

Why Ending Sexual Harassment Is Integral to Ending Gender Discrimination

When Jeanette Moznik and six other women joined the fire department in Richmond, British Columbia, after a merger of two units in 1995, they made history: never before had any women served as firefighters with Richmond Fire-Rescue.¹ Unfortunately, it wasn't long before their male colleagues ensured they felt not only unwelcome but unsafe. The men in the department displayed pornography on the walls. Moznik found a condom filled with an unidentified substance in her locker, accompanied by a threatening note using a misogynistic slur.² The men put human feces in her boots and pants. And on one occasion, they cut the water pressure to the hoses she and another female firefighter were using during a live fire.³

Finally, in 2005, Moznik filed a lawsuit with the Supreme Court of British Columbia, alleging “a culture of systemic discrimination and harassment of its female firefighters.”⁴ In 2006, the court dismissed her suit, determining that it lacked jurisdiction since her union ought to handle the grievance. Later that year, a mediator published a report that called out the toxic environment and urged a series of practical reforms, such as trainings on equality and harassment and separate washrooms for the female firefighters, while underscoring the need for steps leading to an overall culture change.⁵

The mediator's report seems to have had some impact. Between 2007 and 2019, the department began recruiting more women, who accounted for 17 percent of total hires.⁶ Nevertheless, for Moznik and the other women who joined Richmond Fire-Rescue in 1995, the damage had been done. By the time the report was issued,

all four remaining female firefighters had quit, citing harassment.⁷ Moznik herself suffered from depression and what she described as “nervous shock.”⁸ The other woman who had been working alongside Moznik the day their water pressure was cut off died by suicide in early 2005.

Too often, sexual harassment at work is treated like a punchline, or brushed off as the bad behavior of an errant colleague or an “old-fashioned” boss. Yet stories like Moznik’s are all too common, and a stark reminder that sexual harassment is not a matter of a few “bad apples”—it’s structural discrimination, with often serious and even lifelong consequences for its targets. Sexual harassment’s discriminatory functions are especially evident when looking at the high levels of harassment that women face in male-dominated fields across countries, though this form of discrimination is found across sectors.⁹ For example, in Kolkata, India, 74 percent of women working in the construction industry report facing sexual harassment at work, including being “offered” to contractors in exchange for jobs.¹⁰ In Canada, a 2014 survey found that nearly one in six women in the military had experienced sexual assault or unwanted sexual touching in the course of employment.¹¹ In South Africa’s platinum mines, women report regular sexual assaults by their coworkers during the four-minute journey from the surface underground, and threats of further violence to “remind” them that they’re women.¹²

And as in Moznik’s case, these experiences have direct impacts on women’s employment. In the United States, for example, nearly 8,000 women left the military between April 2014 and September 2016 alone due to sexual harassment, alongside another 2,000 who resigned after a sexual assault.¹³

Yet how far have countries come in addressing sexual harassment through the law? Beyond providing remedies after sexual harassment has already happened, what’s the role of the law in preventing harassing behaviors? Moreover, how do the details of countries’ legal approaches shape their reach and potential impact?

PREVALENCE AND IMPACTS OF SEXUAL HARASSMENT

Sexual harassment at work is a long-standing and global issue with vast and under-acknowledged impacts on women. While different definitions and understandings of sexual harassment make it difficult to develop fully comparable data on its frequency across countries, surveys dating back three to four decades illustrate the scale of the problem. For example, in a 1980 survey of 23,000 US federal employees, 10 percent reported having been pressured for sex and 25 percent reported having been inappropriately touched.¹⁴ Similarly, a 1988 survey of 2,000 women in Sweden found that 17 percent had experienced “obscene language, sexual innuendoes, groping, lewd suggestions and outright rape attempts in the workplace.”¹⁵ In Japan, a 1991 survey of 800 women in a labor union found that 500 reported being sexually harassed.¹⁶

More recent numbers indicate that sexual harassment remains pervasive and cuts across countries and industries. For example, a 2019 survey of 7,000 lawyers in 135 countries found that one in three women and one in fourteen men had experienced sexual harassment at work.¹⁷ A 2009 survey of domestic workers in Brazil found that 26 percent had experienced sexual harassment in the preceding year, while a 2018 survey in India similarly reported that over 29 percent of domestic workers had been sexually harassed.¹⁸ In the European Union, a 2014 study based on interviews with 42,000 women across twenty-eight countries found that around half of women had experienced sexual harassment at least once since age fifteen; among those, 32 percent had experienced sexual harassment at work.¹⁹ In the United States, a 2018 survey of over 6,000 workers found 59 percent of women and 27 percent of men had experienced “unwanted sexual advances or verbal or physical harassment of a sexual nature”; of those, the majority said it had happened in a work setting.²⁰ What are the consequences for women’s employment outcomes and overall well-being?

Absenteeism and Work Withdrawal

Across countries, studies have shown that experiences of sexual harassment lead to higher rates of absenteeism, withdrawal from work, and lower job satisfaction.²¹ For example, an analysis of Australia’s labor market found that workers who experienced sexual harassment at work took more leave than other workers, and that the severity of the harassment predicted the extent of absences: those who experienced the most severe harassment took over fifty times as much leave as those who faced the lowest-impact harassment (an average of 36 hours compared to 0.7 hours).²² In Pakistan, a study of health-care workers found that those who experienced sexual harassment at work reported higher rates of absenteeism overall, though socioeconomic status influenced the ability to take time off work.²³ In Brazil, Argentina, and Chile, a study based on interviews with over 8,000 workers found that those who had been sexually harassed were not only more likely to take leave from work, but were also 1.6 times as likely as women who had not faced harassment to report that they intended to leave their jobs permanently.²⁴

Lower Access to Opportunities for Advancement, Trainings, and Promotions

Sexual harassment can also affect women’s access to trainings, mentorship, or opportunities for advancement. In many instances, these consequences represent a form of retaliation after a worker reports harassment or rejects a supervisor’s advances; in others, they result from how experiencing sexual harassment may influence women’s behavior, including by deterring them from participating in social and professional events that in some fields play an important role in furthering careers.²⁵

For example, a survey by the Australian Human Rights Commission found that 11 percent of workers who lodged a formal complaint of sexual harassment were denied access to a training or promotion, while 6 percent were demoted.²⁶ In the United States, an analysis of over 7,000 discrimination claims filed with the Ohio Civil Rights Commission revealed that retaliation was most common following initial reports of sexual harassment, and that 15 percent of sexual harassment claimants reporting retaliation cited demotions, reduced wages or hours, and/or denials of training following their complaints.²⁷ Another US study found that among academic medical faculty, nearly half of women who personally experienced sexual harassment reported that it negatively affected their career advancement.²⁸

Even reporting harassment by third parties can threaten women's advancement in certain occupations. In Lebanon, for example, a study based on surveys and interviews with female journalists found that women were reluctant to report sexual harassment experienced in the field since it could limit their future reporting opportunities; others reported objecting to sexual harassment by supervisors and missing out on stories and promotions as a result. All in all, 82 percent of the 250 journalists surveyed reported that sexual harassment negatively affected opportunities for advancement in their profession.²⁹

Loss of Employment

Experiences of sexual harassment also often lead to job loss. For example, a study based on surveys of employed women in St. Paul, Minnesota found that women who had experienced sexual harassment were 6.5 times as likely as women who had not been harassed to change jobs.³⁰ Moreover, sexual harassment was significantly associated with financial stress, 35 percent of which was found attributable to a job change. In some cases, women leave their jobs due to harassment that goes unaddressed; one early estimate from the United States found that as many as 10 percent of women who were sexually harassed at work quit their jobs.³¹ In other cases, women are fired after they report harassment or refuse advances of a supervisor. These risks create even greater barriers to reporting, particularly when women expect that having made a claim of sexual harassment will reduce their employment prospects going forward. For example, as one woman in Zimbabwe recounted, in a study analyzing the scope and impacts of sexual harassment of female legal practitioners in her country, "I want work and I would tarnish my reputation so who is going to hire me, oh, she is the one who reported John."³²

Lower Long-Term Wages and Consequences for Career Trajectories

The cumulative impacts of sexual harassment on women's careers and economic outcomes can be significant. For example, women who leave a job due to harassment may encounter challenges securing new employment or employment that pays an equivalent wage, particularly if they are seeking a new job without the benefit of references or good relationships with their previous employer.

Meanwhile, significant research has documented that periods of unemployment can have long-term negative impacts on wages, particularly if a worker is reemployed in a lower-paying job.³³ Further, women who experience sexual harassment may have limited access to income support when they are in between jobs. In some jurisdictions, women who leave jobs due to sexual harassment are ineligible to receive unemployment benefits, since their departure is considered “voluntary.”³⁴

Altogether, these financial consequences and the lack of available safety nets mean that women who experience sexual harassment at work must too often either endure the behavior with severe adverse personal, health, and economic impacts or pay a high price for speaking up. Experiences or observations of sexual harassment in a particular field can also deter women from pursuing their chosen career path or job, even if that means settling for a less desirable position or industry. In Germany, for example, a study based on a survey of medical students found that women who had witnessed or experienced sexual harassment during their training were more likely than women who had not to decide against pursuing surgical specialties, which typically provide among the highest pay.³⁵ Moreover, given the especially high rates of sexual harassment of women in male-dominated industries, job loss triggered by sexual harassment has the potential to reinforce occupational segregation, thus widening the gender pay gaps discussed in chapter 2.

Mental and Physical Health

Beyond direct impacts on employment, sexual harassment has broader consequences for women’s well-being that shape health and economic outcomes. A range of studies has found that women who have experienced sexual harassment suffer higher incidence of depression, anxiety, and posttraumatic stress disorder.³⁶ Mental health impacts can be particularly severe for harassment that is frequent, long-term, or perpetrated by someone with significant power over the worker.³⁷

Sexual harassment also has consequences for physical health, which often derive from its psychological impacts.³⁸ For example, many women who have experienced sexual harassment at work report headaches, insomnia, nausea, weight loss, and other physical signs of stress; one study found that even mild sexual harassment triggered increased cardiovascular activity.³⁹ In the most severe cases, where sexual harassment rises to the level of sexual violence, women can experience immediate bodily harm.

Compounded Vulnerabilities for Marginalized Women

The stakes of speaking up for women in more vulnerable work and economic situations are often especially high. For example, women whose work takes place in the most private settings, such as homes or hotel rooms, often face heightened risks of violence and exploitation and fewer avenues for recourse under labor law. Similarly, agricultural workers face high rates of sexual harassment and often have fewer options for leaving abusive employment situations due to exclusion

from social protection.⁴⁰ Workers in these fields are also disproportionately likely to be migrants, which on its own may make them ineligible for unemployment benefits and other social insurance programs guaranteed to citizens; migrant workers also face significant risks of deportation if they quit or are fired from a job. These dynamics show up in case law. For example, in the United States, a group of undocumented Mexican agricultural workers working on an egg farm in Iowa faced relentless sexual harassment and repeated rapes.⁴¹ The perpetrators were well aware that the women feared deportation if they came forward, and that their families relied on their wages. Ultimately, the eleven plaintiffs won a settlement. Yet many more cases never make it to court, and sexual harassment is a common feature of many exploitative work environments.

Beyond barriers to legal rights and social insurance, broader economic inequalities leave many marginalized women with limited options when they encounter harassment at work. Many women across countries and industries can't afford to leave their jobs and often feel they have little choice but to continue working in the face of abuse. With fewer economic resources to fall back on, low-wage workers face higher risks if they lose work or income.⁴² These economic impacts of sexual harassment consequently exacerbate other disparities. Moreover, some research suggests that sexual harassment that intersects with another form of discrimination—for example, racialized sexual harassment—can be particularly psychologically damaging.⁴³

Importantly, sexual harassment is finally receiving more widespread attention from media and policy makers. In 2017, the #MeToo movement powerfully demonstrated that countless women have experienced sexual harassment in the workplace. Movements in countries and regions around the world—from #KuToo to #QuellaVoltaChe to #YoTambien—have amplified these calls and brought critical attention to issues affecting women across social contexts.⁴⁴ Notably, the #MeToo movement and its spinoffs have demonstrated how sexual harassment affects women in all fields and industries, and how even those with among the highest incomes in the world have faced risks to their careers due to a culture of impunity; at the same time, women without economic resources or with limited legal rights face vastly higher barriers to justice. In a powerful show of solidarity during the movement's early days, Alianza Nacional de Campesinas, a civil society organization based in the United States, published an open letter on behalf of 700,000 Latina farmworkers addressed to the Hollywood actors who first brought #MeToo to the public eye, noting the similarities of their experiences despite the vast differences in access to legal and economic resources:

Even though we work in very different environments, we share a common experience of being preyed upon by individuals who have the power to hire, fire, blacklist and otherwise threaten our economic, physical and emotional security. Like you, there are few positions available to us and reporting any kind of harm or injustice committed against us doesn't seem like a viable option. Complaining about anything—even

sexual harassment—seems unthinkable because too much is at risk, including the ability to feed our families and preserve our reputations.⁴⁵

The movement's greatest potential lies in this recognition: that sexual harassment creates intolerable risk to women's careers and well-being in all countries, all fields, and at all income levels, but that specific attention to the unique vulnerabilities and barriers to justice for marginalized women is essential to addressing the problem equitably and comprehensively.

Consequences for Workplaces and Economies

Beyond its impacts on individual women, sexual harassment also has consequences for broader workplaces and economies. Pervasive sexual harassment contributes to toxic workplaces, harming morale and reducing productivity by workers directly affected and by bystanders. Sexual harassment also has significant costs for employers. Absenteeism, lost productivity, and high turnover all have major impacts on a company's bottom line.⁴⁶ These costs are borne out by the data. For example, a study of garment factories in Jordan and Vietnam found that sexual harassment in the workplace strongly correlated with lower profits, likely due to its effects on productivity and turnover.⁴⁷

Similarly, in the aggregate, instances of sexual harassment across employers have significant costs to economies. Though few analyses of national costs have been undertaken,⁴⁸ those that have are damning: for example, an analysis estimated that in 2018, sexual harassment in Australia was responsible for AU\$2.6 billion in lost productivity, despite a labor force of only thirteen million people, and another AU\$900 million in other financial costs.⁴⁹

RECOGNIZING SEXUAL HARASSMENT AS DISCRIMINATION

Despite decades of evidence showing that sexual harassment is pervasive and a growing body of research documenting its consequences, only more recently has sexual harassment in the workplace been recognized as legally actionable. Likewise, only within the past several decades has there been a wider acknowledgment that sexual harassment, rather than an issue of misplaced affection, is "more appropriately understood as discriminatory conduct that has little to do with sexual desire and much to do with hostility."⁵⁰ Indeed, while some forms of violence against women have been addressed by law throughout recorded history, and some forms of workplace discrimination became mainstream legal subjects in the 1970s, it wasn't until the 1990s that sexual harassment began receiving wider and more specific recognition in law.

The foundational women's rights treaty adopted in 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), guaranteed equal rights at work and prohibited gender-based violence, but it did not

specifically address sexual harassment. Six years later, however, the Third World Conference on Women recognized the need to address sexual harassment in more detail through the Nairobi Forward-looking Strategies for the Advancement of Women, which urged countries to adopt “appropriate measures . . . to prevent sexual harassment on the job or sexual exploitation in specific jobs, such as domestic service.”⁵¹ In 1989, the CEDAW Committee finally used the term “sexual harassment” in a binding recommendation urging countries to submit information in their periodic reports about “legislation in force to protect women against the incidence of all kinds of violence in everyday life (including . . . sexual harassment at the work place),” which was followed by a more detailed recommendation in 1992 that defined sexual harassment and urged countries to adopt “effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including . . . sexual harassment in the workplace.”⁵² And at last, in 1995, the Beijing Declaration and Platform for Action, adopted unanimously by 189 countries at the Fourth World Conference on Women, directly called on governments to “enact and enforce laws and develop workplace policies against . . . discriminatory working conditions and sexual harassment.”⁵³

Similarly, in many countries, antidiscrimination was addressed in national laws before sexual harassment was. In the United States, a series of cases in the 1970s found that protections against sex discrimination in Title VII of the recently passed Civil Rights Act of 1964 should encompass the sexual harassment of women.⁵⁴ In 1980, the Equal Employment Opportunity Commission, charged with implementing Title VII, adopted new guidelines clarifying that the law prohibited sexual harassment, which included “unwelcome sexual advances” and “requests for sexual favors” that were a condition of employment or that created a hostile work environment.⁵⁵ In 1991, the European Commission adopted a Code of Practices on measures to end sexual harassment, which it defined as “unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work. This includes unwelcome physical, verbal or nonverbal conduct.” By the following year, a survey by the International Labour Organization (ILO) found that three out of eighteen high-income European countries—France, Spain, and Sweden—had adopted laws explicitly addressing sexual harassment,⁵⁶ while in the mid-1990s, several countries in Asia, Africa, and Latin America—including Chile, Costa Rica, the Philippines, and South Africa—enacted new legislation.⁵⁷

Alongside the gradual adoption of laws, fully defining what constitutes sexual harassment has been an ongoing process. For example, South Africa recognized both “quid pro quo” harassment, where sexual favors are the basis for employment or promotions, and the concept of “hostile work environment” in its first sexual harassment case, decided in 1989.⁵⁸ In 1998, the country adopted a specific sexual harassment law, though its detailed definitions of prohibited conduct were reserved for a nonbinding Code of Practice.⁵⁹ The first US cases focused only on

quid pro quo;⁶⁰ only later did courts expand the definition of sexual harassment to include hostile work environment, and it wasn't until 1998 that the US Supreme Court ruled that sexual harassment claims could be brought against a person of the same sex.⁶¹ In the United Kingdom, only after a ruling from the Equal Opportunities Commission in 2007 was the sexual harassment law amended to offer protection against harassment by customers, clients, and other third parties, rather than simply supervisors and coworkers.⁶²

Over the past thirty years, progress in laws and in courts has accelerated, though in much of the world women continue to work without any legal rights in this area.⁶³ In India, a groundbreaking sexual violence case brought by a coalition of women's groups resulted in the Supreme Court's issuance of detailed guidelines on sexual harassment at work in 1997, which paved the way for landmark legislation building on the guidelines in 2013.⁶⁴ In 2007, the High Court of Tuvalu issued the first decision on sexual harassment in the Pacific Islands,⁶⁵ while in 2008 a woman won the first sexual harassment case in Egypt—a ruling that energized advocacy efforts to adopt stronger legislation.⁶⁶ And in 2019, reflecting a remarkable degree of global consensus, the ILO adopted a new binding treaty on sexual harassment in the workplace, which broadly prohibited harassment in all work settings, including the informal economy. While a major step forward, however, the Violence and Harassment Convention (also known as C190) will require further action at the country level to be realized.⁶⁷

ADDRESSING SEXUAL HARASSMENT IN NATIONAL LAWS: WHERE THE WORLD STANDS

Some of the earliest cases on sexual harassment determined that prohibitions of sex discrimination at work extended to sexual harassment. For example, in 1989 the Supreme Court of Canada found a violation of the sex discrimination provisions of the Human Rights Act after two waitresses were repeatedly subject to unwanted touching by a coworker, and then faced retaliation after they reported.⁶⁸ At the same time, similarly broad interpretations of antidiscrimination laws have not been adopted everywhere; likewise, broad protections for decent working conditions have had mixed results for addressing sexual harassment. Two cases illustrate why adopting more comprehensive and specific sexual harassment laws may make a difference.

First, in China, a woman brought the country's first sexual harassment case in 2001 after her boss had repeatedly touched her inappropriately at work while promising her a promotion.⁶⁹ On one occasion, he had also invited her to join him at a hotel room. When the woman complained about the behavior—which had persisted for years—she was reprimanded, lost her bonus, and eventually lost her job.⁷⁰ The woman brought a lawsuit alleging infringements of her right to “human dignity,” since no specific sexual harassment law was in place. However, when

none of her colleagues, fearing reprisal, were willing to testify on her behalf, her case was dismissed, with the court also questioning the relationship between the alleged behavior and “dignity.”⁷¹ On appeal, the People’s Court in Lianhu District of Xi’an City upheld the ruling. For the country’s growing women’s rights movement, the case—alongside several other sexual harassment claims that failed in the courts between 2001 and 2003—highlighted a critical legal gap: in 2004, the All-China Women’s Federation began actively urging the adoption of a specific sexual harassment law.⁷²

A more recent case from Uruguay illustrates how different the outcome can be when women’s rights in this area are legally protected. In 2015, a woman brought a sexual harassment claim after two years of harassment by one of her company’s directors, including one email with over seventy images of sexual content. She never responded to any of his harassing messages and eventually filed a formal internal complaint but only received an apology. After thirteen years of employment with the company, this spurred the woman to quit and sue for harassment. She won at trial but the director appealed, claiming that there was insufficient evidence and that she had consented to his advances. The Labour Court of Appeal rejected this argument, finding that his behavior had created a hostile work environment, and upheld the award of 880,272 pesos (around US\$20,000) and an additional fine against the company.⁷³

The case was decided on the basis of detailed sexual harassment legislation adopted in 2009, which reflected persistent efforts to strengthen the law. Uruguay was among the first of Latin American countries to legally address sexual harassment at work.⁷⁴ Regulations adopted in 1997 clarified that a 1989 law on sex discrimination covered sexual harassment at work,⁷⁵ and a sexual harassment law was passed in December 1999 but was rarely used.⁷⁶ Finally, a decade later, Uruguay passed the comprehensive sexual harassment legislation that the court invoked in *Caeiro v. Tecnosolar*.⁷⁷ To support its implementation, the Instituto Nacional de las Mujeres, a government agency, carried out an awareness-raising campaign for the law and also began providing trainings for lawyers and labor inspectors.⁷⁸ And notably, in 2020, Uruguay became the first country worldwide to ratify the new ILO Violence and Harassment Convention.

As these cases demonstrate, ensuring laws directly prohibit sexual harassment provides an important foundation for redress. In this section we examine how 193 countries address some of these key questions through legislation specifically targeting sexual harassment at work, and identify key gaps.

Is Sexual Harassment in the Workplace Prohibited?

Across countries, lawyers and courts have used nonspecific laws to address particular aspects or types of sexual harassment; for example, penal code provisions addressing assault have provided a tool for reaching certain forms of harassment.⁷⁹ Nevertheless, these approaches generally allow for reaching only a fraction of the

sexual harassment experienced in the workplace, and offer no substitute for a comprehensive, workplace-specific law.

Around the world, nearly three-quarters of countries, including a majority of countries in all regions, have enacted laws specifically prohibiting sexual harassment in the workplace.^a This includes 78 percent of high-income countries, 74 percent of middle-income countries, and 65 percent of low-income countries. An additional four countries do not explicitly prohibit sexual harassment but have at least some protection from sexual harassment, such as being able to terminate an employment contract on the basis of sexual harassment or stating that employers have a duty to respond to incidents of sexual harassment. Though this broad global coverage is encouraging, these overall gaps in coverage, as well as disparities in coverage across country income groups, are far greater than for workplace sex discrimination more broadly, which is covered by 93 percent of high-income countries, 94 percent of middle-income countries, and 89 percent of low-income countries.

Importantly, legally prohibiting sexual harassment is immediately feasible for countries in all income groups. Further, given the extensive evidence about how sexual harassment has economic consequences not only for individual women and their households but also for entire countries, this is a step that could powerfully support countries' economic growth.

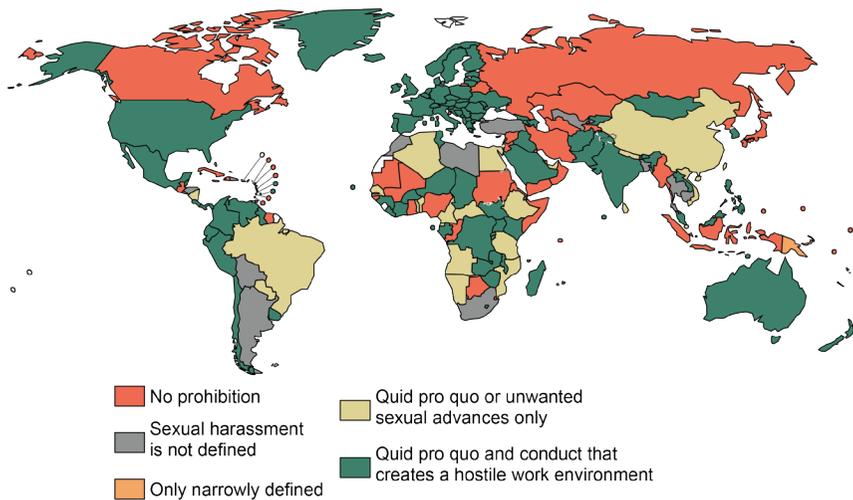
Which Perpetrators Are Covered?

Some of the first court cases that litigated sexual harassment involved bosses abusing their authority, such as by seeking sexual favors in exchange for employment opportunities. While this type of sexual harassment remains common and critical to address, ensuring safety and equal rights in the workplace also requires covering sexual harassment by coworkers, clients and customers, and other third parties. In some types of work, such as hospitality and food service, this type of harassment is especially common.⁸⁰ For example, a study focused on hotel workers in Accra, Ghana found that young, unmarried women working at the front desk or in food and beverage faced particularly high rates of sexual harassment by guests.⁸¹ Moreover, without clear protections in the law, companies have been known to argue that they are not responsible for harassment perpetrated by other workers or third parties.

Employers have the power to create environments where it is clear that they won't tolerate any form of sexual harassment; alternatively, they can put workers at risk by fostering a workplace culture that suggests they will look the other way. By

a. In 4 percent of countries, sexual harassment prohibitions may cover only women. These are provisions that either explicitly prohibit sexual harassment of women or are located only in legislation specific to women or sections of legislation specific to women. It is critical that legislation equally covers all genders.

What sexual behaviors are legally defined as sexual harassment at work?



Do countries prohibit sexual harassment across a range of relationships in a workplace?

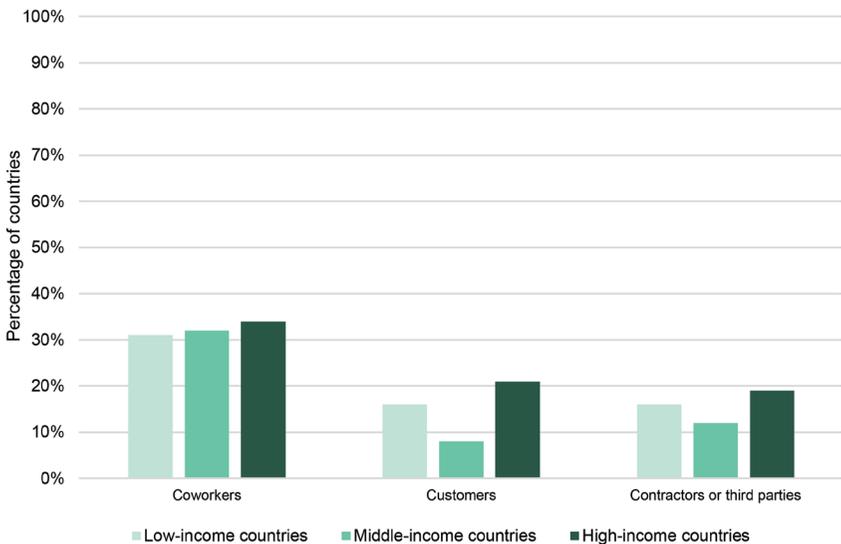


FIGURE 9. How comprehensive are countries' protections against sexual harassment? What sexual behaviors are legally defined as sexual harassment at work?

prohibiting sexual harassment not only by supervisors but also by coworkers and clients, laws can move employers to take proactive steps. Yet as of 2021, only a third of countries prohibited sexual harassment by coworkers either by explicitly prohibiting it (29 percent) or by using language that would broadly apply to anyone in the workplace (4 percent). Just 13 percent of countries explicitly prohibit sexual harassment by customers or anyone else in the workplace. Similarly, 15 percent of countries explicitly address contractors or other third parties or broadly prohibit sexual harassment by anyone in the workplace. Gaps in protections span countries across income groups.

How Is Sexual Harassment Defined?

Beyond whether the law addresses sexual harassment, how it defines sexual harassment can have vast implications for whether it offers a remedy for the most common types of harassing behavior. To be comprehensive, legislation should cover sexual-behavior-based harassment, including both quid pro quo and hostile work environments, and sex-based harassment. In sex-based harassment, women are harassed because of their sex. This harassment does not necessarily take a sexual form. Notably, both sex-based and sexual-behavior-based harassment are covered by the ILO Violence and Harassment Convention.

It is important that national laws clearly prohibit all three of these aspects of sexual harassment: sex-based harassment, quid pro quo, and hostile work environment.^b However, this comprehensive approach is found in only a third of countries (37 percent). While nearly two-thirds of high-income countries explicitly address all three aspects, 30 percent of middle-income countries and only 12 percent of low-income countries do so.

In nearly a third of countries, sexual-behavior-based harassment is prohibited, but sex-based harassment is not. In 20 percent of countries, sexual harassment either is not defined, covers quid pro quo only, or is narrowly defined. In some countries, legislation explicitly specifies that a single serious incident can constitute sexual harassment, whereas others indicate that the harassment must be persistent for individuals to have legal remedies.

b. For example, Kenya's 2007 Employment Act prohibits harassment on the basis of sex broadly and stipulates: "An employee is sexually harassed if the employer of that employee or a representative of that employer or a co-worker—(a) directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express—(i) promise of preferential treatment in employment; (ii) threat of detrimental treatment in employment; or (iii) threat about the present or future employment status of the employee; (b) uses language whether written or spoken of a sexual nature; (c) uses visual material of a sexual nature; or (d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction."

Sexual harassment can occur outside the workplace, whether during travel to work sites, during offsite meetings, or over electronic communications, among others. While 14 percent explicitly limit prohibitions to the workplace, 10 percent of countries explicitly cover sexual harassment that occurs offsite. For example, Barbados's 2017 Employment Sexual Harassment (Prevention) Act specifies that "'workplace' means any location or place where persons work and includes (a) any other location or place where an employee is required to conduct the business of the employer; or (b) any location or place to which that person is sent by the employer for the purpose of receiving training or attending a conference on the employer's behalf."

Are Workers Covered Regardless of Position?

Individuals with potentially uncovered employment relationships are hugely vulnerable. Some countries have taken affirmative steps to cover individuals without formal employment contracts. For example, Belize's 2000 Protection against Sexual Harassment Act explicitly includes "apprentices, persons on probation, full and part-time employees and commission agents." Globally, only 20 percent of countries explicitly extend prohibitions of sexual harassment to cover interns, trainees, and apprentices. Sexual harassment can also begin even before employment officially starts (for example, quid pro quo demands during job interviews), yet only 27 percent of countries explicitly prohibit sexual harassment against job applicants.

Domestic workers are particularly vulnerable to sexual harassment and violence because of the private settings in which they work; surveys from countries including India, Brazil, Portugal, Egypt, and the United States have all found high rates of sexual harassment among domestic workers.⁸² At the same time, domestic workers are often excluded from protections against sexual harassment that extend to other workers, particularly if they work in the informal economy. However, some countries have taken steps to ensure coverage also extends to domestic workers. For example, Peru's Domestic Worker Law explicitly prohibits discrimination and sexual harassment against domestic workers.

Moreover, some countries have also taken steps to prohibit sexual harassment in the purchase or provision of goods and services as well as harassment by public officials. This can be particularly important for women working in the informal economy selling goods in markets and public places. For example, the Philippines's Safe Spaces Act prohibits sexual harassment in public spaces, which it defines to include "streets and alleys, public parks, schools, buildings, malls, bars, restaurants, transportation terminals, public markets, [and] buildings and other privately-owned places open to the public."

Sexual harassment is damaging for women in leadership positions as well, making it critical to cover across all levels. One study of Sweden, the United States, and Japan found that women in supervisory roles were between 30 percent and

100 percent more likely to have experienced sexual harassment in the preceding year than nonsupervisory employees.⁸³ Female politicians also report high rates of sex-based and sexual harassment globally; according to an Inter-Parliamentary Union study based on interviews with fifty-five female parliamentarians spanning thirty-eight countries across five continents, 66 percent had experienced sexual or sexist remarks as part of their work, 33 percent had experienced workplace harassment, and 22 percent had experienced sexual violence.⁸⁴ Some countries affirmatively protect women from sexual harassment regardless of their position within the workplace. For example, Bangladesh's 2006 Labour Law covers "where any female worker is employed in any work of the establishment, irrespective of her rank or status."

*Are Workers Covered Regardless of Sex, Sexual Orientation,
and Gender Identity?*

Although global evidence shows that women are most likely to face sexual harassment at work, workers of all genders can be targets. However, in eight countries, laws prohibiting sexual harassment at work apply specifically to women only. These gaps in coverage have consequences for everyone, as cases involving sexual harassment of men illustrate how sexual harassment often serves to reinforce discriminatory gender norms.⁸⁵ In many cases, men who face sexual harassment at work are targeted by other men due to their perceived femininity or departure from "traditional" expectations about gendered behavior.⁸⁶ These dynamics also shape experiences of sexual harassment by women; one influential study found that more "masculine" women (i.e., "gender-role deviants") face a higher degree of sexual harassment at work.⁸⁷

Further, while data are limited, surveys have shown that LGBT+ workers experience high rates of sexual harassment, which again often focuses on policing gender norms. For example, a 2019 UK survey found that nearly seven in ten LGBT+ workers had experienced some form of sexual harassment at work.⁸⁸ Rates of experiencing physical harassment and violence were particularly high among LGBT+ women, of whom 35 percent reported unwanted touching, 21 percent reported sexual assault, and 12 percent reported serious sexual assault or rape. Further, LGBT+ women with disabilities and LGBT+ women from marginalized racial or ethnic groups reported even higher rates. Verbal harassment often specifically focused on workers' LGBT+ identities, with 43 percent of LGBT+ workers reporting sexual comments about their sexual orientation, 30 percent reporting sexual comments about their gender identity, and 42 percent reporting unwanted comments or questions about their sex lives.

Around the world, 20 percent of countries explicitly prohibit same-sex sexual harassment or sexual harassment based on sexual orientation. Twelve percent of countries explicitly prohibit sexual harassment based on gender identity. Though these protections are currently far more common in high-income countries, they

exist in countries at all income levels and are critical to the full inclusion of workers everywhere.

CHANGING THE CONVERSATION

Laws prohibiting gender discrimination of all kinds can directly affect women's lives by providing a tool for seeking justice. Sexual harassment laws are no exception. In countries around the world, workplace sexual harassment laws have had an impact:

- In South Korea, a group of hotel workers won the country's first collective sexual harassment lawsuit in 2002—illustrating the power of union representation and group legal actions for securing justice for a whole class of workers.⁸⁹ The lawsuit originated during a workers' strike protesting low wages and general working conditions at the Lotte Hotel, one of the major five-star hotels in Seoul. During the walkout, the workers' union conducted a survey finding that 70 percent of women the hotel employed had been sexually harassed by supervisors or customers. Citing inappropriate touching, obscene jokes, and forced resignations if they complained, over 200 female workers initiated litigation. In 2002, the Seoul District Court ruled in favor of forty of the women, finding seven male executives liable, though a subsequent court ruling authorized damages to only nineteen of the women. Nevertheless, the case—the first to recognize the employer's responsibility to prevent harassment—represented an important victory in an industry in which workers describe sexual harassment as pervasive and widely tolerated.⁹⁰
- In the United States, collective litigation likewise resulted in a powerful outcome in a case brought by female mine workers, while highlighting the potential of sexual harassment laws to address harassment against women in male-dominated fields.⁹¹ The case was initiated by Lois Jenson, a single mother who was one of the first women to join the mine in 1975; within her first days, a male coworker told her, "You [expletive] women don't belong here. If you knew what was good for you, you'd go home where you belong."⁹² For the next decade, she and her female coworkers would face relentless and extreme sexual and sex-based harassment; when Jenson finally reported the behavior to the Minnesota Department of Human Rights in 1984, her tires were slashed. In 1988, she and fourteen other female mine workers initiated what would become the country's first sexual harassment class action. After a victory at the trial level, the women endured another decade of litigation and invasive questioning about their personal lives. Ultimately, however, they won a \$3.5 million settlement in 1998, securing some measure of recompense and

putting companies on notice that their failure to address sexual harassment could have substantial costs.⁹³

- In France, a landmark court ruling in 2017 showed the potential of sexual harassment laws to reach vulnerable workers.⁹⁴ In the case, four immigrant women who worked as cleaners at the Gare du Nord, the busiest train station in Paris, had been physically harassed by their supervisor over an extended period, and the harassment intensified after the four women supported another male colleague, also an immigrant, who was fired after reporting a kickback scheme. When he sued as well, all five employees had their cases heard together, and the man who had been terminated testified on behalf of his female coworkers. Though the workers “hardly thought they had a chance,” particularly given the low rates of success in sexual harassment cases in France historically, the Labor Court ruled in their favor, sending an important signal about a potential shift in the legal culture just as #MeToo was picking up steam.⁹⁵

Notably, for each of these cases, the impacts were not limited to individual justice but also extended to norms and workplace cultures more broadly. In this way, laws prohibiting discrimination, and the movements that are often pivotal to their enactment, can play a critical role in changing the conversation about equal rights. Over the past fifty years, expectations about unacceptable behavior in many workplaces have begun to change. In the United States, 68 percent of Americans stated that sexual harassment was a “very serious” or “extremely serious” problem in a 2017 poll, compared to just 34 percent in 1998.⁹⁶ While in some countries shifts in norms have begun in earnest only more recently, the fact remains that efforts to identify and legally address sexual harassment across countries have had and are continuing to have impact on public consciousness.⁹⁷

These shifts in norms matter and can affect the impacts of the laws themselves. In particular, greater awareness and understanding can improve enforcement of laws already on the books. For example, in a range of countries, courts determine whether a particular behavior amounts to sexual harassment based on whether a “reasonable person” would view it as such. Consequently, building a shared popular understanding of what constitutes sexual harassment, and closing gaps in perceptions of sexual harassment between men and women, is critical to the law’s capacity to make a difference.⁹⁸

Greater awareness can also spur the adoption of new laws and efforts to address legal gaps. For example, the awareness-raising of #MeToo and related regional movements has inspired legal change.⁹⁹ In 2019, Chile adopted a new law banning sexual harassment in public spaces, becoming the second country in Latin America to do so.¹⁰⁰ In South Korea, eleven new “#MeToo-related laws” were passed in 2018.¹⁰¹ In the United States, at least fifteen states passed stronger laws against

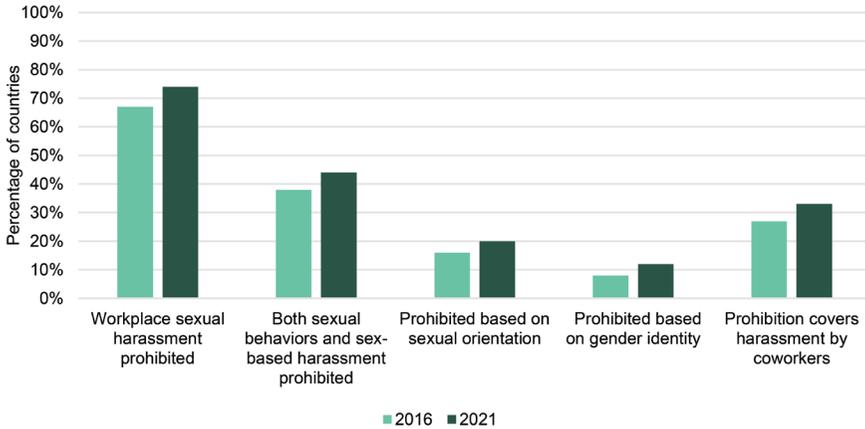


FIGURE 10. Have countries strengthened laws prohibiting sexual harassment at work?

NOTE: Figure describes coverage of sexual harassment laws at work for women. As noted in text, sexual harassment laws should cover all genders. In the vast majority of countries, legislation uses gender-neutral language or is inclusive of all genders. However, in some countries legislation explicitly prohibits sexual harassment of women, but not men, or is found in laws or sections of laws specific to women.

workplace sexual harassment between 2017 and 2020, many of which prohibited nondisclosure agreements that barred workers from speaking out about their experiences of sexual harassment.¹⁰² Movements are also underway in the United States to address related policies that undermine sexual harassment laws, such as the establishment of a lower minimum wage for service workers, which creates a dynamic wherein workers often must tolerate harassing behavior from customers in exchange for a decent tip. As these examples illustrate, shifts in norms and shifts in laws often go hand in hand.

In just the five years between 2016 and 2021, eleven countries adopted new laws explicitly prohibiting sexual harassment at work for workers regardless of gender, while two countries that previously prohibited sexual harassment only of women passed new gender-neutral legislation. At the same time, eight countries newly enacted or amended legislation to specifically prohibit sexual harassment based on sexual orientation, as did nine countries for gender identity. Protections against both sex-based and sexual-behavior-based harassment have likewise increased over this period, as have prohibitions of harassment by coworkers and others at work.

Still, more research is needed on the effectiveness of laws, trainings, and other prevention efforts across countries as well as how experiences of sexual harassment vary in different contexts. To date, most sexual harassment studies have focused on a few high-income countries. While existing evidence suggests that women across countries face similar types of harassing behaviors in the workplace, developing more robust evidence from a wide array of settings would strengthen efforts to identify effective solutions for all workers.

TABLE 3 Comprehensiveness of legal prohibitions of sexual harassment at work, by country income level

	Low-income countries	Middle-income countries	High-income countries
<i>Are both sexual behavior-based and sex-based harassment explicitly prohibited in the workplace?</i>			
No prohibition	9 (35%)	26 (24%)	8 (14%)
No prohibition, but at least some protection	0 (0%)	2 (2%)	2 (3%)
Only sexual behavior-based harassment prohibited	13 (50%)	36 (33%)	9 (16%)
Only sex-based harassment prohibited	0 (0%)	0 (0%)	3 (5%)
Both sexual behavior-based and sex-based harassment prohibited	4 (15%)	44 (41%)	36 (62%)
<i>What sexual behaviors are legally defined as sexual harassment?</i>			
No prohibition	9 (35%)	28 (26%)	13 (22%)
Only narrowly defined	0 (0%)	1 (1%)	0 (0%)
Quid pro quo or unwanted sexual advances only	4 (15%)	16 (15%)	3 (5%)
Quid pro quo and conduct that creates a hostile work environment	12 (46%)	50 (46%)	41 (71%)
Sexual harassment is not defined	1 (4%)	13 (12%)	1 (2%)
<i>Does legislation explicitly prohibit work-related sexual harassment that happens outside the workplace?</i>			
No explicit prohibition of sexual harassment at work	9 (35%)	28 (26%)	13 (22%)
Only workplace sexual harassment explicitly covered	4 (15%)	14 (13%)	8 (14%)
Explicitly covers harassment outside the workplace	1 (4%)	14 (13%)	4 (7%)
Place not specified	12 (46%)	52 (48%)	33 (57%)
<i>Do sexual harassment prohibitions cover job seekers?</i>			
No explicit prohibition of sexual harassment at work	9 (35%)	28 (26%)	13 (22%)
Covers employees or other specific groups only	11 (42%)	35 (32%)	15 (26%)
Yes, explicitly covered	1 (4%)	26 (24%)	25 (43%)
Coverage not specified	5 (19%)	19 (18%)	5 (9%)
<i>Do sexual harassment prohibitions cover interns, apprentices, or employees in training?</i>			
No explicit prohibition of sexual harassment at work	9 (35%)	28 (26%)	13 (22%)
Covers employees or other specific groups only	10 (38%)	44 (41%)	21 (36%)
Yes, explicitly covered	2 (8%)	17 (16%)	19 (33%)
Coverage not specified	5 (19%)	19 (18%)	5 (9%)

(contd.)

TABLE 3 (continued)

	Low-income countries	Middle-income countries	High-income countries
<i>Is there a prohibition of workplace sexual harassment based on sexual orientation?</i>			
Sexual harassment not explicitly prohibited	9 (35%)	28 (26%)	13 (22%)
No prohibition explicit to sexual orientation and sexual harassment prohibition covers women only	1 (4%)	6 (6%)	0 (0%)
Prohibition extends to both genders, but no prohibition explicit to sexual orientation	14 (54%)	60 (56%)	22 (38%)
Prohibition explicit to sexual orientation or same sex sexual harassment	2 (8%)	14 (13%)	23 (40%)
<i>Is there a prohibition of workplace sexual harassment based on gender identity?</i>			
Sexual harassment not explicitly prohibited	9 (35%)	28 (26%)	13 (22%)
No prohibition explicit to gender identity and sexual harassment prohibition covers women only	1 (4%)	6 (6%)	0 (0%)
Prohibition extends to both genders, but no prohibition explicit to gender identity	15 (58%)	67 (62%)	29 (50%)
Prohibition explicit to gender identity	1 (4%)	7 (6%)	16 (28%)

CONCLUSION

Recent decades have brought significant and overdue attention to the prevalence of sexual harassment, its economic consequences for women and workers of all genders, and the importance of a legal response. The laws that have already been passed matter: sexual harassment legislation has offered recourse to individual women all over the world and has played an important role in beginning to shift expectations about workplace cultures.

At the same time, there's still far to go: one in four countries globally, including one in three low-income countries, still lack explicit provisions prohibiting sexual harassment at work. This represents a missed opportunity. Prohibiting sexual harassment comprehensively is a straightforward step all countries can take to advance gender equality and also boost their economies by enabling everyone to contribute to their full potential.

Further, to shift norms long-term and ensure equal rights are realized, laws must not only be in place but be effectively enforced for all. This means not only that all workers must have access to effective reporting mechanisms, but also that workers who do report—and their colleagues who stand with them—must be protected from retaliation. Moreover, employers must have affirmative duties to prevent harassment. The following chapter—concluding section 1 of this book—details important considerations and effective approaches from across countries, designed to ensure that the potential of sexual harassment laws and of other anti-discrimination legislation is fulfilled.

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