Chapter 19

Disruptions to the Workplace Exploring the Policies and Legal Cases of Online Sexual Harassment:
Policies and Laws About Online Sexual Harassment

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ABSTRACT

Online sexual harassment, also called cybersexual harassment, has proliferated as the rise of technology and social media has also increased. One particular issue that impacts victims' decisions is that many organizations do not have policies—or at least clear policies—regarding the consequences for perpetrator behavior. Thus, the purpose of this chapter is to explore the policies, legal implications, and example cases of online sexual harassment for employee victims who are harassed by their coworkers and to also detail how organizations have responded in the past. Furthermore, the authors highlight specific example policies that some organizations have in place as well as describe how organizations could (or should) respond to online harassment situations.

INTRODUCTION

Online sexual harassment, also called cybersexual harassment (see Ritter 2012, 2014; Schenck, 2008), has proliferated as the rise of technology and social media has also increased. Cybersexual harassment, is just another term for online sexual harassment. Online sexual harassment was initially defined as "the use of the internet to sexually procure and/or intimidate an individual in some way" (Griffiths, 2000, p. 541). Research has determined that three types of online sexual harassment exist: 1) gender harassment, 2) unwanted sexual attention, and 3) sexual coercion (Barak, 2005). Gender harassment is specifically related to gender and includes uninvited comments, direct messages, and/or pictures that occur online, unwanted sexual attention is unwelcome sexual communication online or on social media, and sexual coercion describes serious threats of harm or cyberstalking that occur in online mediums (Barak, 2005; Van Royen et al., 2015).

Online sexual harassment can occur on email, blogs, and social networking sites (SNS) (Van Royen et al., 2015; Van Royen et al., 2016). Recent research has explored how employees who are sexually harassed online—specifically on SNS—cope with their experiences (Scarduzio et al., 2018a, 2018b), and also make choices about reporting or not reporting their online sexual harassment experiences to the organization or their coworkers (Herovic et al., 2018; Scarduzio et al., 2019). The research reveals that making choices about disclosing online sexual harassment is complex and influenced by a variety of factors.

One particular issue that impacts victims' decisions is that many organizations do not have policies—or at least clear policies—regarding the consequences for perpetrator behavior (Scarduzio et al., 2019). To date, many organizations have used a varied approach to address online sexual harassment, electing to employ one of two differing strategies. In some instances, organizations elect to apply established policies governing matters of traditional sexual harassment, regardless of the modality in which such matters may occur. Other organizations draft specific online harassment, social media, and electronic communication polices, including innumerable terms, but marginally covering precise details (see Mainiero & Jones, 2013a). A strength of this type of regulatory drafting is that addressing sexual harassment broadly, rather than narrowly, allows organizations to encompass all types of sexual harassment across various contexts (Coletta, 2018; Mainiero & Jones, 2013a; O'Connor et al., 2016). Moreover, these policies can extend over time, regardless of new mediums or tactics utilized to carry out sexual harassment (Mainiero & Jones, 2013a; O'Connor et al., 2016).

However, there are also some notable weaknesses. First, massive amounts of policy language and jargon can be overwhelming, hindering employees' ability to accurately "understand and apply" these extensive policies (O'Connor et al., 2016, p. 206). Second, these policies can make it difficult for employees to "recognize and prevent sexual harassment on social media" (Coletta, 2018, p. 473). The lack of recognition is problematic because this suggests that such policies may fail to provide adequate notice to potential harassers of actions that constitute online sexual harassment. Correspondingly, the lack of notice and policy clarity suggests that there is a failure to communicate the rights entitled to potential victims and procedures to address their grievances, possibly impacting whether they come forward (Coletta, 2018; O'Connor et al., 2016).

Legal scholars have presented analyses and arguments addressing potential legal issues stemming from the failure to draft organizational cybersexual harassment policies, such as issues arising under cyberlaw, employment law, and constitutional law (Ciocchetti, 2011; Coletta, 2018; Franks, 2012; Gelms, 2012). Additionally, scholars in academia have explored the distinctive legal implications of online

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