Workplace Sexual Harassment in Higher Ed: Special Issues

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Agenda

- Background: UE Study, EEOC, Continuing Campus Problem
- Laws and Regulations
- Role of Title IX Coordinators
- Policies and Procedures
- Reporting
- Investigations
- Training Considerations
- Research Grant Issues
- Media Scrutiny
UE Study: Monetary Losses

Claims That Incurred Monetary Losses

TOTAL LOSSES
$10.3 million

$6.9 million
INDEMNIITY COSTS

$3.4 million
DEFENSE COSTS

$153,000
AVERAGE INDEMNIITY COST

$74,000
AVERAGE DEFENSE COST
EEOC in FY 2018

- Total discrimination charges dropped about 10% from prior year
- But sexual harassment charges **increased** almost 14%
- Agency recovered $56.6 million for sexual harassment victims, up from $47.5 million in FY 2017
A Continuing Campus Problem

- General academic culture values
- Faculty issues
  - Bases for tenure/promotion decisions
  - Often lack clear “supervisor”
  - May assume supervisory duties for reasons other than managerial skill
- Other issues
  - Small, isolated work units (e.g., labs)
  - Poor management, personality conflicts
  - Pockets of power
Laws and Regulations

- Federal laws
  - Title VII
  - Title IX (not just for students, depending on location)
    - Interplay between Title VII and Title IX
    - Pending OCR regulations
- State laws
  - May give employees greater protection
  - Plaintiffs can avoid Title VII damages caps
- Others
  - Federal agencies
  - Private entities
Role of Title IX Coordinators

- Goes beyond student sexual harassment
- UW-Madison Title IX office
  - Oversees all sexual harassment/violence investigations
  - Primary owner of employee training
  - Multiple other responsibilities
- Common problems
  - Unclear authority
  - Title IX vs. HR?
Q&A Session #1
Common mistakes include:
- Excessive focus on student issues
- No regular review/update
- Cutting/pasting from other institutions
- Not addressing obvious inconsistencies

Disseminate widely to employees
- UW-Madison approach

Potential conflicts: procedures for different employee groups
Reporting

- Difficulty getting reports?
  - Interdependence, important relationships, need for referrals
- Reporting procedures must be clear, easy to follow
- Actively encourage reporting
  - Cover in training
  - Emphasize retaliation not tolerated
- Anonymous reporting/Hotlines
Reporting (cont.)

- “Responsible employees”
- Big changes in Texas
  - New law
    - Potential criminal penalties (fines, prison time) for employee failure to report sexual assault or harassment, stalking, dating/interpersonal violence
    - Will other states follow?
  - New policy at UT-Austin
    - Termination is presumptive punishment for sexual misconduct
Investigations

- Internal vs. external investigators
  - If institution has choice, when is latter preferable?
    - May be more cost-effective
    - High profile or otherwise sensitive matters
- Addressing new information (e.g., multiple employees knew of harassment but failed to report)
  - Potential responses: more training, possible discipline?
  - Assess awareness/comfort with current system and whether alternatives are needed
Q&A Session #2
Training Considerations

- Home grown or commercial?
  - Advantages of former for UW:
    - Tailored to own policies/procedures
    - Treats learner as bystander, not perpetrator
    - Mandatory, with high compliance rate
    - Applies to everyone, including faculty
    - Alternatives arranged as needed
Training Considerations (cont.)

- Tiered (combination) approach
  - Online training for most employees
    - In person for certain groups
    - Who conducts?
- Comply with state or local requirements
  - Examples include CA, NY, IL (and NYC)
Research Grant Issues

- Grants may require institution to report sexual harassment by grant’s P.I.
  - Failure to comply can mean loss of grant
  - May need to replace P.I.
- Fallout potentially affects others (not just harasser and victim)
  - Sometimes can find alternative salary funding for other employees – if not, they may become collateral damage
How to respond when media comes calling?

- At UW, decline comment on specifics while internal matter is active
- More information typically released after matter concludes, with redactions
- Complete refusal to comment often not feasible; refer to general institutional procedures
Media Scrutiny (cont.)

- For smaller, less well-resourced institutions
  - Have a plan to deal with media attention to matter involving high profile figure
  - Identify in advance institutional spokesperson(s)
- Mitigate impact on alumni, other donors
  - Transparency is critical
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Hot Topics

Title IX and VAWA/Campus SaVE Act

Employee-on-Student Sexual Misconduct in Higher Ed

Educator Sexual Misconduct at K-12 Schools

Preventing Workplace Harassment
Q&A Session #3