirmative defense to sexual harassment charges. *Fordham Law Review*, 69, 1265-1304.
- Silbergeld, A. (1997). Examining ten years of hostile environment cases, 1997. *Andrews Employment Litigation Report*. 21627.
- Skiba, R. J., & Peterson, R. L. (1999). The dark side of zero tolerance: Can punishment lead to safe schools? *Phi Delta Kappan*, 80, 372.
- Stalaker v. K-Mart Corp.*, 950 F. Supp. 1091, 1096-97 (D. Kan. 1996).
- Stein, N. (2001). Sexual Harassment Meets Zero Tolerance: Life in K-12 Schools Since Davis. *Hastings Women's Law Journal*, 12, 123-131.
- Sulloway & Hollis, P.L.L.C. (1999). You may face obstacles in firing sexual harassers. New Hampshire. *Employment Law Letter*, 4(4), 3.
- Taylor v. Texas Dep't of Criminal Justice*, 2000 WL 528410, *8-9 (N.D. Tex.).
- United States Merit Systems Protection Board. (1981). *Sexual harassment in the federal workplace: Is it a problem?* Washington, D.C: U.S. Government Printing Office.
- United States Merit Systems Protection Board. (1995). *Sexual harassment in the federal workplace: Trends, progress, continuing challenges*. Washington, D.C: U.S. Government Printing Office.
- Violanti, M. T. (1996). Hooked on expectations: An analysis of influence and relationships in the tailhook reports. *Journal of Applied Communication Research*, 24, 67-82.
- West, M. S. (2002). Preventing sexual harassment: The federal courts' wake-up call for women. *Brooklyn Law Review*, 68, 457-523.
- Whaley, R. B. (2001). The paradoxical relationship between gender equality and rape: Toward a refined theory. *Gender & Society*, 15, 531-555.
- Woodward v. Ameritech Mobile Communications, Inc.*, 2000 WL 680415, *13-6 (S.D. Ind.).

Received: 5/04/03

Revised: 5/04/03

Accepted: 5/04/03

Copyright of Journal of Forensic Psychology Practice is the property of Haworth Press and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.