



September 2020

WORKPLACE SEXUAL HARASSMENT

Experts Suggest Expanding Data Collection to Improve Understanding of Prevalence and Costs

Accessible Version

GAO Highlights

Highlights of [GAO-20-564](#), a report to congressional requesters

Why GAO Did This Study

While many workers in the United States experience workplace sexual harassment—resulting in substantial costs to them and their employers—the extent of sexual harassment and the magnitude of its effects are not fully understood.

GAO was asked to examine the extent to which reliable information is available on workplace sexual harassment's prevalence and costs. This report examines (1) what is known about the prevalence and costs of U.S. workplace sexual harassment, including the federal workforce, (2) the extent to which EEOC collects sexual harassment data, and (3) data collection approaches experts recommend to improve available information. To address these objectives, GAO analyzed EEOC data and survey data from other federal agencies, interviewed officials and reviewed documentation from multiple federal agencies, and interviewed experts on sexual harassment. GAO also convened a 2-day roundtable of experts, with assistance from the National Academies of Sciences, Engineering, and Medicine, and conducted a literature review.

What GAO Recommends

GAO recommends that EEOC assess the feasibility of systematically analyzing its data on retaliation charges and the associated protected activities, including those related to sexual harassment. EEOC did not state whether or not it concurred with GAO's recommendation. GAO continues to believe this recommendation is appropriate, as discussed in the report.

View [GAO-20-564](#). For more information, contact Cindy S. Brown Barnes at (202) 512-7215 or brownbarnesc@gao.gov.

September 2020

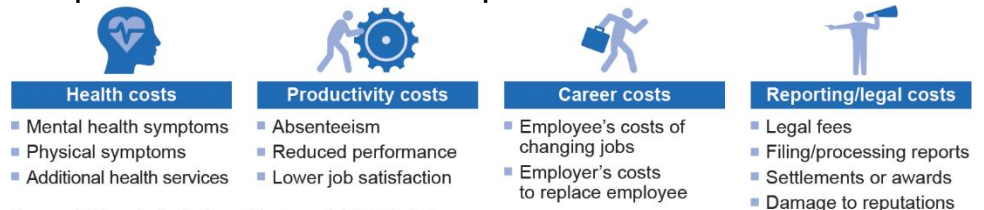
WORKPLACE SEXUAL HARASSMENT

Experts Suggest Expanding Data Collection to Improve Understanding of Prevalence and Costs

What GAO Found

Limited nationwide data hinder a comprehensive understanding of the prevalence and costs of workplace sexual harassment. According to GAO's analysis of available federal data and literature review, the few reliable nationwide estimates of sexual harassment's prevalence vary substantially due to differences in methodology, including the question structure and time period the survey used. Moreover, the likelihood of experiencing workplace sexual harassment can vary based on an individual's demographic characteristics—such as gender, race, and age—and whether the workplace is male- or female-dominated. For example, women, younger workers, and women in male-dominated workplaces were more likely to say they experienced harassment. GAO did not find any recent cost estimates of workplace sexual harassment, but identified four broad categories of costs: health, productivity, career, and reporting and legal costs (see figure).

Examples of Costs Associated with Workplace Sexual Harassment



Source: GAO analysis of relevant literature. | GAO-20-564

The Equal Employment Opportunity Commission (EEOC), as part of its mission to prevent and remedy unlawful employment discrimination, maintains data on sexual harassment and retaliation charges filed against employers, but cannot systematically analyze the relationship between the two for all charges filed nationwide. After filing sexual harassment charges or engaging in other protected activity, employees may experience retaliation, such as firing or demotion, and EEOC data show that retaliation charges constitute a growing portion of its workload. EEOC's planning documents highlight its intention to address retaliation and use charge data to inform its outreach to employers. However, while EEOC can review electronic copies of individual charges for details, such as whether a previously filed sexual harassment charge led to a retaliation charge, its data system cannot aggregate this information across all charges. Without the capacity to fully analyze trends in the relationship between sexual harassment and retaliation charges, EEOC may miss opportunities to refine its work with employers to prevent and address retaliation.

Experts at GAO's roundtable said nationally representative surveys would help to improve available information on workplace sexual harassment. Expert recommendations focused on three main areas: (1) survey administration and resources, including advantages and disadvantages to various federal roles; (2) methods to collect data, such as using stand-alone surveys or adding questions to existing surveys; and (3) content of data to be collected, including employee and employer characteristics and specific costs.

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Abbreviations

BLS	Bureau of Labor Statistics
CDC	Centers for Disease Control and Prevention
DOJ	Department of Justice
DOL	Department of Labor
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
GSS	General Social Survey
HHS	Department of Health and Human Services
ICRW	International Center for Research on Women
LGBTQ+	Lesbian, Gay, Bisexual, Transgender, and Queer or Questioning

MSPB	Merit Systems Protection Board
National Academies	National Academies of Sciences, Engineering, and Medicine
NIOSH	National Institute for Occupational Safety and Health
OMB	Office of Management and Budget
QWL	Quality of Worklife
SEQ	Sexual Experiences Questionnaire

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September 30, 2020

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor and Pensions
United States Senate

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

Senator Kirsten Gillibrand
United States Senate

Senator Elizabeth Warren
United States Senate

Many workers in the United States experience sexual harassment in their workplaces, which in many cases may violate anti-discrimination laws and result in substantial costs to these workers and their employers.¹ However, the extent of workplace sexual harassment and the magnitude of its effects are not fully understood. Research shows that few workers who experience sexual harassment report it—some studies estimate as few as 6 percent of such workers report the incident.² While the most tangible effects of sexual harassment may be direct costs, such as legal fees and settlement amounts, there are also indirect costs and consequences, such as decreased productivity, increased turnover, and reputational harm to workers and employers.

You asked us to examine the extent to which reliable information is available on different aspects of workplace sexual harassment, including its prevalence and costs. This report examines (1) what is known about

¹In this report, unless otherwise clear from context, we use the term sexual harassment broadly to include behaviors that may or may not meet the legal criteria to constitute unlawful sexual harassment. Where we discuss particular data and studies in the report, we use the term sexual harassment as it is defined by those datasets or researchers.

²Equal Employment Opportunity Commission, *Select Task Force on the Study of Harassment in the Workplace*, Report of Co-Chairs Chai R. Feldblum and Victoria A. Lipnic, (Washington, D.C.: June 2016).

the prevalence and costs of workplace sexual harassment in the United States, including in the federal workforce, (2) the extent to which the Equal Employment Opportunity Commission (EEOC) collects data on formal charges and complaints of U.S. workplace sexual harassment, and (3) the data collection approaches experts recommend to improve available information about the prevalence and costs of workplace sexual harassment.

To address these objectives, we used a variety of data collection methods to obtain a wide range of information on workplace sexual harassment and costs, as well as to identify approaches for improving available information. We analyzed data from EEOC to better understand how it tracks formal charges and complaints of sexual harassment, and from the Merit Systems Protection Board (MSPB) and Centers for Disease Control and Prevention's (CDC) National Institute for Occupational Safety and Health (NIOSH) to assess their reported estimates of the prevalence of workplace sexual harassment. Our analysis included data from charges filed with EEOC by private sector, state, and local government workers for fiscal years 2009-2018; complaints filed with federal agency equal employment opportunity (EEO) offices for fiscal years 2013-2018;³ MSPB's 2016 Merit Principles Survey; and NIOSH's Quality of Worklife survey module for the years 2006, 2010, 2014, and 2018.⁴ We also conducted a multi-stage literature review of almost 300 publication abstracts, and reviewed the full reports for those that met our methodological standards to identify common themes and relevant data about sexual harassment.

In addition, we interviewed officials and reviewed documentation from multiple federal agencies about sexual harassment data they collect and

³EEOC uses the term "charge" in the context of private sector, state, and local government, and other non-federal workplaces, and uses the term "complaint" for federal workplaces. Charges of discrimination against non-federal employers may be filed directly with EEOC, or in some cases, a state or local agency. The data we analyzed do not include charges filed with state or local agencies. Complaints of discrimination against federal employers are generally filed with the federal agency, and federal agencies report complaint data to EEOC. For the purposes of our review, we considered sexual harassment charges and complaints to be those that list sexual harassment as at least one of the issues alleged.

⁴The Quality of Worklife (QWL) module is a part of the General Social Survey (GSS) conducted by NORC, an independent, nonpartisan research institute at the University of Chicago, and is fielded every 4 years. According to NIOSH officials, a National Science Foundation grant funds the GSS, and, through an interagency agreement with National Science Foundation, NIOSH adds funds for administration of the QWL module.

other efforts to address sexual harassment. These federal agencies include the Departments of Justice (DOJ), Labor (DOL), Commerce, and Health and Human Services (HHS); the U.S. Commission on Civil Rights; EEOC; and MSPB.⁵ We also interviewed representatives of organizations with expertise in workplace sexual harassment, such as the National Women’s Law Center and the Institute for Women’s Policy Research. Additionally, we coordinated with the National Academies of Sciences, Engineering, and Medicine (National Academies) to convene a 2-day roundtable of 17 experts from a variety of backgrounds (e.g., survey methodologists, sexual harassment researchers, and economists) to gather their recommendations on improving available information on workplace sexual harassment.⁶ The roundtable also included representatives of four federal agencies—DOL’s Bureau of Labor Statistics, EEOC, MSPB, and NIOSH.⁷ Prior to the roundtable, we sent participants a questionnaire to gather initial data and inform our roundtable agenda. Lastly, we reviewed relevant federal laws and regulations. Additional detail on our methodology is presented in appendix I.

⁵This review does not focus its analysis on sexual harassment among members of the military. However, certain employees of military agencies are included as part of the federal workforce in the EEOC complaint and MSPB survey data we analyzed. For previous GAO work on sexual harassment and assault in the military, see GAO, *Sexual Violence: Actions Needed to Improve DOD’s Efforts to Address the Continuum of Unwanted Sexual Behaviors*, [GAO-18-33](#) (Washington, D.C.: Dec. 18, 2017); *Sexual Assault: Actions Needed to Improve DOD’s Prevention Strategy and to Help Ensure It Is Effectively Implemented*, [GAO-16-61](#) (Washington, D.C.: Nov. 4, 2015); *Preventing Sexual Harassment: DOD Needs Greater Leadership Commitment and an Oversight Framework*, [GAO-11-809](#) (Washington, D.C.: Sep. 21, 2011); and *Military Personnel: The DOD and Coast Guard Academies Have Taken Steps to Address Incidents of Sexual Harassment and Assault, but Greater Federal Oversight Is Needed*, [GAO-08-296](#) (Washington, D.C.: Jan. 17, 2008).

⁶The National Academies is a private, nonprofit organization whose mission is to provide independent, objective analysis and advice to the nation and conduct activities to solve complex problems and inform public policy decisions. Our roundtable meeting of experts, was planned and convened with the assistance of the National Academies to better ensure a breadth of expertise. However, all final decisions regarding meeting substance and expert participation were the responsibility of GAO. Neither GAO nor the roundtable participants as a whole recommend or endorse the adoption of any particular approach discussed in this report. See appendix II for the list of experts who participated in our roundtable.

⁷Representatives from DOL, EEOC, and NIOSH participated in a single roundtable session focusing on federal agency data collection, whereas a representative from MSPB—a researcher responsible for its survey on sexual harassment of federal employees—participated in the entire roundtable.

We conducted this performance audit from July 2018 to September 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Legal Framework for Workplace Sexual Harassment

A number of federal laws and executive orders prohibit sex discrimination, including sexual harassment, in the workplace. For example, Title VII of the Civil Rights Act of 1964 (Title VII) prohibits covered employers from discriminating “against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”⁸ The Supreme Court has held that sexual harassment, when it meets certain criteria, is a form of sex discrimination prohibited by Title VII.⁹ Private, state, and local government employers with 15 or more employees, as well as federal employers, are generally covered by Title VII.¹⁰ Similarly, Executive Order 11246, as amended, prohibits discrimination in employment on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin by covered federal contractors.¹¹ In addition, the Civil Service Reform Act of 1978, as amended, prohibits executive branch agencies from discriminating in personnel actions based on race, color, religion, sex, national origin, age, disability, marital status, political affiliation, or on

⁸42 U.S.C. § 2000e-2(a)(1). On June 15, 2020, the Supreme Court held that Title VII’s prohibition against discrimination on the basis of sex includes discrimination based on sexual orientation and gender identity. *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

⁹See, e.g., *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

¹⁰See 42 U.S.C. §§ 2000e(b), (f), 2000e-1, 2000e-16(a).

¹¹It also requires these contractors to take affirmative action to ensure that equal opportunity is provided in employment without regard to these protected characteristics. In general, federal contractors and subcontractors, and federally assisted construction contractors and subcontractors, who do over \$10,000 in federal government business in a year are covered by Executive Order 11246. A current version of the executive order, incorporating subsequent amendments, is available at <https://www.dol.gov/agencies/ofccp/executive-order-11246/as-amended>.

Components of an Equal Employment Opportunity Commission (EEOC) Title VII Charge—Basis and Issue

According to EEOC, in order to have a legal claim, a discrimination charge filed with EEOC must allege a “basis” and an “issue” covered by the federal equal employment opportunity (EEO) statutes enforced by EEOC.

With respect to basis, a charge must allege that an individual was subjected to employment discrimination based on one or more protected characteristics.

Under Title VII of the Civil Rights Act of 1964, covered bases include: 1) race, 2) color, 3) national origin, 4) religion, 5) sex (including pregnancy), and 6) retaliation.

A discrimination charge must also pertain to an issue covered by the applicable EEO statute. Under Title VII, covered issues include, but are not limited to: 1) hiring/recruitment, 2) discharge/layoff, 3) promotion/demotion, 4) wages and benefits, 5) reasonable accommodation of religion, and 6) decisions or other actions that affect the terms and conditions of employment, which includes harassment and sexual harassment.

Source: Equal Employment Opportunity Commission, EEOC Compliance Manual, Section 2: Threshold Issues. | GAO-20-564

conduct which does not adversely affect the performance of the applicant or employee.¹²

According to EEOC, to be unlawful under Title VII, harassment must be based on a legally protected characteristic (such as race, sex, or national origin); be unwelcome; and affect a term, condition, or privilege of employment. Under Title VII, harassment affects an applicant’s or employee’s terms, conditions, or privileges of employment if: (1) there is an actual change to the terms or conditions of employment that is linked to such harassment (for example, a decision to refuse to hire an applicant, or to fire an employee, because they rejected a manager’s sexual advances); or (2) the harassment constructively changes the terms or conditions of employment by creating a hostile work

¹² 5 U.S.C. §§ 2302(b)(1) and (b)(10). Further, Executive Order 11478, as amended, generally prohibits discrimination in federal employment on the basis of race, color, religion, sex, national origin, handicap, age, sexual orientation, gender identity, or status as a parent, and requires covered federal agencies to maintain “an affirmative program of equal employment opportunity” for employees and applicants.

environment.¹³ (See sidebar.) The circumstances under which employers will be liable for sexual harassment depend on the identity of the harasser(s) and the nature of the harassment.¹⁴

**Merit Systems Protection Board (MSPB)
categories of sexual harassment behaviors**

- Gender harassment: unwelcome behaviors that disparage or objectify others based on their sex or gender (e.g., use of derogatory or unprofessional terms related to sex or gender).
- Sexual coercion: pressure or force to engage in sexual behavior (e.g., offer of preferential treatment in the workplace in exchange for sexual favors, a.k.a. quid pro quo).
- Unwanted sexual attention: unwelcome behaviors of a sexual nature that are directed toward a person (e.g., invasion of personal space).

Source: Merit Systems Protection Board, Update on Sexual Harassment in the Federal Workforce (Mar. 2018). | GAO-20-564

Other definitions of sexual harassment encompass behaviors that may not meet the legal definition of sexual harassment, such as an offhand remark based on sex. For example, MSPB groups sexual harassment behaviors in three categories: gender harassment, sexual coercion, and unwanted sexual attention. (See sidebar.) Depending on the

¹³See <https://www.eeoc.gov/harassment>. See also EEOC's guidelines on sexual harassment under Title VII at 29 C.F.R. § 1614.11(a). To establish a hostile work environment claim, according to EEOC, the complainant must establish that the harassing conduct was based on sex (or another legally protected characteristic), unwelcome, and sufficiently severe or pervasive to create a subjectively and objectively hostile work environment (that is, the employee believed that the work environment was hostile or abusive, and a reasonable person in the employee's position would find the work environment hostile or abusive). See EEOC, *Enforcement Guidance on Harris v. Forklift Sys. Inc.* (Mar. 8, 1994) and EEOC, *Policy Guidance on Current Issues of Sexual Harassment* (Mar. 19, 1990).

¹⁴For example, according to EEOC guidelines, employers are generally liable for sexual harassment by employees or nonemployees (such as customers, contractors, or vendors) if the employer knew or should have known about the harassment and failed to act promptly to stop and correct it. 29 C.F.R. § 1604.11(d), (e). Employers may also be liable for sexual harassment by supervisors that involves a tangible employment action (a significant change in employment status, such as refusal to hire, termination, demotion, or reassignment with significantly different responsibilities). See EEOC, *Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors* (June 18, 1999).

circumstances, such behaviors may constitute sexual harassment in violation of Title VII. In this report, as we present or discuss sexual harassment data from different sources, we identify the relevant definitions being used, which may not meet the legal criteria to constitute discrimination under Title VII.

Federal Role in Addressing Sexual Harassment

Equal Employment Opportunity Commission

EEOC is the primary federal agency responsible for enforcing federal employment antidiscrimination laws, and it investigates sexual harassment charges brought under Title VII against private sector, state, and local government employers.¹⁵ EEOC also oversees federal agencies' equal employment opportunity (EEO) programs, including by requiring agencies to submit annual reports to EEOC.¹⁶

When an EEOC investigation of a private sector charge determines there is reasonable cause to believe sexual harassment occurred, EEOC will engage in confidential conciliation with the employer, which could result in an administrative settlement agreement. The employer may also enter into an administrative settlement agreement at any other stage in the EEOC administrative enforcement process, including prior to an investigation or determination on whether unlawful sexual harassment occurred.¹⁷ If conciliation is unsuccessful, EEOC may decide to litigate the

¹⁵42 U.S.C. §§ 2000e-5, 2000e-8. In some cases, state or local agencies may investigate EEO charges. EEOC's mission is to prevent and remedy unlawful employment discrimination and advance equal opportunity for all in the workplace.

¹⁶42 U.S.C. § 2000e-16(b) and Exec. Order 12067, 43 Fed. Reg. 28,967 (July 5, 1978). EEOC regulations require federal agencies to report to EEOC information about the status, processing, and disposition of EEO complaints on an annual basis, known as the Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (EEOC Form 462). 29 C.F.R. § 1614.602(a). In addition, EEOC also provides guidance to federal agencies on all aspects of the federal government's equal employment opportunity program, including providing technical assistance; monitoring and evaluating federal agencies' affirmative employment programs; developing and distributing educational materials; and adjudicating appeals from administrative decisions made by federal agencies on EEO complaints.

¹⁷EEOC distinguishes between conciliation agreements, which are entered into after EEOC has made a cause finding, and settlement agreements, which are entered into before EEOC makes a cause determination. This report refers to both types of agreements as administrative settlement agreements and does not make a distinction between agreements reached before or after a cause determination is made on a charge.

case, which could also result in a settlement or a judgment from the court.¹⁸ The employer may agree to certain monetary and nonmonetary remedies as part of the settlement, or the court may order such remedies if it determines unlawful discrimination occurred.¹⁹

Other Agencies

Several additional federal agencies have a role in the enforcement of federal EEO requirements or engage in other efforts related to sexual harassment, including:

- **The U.S. Commission on Civil Rights'** mission is to inform the development of national civil rights policy and enhance the enforcement of federal civil rights laws.²⁰
- **The Department of Justice's (DOJ) Civil Rights Division** has authority to investigate and litigate Title VII cases referred to it by EEOC involving state and local government employers.²¹

¹⁸According to EEOC, the agency pursues litigation under Title VII in select cases against non-governmental employers, considering factors such as the seriousness of the discrimination, the type of legal issues involved, and any wider impact the case may have on EEOC's efforts. In Title VII cases involving state or local government employers, EEOC will refer the case to the Department of Justice for litigation when EEOC finds cause to believe that discrimination has occurred. Individual workers also may sue their employer in court after receiving notice from EEOC of their right to do so. EEOC generally issues a notice to complainants of their right to sue at the conclusion of its investigation.

¹⁹There is a cap on the total amount of compensatory and punitive damages that parties can receive through EEOC procedures. According to EEOC, compensatory damages are intended to compensate charging parties for out-of-pocket expenses incurred and any emotional harm, while punitive damages are intended to deter future discriminatory conduct and punish employers whose violation is malicious or reckless. The cap varies based on the size of the employer, ranging from \$50,000 for employers with 15-100 employees to \$300,000 for employers with more than 500 employees. 42 U.S.C. § 1981a(b).

²⁰The Commission recently issued a report examining the prevention and redress of sexual harassment in federal workplaces. The report looks at EEOC's Title VII work and provides an analysis of agency policies and practices at the Department of State and the National Aeronautics and Space Administration. See U.S. Commission on Civil Rights, *Federal #Me Too: Examining Sexual Harassment in Government Workplaces*, (Washington, D.C.: Apr. 1, 2020).

²¹42 U.S.C. § 2000e-5(f). DOJ may also initiate investigations and enforcement actions against state and local government employers where it has reason to believe that a "pattern or practice" of employment discrimination exists. 42 U.S.C. § 2000e-6.

- **The Department of Labor’s Office of Federal Contract Compliance Programs** enforces affirmative action and antidiscrimination requirements for federal contractors under Executive Order 11246.
- **The Office of Congressional Workplace Rights** enforces anti-discrimination provisions of the Congressional Accountability Act of 1995 for over 30,000 legislative branch employees.²²
- **The Merit Systems Protection Board (MSPB)** may be involved in appeals of sexual harassment grievances in federal workplaces, and it also studies prohibited personnel practices, including sexual harassment, in the federal workforce.
- **Federal agencies** generally process sexual harassment complaints from their employees internally, though employees may request a hearing before an EEOC Administrative Judge or appeal agency decisions to EEOC.²³

In addition to federal protections, many workplaces, localities, and states have their own statutes or policies prohibiting sexual harassment, which in some cases may be more expansive than the Title VII protections enforced by EEOC.

Reporting Sexual Harassment

Many workers who experience sexual harassment choose not to report it. According to a 2018 literature review by the National Academies, formal reporting is the least common response for women who have experienced sexual harassment (versus leaving a job, avoiding the perpetrator, etc.), often due to “an accurate perception that they may experience retaliation or other negative outcomes associated with their

²² U.S.C. §§ 1301-1438. For more information on the Office of Congressional Workplace Rights and its online system for discrimination and harassment claims, see GAO, *Office of Congressional Workplace Rights: Weaknesses in Cybersecurity Management and Oversight Need to Be Addressed*, [GAO-20-199](#) (Washington, D.C.: Feb. 11, 2020).

²³ After a federal agency investigates an employee complaint, an employee can decide to (1) ask the agency to issue a decision as to whether discrimination occurred, or (2) request a hearing before an EEOC administrative judge. In either case, an employee can appeal the decision to EEOC or file suit in federal court.

personal and professional lives.”²⁴ The EEOC Select Task Force on the Study of Harassment in the Workplace reviewed studies showing that only 6 to 13 percent of individuals who experience harassment file a formal complaint.²⁵ Additionally, MSPB found in a 2016 survey of federal government employees that only 11 percent of those who experienced sexual harassment filed a formal complaint.²⁶

Employees who experience or witness sexual harassment may have a number of options to report it, depending on the circumstances (see fig. 1). For example, employees might report to their employer or file a union grievance. Employees at private sector, state, and local government workplaces covered by Title VII may file a charge of sexual harassment directly with EEOC or with state or local equivalents, known as Fair Employment Practices Agencies. Some workers may also choose to sue their employers in federal or state court after receiving a notice of their right to sue from EEOC. Federal government workers also must go through an administrative process before filing a lawsuit, which generally involves filing complaints with their agencies’ EEO offices.

²⁴National Academies of Sciences, Engineering, and Medicine, *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine* (Washington, D.C.: 2018).

²⁵Equal Employment Opportunity Commission, Select Task Force on the Study of Harassment in the Workplace, *Report of Co-Chairs Chai R. Feldblum and Victoria A. Lipnic*.

²⁶Merit Systems Protection Board, *Update on Sexual Harassment in the Federal Workplace* (Washington, D.C.: March 2018).

Figure 1: Various Reporting Options for Workers Who Experience Workplace Sexual Harassment

Depending on the circumstances, workers may choose more than one reporting option, but not all options are available to all workers. Time limits may also apply.

Choose not to report	Report to employer	File a union grievance	Report to EEOC/OFCCP	Report to state or local EEO agency	Sue the employer	Report to police
<p><i>Most workers experiencing workplace sexual harassment do not report to their employer or public agency.</i></p> <p><i>In addition, some workers may not be covered by a federal or state anti-discrimination law because of the size of their employer.</i></p>	<p><i>Employer is legally obligated to stop harassment. Employer should investigate the complaint and may try to resolve it through an internal complaint resolution procedure or arbitration.</i></p> <p><i>Federal agencies generally process reports of sexual harassment from their employees internally.</i></p>	<p><i>Union may help facilitate a resolution, consistent with its bargaining agreement.</i></p> <p><i>Workers may also have to file a complaint with the employer to allow them to investigate the complaint and remedy the situation.</i></p>	<p><i>EEOC will investigate charges falling under its jurisdiction, which may result in dismissal, settlement, or litigation.</i></p> <p><i>Workers employed by a federal contractor may also report to the Office of Federal Contract Compliance Programs (OFCCP). Routine OFCCP compliance evaluations may also identify sexual harassment.</i></p>	<p><i>State and local equal employment opportunity (EEO) agency will investigate reports falling under its jurisdiction, which may result in dismissal, settlement, or litigation.</i></p> <p><i>For charges that may also involve state and/or local anti-discrimination laws, EEOC may coordinate with state and/or local agencies that are responsible for enforcing these laws.</i></p>	<p><i>After reporting sexual harassment to EEOC or state or local EEO agency, workers may file a lawsuit against their employer upon receiving a Notice of Right to Sue.</i></p>	<p><i>When workplace harassment involves sexual assault or other criminal conduct, workers may report it as a crime to local police.</i></p>

Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) guidance and interviews. | GAO-20-564

Retaliation

Elements of an Equal Employment Opportunity Commission (EEOC) Retaliation Claim

Protected Activity – There are two types of protected activities:

Participating in an equal employment opportunity (EEO) process—specifically, making a charge, testifying, or assisting or participating in an investigation, proceeding, or hearing.

Opposition to perceived employment discrimination. The manner of opposition must be reasonable, and may be based on a reasonable, good faith belief, even if the conduct opposed is ultimately deemed lawful.

Materially Adverse Action – Action taken by an employer that might deter a reasonable person from engaging in protected activity, such as denial of promotion, refusal to hire, denial of job benefits, and demotion.

Causal Connection – A materially adverse action cannot violate the EEO laws without a causal connection between the action and the protected activity. The causal link is often established by evidence that the adverse action occurred shortly after a protected activity. However, even when time between the protected activity and the adverse action is lengthy, other evidence of retaliatory motive may establish the causal link.

Source: Equal Employment Opportunity Commission, Enforcement Guidance on Retaliation and Related Issues. | GAO-20-564

One potential consequence of reporting sexual harassment is retaliation by the employer. Title VII prohibits retaliation against employees who take part in one or more “protected activities,” such as making a charge or participating in an EEOC investigation or hearing.²⁷ Another example of a protected activity could include complaining to a supervisor about allegedly sexually harassing behaviors, depending on the circumstances. According to EEOC guidance, an employer engages in retaliation when it

²⁷Specifically, Title VII provides that “[i]t shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, because he has opposed any practice made an unlawful employment practice by [Title VII], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.” 42 U.S.C. § 2000e-3(a).

takes a “materially adverse” action against an applicant or employee because he or she engaged in a protected activity.²⁸ (See sidebar).

Limited Nationwide Data on Workplace Sexual Harassment Hinder a Comprehensive Understanding of Prevalence and Costs

Few Reliable Nationwide Estimates of the Prevalence of Workplace Sexual Harassment Exist

In our literature review and analysis of federal data, we found three nationwide estimates of the prevalence of workplace sexual harassment—the percentage of workers who say they have experienced it—and one estimate for federal government workers that we determined were reliable for the purposes of our report. These four estimates vary substantially, largely due to differences in methodology (see table 1). Estimates of workplace sexual harassment based on surveys that provide respondents with examples of behaviors that may constitute sexual harassment were higher than other estimates based on surveys that ask directly about sexual harassment. For example, in a national survey conducted in 2003-2004, Rospenda et al. found that 52 percent of women and 43 percent of men reported experiencing any one of nine behaviors that could be considered workplace sexual harassment in the previous 12 months.²⁹ In contrast, other estimates based on surveys that labeled sexual harassment and did not give examples of behaviors that may

²⁸See Equal Employment Opportunity Commission, *Enforcement Guidance on Retaliation and Related Issues* (Aug. 25, 2016).

²⁹Kathleen M. Rospenda, Judith A. Richman, and Candice A. Shannon, “Prevalence and Mental Health Correlates of Harassment and Discrimination in the Workplace: Results from a National Study,” *Journal of Interpersonal Violence*, vol. 24, no. 5 (2009): pp. 819-843. The sample included a random draw of U.S. households with adults (age 18+) who had worked at least 20 hours per week at some point in the past 12 months. While the study used a nationally representative sample, the authors identify potential limitations to this study, including that the data are cross-sectional rather than longitudinal and cannot establish causality between workplace sexual harassment and negative outcomes, and that there is potential for response bias. They include suggestions for future research, including oversampling smaller minority groups and employing the full version of the Sexual Experience Questionnaire, instead of the shortened version they used. These estimates have margins of error at the 95 percent confidence level within +/- 3.5 percentage points for women and men.

constitute sexual harassment reported considerably lower estimates of workplace sexual harassment. For example, the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (NIOSH), through an interagency agreement with the National Science Foundation, sponsors a nationwide household survey of workers ages 18 and older every 4 years that asks respondents whether they have been sexually harassed at work in the past 12 months. In the 2018 NIOSH survey, 4 percent of women and 2 percent of men answered that they experienced what they perceived to be sexual harassment.³⁰ Likewise, a 2017 nationwide survey from the Pew Research Center asked respondents whether they had ever experienced workplace sexual harassment. An estimated 22 percent of women and 7 percent of men answered that they had experienced what they perceived to be sexual harassment.³¹

In addition to these nationwide estimates, we analyzed data from MSPB's 2016 Merit Principles Survey, based on respondents from a random sample of federal employees. The survey asked respondents to indicate whether, in the past 2 years, they had experienced any one of 12 behaviors that may constitute sexual harassment.³² An estimated 21

³⁰These estimates have margins of error at the 95 percent confidence level within +/- 1.6 percentage points for women and +/-1.2 percentage points for men.

³¹Pew Research Center, *Women and Men in STEM Often at Odds over Workplace Equity* (Washington, D.C.: 2018). Survey results are based on a nationally representative survey conducted from July 11 to August 10, 2017, among a sample of 4,914 adults. The margin of error for the full sample (at a 95 percent level of confidence) is +/- 2.7 percentage points, although the margins of error for subpopulations are larger. The survey was conducted in English and Spanish using a nationally representative online research panel. The completion rate for this survey—the share of panelists invited to participate who completed the survey—was 62.9 percent. The cumulative response rate, calculated following Callegaro and DiSogra (2008) procedures, was 5 percent. The data were weighted, taking into account gender by age, race/ethnicity, education, household income, region by metropolitan status, and primary language, to create estimates for all U.S. adults. Please note that question wording (as we explain in detail below) can affect the outcomes of opinion polls.

³²The survey also asked whether respondents experienced "different treatment based on sex/gender," but MSPB did not include this as one of the 12 behaviors that constitute sexual harassment in its survey analysis because, according to MSPB, it describes a form of sex discrimination that is distinct from sexual harassment.

percent of women and 9 percent of men reported experiencing such behaviors.³³

Table 1: Selected Prevalence Estimates of Sexual Harassment in the Workplace, and Related Methodologies, 2003-2018

Source and year(s) survey conducted	Structure of question	Recall period	Estimated prevalence rate for women	Estimated prevalence rate for men	Estimated total prevalence rate
Rospenda (2003-2004)	Behavioral list	Past 12 months	52%	43%	47%
CDC/NIOSH (2018)	Labeling question	Past 12 months	4%	2%	3%
Pew (2017)	Labeling question	Ever	22%	7%	14%
Federal employees only: MSPB (2016)	Behavioral list	Past 2 years	21%	9%	14%

Source: GAO literature review of sexual harassment prevalence studies. | GAO-20-564

Note: The 95 percent margins of error for each source are as follows: Rospenda +/- 3.5 percentage points for women, +/-3.5 percentage points for men, and +/-2.5 percentage points total; CDC/NIOSH +/- 1.6 percentage points for women, +/-1.2 percentage points for men, and +/-0.7 percentage points total; Pew +/- 2.7 percentage points for the full sample, although the margins of error for subpopulations are larger; MSPB +/-2.3 percentage points for women, +/-1.3 percentage points for men, and +/-1.2 percentage points total.

The wide variation in these surveys' estimates of sexual harassment prevalence largely reflects differences in two major methodological areas: survey question structure and recall period.

Survey Question Structure

Surveys measuring the prevalence of sexual harassment typically choose one of two approaches to ask respondents about sexual harassment experiences—a labeling question or a behavioral list—and that choice can influence the resulting prevalence estimates. Surveys using the labeling question approach ask respondents whether they have experienced sexual harassment, and may or may not define what they mean by the term. However, researchers have found individuals who experience sexually harassing behaviors rarely label those experiences

³³Merit Systems Protection Board, Office of Policy and Evaluation, *Update on Sexual Harassment in the Federal Workplace* (Washington, D.C.: 2018). These estimates have margins of error at the 95 percent confidence level within +/- 2.3 percentage points for women and +/-1.3 percentage points for men.

as sexual harassment.³⁴ In contrast, surveys using a behavioral list, such as the MSPB and Rospenda et al. surveys, ask respondents whether they have experienced any of a set of sexually harassing behaviors, without labeling those behaviors in the survey as sexual harassment (see table 2).³⁵ Experts in our roundtable considered the behavioral list method to be a more accurate way to measure sexual harassment prevalence, as it eliminates the need for respondents to subjectively define the term and label their experiences as sexual harassment. Researchers have found that using different definitions of sexual harassment, or not providing a definition at all, can influence the resulting estimates of sexual harassment prevalence. For example, the National Academies conducted a literature review of sexual harassment research and concluded that “a key obstacle to obtaining accurate prevalence numbers across academia and between fields or workplaces is the number of surveys available that do not always use a standardized method for measuring or defining sexual harassment.”³⁶ In addition, researchers have found that using the behavioral list method can result in higher prevalence rates. For example, a 2012 study using a small, nongeneralizable cohort sample from one U.S. city found a large difference between the percent of survey respondents who reported experiencing any of a list of sexually harassing behaviors and the percent who perceived these experiences as sexual harassment.³⁷ Therefore, studies that use the labeling question approach may have less reliable and lower estimates than those using a behavioral list, as they are measuring the prevalence of what individual respondents perceive to be sexual harassment.

³⁴Equal Employment Opportunity Commission, *Select Task Force on the Study of Harassment in the Workplace*, Report of Co-Chairs Chai R. Feldblum and Victoria A. Lipnic.; Heather McLaughlin, Christopher Uggen, and Amy Blackstone, “Sexual Harassment, Workplace Authority, and the Paradox of Power,” *American Sociological Review*, vol. 77, no.4 (2012); pp.625-647; and National Academies of Sciences, Engineering, and Medicine, *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine* (Washington, D.C.: 2018).

³⁵Joni Hersch, “Valuing the Risk of Workplace Sexual Harassment,” *Journal of Risk and Uncertainty*, vol. 57 (2018): pp.111-131.

³⁶National Academies of Sciences, Engineering, and Medicine, *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine*.

³⁷McLaughlin, Uggen, and Blackstone, “Sexual Harassment, Workplace Authority, and the Paradox of Power,” pp. 625-647. These behaviors may or may not constitute unlawful sexual harassment, depending on the circumstances.

Table 2: Types of Sexual Harassment Behaviors Reported from 2016 MSPB Merit Principles Survey

Gender harassment	Unwanted sexual attention	Sexual coercion
<ul style="list-style-type: none"> • Derogatory or unprofessional terms related to sex or gender • Unwelcome sexual teasing, jokes, comments or questions • Exposure to sexually oriented material (e.g., photos, videos, written material) • Exposure to sexually oriented conversations 	<ul style="list-style-type: none"> • Unwelcome invasion of personal space (e.g., touching, crowding, leaning over) • Unwelcome communications (e.g., emails, phone calls, notes, text messages, social media contacts) of a sexual nature • Unwelcome sexually suggestive looks or gestures 	<ul style="list-style-type: none"> • Offer of preferential treatment in the workplace in exchange for sexual favors (quid pro quo) • Pressure for sexual favors • Pressure for dates • Stalking (e.g., unwanted physical or electronic intrusion into one’s personal life) • Sexual assault or attempted sexual assault

Source: Merit Systems Protection Board (MSPB), Office of Policy and Evaluation, Update on Sexual Harassment in the Federal Workplace (Washington, D.C.: 2018). | GAO 20-564

Note: Respondents also had the option to answer “other” and provide a description of the behavior. These behaviors may or may not constitute unlawful sexual harassment, depending on the circumstances. The survey also asked whether respondents experienced “different treatment based on sex/gender.” MSPB did not include different treatment as one of the 12 behaviors that constitute sexual harassment in its survey analysis because, according to MSPB, such behavior describes a form of sex discrimination that is distinct from sexual harassment.

Recall Period

Surveys also vary in the recall period they use—the time period respondents are asked to consider when answering questions about sexual harassment experiences—which can influence sexual harassment prevalence estimates. For example, while Rospenda et al. and NIOSH used a recall period of the “past 12 months,” Pew used “ever,” and MSPB used the “past 2 years.” Experts from our roundtable found that one potential issue with longer recall periods is that people are more likely to remember more extreme behaviors and less likely to remember subtler forms of sexual harassment, such as sexually inappropriate jokes or derogatory comments based on gender.

In short, differences in survey question structure, recall period, and other methodological choices likely account for much of the substantial variation among the prevalence estimates we reviewed. For example, because NIOSH and Pew used a labeling question approach without a definition, their surveys effectively asked respondents whether they experienced what they perceive to be sexual harassment. Therefore, their estimated prevalence rates may less reliably reflect the full range of behaviors that may constitute sexual harassment than estimates from Rospenda et al. and MSPB, which asked about experiencing specific behaviors. These prevalence estimates also come from surveys conducted in different years. For example, while Rospenda et al. used

methods endorsed by experts, the authors fielded the survey over 15 years ago. These factors make it difficult to compare these estimates and draw conclusions about an overall nationwide prevalence rate.

Prevalence of Sexual Harassment Can Vary based on Demographic and Workplace Characteristics

The likelihood of experiencing workplace sexual harassment can vary based on individuals' demographic characteristics and the gender composition of their workgroup, according to our analysis of federal data, as well as non-generalizable prevalence data from our literature review.³⁸ However, underrepresentation of some groups in research studies may complicate the ability to draw conclusions about the prevalence of sexual harassment among demographic groups.³⁹

Gender

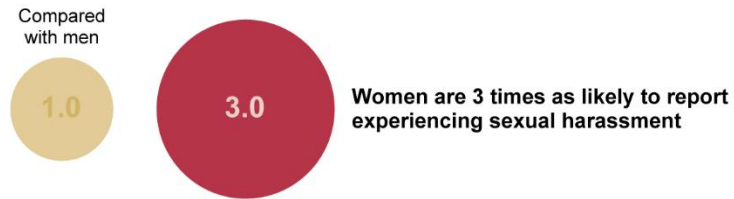
Across our data analysis and the literature, we found that women are more likely than men to say they have experienced sexual harassment at work. Among federal workers, holding all other factors constant, women were 3 times as likely as men to say they experienced sexual harassment in the previous two years (see fig. 2). Our analysis of NIOSH survey data found that women were at least twice as likely to report experiencing sexual harassment as men. Rospenda et al. also found that women in the

³⁸We used the MSPB and NIOSH survey data to examine whether groups with different demographic and workplace characteristics reported different experiences with sexual harassment. We also conducted logistic regression analyses of the data from the 2016 MSPB survey of federal employees to analyze the association between certain demographic and workplace characteristics—such as age, race, and workplace gender composition—and the odds of reporting experiencing sexual harassment, while holding other demographic and work characteristics constant. See appendix I for additional information.

³⁹Multiple experts who participated in our roundtable mentioned that demographic groups with comparatively smaller populations are often underrepresented in surveys, which can make it difficult to analyze results for these groups. For example, some experts said the sexual harassment experiences of men and of lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ+) people are understudied. In addition, two non-generalizable studies in our literature review found evidence that suggests some minority groups may experience sexual or gender harassment differently or concurrently with other forms of harassment, such as harassment based on race or sexual orientation.

U.S. adult working population were 9 percent more likely to say they experienced sexual harassment than men.⁴⁰

Figure 2: Odds of Federal Workers Reporting in the MSPB Survey That They Experienced Sexual Harassment in the Past 2 Years, by Gender



Source: GAO analysis of Merit Systems Protection Board Survey 2016 data. | GAO-20-564

Note: The Merit Systems Protection Board (MSPB) survey asked whether respondents had experienced various sexual harassment behaviors in the preceding 2 years; such behaviors may or may not constitute unlawful sexual harassment, depending on the circumstances. All results presented are statistically significant at the 95 percent or 99 percent confidence intervals. Odds ratios of 1 mean that the groups have equal odds of experiencing workplace sexual harassment. Odds ratios of less than 1 indicate that the specified group is less likely than the reference group, and odds ratios over 1 indicate that the specified group is more likely than the reference group to experience sexual harassment. These results are for selected variables in our analysis.

Moreover, sexual harassment can occur between people of the same or different genders. A study using a nongeneralizable cohort sample from one U.S. city found that “the most common [workplace sexual harassment] scenario involved male harassers and female targets, followed by male harassers and male targets.”⁴¹

Age

We also found evidence that younger workers may be more likely than older workers to say they have experienced workplace sexual harassment in a given time period. Across NIOSH survey data we analyzed (from 2006, 2010, 2014, and 2018), we found that the youngest age group (29 and under) said they experienced higher rates of sexual harassment than the oldest age group (60 and above) by 3 to 5 percentage points. Rospenda et al. also found an association between a woman’s age and whether they said they experienced sexual

⁴⁰Rospenda, Richman, and Shannon, “Prevalence and Mental Health Correlates of Harassment and Discrimination in the Workplace,” pp. 819-843.

⁴¹McLaughlin, Uggen, and Blackstone, “Sexual Harassment, Workplace Authority, and the Paradox of Power,” pp. 625-647.

harassment.⁴² Among women, 62 percent of those ages 31 to 40 reported experiencing sexual harassment, the highest rate of any age group.

Race

Our results examining prevalence by ethnicity and race were mixed. Our analysis of MSPB’s federal worker survey data found that, holding other factors constant, American Indian/Alaska Natives⁴³ were close to 3 times as likely to report experiencing sexual harassment as non-Hispanic Whites. However, we found that Blacks/African Americans were 30 percent less likely than non-Hispanic Whites to report experiencing sexual harassment (see fig. 3).⁴⁴

Figure 3: Odds of Federal Workers Reporting in the MSPB Survey That They Experienced Sexual Harassment in the Past 2 Years, by Race



Source: GAO analysis of Merit Systems Protection Board Survey 2016 data. | GAO-20-564

Note: The Merit Systems Protection Board (MSPB) survey asked whether respondents had experienced various sexual harassment behaviors in the preceding 2 years; such behaviors may or may not constitute unlawful sexual harassment, depending on the circumstances. All results presented are statistically significant at the 95 percent or 99 percent confidence intervals. Odds ratios of 1 mean that the groups have equal odds of experiencing workplace sexual harassment. Odds ratios of less than 1 indicate that the specified group is less likely than the reference group, and odds ratios over 1 indicate that the specified group is more likely than the reference group to experience sexual harassment. These results are for selected variables in our analysis. In our analysis of the MSPB survey data, all racial/ethnic groups besides Hispanic are characterized as non-Hispanic.

⁴²Rospenda, Richman, and Shannon, “Prevalence and Mental Health Correlates of Harassment and Discrimination in the Workplace,” pp. 819-843.

⁴³In our analysis of the MSPB survey data, all racial/ethnic groups besides Hispanic are categorized as non-Hispanic.

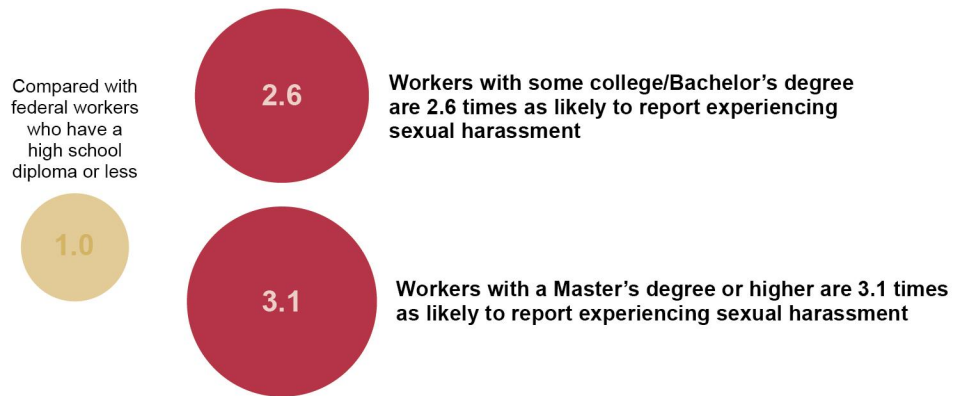
⁴⁴The results for other racial/ethnic groups (Asian, Hispanic, Native Hawaiian/Pacific Islander, and Mixed) did not show statistically significant differences from non-Hispanic Whites.

Conversely, Rospenda et al. found that, for men only, being either Black or of “Other” race or ethnicity was associated with higher rates of saying they experienced sexual harassment than for men of other racial/ethnic groups.⁴⁵ Our analysis of NIOSH data found that among those who reported experiencing sexual harassment, no statistically significant differences exist between ethnic groups for most years, and the results for different racial groups varied across years.

Education Level

Attaining a higher education level may also be associated with a higher likelihood of experiencing sexual harassment. Our regression analysis of MSPB survey results shows that, controlling for other factors, federal employees with at least some college or a Bachelor’s degree are 2.6 times as likely as those with a high school education or less to say they experienced sexual harassment; those with a Master’s degree or above are more than 3 times as likely as those with a high school education or less to say they experienced it (see fig. 4).

Figure 4: Odds of Federal Workers Reporting in the MSPB Survey That They Experienced Sexual Harassment in the Past 2 Years, by Educational Level



Source: GAO analysis of Merit Systems Protection Board Survey 2016 data. | GAO-20-564

Note: The Merit Systems Protection Board (MSPB) survey asked whether respondents had experienced various sexual harassment behaviors in the preceding 2 years; such behaviors may or may not constitute unlawful sexual harassment, depending on the circumstances. All results presented are statistically significant at the 95 percent or 99 percent confidence intervals. Odds ratios of 1 mean that the groups have equal odds of experiencing workplace sexual harassment. Odds ratios of less than 1 indicate that the specified group is less likely than the reference group, and odds ratios over 1 indicate that the specified group is more likely than the reference group to experience

⁴⁵The study examined four racial/ethnic groups: Asian, Black, Latino, White, and Other/Mixed.

sexual harassment. These results are for selected variables in our analysis.

Rospenda et al. also found a positive relationship, for women only, between having at least a Bachelor’s degree and having said they experienced sexual harassment. However, our analysis of NIOSH survey data generally found that among workers who said they experienced sexual harassment, no statistically significant differences exist among those with different education levels.

Workplace Gender Composition

In addition to differences across demographic characteristics, we found links in our analysis of data and relevant literature between the ratio of men to women in the workplace and the likelihood of experiencing sexual harassment in the previous two years. Specifically, workers typically reported experiencing more sexual harassment in male-dominated workplaces. For example, holding other factors constant, federal workers were 40 percent more likely to say they experienced sexual harassment if their immediate work group was composed of substantially more men than women, compared to a work group with about equal numbers of men and women, according to the MSPB survey (see fig. 5).

Figure 5: Odds of Federal Workers Reporting in the MSPB Survey That They Experienced Sexual Harassment in the Past 2 Years, by Workplace Gender Composition



Source: GAO analysis of Merit Systems Protection Board Survey 2016 data. | GAO-20-564

Note: The Merit Systems Protection Board (MSPB) survey asked whether respondents had experienced various sexual harassment behaviors in the preceding 2 years; such behaviors may or may not constitute unlawful sexual harassment, depending on the circumstances. All results presented are statistically significant at the 95 percent or 99 percent confidence intervals. Odds ratios of 1 mean that the groups have equal odds of experiencing workplace sexual harassment. Odds ratios of less than 1 indicate that the specified group is less likely than the reference group, and odds ratios over 1 indicate that the specified group is more likely than the reference group to experience sexual harassment. These results are for selected variables in our analysis.

Similarly, a study using a nongeneralizable cohort sample from one U.S. city found that “industry sex composition” was a significant predictor of workers saying they experienced sexually harassing behaviors, meaning

that such behaviors were more likely in male-dominated industries.⁴⁶ Using a range of methodologies, Hewlett et al. found that 63 percent of women working in science, engineering, and technology—historically male-dominated fields—said they experienced sexual harassment.⁴⁷ In 2018, the International Center for Research on Women (ICRW) conducted a literature review of sexual harassment research and likewise found that “companies and workgroups with the lowest prevalence of sex-based harassment are those with the greatest gender balance in terms of workplace composition.”⁴⁸

Research Shows Links between Sexual Harassment and Negative Outcomes, but Lacks Specific Cost Estimates

We did not find in our literature review any recent estimates of costs for employers or employees associated with workplace sexual harassment. MSPB has estimated costs to the federal government for sexual harassment among federal employees, but has not updated its estimate since 1994. Specifically, MSPB calculated the costs of job turnover, sick leave, and decreases in individual and team productivity. Similarly, in 1999, Faley et al. used a behavioral costing model to estimate the organizational costs of sexual harassment in the U.S. Army.⁴⁹ This study examined productivity-related costs (e.g., productivity reduction, time costs, and absenteeism) and administrative costs (e.g., separation, replacement, and transfer costs), and calculated dollar amounts using data from the Department of Defense’s survey of sex roles in the active duty military and the Army’s personnel cost database.

Despite the lack of recent and specific cost data, we identified common types of costs associated with workplace sexual harassment, based on our literature review and discussions with experts. These costs fall into

⁴⁶McLaughlin, Uggen, and Blackstone, “Sexual Harassment, Workplace Authority, and the Paradox of Power,” pp.625-647.

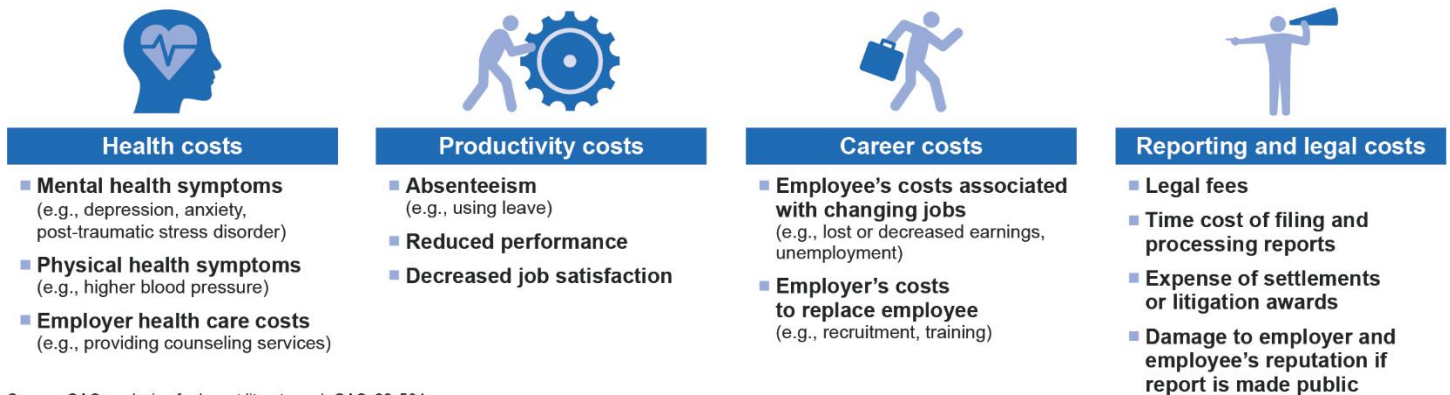
⁴⁷Sylvia Ann Hewlett, et al., “The Athena Factor: Reversing the Brain Drain in Science, Engineering, and Technology,” *Harvard Business Review* (Boston, Mass.: 2008).

⁴⁸Theodore A. Rizzo, et al., *The Costs of Sex-Based Harassment to Businesses: An In-Depth Look at the Workplace* (Washington, D.C: International Center for Research on Women, 2018).

⁴⁹Robert H. Faley, et al., “Estimating the Organizational Costs of Sexual Harassment: the Case of the U.S. Army,” *Journal of Business and Psychology*, vol.13, no. 4 (December 1999): pp.461-484.

four broad categories: health, productivity, career, and reporting (see fig. 6).⁵⁰

Figure 6: Examples of Employee and Employer Costs Associated with Workplace Sexual Harassment



Source: GAO analysis of relevant literature. | GAO-20-564

Health Costs

Researchers have identified links between an employee's experience of sexual harassment and poorer mental and physical health outcomes, which may result in added health care costs for employers. Studies have investigated the link between sexual harassment and mental health outcomes through such measures as psychological distress, depression, anxiety, trauma-related symptoms, life satisfaction, and overall psychological well-being. For example, a 2016 meta-analysis of peer-reviewed literature found that experiencing sexual coercion or unwanted sexual attention in the workplace had a direct, negative relationship to mental health,⁵¹ and a 2010 study of U.S. working adults and employed

⁵⁰Our list of commonly identified costs of workplace sexual harassment is not exhaustive, and other costs may exist.

⁵¹Victor E. Sojo, Robert E. Wood, and Anna E. Genat, "Harmful Workplace Experiences and Women's Occupational Well-Being: A Meta-Analysis," *Psychology of Women Quarterly*, vol. 40, no.1 (2016): pp.10-40.

college students established a link between gender harassment and both anxiety and depression.⁵²

In addition to links to poorer mental health, researchers have established that experiencing sexual harassment is associated with poorer physical health, based on such measures as blood pressure, sleep quality, health satisfaction, and other physical symptoms. For example, a small, non-generalizable study of middle-aged, non-smoking women in one U.S. city found evidence of a positive association between experiencing workplace sexual harassment and both higher blood pressure and decreased sleep quality.⁵³ A 2008 analysis of multiple studies on workplace sexual harassment outcomes found that experiencing sexual harassment was associated with lower levels of health satisfaction and higher levels of negative physical symptoms.⁵⁴

In their examination of the costs of sexual harassment to the U.S. Army, Faley et al. identified that one cost to employers is providing additional medical services to employees who experience sexual harassment, although they did not calculate a monetary amount.⁵⁵ Several experts at our roundtable also described increased health care costs to the employer, as those who suffer mental and physical health effects from sexual harassment may increase their use of health services. One expert also said there could be possible related increases in insurance rates, and another said disability claims are important to consider as those who experienced sexual harassment may develop chronic health issues.

⁵²Jana L. Raver and Lisa H. Nishii, "Once, Twice, or Three Times as Harmful? Ethnic Harassment, Gender Harassment, and Generalized Workplace Harassment," *Journal of Applied Psychology*, vol. 95, no. 2 (2010): pp. 236-254. Note that this study included a focus on gender harassment, which the authors define as "crude verbal and physical behaviors that convey hostile, offensive, and sexist attitudes."

⁵³Rebecca C. Thurston, et al., "Association of Sexual Harassment and Sexual Assault with Midlife Women's Mental and Physical Health." *JAMA Internal Medicine*, vol. 179, no. 1 (2019): pp.48-53.

⁵⁴Darius K-S Chan, et al., "Examining the Job-Related, Psychological, and Physical Outcomes of Workplace Sexual Harassment: A Meta-Analytic Review," *Psychology of Women Quarterly*, vol. 32 (2008): pp.362-376.

⁵⁵Faley et al., "Estimating the Organizational Costs of Sexual Harassment: The Case for the Army," pp.461-484.

Productivity Costs

Studies we reviewed also found costs connected to decreases in employee productivity, which can include the effects of lower job performance and job satisfaction, increased job stress, the time costs of the harassing incident itself, and absenteeism from work (such as sick and/or annual leave). For example, Faley et al. define productivity costs as including reduced productivity, the time costs of the incident, and absenteeism.⁵⁶ Chan et al.'s analysis of workplace sexual harassment costs found that experiencing sexual harassment was associated with lower levels of job performance, satisfaction, and commitment.⁵⁷ A 2011 study of a small sample of attorneys working in federal courts found that women who reported experiencing gender harassment also reported higher levels of job stress and lower levels of professional relationship satisfaction than those who did not report experiencing gender harassment.⁵⁸ In addition to job stress for the individual who experiences sexual harassment, bystanders and team members may also experience negative effects. The ICRW 2018 literature review on employer costs of sexual harassment found that exposure to sexual harassment of co-workers may lead to "bystander stress" and negative team outcomes such as conflict and decreases in team performance.⁵⁹

Career Costs

Researchers have found that individuals who experience sexual harassment are more likely to subsequently leave their jobs, which can

⁵⁶Faley et al., "Estimating the Organizational Costs of Sexual Harassment: The Case for the Army," pp.461-484.

⁵⁷Chan et al., "Examining the Job-Related, Psychological, and Physical Outcomes of Workplace Sexual Harassment: A Meta-Analytic Review," pp.362-376.

⁵⁸Emily A. Leskinen, et al., "Gender Harassment: Broadening Our Understanding of Sex-Based Harassment at Work," *Law and Human Behavior*, vol. 35 (2011): pp. 25-39. This study focused on effects of gender harassment specifically. The authors define gender harassment as treatment that conveys explicit antipathy toward members of one gender, including crude behavior that while sexual on the surface, expresses animosity rather than attraction. This could include, for example, making offensive remarks about someone's appearance, body, or sexual activities, and making gestures or using body language of a sexual nature to embarrass or offend someone.

⁵⁹Rizzo, et al., *The Costs of Sex-based Harassment to Businesses: An In-Depth Look at the Workplace*.

cost both the affected individual and the employer.⁶⁰ Costs to the employee can include unemployment or lost earnings, while costs to the employer can include replacement and training costs. A study using a non-generalizable cohort sample from one U.S. city found that sexual harassment increases financial stress, largely by precipitating job change, and can significantly alter women's career attainment. The researchers interviewed selected participants, who attributed this financial stress "to unemployment and career uncertainty, diminished hours or pay, and the anxiety associated with starting over in a new position."⁶¹ Job turnover can cost employers, primarily through costs associated with the separation, transfer, or replacement of the harassed employee.⁶² These costs can include advertising for the position, background and reference checks, drug testing, relocation costs, salary increases, signing bonuses, and labor costs for human resources employees, according to the ICRW literature review.⁶³

Reporting and Legal Costs

When workplace sexual harassment is reported, it can lead to related costs to employers and employees. For example, literature reviews by the ICRW⁶⁴ and the Institute for Women's Policy Research⁶⁵ identified legal costs, including settlements, as a component of the employer costs of sexual harassment. The ICRW review noted that employers may also experience legal costs such as damages, legal fees, and the time cost of

⁶⁰Elyse Shaw, Ariane Hegewisch, and Cynthia Hess, *Sexual Harassment and Assault at Work: Understanding the Costs* (Washington, D.C.: Institute for Women's Policy Research, 2018); National Academies of Sciences, Engineering, and Medicine, *Sexual Harassment of Women*; and Raver and Nishii, "Once, Twice, or Three Times as Harmful?," pp. 236-254.

⁶¹Heather McLaughlin, Christopher Uggen, and Amy Blackstone, "The Economic and Career Effects of Sexual Harassment on Working Women," *Gender and Society*, vol.31, no.3 (2017): pp. 333-358.

⁶²Faley et al., "Estimating the Organizational Costs of Sexual Harassment: The Case of the U.S. Army," pp.461-484.

⁶³Rizzo, et al., *The Costs of Sex-based Harassment to Businesses: An In-Depth Look at the Workplace*.

⁶⁴Rizzo, et al., *The Costs of Sex-based Harassment to Businesses: An In-Depth Look at the Workplace*.

⁶⁵Shaw, Hegewisch, and Hess, *Sexual Harassment and Assault at Work: Understanding the Costs*.

resolving a lawsuit. It also found that reports of sex-based harassment have been linked to reputational damage for employers, which, while difficult to quantify, can lead to issues such as “driving away customers, investors, and potential talent.”⁶⁶ An expert who participated in our roundtable echoed this concern, citing the potential for lost talent from people not applying to workplaces with a reputation for sexual harassment. Employees may also experience damage to their individual reputations when they report workplace sexual harassment. For example, the National Academies conducted a literature review of sexual harassment research and found that women who report sexual harassment may develop a negative reputation that prevents them from further career opportunities.⁶⁷

One source of information on a portion of the reporting and legal costs of workplace sexual harassment comes from EEOC, which collects data on monetary relief awarded through its administrative enforcement process—by which EEOC receives, investigates, and attempts to resolve discrimination charges—and through litigation brought by EEOC. We analyzed EEOC data on private sector administrative charge resolutions (administrative resolutions) and litigation resolutions for fiscal years 2009-2018 for charges filed with the EEOC that included an allegation of sexual harassment (see fig. 7).⁶⁸ In fiscal year 2018, for example, EEOC obtained \$57 million in administrative resolutions for those filing sexual

⁶⁶Rizzo, et al., *The Costs of Sex-based Harassment to Businesses: An In-Depth Look at the Workplace*.

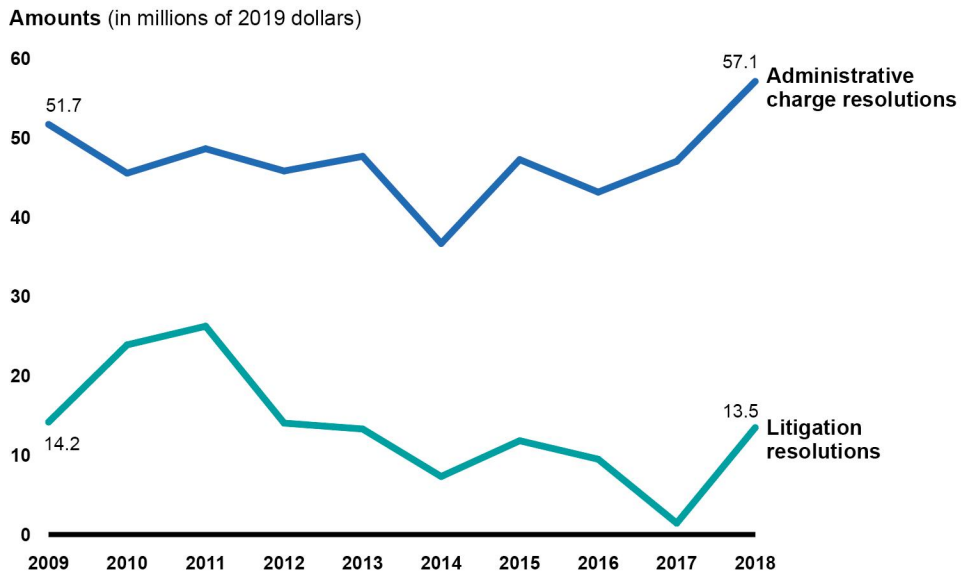
⁶⁷National Academies of Sciences, Engineering, and Medicine, *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine*.

⁶⁸For the purposes of this report, the term “administrative charge resolutions” refers to monetary amounts an employer agreed to pay as part of an administrative settlement agreement during any stage of EEOC’s administrative enforcement process, including conciliation; the term “litigation resolutions” refers to monetary relief recovered as a result of litigation brought by EEOC, either through settlement of the litigation or by jury verdict. According to EEOC, the vast majority of EEOC litigation cases settle before trial. The litigation resolutions included in our analysis exclude any amounts resulting from litigation to which EEOC was not a party, such as lawsuits brought by individual employees or DOJ. The litigation resolutions in our analysis may not include all costs related to litigation, such as attorneys’ fees. Employees at workplaces covered by Title VII may also file a charge of sexual harassment with their state or local EEOC equivalents, Fair Employment Practices Agencies, but we only include charges filed with EEOC in our analysis. This analysis also does not include the federal sector.

harassment charges, which represented 11 percent of the \$353 million EEOC secured that year for all types of charges filed under Title VII.⁶⁹

EEOC settles far more charges alleging sexual harassment than it litigates. Total administrative resolutions have generally held steady at about \$43 million to \$52 million from fiscal years 2009 to 2017, with a decrease to about \$37 million in fiscal year 2014 and an increase to \$57 million in fiscal year 2018. During this period, the number of charges alleging sexual harassment that were administratively settled with monetary relief fluctuated, with a high of 1,527 in fiscal year 2010 and a low of 1,248 in fiscal year 2017.

Figure 7: Administrative Charge Resolution and Litigation Resolution Amounts, for Charges and Cases Alleging Sexual Harassment, Fiscal Years 2009-2018



Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) data. | GAO-20-564

Note: Administrative charge resolution amounts and litigation resolution amounts were adjusted for inflation using the Consumer Price Index. “Administrative charge resolutions” refers to monetary amounts an employer agreed to pay as a result of an administrative settlement agreement during any stage of EEOC’s administrative enforcement process; “litigation resolutions” refers to monetary relief recovered from an employer as a result of litigation brought by EEOC, either through settlement of the litigation or by jury verdict. The vast majority of EEOC litigation cases settle before trial, according to EEOC. Litigation resolutions exclude any amounts resulting from litigation to which EEOC was not a party, such as law suits brought by individual employees or the Department of Justice. Resolution amounts may stem from more than one allegation and may not be exclusively linked to sexual

⁶⁹Additionally, prevailing charging parties may also receive nonmonetary relief, such as an agreement that an employer will reinstate an employee or implement policy changes.

harassment. This figure also does not include the federal sector, or any charges filed with and resolved by state or local EEO agencies.

In addition, the number of EEOC’s litigation cases that included sexual harassment allegations and that resulted in monetary relief sharply decreased, from a high of 75 cases resolved in fiscal year 2011 to 10 cases in fiscal year 2017, before increasing to 31 cases in fiscal year 2018. Total litigation resolution amounts for such cases have generally decreased, after reaching a high in fiscal year 2011, with upticks in fiscal years 2015 and 2018. Sexual harassment cases resolved through litigation resulted in substantially more monetary relief than charges resolved administratively, with the median litigation resolution amount per case close to 7 times that of the median administrative resolution amount per charge from fiscal years 2009-2018. Specifically, the median administrative resolution amount and litigation resolution amount for charges and cases that included sexual harassment allegations and that resulted in monetary relief was \$15,308 and \$104,380, respectively (see table 3).⁷⁰

Table 3: Number of EEOC Sexual Harassment Charges and Litigation Cases Resolved with Monetary Relief, Fiscal Years 2009-2018

Fiscal year	Number of Charges Resolved Administratively with Monetary Relief	Administrative Charge Resolution Amount (2019 dollars)	Number of Litigated Cases with Monetary Relief	Litigation Resolution Amount (2019 dollars)
2009	1,525	\$51,694,831	73	\$14,174,111
2010	1,527	\$45,537,513	64	\$23,898,696
2011	1,483	\$48,621,481	75	\$26,254,049
2012	1,486	\$45,817,064	56	\$14,036,616
2013	1,387	\$47,661,327	46	\$13,304,416
2014	1,264	\$36,677,091	23	\$7,313,555
2015	1,411	\$47,250,124	18	\$11,817,629
2016	1,316	\$43,142,920	22	\$9,491,609
2017	1,248	\$47,039,825	10	\$1,425,776
2018	1,371	\$57,109,200	31	\$13,471,404
Total	14,018	\$470,551,377	418	\$135,187,861
Median		\$15,308 (per charge)		\$104,380 (per case)

Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) data. | GAO-20-564

⁷⁰Median resolution amounts do not reflect the median amount recovered per individual claimant, as charges and lawsuits may be filed or settled on behalf of multiple claimants.

Note: Administrative charge resolution amounts and litigation resolution amounts were adjusted for inflation using the Consumer Price Index. “Administrative charge resolution amounts” refers to monetary amounts an employer agreed to pay as a result of an administrative settlement agreement during any stage of EEOC’s administrative enforcement process; “litigation resolution amounts” refers to monetary relief recovered from an employer as a result of litigation brought by EEOC, either through settlement of the litigation or by jury verdict. The vast majority of EEOC litigation cases settle before trial, according to EEOC. Litigation resolution amounts exclude any amounts resulting from litigation to which EEOC was not a party, such as law suits brought by individual employees or the Department of Justice. Resolution amounts may stem from more than one allegation and may not be exclusively linked to sexual harassment. Median resolution amounts do not reflect the median amount recovered per individual claimant, as charges and law suits may be filed or settled on behalf of multiple claimants. This figure also does not include the federal sector, or any charges filed with and resolved by state or local EEO agencies.

EEOC Collects Data on Workplace Sexual Harassment Charges and Complaints but Cannot Systematically Analyze Related Retaliation Data

EEOC Maintains Data on Sexual Harassment Charges Filed Against Private, State, and Local Government Employers

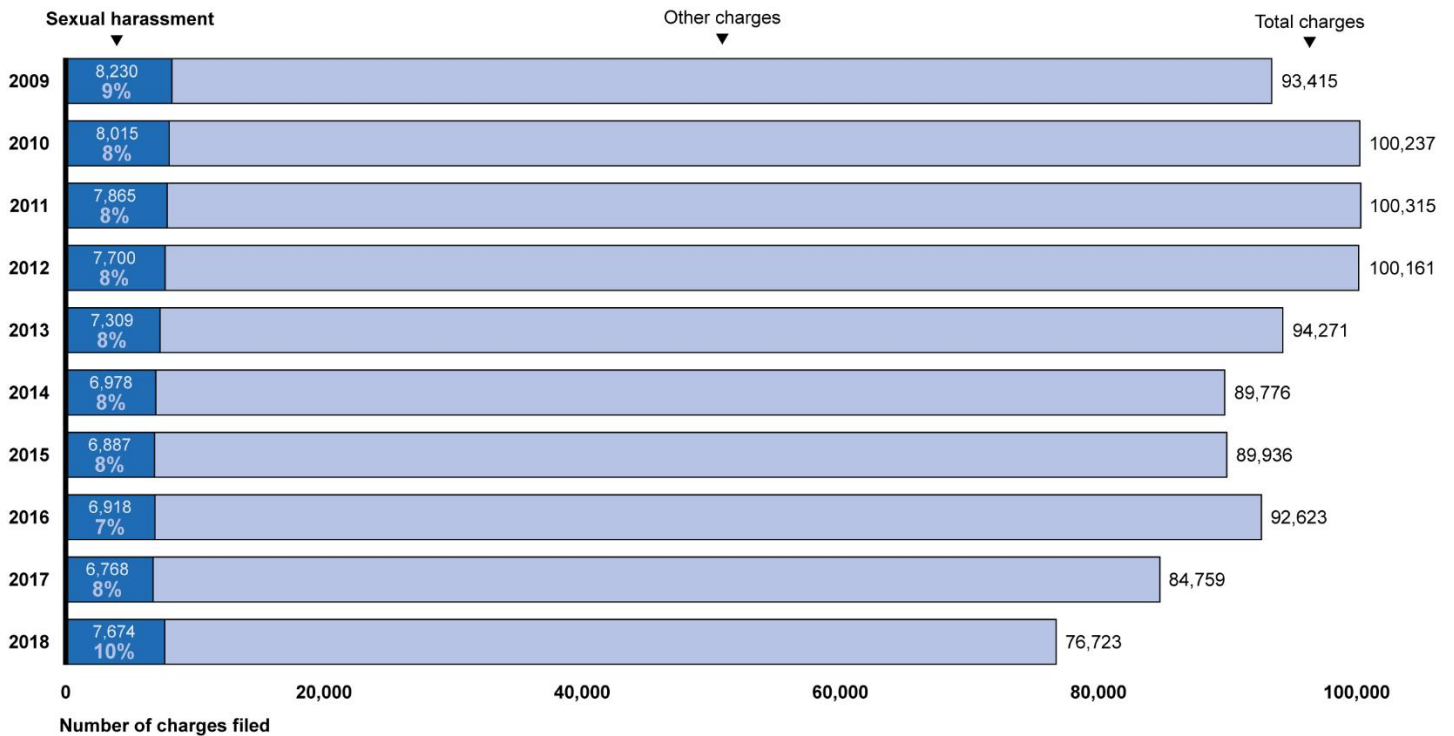
EEOC collects data on the annual number of sexual harassment charges U.S. workers file with EEOC against their employers. In fiscal years 2009-2018, the total number of workplace sexual harassment charges filed ranged from a low of 6,768 in fiscal year 2017 to a high of 8,230 in fiscal year 2009, according to EEOC data.⁷¹ These data reflect sexual harassment charges filed against private sector, state, and local government employers, as well as unions and other nonfederal workplaces. For most of this period—fiscal years 2009 through 2015—the number of sexual harassment charges consistently decreased, and then remained relatively stable through 2017. However, in 2018, the number increased to its highest level since 2012.⁷² Overall, the number of sexual

⁷¹These data do not include charges filed with state or local Fair Employment Practices Agencies, which we excluded from our review. Allegations of sexual harassment filed against federal employers are called complaints, which we discuss later in this report, and for which EEOC also maintains data.

⁷²An April 2019 EEOC press release associated with the issuance of its fiscal year 2018 charge data highlights the #Me Too movement’s potential impact on the increased number of sexual harassment charges filed that year. See Equal Employment Opportunity Commission, *EEOC Releases Fiscal Year 2018 Enforcement and Litigation Data*, accessed March 3, 2020, <https://www.eeoc.gov/eeoc/newsroom/release/4-10-19.cfm>.

harassment charges filed with EEOC constituted a small proportion of total charges filed each year, which also include race and age-related discrimination charges, among others (see fig. 8).

Figure 8: Sexual Harassment Charges and All Other Charges Filed with the Equal Employment Opportunity Commission (EEOC), Fiscal Years 2009-2018



Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) charge data. | GAO-20-564

Note: "Other charges" include race and age-related discrimination charges, among other types of discrimination charges. This figure does not indicate whether any of these charges ultimately resulted in a finding of unlawful discrimination.

EEOC charge data provide some insight into the characteristics of individuals who file charges of workplace sexual harassment, but they do

not provide a complete picture.⁷³ While many individuals voluntarily provide demographic information to EEOC when they file charges, they are not required to provide information on their gender or race when filing a sexual harassment charge, and are only required to disclose their age if they are including age as a basis for discrimination, according to EEOC officials.⁷⁴ In addition, EEOC officials told us that the individual filing the charge may not always be the primary target of the alleged discrimination, and therefore the demographic characteristics of the filer may not reflect those of the primary target in all cases.⁷⁵

Our analysis of EEOC data found that charges filed by women, Whites, and workers under the age of 50 constituted the majority of workplace sexual harassment charges filed with EEOC.

⁷³In our prior work, we reported that EEOC does not consistently capture information on the employer's industry in its discrimination charge data, which includes sexual harassment charges. We recommended that EEOC develop a timeline for adding missing industry data to its system so it can better analyze charge data by industry to help target its investigation and outreach. See GAO, *Diversity in the Technology Sector: Federal Agencies Could Improve Oversight of Equal Employment Opportunity Requirements*, [GAO-18-69](#) (Washington, D.C.: Nov. 16, 2017). EEOC has since developed an Employer Master List that will provide a source of employer information, including industry. Since EEOC was in the midst of changing its process for collecting data on the industries in which employers have been charged with discrimination, we did not analyze charges by industry.

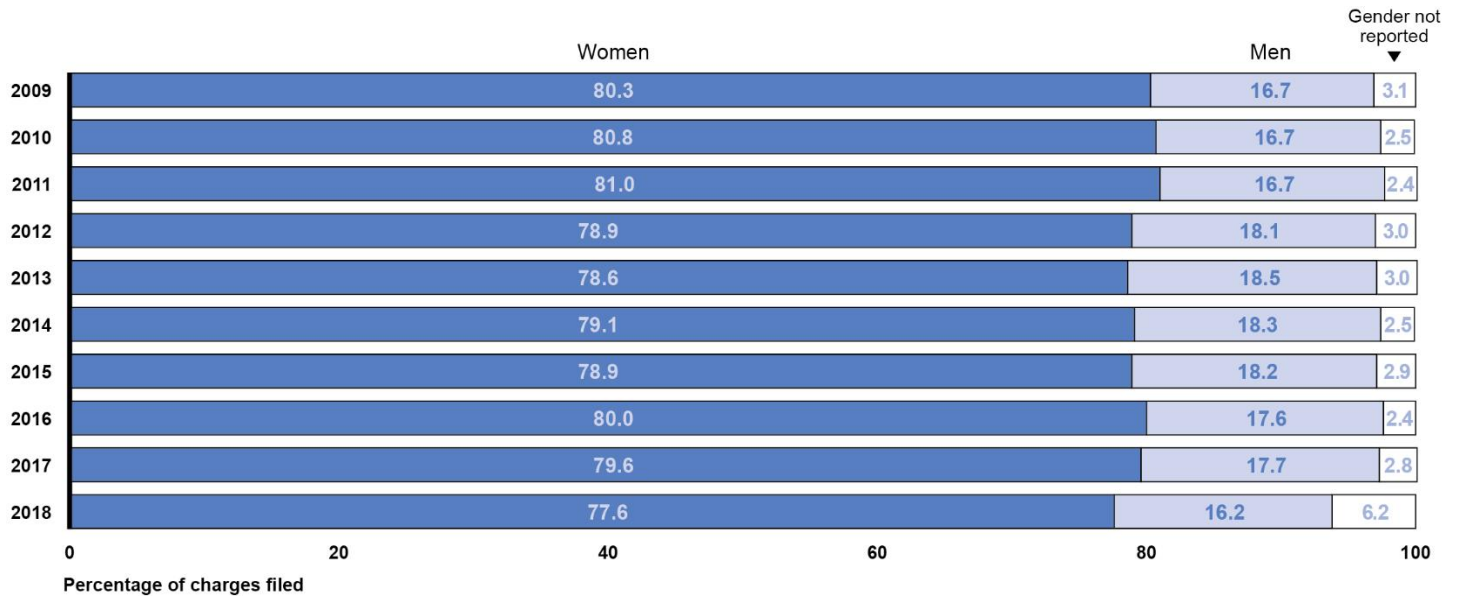
⁷⁴EEOC officials told us there is no federal law that requires the agency to collect demographic information from individuals, other than their age when they allege age-based discrimination, and one official said that requiring such information might dissuade individuals from filing charges. According to EEOC officials, a charge can involve multiple bases and issues. Therefore, for example, it is possible for someone to allege age discrimination in addition to sexual harassment.

⁷⁵As an example, officials said that an employee of one race (employee A) could potentially file a discrimination charge if they observe a supervisor racially harassing another employee of a different race (employee B). Officials said that if employee A were to file a charge and disclose their race, employee A's rather than employee B's race would be associated with the charge in EEOC's data system.

Charges by Gender

In fiscal years 2009-2018, women consistently filed the majority of workplace sexual harassment charges with EEOC—about 80 percent of charges in each of these years, according to EEOC data (see fig. 9).⁷⁶

Figure 9: Percentage of Sexual Harassment Charges Filed with the Equal Employment Opportunity Commission (EEOC), by Gender of Filer, Fiscal Years 2009-2018



Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) charge data. | GAO-20-564

Note: EEOC does not require individuals to provide their gender when filing a charge. According to EEOC officials, while unlikely, it is possible for the gender of the individual who filed a charge to be different from the gender of the individual who is the primary target of the alleged discrimination. This figure does not indicate whether any of these charges ultimately resulted in a finding of unlawful discrimination.

Charges by Race

In fiscal years 2009-2018, charges filed by Whites and Blacks constituted the majority of workplace sexual harassment charges, according to EEOC

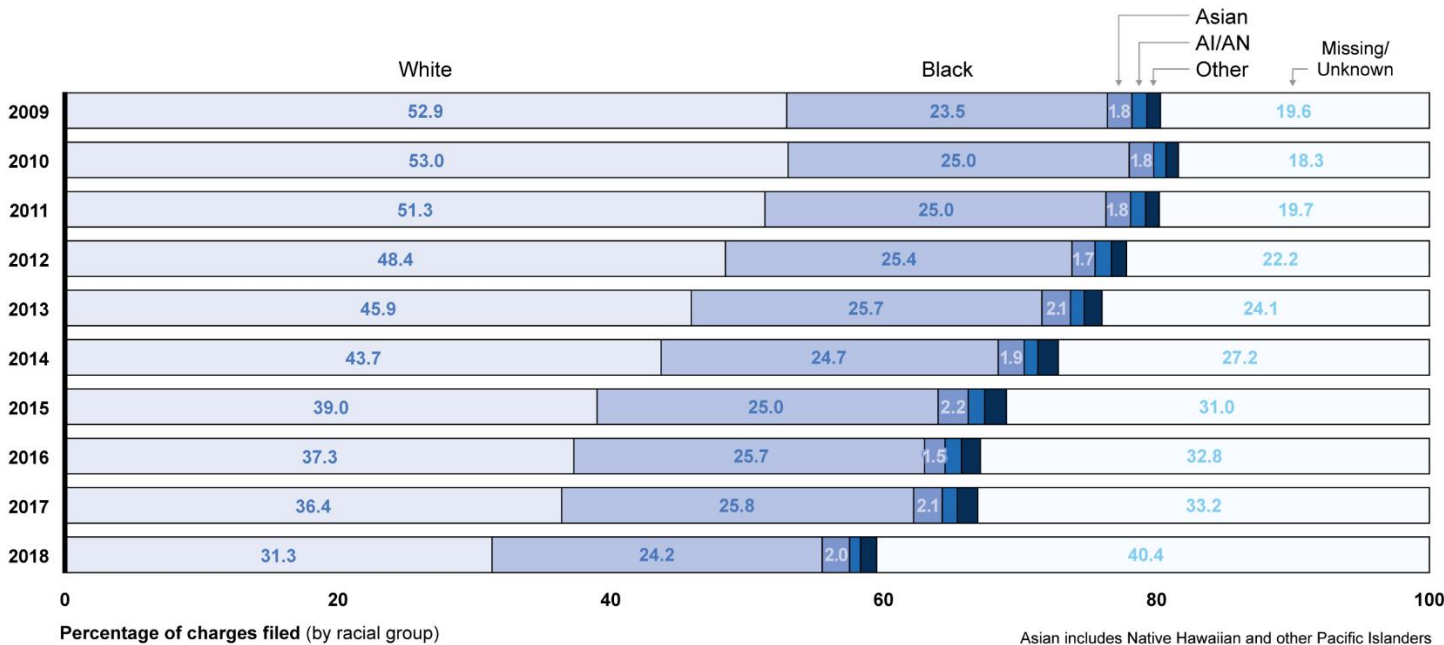
⁷⁶EEOC data include three gender categories: female, male, and missing/not applicable. During this time period, the number of sexual harassment charges that did not include the gender of the individual who filed a charge ranged from a low of 165 charges (about 2 percent of charges filed in fiscal year 2016) to a high of 476 charges (about 6 percent of charges filed in fiscal year 2018).

data.⁷⁷ Among those who filed charges and provided information on their race, Whites filed the highest number of charges each year, but those numbers as a percentage of total charges have declined since 2009 (see fig. 10). For example, in fiscal year 2009, charges filed by Whites constituted about 53 percent of all sexual harassment charges filed with EEOC, but in fiscal year 2018, they constituted about 31 percent. Conversely, during this same period, the percentage of total sexual harassment charges filed by Blacks—the racial group that filed the second highest number of charges—remained relatively stable, ranging from about 24 percent of charges to about 26 percent of charges.⁷⁸

⁷⁷During this time period, the percentage of charges that did not include the race of the individual who filed a charge ranged from a low of about 18 percent (fiscal year 2010) to a high of about 40 percent (fiscal year 2018).

⁷⁸The other racial groups were (1) American Indian or Alaska Native, (2) Asian, Native Hawaiian or Other Pacific Islander, and (3) Other or Multiple Races. According to EEOC data collected from Standard Form 100 (EEO-1) filings, in fiscal year 2009, the percentage of total workers employed by companies filing an EEO-1 report with EEOC, by race (excluding Hispanics, who are not included in EEOC data on charges by race), was as follows: (1) Whites: 66 percent; (2) Blacks: 14 percent; (3) Asian/Hawaiian: 6 percent; (4) American Indian: 0.6 percent; and (5) Multi-racial: 0.8 percent. In fiscal year 2018, the percentages were as follows: (1) Whites: 59 percent; (2) Blacks: 15 percent; (3) Asian/Hawaiian: 7 percent; (4) American Indian: 0.6 percent; and (5) Multi-racial: 2 percent. In general, private employers who are subject to Title VII and have 100 or more employees are required to file the EEO-1 report with EEOC annually. The report requires covered employers to provide employment data categorized by race/ethnicity, as well as gender and job category. The EEO-1 data do not include state and local governments, public school systems, and institutions of higher education, among others.

Figure 10: Percentage of Sexual Harassment Charges Filed with the Equal Employment Opportunity Commission (EEOC), by Race of Filer, Fiscal Years 2009-2018



Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) charge data. | GAO-20-564

Asian includes Native Hawaiian and other Pacific Islanders
 AI/AN= American Indian/Alaska Native
 Other includes multi-racial

Note: From fiscal years 2009 to 2018, the percentage of sexual harassment charges filed each year by American Indian/Alaska Natives was 1.1, 1.0, 1.1, 1.3, 1.0, 1.0, 1.3, 1.2, 1.1, and 0.8 percent, respectively. During this period, the percentage of sexual harassment charges filed each year by individuals of other or multiple races was 1.0, 1.0, 1.0, 1.1, 1.3, 1.5, 1.6, 1.4, 1.5, and 1.2 percent, respectively. EEOC does not require individuals to provide their race when filing a charge. According to EEOC officials, while unlikely, it is possible for the race of the individual who filed a charge to be different from the race of the individual who is the primary target of the alleged discrimination. This figure does not indicate whether any of these charges ultimately resulted in a finding of unlawful discrimination.

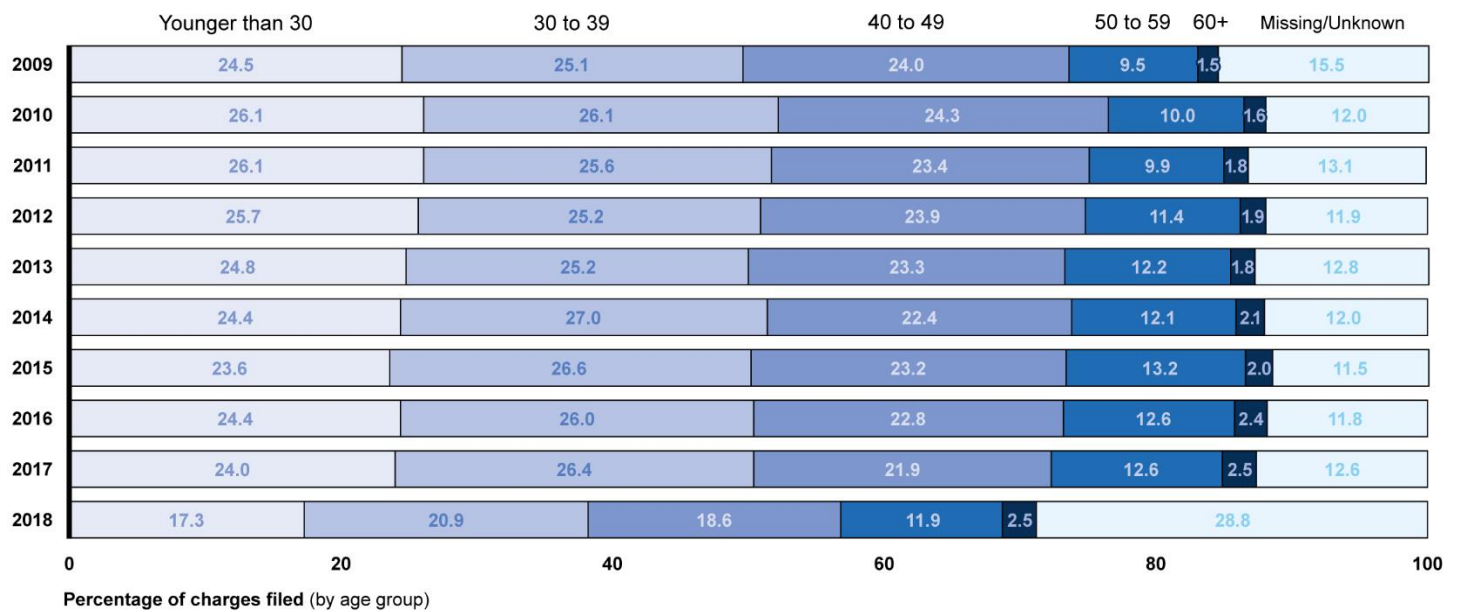
Charges by Age

In fiscal years 2009-2018, individuals from younger age groups filed a greater percentage of sexual harassment charges than those from older groups, according to EEOC data that included the ages of the individuals who filed charges.⁷⁹ Specifically, the percentage of charges filed with EEOC by individuals from three age groups—29 and under, 30 to 39, and 40 to 49—exceeded the percentage of charges filed by older age groups each year during this time period (see fig. 11). Of these three age groups,

⁷⁹During this time period, the percentage of charges that did not include the age of the individual who filed a charge ranged from a low of about 12 percent (fiscal years 2010, 2012, 2014, 2015, and 2016) to a high of about 29 percent (fiscal year 2018).

30- to-39-year-olds filed the highest percentage of sexual harassment charges for most years during this period (8 out of 10 years). However, the percentage of charges filed by this group has generally decreased each year since fiscal year 2014.

Figure 11: Percentage of Sexual Harassment Charges Filed with the Equal Employment Opportunity Commission (EEOC), by Age of Filer, Fiscal Years 2009-2018



Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) charge data. | GAO-20-564

Note: EEOC does not require individuals to provide their age when filing a charge unless they are filing a charge on the basis of age discrimination. We set ages 12 and 99 as the lower and upper bounds for our analysis, and treated ages outside of that range as missing. According to EEOC officials, while unlikely, it is possible for the age of the individual who filed a charge to differ from that of the primary target of the alleged discrimination. This figure does not indicate whether any of these charges ultimately resulted in a finding of unlawful discrimination.

EEOC Maintains Data on Sexual Harassment Complaints Filed Against Federal Employers

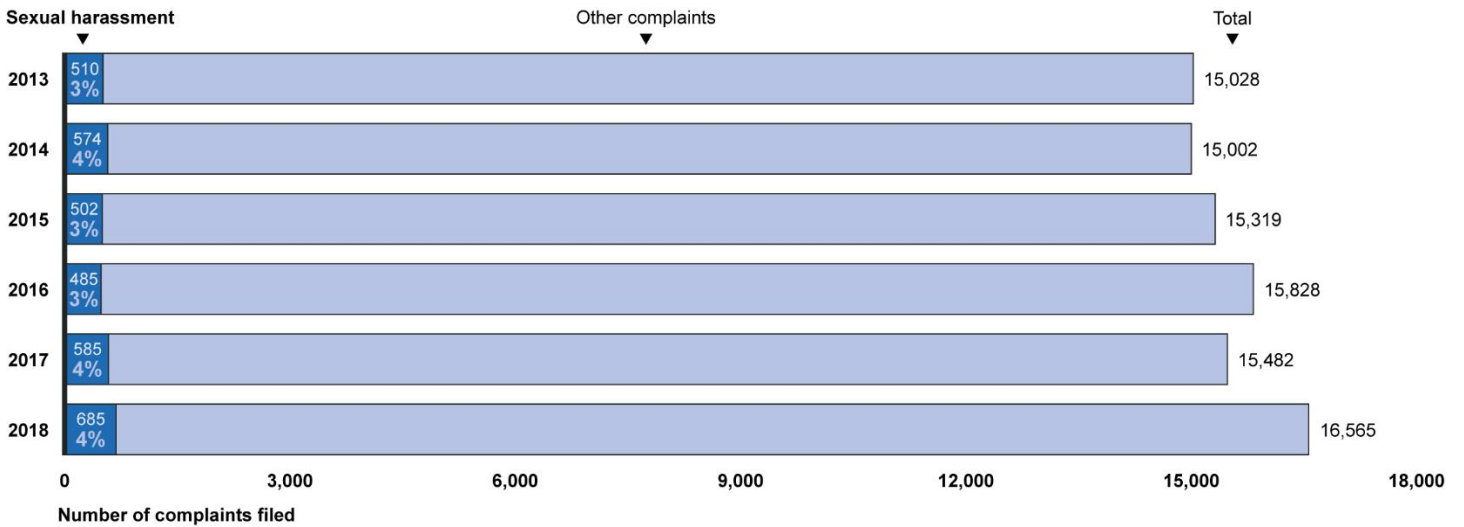
Across all federal agencies included in EEOC’s data for fiscal years 2013-2018, the total number of sexual harassment complaints filed by federal employees against their employers ranged from a low of 485 complaints

in fiscal year 2016 to a high of 685 complaints in fiscal year 2018.⁸⁰ These data are based on formal complaints that federal employees file with their agencies' EEO offices, which, in turn, provide this information to EEOC on EEOC Form 462.⁸¹ Similar to sexual harassment charges, sexual harassment complaints constituted a small percentage of the total number of discrimination complaints filed each year during this time period by federal employees (see fig. 12). Total complaints also include complaints of discrimination by age and race, as well as retaliation and other types of discrimination.

⁸⁰EEOC officials said they were unable to provide federal complaint data for years prior to fiscal year 2013, because these data are stored in a legacy system that is incompatible with EEOC's current system.

⁸¹According to EEOC guidance, the requirement to file an annual EEOC Form 462 Report applies to all federal agencies and departments covered by 29 C.F.R. Part 1614, as defined in 29 C.F.R. § 1614.103(b). According to this guidance, these agencies include executive agencies as defined in 5 U.S.C. § 105, military departments as defined in 5 U.S.C. § 102, the Government Printing Office, the Postal Regulatory Commission, the Smithsonian Institution, the Tennessee Valley Authority, the United States Postal Service, and those units of the judicial branch of the federal government having positions in the competitive service. See Equal Employment Opportunity Commission, Office of Federal Operations, *EEOC Form 462 Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints User's Instruction Manual, Fiscal Year 2016 Report* (Oct. 1, 2015–Sept. 30, 2016). EEOC Form 462 captures data on a limited number of bases of discrimination alleged in sexual harassment complaints, including sex (female, male, and lesbian/gay/bisexual/transgender) and pregnancy (i.e., sexually harassing a woman because she is pregnant), but does not otherwise capture demographic information on individuals who filed complaints. For fiscal years 2013–2018, "sex-female" was the sex basis most frequently alleged in sexual harassment complaints. For example, in fiscal year 2018, sex-female was alleged a total of 508 times in sexual harassment complaints, while "sex-male" and "sex-LGBT" were alleged a total of 118 times and 21 times, respectively.

Figure 12: Sexual Harassment Complaints as a Percentage of All Discrimination Complaints Filed by Federal Employees against Federal Agencies, Fiscal Years 2013-2018



Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) complaint data. | GAO-20-564

Note: Total complaints include complaints of race and age-related discrimination, as well as other types of discrimination complaints. This figure does not indicate whether any of these complaints ultimately resulted in a finding of unlawful discrimination.

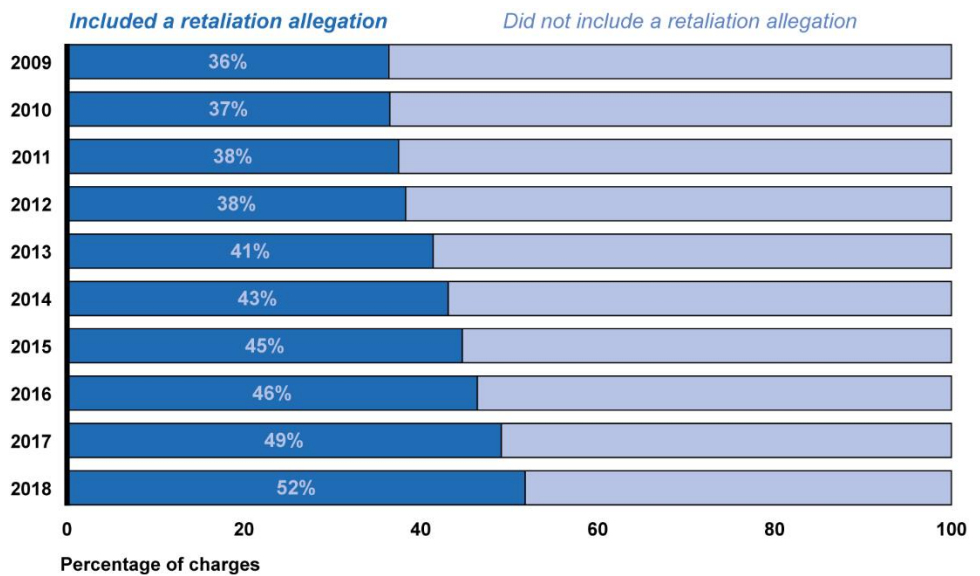
EEOC Does Not Have the Ability to Systematically Analyze Retaliation Charges to Determine Whether They Stem from Prior Sexual Harassment

Some workers who report sexual harassment may also face subsequent retaliation from their employers. Retaliation consists of adverse workplace actions—such as firing, demotion, or harassment—in response to employee participation in a “protected activity,” which can include filing a sexual harassment or other discrimination charge, participating in an EEO proceeding, or opposing discrimination. Retaliation charges make up an increasing portion of all charges received by EEOC, but EEOC cannot systematically analyze its retaliation data to determine when retaliation charges are based on protected activity related to sexual harassment, such as previously filing a charge of sexual harassment.⁸² EEOC can analyze certain aspects of its retaliation data to identify trends, including

⁸²For the purposes of this report, we considered retaliation charges to be charges that EEOC has determined have a basis of retaliation and any issue. Issues could include discharge/layoff, demotion, or other actions that affect the terms and conditions of employment, such as sexual harassment.

when sexual harassment and retaliation charges are filed simultaneously. In 2016, EEOC reported that the percentage of charges alleging retaliation from private sector, state, and local government employees has essentially doubled since 1998, and that retaliation was the most frequently alleged basis of discrimination in all sectors, including the federal workforce.⁸³ Our analysis of fiscal year 2009-2018 EEOC charge data similarly found that retaliation charges made up an increasing proportion of the total charges received by EEOC. According to these data, in fiscal year 2009, charges that included an allegation of retaliation made up 36 percent of all charges filed with EEOC (33,979 out of 93,415 charges). By fiscal year 2018, the percentage of charges that included an allegation of retaliation had increased to 52 percent (39,772 out of 76,723 charges) (see fig. 13).

Figure 13: Percentage of Charges Filed with the Equal Employment Opportunity Commission (EEOC) That Include an Allegation of Retaliation, Fiscal Years 2009-2018



Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) charge data. | GAO-20-564

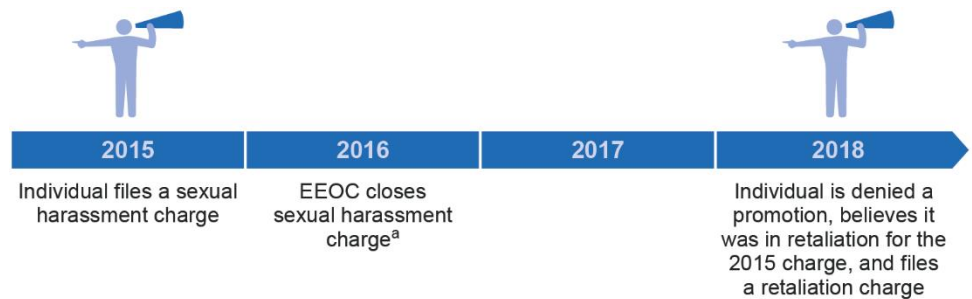
Note: Due to rounding, the percentage of charges that included an allegation of retaliation appears to be the same for fiscal years 2011 and 2012. However, in fiscal year 2011, these charges constituted 37.54 percent of charges filed, while they constituted 38.35 percent of charges filed in fiscal year

⁸³Equal Employment Opportunity Commission, *EEOC Enforcement Guidance on Retaliation and Related Issues* (Aug. 25, 2016).

2012. This figure does not indicate whether any of these charges ultimately resulted in a finding of unlawful discrimination.

In cases where the alleged retaliation is based on filing a sexual harassment charge, an individual can allege retaliation at the same time, or they may file a retaliation charge subsequent to filing a sexual harassment charge (see fig. 14).⁸⁴

Figure 14: Hypothetical Example of a Retaliation Charge Based on a Previous Workplace Sexual Harassment Charge Filed with the Equal Employment Opportunity Commission (EEOC)



Source: GAO analysis of U.S. Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on Retaliation and Related Issues, (Aug. 25, 2016). | GAO-20-564

^aAfter a charge is filed, it may be closed by EEOC for a variety of reasons, such as if EEOC investigates the charge and finds insufficient evidence that discrimination occurred, the charging party files a law suit, or the parties agree to a settlement. According to EEOC enforcement guidance, retaliation against an employee for filing a charge is prohibited regardless of the merit of the underlying charge.

EEOC officials told us they do not know why the percentage of charges that allege retaliation has increased, and do not have the ability to systematically analyze data on the underlying protected activities that led to retaliation charges, such as filing a sexual harassment or other type of discrimination charge.⁸⁵ EEOC officials said they can review electronic

⁸⁴EEOC guidance on retaliation states, in part, “the causal link between the adverse action and the protected activity is often established by evidence that the adverse action occurred shortly after the plaintiff engaged in protected activity. However, temporal proximity is not necessary to establish a causal link. Even when the time between the protected activity and the adverse action is lengthy, other evidence of retaliatory motive may establish the causal link. Moreover, an opportunity to engage in a retaliatory act may not arise right away. In these circumstances, a materially adverse action might occur long after the original protected activity occurs, and retaliatory motive is nevertheless proven.” See Equal Employment Opportunity Commission, *EEOC Enforcement Guidance on Retaliation and Related Issues*.

⁸⁵EEOC officials told us that a retaliation charge may involve several different types of protected activities.

copies of charges and other relevant documents in their data system to determine the protected activities upon which a retaliation charge was

Outreach Efforts by the Equal Employment Opportunity Commission (EEOC)

To complement its enforcement efforts—receiving and investigating sexual harassment and other discrimination charges—EEOC conducts outreach and education activities. These activities provide information about the laws EEOC enforces and the roles and responsibilities of employers and employees. As part of this effort, EEOC provides training and materials on specific topics, including sexual harassment, retaliation, and other prohibited practices.

In fiscal year 2018, EEOC reported that it held more than 3,926 outreach events, providing more than 398,650 individuals nationwide with information about their rights and responsibilities in the workplace. About a fourth of these events (949) covered sexual harassment, while a slightly higher number of events (976) covered retaliation, according to EEOC.

Source: EEOC. | GAO-20-564

based, but do not have the ability to aggregate these data across all charges filed nationwide. Since staff can review the data system to obtain these details about prior charges, officials do not believe that aggregating the data would further their investigation of retaliation charges. In addition, officials said that, in their outreach to employers, they underscore that retaliation is prohibited for all types of protected activities, rather than focusing on specific types of activities (see sidebar).

However, without the ability to aggregate protected activity data across retaliation charges, EEOC cannot efficiently analyze these data to determine how often retaliation charges filed in a given year may be related to previously closed sexual harassment charges.⁸⁶ More generally, EEOC cannot readily determine the types of protected activities most commonly associated with retaliation charges filed nationwide—information that could allow the agency to understand why retaliation charges are increasing. While officials said it would not be possible to

⁸⁶After a charge is filed, it may be closed by EEOC for a variety of reasons, such as if EEOC investigates the charge and finds insufficient evidence that discrimination occurred, the charging party files a lawsuit, or the parties agree to a settlement. According to EEOC enforcement guidance, retaliation against an employee for filing a charge is prohibited regardless of the merit of the underlying charge. See Equal Employment Opportunity Commission, *EEOC Enforcement Guidance on Retaliation and Related Issues*.

aggregate these data in a reliable way with the agency's current data system, they said they could consider developing this capability when they implement a new data system over the next 2 years.

EEOC planning documents highlight the agency's intention to focus on retaliation and data analysis, as well as use data to inform its education and outreach efforts.⁸⁷ For example, EEOC's Strategic Enforcement Plan for Fiscal Years 2017-2021 highlights several national priority areas, one of which is to focus on retaliatory practices that dissuade others in the workplace from exercising their EEO rights.⁸⁸ In addition, the plan states that collecting and analyzing data is central to EEOC's enforcement and educational efforts, and that research, in particular, can illuminate the causes of frequent violations and therefore assist in devising effective solutions. Moreover, EEOC's Communications and Outreach Plan highlights the importance of providing supporting data when conveying messages to pertinent audiences.⁸⁹ The plan also highlights the agency's intention to use an outreach strategy informed by analysis of the areas with the greatest need for education, taking into account, among other things, the agency's charge data. Improving EEOC's ability to systematically analyze charge data to identify trends regarding the protected activities underlying retaliation charges would align with the goals outlined by EEOC in these planning documents. Further, such data analysis could help EEOC refine its education and outreach efforts by focusing on the protected activities of greatest concern. This, in turn, could improve EEOC's ability to work with employers to prevent and address unlawful retaliation.

⁸⁷EEOC has also modified its organizational structure in an effort to focus on data analysis. In May 2018, EEOC created an Office of Enterprise Data and Analytics. The Office of Enterprise Data and Analytics aids EEOC in its efforts to achieve its mission and plan its goals and objectives strategically by researching, collecting, and analyzing relevant data and information; reviewing and analyzing organizational activities; and recommending approaches and procedures to improve operations by ensuring data-driven decision-making.

⁸⁸Equal Employment Opportunity Commission, *Strategic Enforcement Plan Fiscal Years 2017-2021*.

⁸⁹Equal Employment Opportunity Commission, *EEOC Agency-Wide Communications and Outreach Plan September 2015*.

Experts Recommended Developing New or Expanded Nationwide Surveys to Improve Information on Workplace Sexual Harassment

Given the paucity of reliable information on the prevalence and costs of workplace sexual harassment, experts participating in our 2-day roundtable discussion provided numerous suggestions on how to improve available information.⁹⁰ Specifically, recurring nationally representative surveys would help develop reliable nationwide estimates of the prevalence and costs of workplace sexual harassment, according to experts. Based on discussion comments and questionnaire responses, we categorized experts' recommendations for survey data collection into three main categories: (1) administration and resources, (2) data collection approach, and (3) content and format.⁹¹ Experts also anticipated challenges to collecting data on sexual harassment's prevalence and costs.

Administration and Resources

Developing and administering one or more nationally representative surveys would require substantial time and financial resources, according to experts. They also said developing these surveys would require expertise in several areas, including survey and questionnaire design and sexual harassment research. Additionally, experts said experience in large-scale and sensitive data collection and the ability to gain respondent trust would help survey administrators.

⁹⁰In this report, use of the term "experts" generally indicates that (1) more than one expert made a statement supporting a general point, and supporting views were relatively uniform, and (2) we are aware that there may not be evidence of full agreement or consensus on the topics discussed. Also, since experts were generating and discussing ideas as part of a free-flowing group discussion, the number of times a concept was (or was not) repeated does not necessarily indicate the level of consensus on that concept. See appendix I for more detail.

⁹¹For the approaches identified by roundtable experts, we provide a synthesis of information from the roundtable discussion and pre-roundtable questionnaire responses. The information presented is not intended to represent the views of GAO or the entire expert roundtable, or to suggest consensus. Neither GAO nor the roundtable participants as a whole recommend or endorse the adoption of any of the specific approaches selected for discussion.

Experts suggested federal involvement in this effort could be helpful and could take different forms. For instance, according to various experts, a federal agency could directly collect and analyze data; partner with one or more other federal agencies to collect and analyze data; or fund, design, and oversee a survey conducted by a private organization.⁹² Regardless of an agency's specific role, experts said that federal funding would be needed to support these analyses.

Various experts also suggested that some federal agencies are well-positioned to take part in developing and administering nationwide surveys. Specifically, some experts said EEOC should play a role in a nationwide data collection and analysis effort, since it regularly collects sensitive sexual harassment data from employees who file discrimination charges, already surveys a large number of private employers subject to Title VII, and enforces federal laws prohibiting sexual harassment. Other experts said one or more of the federal statistical agencies should be involved in survey design and administration, due to their experience,

⁹²We use the term "various experts" or "varied experts" to generally mean (1) multiple experts made slightly different points that went to the larger point(s) we reported, or (2) experts discussed different possible options related to those larger points. In these cases, after we make a larger point, we generally describe the various related points and/or options discussed, along with any advantages or disadvantages, using "some experts" or "other experts." See appendix I for more detail.

Federal Agencies Represented at the Expert Roundtable Session and Data Related to Workplace Sexual Harassment

Bureau of Labor Statistics (BLS), Department of Labor

- **Mission:** To measure labor market activity, working conditions, price changes, and productivity in the U.S. economy to support public and private decision making.
- **Relevant Data Collection Discussed:** Surveys of both employers (e.g., Current Employment Statistics) and individual households — (e.g., Current Population Survey).

Merit Systems Protection Board (MPSB)

- **Mission:** To protect the merit system principles and promote an effective federal workforce free of prohibited personnel practices.
- **Relevant Data Collection Discussed:** Surveys of federal employees focusing on sexual harassment.

National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services

- **Mission:** To develop new knowledge in the field of occupational safety and health and to transfer that knowledge into practice.
- Relevant Data Collection Discussed:** Quality of Worklife module on the General Social Survey, which contains a question on sexual harassment experiences.

Source: Expert roundtable and agency websites. | GAO-20-564

expertise, and rigorous methodological approach.⁹³ Some experts also said data collection and analysis could be a cooperative effort among multiple agencies. The 2016 *Report of the Co-Chairs of the EEOC Select*

⁹³A federal statistical agency is an agency or organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes, as designated by the Director of the Office of Management and Budget (OMB). The principal statistical agencies identified by OMB are the Bureau of Economic Analysis; Bureau of Justice Statistics; Bureau of Labor Statistics; Bureau of Transportation Statistics; Census Bureau; Economic Research Service; Energy Information Administration; National Agricultural Statistics Service; National Center for Education Statistics; National Center for Health Statistics; National Center for Science and Engineering Statistics; Office of Research, Evaluation and Statistics within the Social Security Administration; and Statistics of Income program within the Internal Revenue Service.

Task Force on the Study of Harassment in the Workplace echoes these experts' views, and recommends that EEOC work with the Bureau of Labor Statistics (BLS) or the Census Bureau, and/or private partners, to develop and conduct a national poll to measure the prevalence of workplace harassment, including sexual harassment.⁹⁴

In considering who should administer these efforts, various experts, including officials from four federal agencies who participated in one of our roundtable sessions, noted both advantages and disadvantages to having one or more federal agencies collect, analyze, and store these data.⁹⁵ (See sidebar.) As advantages, one or more federal agencies have experience and related expertise in collecting large-scale data from individuals and businesses; are already collecting data relevant to workplace sexual harassment's prevalence and costs; and have missions relevant to sexual harassment data collection, according to some of these experts. For example, one agency official described BLS's experience in collecting high quality, nationally representative data from both employers and households, working with well-trained interviewers, and developing well-established data collection protocols. In addition, federal law protects the confidentiality of data collected by federal statistical agencies such as BLS, which one expert said could encourage respondent trust and participation.⁹⁶ Similar to BLS, an official from the National Institute for Occupational Safety and Health (NIOSH) said her agency had internal expertise it could apply to an expanded sexual harassment data collection effort. Officials from both BLS and NIOSH said their agencies' ability to collect these data would be predicated on having sufficient funding. One expert also suggested a federal agency's involvement could lead to consistent funding and administration of a recurring survey, which some experts said would allow for analyzing and comparing outcomes over

⁹⁴Equal Employment Opportunity Commission, *Select Task Force on the Study of Harassment in the Workplace*.

⁹⁵The advantages and disadvantages of the approaches presented in this report summarize experts' views and opinions discussed at the roundtable and in their pre-roundtable questionnaire responses. For the purposes of this report, GAO did not assess the advantages and disadvantages reported by experts. For example, some of these approaches may require statutory or regulatory changes to implement; this report discusses such issues only to the extent they were identified by the experts as an advantage or disadvantage.

⁹⁶For example, under the Confidential Information Protection and Statistical Efficiency Act of 2002, as amended, data collected by an executive agency under a pledge of confidentiality for exclusively statistical purposes may not be disclosed by an agency in identifiable form, for any use other than an exclusively statistical purpose, except with the informed consent of the respondent. See 44 U.S.C. § 3572(c).

time. Finally, one expert noted that while survey response rates are generally decreasing, those for federally administered surveys are dropping less quickly.

Various experts also discussed potential disadvantages to a direct federal role in data collection and analysis. Some of these experts said individuals and employers may be reluctant to provide data to a government agency, as they could associate agencies with legal and regulatory enforcement. One expert also said having federal agencies conduct the survey could lead to slower progress in development and implementation, as lengthy bureaucratic processes may be involved. For example, federal agencies must comply with requirements under the Paperwork Reduction Act of 1980, as amended, which requires agencies to submit requests to collect information from the public to the Office of Management and Budget (OMB) for approval.⁹⁷ In addition, officials from multiple agencies were concerned about adding sexual harassment questions to their existing surveys. One official said that adding any questions, particularly sensitive ones, to existing surveys could lead to a lower response rate and lower data quality overall, since doing so increases the burden on respondents. This may be of particular concern for federal agencies, as they collect essential statistical information relied on by government, businesses, researchers, and the public. Officials cautioned that agencies would need to carefully review any sensitive content before adding it to agency surveys. One official noted that if an agency partnered with a private organization to administer a survey, it might avoid some of these disadvantages.⁹⁸

Data Collection Approach

Experts described different ways nationally representative surveys and resulting analyses could be designed and implemented, including in combination with other methods. They also described some of the related advantages, disadvantages, and limitations. Aspects of data collection they discussed included: implementing a stand-alone survey or adding

⁹⁷Among other things, the Paperwork Reduction Act provides that federal executive agencies may not conduct or sponsor the collection of information from 10 or more persons without first allowing an opportunity for public comment and obtaining OMB approval. See 44 U.S.C. §§ 3501-3521.

⁹⁸For instance, according to one official, respondents may be less likely to associate NIOSH's Quality of Worklife survey module with enforcement, and therefore may be more willing to provide information in response to it, since an independent research organization (and not a federal agency) actually administers the survey.

sexual harassment questions to an existing survey, collecting supplemental qualitative data on sexual harassment prevalence and costs, and designing the sample to allow for analysis of key characteristics.

Stand-alone Surveys versus Additions to Existing Surveys

For understanding nationwide prevalence, various experts said a stand-alone survey would be the “gold standard,” though it has some disadvantages. According to one expert, designing a new stand-alone survey would enable researchers to oversample groups with characteristics of interest (e.g., by race; gender; lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ+) status, etc.), and it would accommodate using a full, validated list of questions on respondents’ workplace sexual harassment experiences. For example, some of these experts said a survey could use a 16-question version of the Sexual Experiences Questionnaire (SEQ), which many researchers use, to capture detailed data on respondents’ experiences (see [textbox](#)).⁹⁹ As potential drawbacks, some experts said that implementing a stand-alone survey would likely be resource-intensive, and one expert said it could result in repeating questions already on other surveys. This approach could also preclude linking information on sexual harassment to relevant data already collected with existing surveys, such as health outcome data, according to experts. One expert said that while limited cost data could be collected in a survey focused on prevalence, it would likely not provide a comprehensive estimate of sexual harassment’s costs. Indeed, some experts said that it would be difficult to capture all of the information needed to calculate sexual harassment’s prevalence and costs in a single survey, and developing more comprehensive estimates may require researchers to draw data from multiple sources.

⁹⁹The Sexual Experiences Questionnaire (SEQ) is the most widely-used and well-validated measure of sexual harassment experiences. Researcher Louise Fitzgerald and her colleagues established the SEQ in 1988 to standardize questions about specific sexual harassment behaviors when conducting related research. Since then, researchers have used the SEQ extensively to assess sexual harassment experiences in both school and work settings, including in the U.S. military. The behaviors asked about in the survey may or may not constitute unlawful sexual harassment, depending on the circumstances.

Sexual Experiences Questionnaire (16-Question Version)

In the previous 12 months, have you been in a situation in your workplace in which a coworker or supervisor:

Sexist Hostility (sexist behavior)

- Treated you “differently” because of your sex (for example, mistreated, slighted, or ignored you)?
- Displayed, used, or distributed sexist or suggestive materials (for example, pictures, stories, or pornography which you found offensive)?
- Made offensive sexist remarks (for example, suggesting that people of your sex are not suited for the kind of work you do)?
- Put you down or was condescending to you because of your sex?

Sexual Hostility (crude or offensive behavior)

- Repeatedly told sexual stories or jokes that were offensive to you?
- Made unwelcome attempts to draw you into a discussion of sexual matters (for example, attempted to discuss or comment on your sex life)?
- Made offensive remarks about your appearance, body, or sexual activities?
- Made gestures or used body language of a sexual nature which embarrassed or offended you?

Unwanted Sexual Attention

- Made unwanted attempts to establish a romantic sexual relationship with you despite your efforts to discourage it?
- Continued to ask you for dates, drinks, dinner, etc., even though you said “No”?
- Touched you in a way that made you feel uncomfortable?
- Made unwanted attempts to stroke, fondle, or kiss you?

Sexual Coercion

- Made you feel like you were being bribed with a reward to engage in sexual behavior?
- Made you feel threatened with some sort of retaliation for not being sexually cooperative (for example, by mentioning an upcoming review)?
- Treated you badly for refusing to have sex?
- Implied faster promotions or better treatment if you were sexually cooperative?

Source: Stephen Stark, Oleksandr S. Chernyshenko, Anita R. Lancaster, Fritz Drasgow, and Louise F. Fitzgerald, “Toward Standardized Measurement of Sexual Harassment: Shortening the SEQ-DoD Using Item Response Theory,” *Military Psych*

In contrast to creating a new stand-alone survey, various experts said adding questions on workplace sexual harassment experiences to existing surveys could create efficiencies and allow for collecting data on both the prevalence and costs of sexual harassment. For example, some experts said sexual harassment questions could be added to NIOSH’s Quality of Worklife module on the General Social Survey (GSS), which collects national data on employment and some outcomes, or the National Health Interview Survey, which collects data on medical

conditions.¹⁰⁰ A NIOSH official also said researchers could add an entire new module focused on workplace sexual harassment to the GSS. Adding questions to existing surveys, according to one expert, could be less resource-intensive than developing a stand-alone survey, would reduce the potential for duplicate questions on different surveys, and would allow for linking sexual harassment data to existing data. Another expert cautioned that when considering adding sexual harassment questions, an existing survey's subject matter should be at least somewhat related to sexual harassment.

"There is much work needed to determine... good measures of the costs, both monetary and non-monetary...I would suggest start[ing] with getting good measures of the prevalence and put[ting] in the methodological work needed to develop good estimates of costs before fielding that portion."

Source: Expert's response to GAO questionnaire. | GAO-20-564

Various experts discussed two different possibilities for adding sexual harassment content to existing surveys: (1) adding the full 16-question version of the SEQ; or (2) adding an abbreviated four-question version of the SEQ, which would need to be developed.¹⁰¹ Adding a full 16-question set to a survey would allow for collecting detailed prevalence information, according to some experts. In addition, the reliability of resulting estimates could be more easily assessed, according to one expert. On the other hand, some experts said that a shorter four-question SEQ version might be easier to add to existing surveys that have limited space,

¹⁰⁰The General Social Survey (GSS) is a personal-interview survey conducted by NORC, an independent, non-partisan research institution at the University of Chicago. According to NIOSH officials, the GSS is funded through a grant from the National Science Foundation and NIOSH, through an interagency agreement with National Science Foundation, adds funds to this grant for administration of the Quality of Worklife module. The survey monitors attitudes, behaviors, and attributes in the United States. The GSS contains a standard core of demographic, behavioral, and attitudinal questions, plus topics of special interest, including civil liberties, crime and violence, psychological well-being, and stress and traumatic events. The National Health Interview Survey, administered by the Census Bureau, is the country's largest in-person health survey and is the primary source for information on the nation's health, collecting data on medical conditions, health insurance, doctor's office visits, physical activity, and other health behaviors.

¹⁰¹An expert said that the SEQ could possibly be condensed into a set of four questions, on the following topics: (1) gender harassment involving sexist hostility, such as making offensive sexist remarks; (2) gender harassment involving sexual hostility, such as making sexual or offensive gestures; (3) unwanted sexual attention; and (4) sexual coercion. However, this four-question version has not yet been developed or tested for reliability, according to this expert.

although it would only allow for a proxy prevalence estimate based on four broad aspects of workplace sexual harassment rather than the specific behaviors described in the 16-question version. When adding either the longer or shorter question sets to an existing survey, analysis of the data collected would be subject to and potentially limited by the survey's sampling frames, which, for example, may exclude certain groups of interest, such as gig economy or migrant workers, according to one expert.¹⁰² An existing survey with a small sample size may also lead to higher standard errors in measurements, particularly involving subgroups of respondents, according to this expert.

"A technical challenge [for costs] is that very little attention has been paid to this issue (as opposed to prevalence and consequences, for which we have reliable methods); so, a good bit of scientific spade work will be required here. The measurement of sexual harassment prevalence and consequences is a relatively mature field; we can draw on at least 30 years of solid research; we do not need to re-invent the wheel. With respect to costs, however, we know much less."

Source: Expert's response to GAO questionnaire. | GAO-20-564

Additionally, various experts said more is currently known about how to collect data on workplace sexual harassment's prevalence than on its costs, and some cost data would only become available at some point after an incident. Thus, some experts recommended a phased approach, focusing on collecting prevalence data first, and costs data later. As one option, an expert suggested starting with assessing currently available surveys and other data and then determining what additional data are needed, prior to designing a survey.

Supplemental Qualitative Data

Experts also said collecting qualitative data, in addition to quantitative data, could provide helpful context on respondents' experiences. One expert said this might be particularly important for respondents with multiple/intersecting characteristics of interest (e.g., race, LGBTQ+ status,

¹⁰²While there is no official definition of gig workers, in our 2017 report, *Workforce Training: DOL Can Better Share Information on Services for On-Demand, or Gig, Workers*, we defined gig workers as self-employed individuals providing labor services and completing single projects or tasks on demand for pay. GAO, *Workforce Training: DOL Can Better Share Information on Services for On-Demand, or Gig, Workers*, [GAO-17-561](#) (Washington, D.C.: Sept. 2017).

etc.). Qualitative methods allow for collecting data beyond responses to narrowly defined survey questions, which is helpful since survey questions may not ask about all salient aspects of individuals' experiences, according to this expert. As one potential method, an expert said researchers could administer a large survey, take a sample of those respondents, and interview selected individuals to collect more in-depth data.

Sampling

Experts also said the survey's sampling frame, or the total population from which a sample could be drawn, would help determine which characteristics could be analyzed in resulting data.¹⁰³ Choices related to sampling frame design involve trade-offs, according to various experts. For example, some experts said starting with a sampling frame of *employers* would ensure reliable information on different employer characteristics (e.g., industry, number of employees, etc.); however, one expert cautioned that if a sample of an employer's workers was then surveyed about sexual harassment, those workers might associate the survey with their employer and be less open in their responses, fearing a lack of confidentiality. Starting with an employer sampling frame could also exclude non-traditionally employed individuals (e.g., self-employed workers, gig economy workers, etc.) from analysis, according to some experts. Conversely, according to some experts, using a sampling frame of *individuals* would avoid those issues and allow for analysis of individuals' demographic characteristics of interest, though these individuals may be unable to provide reliable information on their employer. In addition, only employers would have access to certain data, according to some experts.

In considering sampling options, experts told us it would be important for the survey design to allow for examining differences across work settings, and across populations that have historically been underrepresented or may be more vulnerable to sexual harassment. In particular, experts recommended surveys be designed to allow for analysis of

¹⁰³A sampling frame could be made up of individuals, employers, or others. For example, a survey administrator may select a sample of U.S. households to conduct interviews door-to-door; in this case, the sampling frame would be U.S. households.

- various occupations, industries, and employer sizes, including traditionally male-dominated industries and low-level jobs that may be less visible, such as janitorial staff and assembly line workers;
- marginalized populations, including undocumented workers, racial minorities, and members of the LGBTQ+ community; and
- traditionally under-surveyed workers, including self-employed workers (e.g. home health care aides, nannies, etc.), gig economy workers, and migrant workers.

Content and Format

Gathering data on individuals' experiences with workplace sexual harassment through a recurring, nationally representative survey (or surveys) would allow for the creation of a national estimate of sexual harassment's prevalence, according to experts. From that starting point, experts said decisions to collect additional data—on characteristics of respondents, harassers, costs involved, etc.—would provide different possibilities for analysis and would depend on the specific research objectives involved. In considering the amount and types of data to collect, experts noted potential trade-offs of breadth versus depth, as longer surveys and sensitive questions can lower response rates. Various experts also made suggestions for survey formatting.

Prevalence and Cost Data

Experts recommended using certain types of questions and collecting specific data elements to assess workplace sexual harassment's prevalence and costs. To gather data on prevalence, various experts recommended asking questions about respondents' experiences of specific behaviors (e.g., "Has someone made offensive remarks about your appearance, body, or sexual activities?") using a validated question set such as the SEQ, rather than using a labeling question that asks directly if respondents have been "sexually harassed." This approach would result in more reliable responses, since respondents may have varying interpretations of what constitutes sexual harassment, and may not apply that label to their own experiences of sexually harassing behaviors, according to experts.¹⁰⁴ Some experts suggested that

¹⁰⁴Some experts said that asking about experiences that respondents labeled as "sexual harassment," in addition to experiences with specific behaviors, would be valuable, but they recommended that any questions that asked about sexual harassment directly be located towards the end of a survey.

behavioral questions should incorporate the changing nature of both communication (e.g., the increased use of social media, text messaging, etc.) and work (e.g., growth of the gig economy, teleworking, etc.). For example, survey questions could ask whether respondents have received sexually explicit images by email or text message. In addition, one expert suggested that adapting some SEQ behavioral questions could help better capture data on men's experiences, since the SEQ was designed primarily for female respondents. Finally, some experts warned against asking respondents to identify the cause of any particular cost, since respondents may not be able to attribute some outcomes to their true causes, which could include sexual harassment experiences. Instead, they recommended that researchers collect outcome data from all respondents (those indicating they had and had not experienced or witnessed sexually harassing behaviors) to allow for comparing the two groups' outcomes.

Various experts also said the recall period—the length of time respondents are asked to consider when answering a survey question—can affect the accuracy and types of information that respondents remember and provide. Some experts said asking respondents about a shorter recall period, such as the past 12 to 24 months, had distinct advantages. One expert said collecting data on these more recent experiences would capture incidents that respondents were more likely to remember and therefore report accurately. Another expert said using a shorter recall period would increase the likelihood that respondents would still be in the same industry and occupation as they had been when the harassment occurred, making analyses of sexual harassment by industry or occupation more valid. In addition, some experts said that asking respondents about sexual harassment experiences over longer recall periods could be helpful in calculating some sexual harassment costs, as certain effects may take years to manifest.¹⁰⁵

In our pre-roundtable questionnaire, experts reported which data on employee and employer characteristics they thought would be high priorities to collect, in order to calculate the prevalence and costs of sexual harassment.¹⁰⁶ While many of the identified data elements relevant

¹⁰⁵One expert also mentioned that longitudinal studies—in which researchers study the same subjects at multiple points in time—could provide information across a longer span of time.

¹⁰⁶One expert noted that any data collection effort should consider the potential for any privacy concerns that could arise when gathering demographic information on individuals, particularly if a relatively small sample size is involved.

to prevalence—such as employee demographic characteristics and experiences of specific harassment behaviors—would come from employees, data relevant to costs would come from both employees and employers (see tables 4 and 5).

Table 4. Employee Data Identified by Selected Experts as a High Priority to Collect in Sexual Harassment Surveys

- **Employee characteristics** such as sex, race, ethnicity, nationality, sexual orientation, gender identity, age, immigration status, years working for current employer, occupation, and education level
- **Employees' experiences of specific behaviors that may constitute workplace sexual harassment** (such as unwanted sexual touching), during a defined time period, and the frequency of these experiences
- Employees' experiences of other forms of workplace harassment and/or discrimination, including racial harassment/discrimination
- Whether employees witnessed a coworker (or coworkers) experience sexual harassment behaviors
- Whether employees filed formal sexual harassment complaints with employers^a
- Whether employees changed employers in a given period
- Whether employee transferred to a different position or location^a
- Remedies, if any, that employees received from their employer related to sexual harassment
- Amount of missed work^a
- Productivity levels^a
- Indicators of employee engagement, including job-related behaviors and attitudes
- Income levels^a
- **Mental health indicators**, such as experiences of depression symptoms
- Physical health indicators^a
- Reputational harm^a

Source: GAO analysis of experts' questionnaire responses | GAO-20-564

^aIn GAO's pre-roundtable questionnaire, we asked whether these data elements should be collected from employees who report they had experienced or witnessed sexual harassment; however, in their responses and during the roundtable, experts said it was more methodologically sound to ask all individuals for these data—whether they had or had not experienced or witnessed sexually harassing behaviors—to allow for comparing the outcomes of the two groups. We modified our presentation of the questionnaire results in this report to conform to those experts' recommendations.

Table 5. Employer Data Identified by Selected Experts as a High Priority to Collect in Sexual Harassment Surveys

- **Employer characteristics** including industry and number of employees
- Amount paid in legal or mediation fees as a result of sexual harassment claims in a given period, and average amount paid in legal or mediation fees resulting from a single sexual harassment claim
- Amount paid in settlements and/or court-ordered awards in a given period, and average amount paid in settlements and/or court-ordered awards resulting from a single sexual harassment claim
- Number of employees (targets, perpetrators, or others) who have left the organization or been terminated related to workplace sexual harassment
- Average cost of employee turnover for a single position
- **Number of employee transfers** related to workplace sexual harassment
- Average cost of transferring an employee to a different position or location
- **Number of internal complaints** of sexual harassment received by employers
- **Number of employee missed days of work** related to workplace sexual harassment
- Number of employees dedicated to supporting efforts such as investigating reports of sexual harassment or sexual harassment prevention efforts

Source: GAO analysis of experts' questionnaire responses | GAO-20-564

In addition to the data included in our questionnaire, during the roundtable discussions, various experts emphasized the importance of collecting data on other prevalence-related topics, including:

- **workplace characteristics**, such as the gender composition of the work group and whether workers' pay was based on tips;
- **harasser characteristics**, including their gender and relative status at work (whether they are a respondent's peer, supervisor, etc.);
- respondents' most significant experience of sexual harassment; and

"As a measurement issue, if we [have] surveys of sexual harassment that don't also get at what could be happening in this environment around racial harassment, what could be happening in this environment around heterosexist-related harassment, then we are fundamentally going to be missing the ways in which certain people are disproportionately vulnerable and victimized and targeted."

Source: Expert's comments at GAO roundtable. | GAO-20-564

- retaliation respondents may have experienced.

In addition, some experts said some individuals experience multiple forms of harassment and discrimination simultaneously based on their demographic characteristics, including specific forms of sexual harassment (for example, racialized sexual harassment), and questions should be designed to fully capture these experiences.

Various experts also recommended capturing additional aspects of costs, including data on:

- mental and physical health services received;
- health insurance costs to individuals and employers;
- longer-term financial impacts, including effects on retirement income; and
- employment practices liability insurance, which provides employers coverage for employee claims of discrimination, harassment, and other employment-related issues.

Survey Format

Various experts also shared suggestions for survey formatting that have implications for which groups may be able and willing to take surveys, and therefore would be included in the resulting analysis. For instance, one expert suggested researchers ensure the survey's content is accessible to populations with particular needs, such as by providing surveys in different languages and tailoring survey administration for respondents who are deaf or blind. Some experts also said it would be important to use multiple modes of data collection, including online, by phone, in person, or by mail. One additional expert recommended against using the term "sexual harassment" in the survey title or featuring it prominently on survey materials, as doing so might dissuade potential respondents from completing the survey because of the sensitive nature of the topic.

"Costs of sexual harassment may be insidious and challenging to associate with harassment. For example, if the social climate changes and becomes more negative, productivity may be impacted but not tied to harassment. Similarly, individuals may experience physical symptoms that are costly in terms of time, health care, and productivity, but these impacts may not be recognized as related to harassment, either experienced or observed."

Source: Expert's response to GAO questionnaire. | GAO-20-564

Challenges to Collecting Data on Sexual Harassment

Data collection on sexual harassment prevalence and costs could involve some challenges, according to various experts. For instance, while only

employers would have access to some of these data (e.g., amounts paid in settlements), they may be reluctant or unwilling to provide them, especially if there are related legal concerns, according to some experts. Additionally, one expert said that employers vary in their record-keeping practices and analysis capacity, and some may not be able to produce certain relevant data, such as the total number of formal sexual harassment complaints, or the costs of employee turnover. Some experts also said that some costs, such as mental anguish or long-term health conditions, would be difficult or impossible to quantify or monetize, as well as to link to sexual harassment. In addition, some experts said that self-reported data has limitations. For example, some respondents may not have access to health care resources and may therefore be less aware of any underlying health conditions. One expert also said that some forms of sexual harassment, such as a posted offensive cartoon, may cause stress to employees but may not have a specific target, and these instances could be difficult to capture.

Conclusions

Workplace sexual harassment can damage the health, career, and well-being of its victims, and can cost businesses not only in legal fees, but in lost productivity, job satisfaction, and talent. Nonetheless, its exact pervasiveness and costs to workers and employers remains elusive. Understanding the full extent of workplace sexual harassment's prevalence and costs is important, since such behavior may violate state or federal law and has wide-ranging effects on victims and businesses.

Unfortunately, workplace sexual harassment too often goes unreported. The EEOC Select Task Force on the Study of Harassment in the Workplace called for EEOC to work with federal and/or private partners to develop and conduct a national survey that includes sex-based harassment, and this idea was echoed by the experts who participated in our roundtable. The federal government could play a valuable role in realizing a nationwide survey to illuminate the magnitude of the problem of sexual harassment, including the costs to employees and employers, and to inform business and government policy decisions to reduce its occurrence. While the approaches outlined by our roundtable experts are conceptual, they may serve as a starting point for policymakers to determine how best to measure the prevalence and costs of workplace sexual harassment, thereby informing federal efforts to decrease its pervasiveness and toll on the nation's workforce and employers.

Given the scarcity of data on this issue, EEOC's inability to systematically analyze the extent to which the increasing percentage of charges alleging retaliation stem from prior sexual harassment charges or related protected activity prevents a better understanding of the dynamic between harassment, reporting of harassment, and retaliation. Moreover, this limitation represents another way in which sexual harassment's potential effects on individuals are not fully understood. EEOC has recognized the need for improved data; its planning documents highlight its intention to focus on retaliation and data analysis, and to use data to inform its education and outreach efforts. It is increasingly urgent for EEOC to be able to systematically analyze its data on charges alleging retaliation, as they constituted the majority of charges filed with EEOC at the time of our review. Further, understanding and preventing retaliation is critical to EEOC's mission, since the threat of retaliation could inhibit employees from filing any type of discrimination charge. Comprehensive data on the protected activities underlying retaliation charges, such as having filed an earlier sexual harassment charge, would improve EEOC's understanding of the extent to which those who file sexual harassment charges later file retaliation charges, as well as the types of activities that most often lead to retaliation charges and the causes of the rise in such charges. This understanding could ultimately enhance EEOC's effort to curb retaliation by employers.

Recommendation for Executive Action

We are making the following recommendation to the Equal Employment Opportunity Commission:

As part of the Equal Employment Opportunity Commission's plans to implement a new data system, the Chair of the Equal Employment Opportunity Commission should assess the feasibility of developing the agency's capacity to systematically analyze retaliation charge data, including the protected activities associated with these charges.

(Recommendation 1)

Agency Comments and Our Evaluation

We provided a draft of this report for review and comment to the Departments of Health and Human Services (HHS) and Labor (DOL), the Equal Employment Opportunity Commission (EEOC), and the Merit

Systems Protection Board (MSPB). EEOC and MSPB provided technical comments, which we incorporated as appropriate. We also received formal written comments from EEOC, which are reproduced in appendix III. In those comments, EEOC did not state whether or not it concurred with the recommendation we made to it. EEOC questioned the extent to which our report recognizes the quality of EEOC charge data and its role in driving the agency's mission-critical work, and claimed our report ignores EEOC's outreach to employers and workers. Specifically, EEOC outlined steps the agency has taken to improve its ability to collect and use quality data, and highlighted the agency's ability both to analyze demographic information for individuals who file retaliation charges and to examine the bases and issues alleged in retaliation charges. EEOC also questioned how analyzing additional data on retaliation charges would remedy our report's finding of a lack of comprehensive data on sexual harassment's prevalence and costs, but acknowledged that such data may generally help the agency conduct more targeted outreach activities.

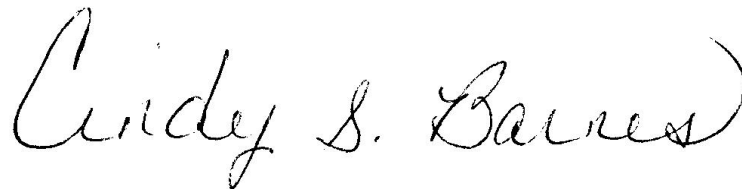
We disagree with EEOC's characterization of our findings. While our report highlights the lack of comprehensive, nationally-representative data on sexual harassment's prevalence and costs, as well as options and considerations from experts for collecting such data in the future, it also examines current federal data on sexual harassment and retaliation charges and identifies an opportunity for EEOC to improve such data. Moreover, our report in no way concludes that EEOC's charge data do not drive its mission work. It is in light of the importance of charge data to EEOC's work that we recommend that EEOC assess opportunities to enhance its data analysis efforts. The report also recognizes steps the agency has taken to improve its data collection, specifically noting the creation of EEOC's Office of Enterprise Data and Analytics as well as EEOC's ongoing effort to implement a new data system. In addition, the report includes a discussion of the agency's outreach activities. For example our report provides context on EEOC's outreach efforts and presents fiscal year 2018 data on the number of outreach events EEOC officials reported that they held—data that EEOC cited in its comments. Furthermore, EEOC's comments misconstrue our findings related to its ability to systematically analyze retaliation charge data. We agree that EEOC is able to analyze some aspects of retaliation charges. Our finding is that the agency is not able to efficiently analyze the protected activities that underlie retaliation charges, which hinders it from better understanding the precursors to retaliation. Given the growth in retaliation charges, we continue to believe EEOC should consider opportunities to analyze additional data that could shed further light on the factors that contribute to this growth, such as the types of protected activities that are

leading to retaliation charges. As EEOC acknowledged, additional data on protected activities may also help the agency conduct more targeted outreach. For both of these reasons, we believe it would be a worthwhile endeavor for EEOC to explore the feasibility of collecting these data.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Secretaries of Health and Human Services and Labor, the Chair of the Equal Employment Opportunity Commission, and the Executive Director of the Merit Systems Protection Board, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or brownbarnesc@gao.gov. Contact points for our

Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Cindy S. Brown Barnes
Managing Director
Education, Workforce, and Income Security Issues

Appendix I: Objectives, Scope and Methodology

Our research objectives were to examine (1) what is known about the prevalence and costs of workplace sexual harassment in the United States, including in the federal workforce; (2) the extent to which the Equal Employment Opportunity Commission (EEOC) collects data on formal charges and complaints of U.S. workplace sexual harassment, and (3) the data collection approaches experts recommend to improve available information about the prevalence and costs of workplace sexual harassment. To address these objectives, we used a variety of approaches, including a literature review, analyses of federal data, a review of federal agency documentation and relevant federal laws and regulations, an expert roundtable discussion and questionnaire, and interviews with federal agency officials and other knowledgeable stakeholders.

Sexual Harassment Prevalence and Costs Literature Review

To inform our understanding of the prevalence and costs of workplace sexual harassment, we conducted a literature review of 21 articles that we identified as relevant to our research objectives and that met our methodological standards. To identify these sources, we searched a variety of databases for academic and other articles published between 2008 and 2018 that (1) measured the prevalence of workplace sexual harassment in the United States; (2) generated estimates of the costs of workplace sexual harassment; or (3) examined associations between experiencing sexual harassment and personal and job-related outcomes. In addition to this formal search, we asked knowledgeable stakeholders to identify studies relevant to our work.

We reviewed the abstracts of the approximately 300 articles identified in this search, excluding those that were not relevant to our objectives or did

not meet our standards for empirical analysis.¹ For the resulting studies, we reviewed the full articles to confirm relevance and assess methodological rigor. We discussed each with a team of GAO analysts and specialists (including a methodologist and economist) and reached consensus on including 21 articles in our final review. Although we examined each article's methodological approach, we did not independently assess the evidence discussed or verify the analysis or conclusions reached.

Federal Data Analysis

To determine the extent to which EEOC collects data on formal charges and complaints of workplace sexual harassment, we reviewed charge data, including data on administrative charge resolutions and litigation resolutions, as well as complaint data from EEOC. In addition, to gain perspective on the prevalence and costs of sexual harassment, we reviewed survey data from the Merit Systems Protection Board (MSPB) and National Institute for Occupational Safety and Health (NIOSH).

Equal Employment Opportunity Commission

We calculated summary statistics from EEOC data on sexual harassment charges filed during fiscal years 2009-2018 against private, state, and local government employers, as well as unions and other nonfederal workplaces. We also calculated total settlement amounts for charges that included an allegation of sexual harassment and that were resolved by administrative settlement during fiscal years 2009-2018 (referred to as "administrative charge resolutions").² In addition, we calculated total

¹To determine relevance, two analysts independently reviewed article abstracts to assess their relevance to workplace sexual harassment prevalence or cost data using inclusion criteria, such as whether they contain (1) original prevalence data; (2) discussion of difficulties and/or challenges to collecting data; (3) discussion of potential approaches for improving data collection; (4) original quantitative estimates of costs; or (5) analysis of indirect costs. Two independent analysts also assessed the scope of article abstracts and excluded those that focused on 1) countries outside the United States; (2) students and Title IX of the Education Amendments of 1972, which prohibits sex discrimination in education programs or activities that receive federal financial assistance; (3) active-duty military members; (4) a specific occupation (versus an industry or the nation as a whole); and (5) legal analysis.

²Administrative charge resolution data include amounts resulting from conciliation agreements, which are entered into after EEOC has made a cause finding, and settlement agreements, which are entered into before EEOC makes a cause determination.

monetary relief recovered as a result of litigation brought by EEOC that included an allegation of sexual harassment and that was resolved either through settlement of the litigation or by jury verdict during fiscal years 2009-2018 (referred to as “litigation resolutions”). To assess the reliability of EEOC’s charge data, we reviewed relevant EEOC documentation, interviewed knowledgeable agency officials, and conducted electronic testing of the data. We determined that the data were sufficiently reliable for our purposes, subject to certain limitations associated with the demographic variables we analyzed. Specifically, the charge data only reflect the age, gender, and race of individuals who disclosed this information,³ and some data were missing for each of these variables.⁴ Therefore, depending on the age, gender, and race of those who did not disclose this information, our analyses of charge data for these groups may vary from the demographic characteristics of the total number of individuals that filed charges.

We also calculated summary statistics for EEOC federal complaint data for fiscal years 2013-2018, which capture limited demographic information on individuals filing complaints.⁵ Federal complaint data are derived from EEOC’s Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (Form 462), which agencies annually submit

³EEOC officials told us they only require individuals to disclose their age when they are filing a charge based on age discrimination, and they do not require individuals to disclose their gender or race when filing a charge.

⁴The percentage of charges that did not include the age of the individuals who filed them ranged from a low of about 12 percent of charges filed in fiscal year 2015 to a high of about 29 percent of charges filed in fiscal year 2018. The percentage of charges that did not include the gender of the individuals who filed them ranged from a low of about 2 percent of charges filed in fiscal year 2016 to a high of about 6 percent of charges filed in fiscal year 2018. The percentage of charges that did not include the race of the individuals who filed them ranged from a low of about 18 percent of charges filed in fiscal year 2010 to a high of about 40 percent of charges filed in fiscal year 2018.

⁵EEOC was unable to provide federal complaint data for years prior to fiscal year 2013 because these data are stored in a legacy system that is incompatible with EEOC’s current system.

to EEOC.⁶ To assess the reliability of EEOC's complaint data, we reviewed relevant EEOC documentation, interviewed knowledgeable agency officials, and conducted electronic testing of the data. We determined that the data were sufficiently reliable for our purposes.

To supplement our review of EEOC's charge and complaint data, we reviewed EEOC documentation and other information related to its data collection and outreach efforts. As part of this effort, we reviewed EEOC responses to a series of questions we developed regarding the agency's process for collecting charge data, its ability to analyze those data, and its education and outreach activities. We also reviewed the agency's strategic enforcement plan,⁷ as well as its communications and outreach plan.⁸

Merit Systems Protection Board

We also analyzed data from MSPB's 2016 Merit Principles Survey, which is intended to evaluate how well the federal government is managing its workforce according to merit systems principles.⁹ The survey asked respondents whether they had experienced any sexually harassing behaviors, from a set of behaviors, in the past 2 years.¹⁰ The survey also asked whether respondents experienced "different treatment based on sex/gender," but MSPB did not include this as one of the 12 behaviors that constitute sexual harassment in the survey analysis. Our analysis

⁶According to EEOC guidance, the requirement to file an annual EEOC Form 462 Report applies to all federal agencies and departments covered by 29 C.F.R. Part 1614, as defined in 29 C.F.R. § 1614.103(b). According to this guidance, these agencies include executive agencies as defined in 5 U.S.C. § 105, military departments as defined in 5 U.S.C. § 102, the Government Printing Office, the Postal Regulatory Commission, the Smithsonian Institution, the Tennessee Valley Authority, the United States Postal Service, and those units of the judicial branch of the federal government having positions in the competitive service. See Equal Employment Opportunity Commission, Office of Federal Operations, *EEOC Form 462 Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints User's Instruction Manual, Fiscal Year 2016 Report* (Oct. 1, 2015 – Sept. 30, 2016).

⁷Equal Employment Opportunity Commission, *Strategic Enforcement Plan Fiscal Years 2017-2021*.

⁸Equal Employment Opportunity Commission, *EEOC Agency-Wide Communications and Outreach Plan September 2015*.

⁹This was the most recent version of the survey available at the time of our review.

¹⁰These behaviors may or may not constitute unlawful sexual harassment, depending on the circumstances.

treats this behavior in the same manner as MSPB. MSPB selected a stratified random sample for the survey.¹¹ MSPB's reported response rate for the survey was 38.8 percent. We concluded that the MSPB survey was the best available data and sufficiently reliable for the purpose of providing a general description of the self-reported prevalence of sexual harassment of permanent full-time civilian federal employees, with caveats related to the potential for nonresponse bias.

We analyzed survey data to estimate the percentage of federal workers who said they had experienced sexual harassment in the 2 years preceding the survey, including breakdowns by demographic and workplace characteristics. We conducted multivariate logistic regression analysis to examine the association between certain demographic characteristics, such as sex, and the likelihood of someone saying they had experienced sexual harassment, while holding other demographic and work characteristics constant.¹² This analysis produced estimated odds ratios, with values greater than one indicating a higher association between different characteristics and the likelihood of reporting an experience of sexual harassment.¹³ Table 6 shows the full regression results. We also conducted a sensitivity analysis, and the results were generally robust.

¹¹The sample was stratified by federal agency (and agency bureau or component for selected agencies) and supervisory status (nonsupervisor, supervisor, or executive). The sample included nearly 126,000 employees from 25 federal agencies, representing all major departments and independent agencies. However, according to MSPB documentation, the Department of Health and Human Services could not be surveyed, for technical reasons. The survey sample ultimately included 24 federal agencies and departments and included 14,515 responses. Among these 14,515 responses, there are around 15 to 17 percent of missing values (item nonresponse) for demographic variables and variables related to respondents' experience with sexual harassment used in this analysis. If those who did not respond would have responded differently compared to those who did, the estimates may not reflect those of the nonrespondents.

¹²This regression analysis is subject to limitations, including: the results are associational and do not imply a causal relationship; we do not identify the causes of any demographic disparities; some variables that could affect a respondent's likelihood of being sexually harassed (e.g., occupation) were not included in the analyzed data; and since survey responses were voluntary and respondent-driven, some may be inaccurate.

¹³For the purposes of our report, statistically significant odds ratios (determined by a p-value of less than 0.05) greater than 1.00 or lower than 1.00 indicate that individuals with that characteristic are more likely or less likely, respectively, to have said they experienced sexual harassment.

Table 6: Likelihood of Surveyed Federal Workers Reporting in the MSPB Survey That They Experienced Sexual Harassment, by Group

Explanatory variable	Odds ratio
Sex (reference group: Men): Women	2.960**
Age (reference group: 60 or older): 29 and under	1.484
Age (reference group: 60 or older): 30-39	1.341
Age (reference group: 60 or older): 40-49	1.009
Age (reference group: 60 or older): 50-59	0.941
Race/ethnicity (reference group: White, non-Hispanic): Hispanic	0.820
Race/ethnicity (reference group: White, non-Hispanic): American Indian/Alaska Native, non-Hispanic	2.726*
Race/ethnicity (reference group: White, non-Hispanic): Black or African American, non-Hispanic	0.689*
Race/ethnicity (reference group: White, non-Hispanic): Asian, non-Hispanic	0.901
Race/ethnicity (reference group: White, non-Hispanic): Native Hawaiian/Pacific Islander, non-Hispanic	0.849
Race/ethnicity (reference group: White, non-Hispanic): Mixed, non-Hispanic	1.369
Sexual orientation (reference group: Heterosexual): Lesbian or gay, bisexual, other, or prefer not to say	1.384
Gender orientation (reference group: Not transgender): Transgender or prefer not to say	0.989
Supervisory status (reference group: Nonsupervisor): Team leader	1.421*
Supervisory status (reference group: Nonsupervisor): Supervisor	0.897
Supervisory status (reference group: Nonsupervisor): Manager	0.782
Supervisory status (reference group: Nonsupervisor): Executive	0.828
Workgroup gender composition (reference group: About the same number of males and females): Slightly more males than females	0.748
Workgroup gender composition (reference group: About the same number of males and females): Substantially more males than females	1.432*
Workgroup gender composition (reference group: About the same number of males and females): Slightly more females than males	1.287
Workgroup gender composition (reference group: About the same number of males and females): Substantially more females than males	1.018
Education level (reference group: High school or less): Some college or bachelor's degree	2.613**
Education level (reference group: High school or less): Master's degree or above	3.140**
Years with current agency (reference group: 32 years or more): 3 years or less	1.622

Appendix I: Objectives, Scope and Methodology

Explanatory variable	Odds ratio
Years with current agency (reference group: 32 years or more): 4-15 years	1.783*
Years with current agency (reference group: 32 years or more): 16-31 years	1.845*
Annual salary (reference group: Less than \$50,000): \$50,000 - \$99,999	0.980
Annual salary (reference group: Less than \$50,000): \$100,000 - \$149,999	0.971
Annual salary (reference group: Less than \$50,000): \$150,000 and above	0.901
Constant	0.0167**

Legend:

**= statistically significant at the 99% confidence interval (p<0.01).

*= statistically significant at the 95% confidence interval (p<0.05).

Source: GAO analysis of the U.S. Merit Systems Protection Board's 2016 Survey. | GAO-20-564

Note: Statistically significant results are in bold type.

To assess the reliability of the MSPB data, we reviewed technical documentation, conducted electronic testing for obvious errors in accuracy and completeness, and interviewed MSPB officials. We determined that the data, in general, were reliable for our purposes and identified some caveats and limitations. MSPB officials provided the agency's nonresponse bias analysis for select features, but noted that they were unable to link other characteristics to the survey respondents, and therefore did not carry out a traditional nonresponse bias analysis.¹⁴ While MSPB did not find evidence of nonresponse bias, their analysis was limited to demographic data on supervisory status, sex, and minority status, so the potential for bias based on other factors was unknown.

To examine the potential for nonresponse bias from identified variables, we analyzed data from the Office of Personnel Management's Enterprise Human Resources Integration Statistical Data Mart, which was used to form the MSPB 2016 survey sample frame. We compared the weighted distribution of MSPB respondents to that of the federal workforce at the time the survey was carried out. To the extent that the distributions differ, there is the potential for bias. If those who did not respond to the survey differ from those who did respond, relying on survey respondents to represent the relevant population could be misleading. Respondent and federal workforce distributions were similar based on five characteristics: supervisory status, eligibility to retire, minority status, sex, and agency.

¹⁴A traditional nonresponse bias analysis would match sampled employee demographic and other characteristics to their response status, and examine whether respondents and nonrespondents differ on those characteristics.

There were potential differences based on three characteristics: annual salary (lower-earning employees were underrepresented in MSPB's survey), age (employees under 40 were underrepresented in MSPB's survey), and federal tenure (employees with 3 years or less were underrepresented in MSPB's survey). Although there were potential differences based on annual salary, age, and federal tenure, we determined that the data, in general, were reliable for our purposes, subject to the aforementioned caveats regarding the potential for non-response bias.

National Institute for Occupational Safety and Health

We also analyzed survey data from the Quality of Worklife (QWL) module, which NORC at University of Chicago has administered as part of the General Social Survey (GSS) on behalf of the National Institute for Occupational Safety and Health (NIOSH) every 4 years, since 2002.¹⁵ The QWL module asks respondents, "In the last 12 months, were you sexually harassed by anyone while you were on the job?", but does not define sexual harassment or provide examples of sexually harassing behaviors. We focused our analysis on survey data from 2006, 2010, 2014, and 2018, since Spanish-speakers were added to the target population in 2006. Full probability sampling was used for the years we analyzed and the results were, in general, generalizable to individuals who were working full-time or part-time, or temporarily not working. In our analysis, we estimated the percentage of U.S. workers who reported experiencing sexual harassment in the 12 months preceding the survey and examined whether groups with different demographic characteristics

¹⁵According to NIOSH officials, a National Science Foundation grant funds the GSS, and, through an interagency agreement with the National Science Foundation, NIOSH adds funds for administration of the QWL module. NORC at University of Chicago is an independent research institution that provides data and rigorous analysis to guide programmatic, business, and policy decisions. Since 1941, it has conducted studies, created and applied methods and tools, and advanced principles of scientific integrity and collaboration. NORC partners with government, corporate, and nonprofit clients to conduct research in five main areas: economics, markets, and the workforce; education, training, and learning; global development; health and well-being; and society, media, and public affairs.

(such as gender and age) were more or less likely to say they experienced sexual harassment.¹⁶

To assess the reliability of the QWL data, we reviewed technical documentation, conducted electronic testing for obvious errors in accuracy and completeness, and interviewed representatives from NORC. We determined that the data, in general, were reliable for our purposes, and identified caveats and limitations. In general, the GSS samples closely resemble distributions reported in the Census and other authoritative sources. However, because of survey nonresponse, sampling variation, and various other factors, the sample used for the GSS differs from known population figures for some variables. The GSS does not calculate post-stratification weights to adjust for such differences. To the extent that these variables include any demographic variables that may impact the likelihood of experiencing harassing behaviors, relying on survey respondents may result in bias. Moreover, since survey responses were voluntary and respondent-driven, some may be inaccurate. In addition, as we noted in the report, directly asking respondents whether they experienced sexual harassment instead of asking behavioral questions may not be as likely to accurately capture the prevalence of sexual harassment.

Expert Roundtable Discussion and Questionnaire

Roundtable Discussion

On July 24-25, 2019, with the assistance of the National Academies of Sciences, Medicine, and Engineering (National Academies), we convened a 2-day roundtable of 17 academic researchers and others with expertise in sexual harassment, data collection, or other relevant areas to discuss data collection approaches to improve information on the

¹⁶While we also conducted logistic regression analysis for the QWL data, the results were not robust and we did not present the regression results in this report. We believe this may be due to the survey not defining sexual harassment. Different respondents sampled over the years may have conceptualized the term differently, leading to a lack of consistency across years.

prevalence and costs of sexual harassment.¹⁷ The 2-day roundtable was recorded and transcribed to ensure that we accurately captured experts' statements. We then analyzed roundtable transcripts to identify common themes and key statements from experts regarding recommended data collection approaches. To complete this analysis, we developed a list of categories characterizing expert statements, reviewed the transcript, and then coded excerpts into relevant categories, based on the consensus of multiple analysts using NVivo qualitative data analysis software.¹⁸ We did not poll expert participants or take votes on approaches discussed during the roundtable. Consequently, we do not provide counts or otherwise quantify the number of experts agreeing to an approach. Further, since experts were generating and discussing ideas as part of a free-flowing group discussion, the number of times a concept was (or was not) repeated does not necessarily indicate the level of consensus on that concept. Throughout the report:

- The term “experts” generally indicates that (1) more than one expert made a statement supporting a general point, and the views in support of the point were relatively uniform, and (2) we are aware that there may not be evidence of full agreement or consensus on the topics discussed.
- The term “various experts” or “varied experts” generally means (1) multiple experts made slightly different points that went to the larger point(s) we reported, or (2) experts discussed different possible options related to those larger points. In these cases, after we make a larger point, we generally describe the various related points and/or options discussed, along with any advantages or disadvantages, as made by “some experts” or “other experts.”

Appendix II provides a list of the 17 experts who participated in the roundtable, along with their affiliations. These experts represented a

¹⁷The National Academies is a private, nonprofit organization whose mission is to provide independent, objective analysis and advice to the nation and conduct other activities to solve complex problems and inform public policy decisions. Our meeting of experts was planned and convened with the assistance of the National Academies to better ensure that a breadth of expertise was brought to bear in its preparation. However, all final decisions regarding meeting substance and expert participation were the responsibility of GAO. Neither GAO nor the roundtable participants as a whole recommend or endorse the adoption of any particular approaches discussed in this report. See appendix II for the list of experts who participated in our roundtable.

¹⁸NVivo is a data analysis software tool used to classify and categorize qualitative and mixed-methods data to identify common themes and attributes.

broad spectrum of views and expertise and came from a variety of fields—the roundtable included sexual harassment researchers, survey methodologists, cost estimation experts, and individuals with knowledge about employer perspectives on sexual harassment. Additionally, officials from four federal agencies—the Department of Labor’s Bureau of Labor Statistics, as well as EEOC, MSPB, and NIOSH—participated in a roundtable session focused on a potential federal role in future data collection approaches.¹⁹ We selected roundtable experts based on their experience and knowledge of the study of sexual harassment, large-scale data collection, and other key areas, as well as recommendations from the National Academies.²⁰ To help identify any potential biases or conflicts of interest, we required each expert who participated in the roundtable to disclose whether they had investments, sources of earned income, organizational positions, relationships, or other circumstances that could affect, or could be viewed to affect, their view on sexual harassment prevalence and cost data collection. None of the experts reported potential conflicts that would affect their ability to participate in the roundtable.

Roundtable Questionnaire

Prior to the roundtable, we administered a questionnaire to the experts, to inform our roundtable agenda and gather individual perspectives on data collection approaches to improve understanding of workplace sexual harassment’s prevalence and costs.²¹ Specifically, we surveyed the experts on existing data collection efforts, data they thought needed to be collected, and overall challenges to collecting data on the prevalence and

¹⁹While officials from the Department of Labor, Equal Employment Opportunity Commission, and National Institute for Occupational Safety and Health participated only in the discussion focused on a potential federal role in data collection, an MSPB researcher responsible for its survey on sexual harassment of federal employees participated in the entire 2-day roundtable, as one of the 17 experts described above.

²⁰Specifically, we considered (1) type and depth of experience; (2) recognition in the professional community, including references from individuals we interviewed over the course of our work; (3) published work and its relevance to our research objectives; (4) professional affiliations; and (5) present and past employment history.

²¹We pretested our questionnaire with two roundtable participants to help ensure our questions were clear. We administered the questionnaire via email in June 2019.

costs of workplace sexual harassment.²² All 17 experts completed the questionnaire.

Interviews

We interviewed federal agency officials from several agencies, including the Department of Health and Human Services' Centers for Disease Control and Prevention (CDC), U.S. Commission on Civil Rights, Department of Commerce's Census Bureau, the Department of Labor's Office of Federal Contract Compliance Programs, Department of Justice's Bureau of Justice Statistics, EEOC, and MSPB, to obtain information on existing sexual harassment data collection efforts and potential options for improving data on sexual harassment prevalence and costs. To obtain additional perspectives on the prevalence and costs of sexual harassment, we interviewed representatives from organizations that have studied sexual harassment or collected their own sexual harassment related data, including the Institute for Women's Policy Research and the American Federation of Labor and Congress of Industrial Organizations.²³

We conducted this performance audit from July 2018 to September 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

²²Since we discuss our analysis of qualitative questionnaire responses along with our analysis of roundtable transcripts in this report, we use the same method and terms (e.g., "experts," "various experts," etc.) when referring to experts' comments, as described in the prior subsection.

²³The Institute for Women's Policy Research has issued reports focused on sexual harassment. See, for example, Ariane Hegewisch, Cynthia Deitch, and Evelyn Murphy, *Ending Sex and Race Discrimination in the Workplace: Legal Interventions that Push the Envelope* (Washington, D.C.: Institute for Women's Policy Research, 2011) and Shaw, Hegewisch, Cynthia Hess, *Sexual Harassment and Assault at Work: Understanding the Costs*. The American Federation of Labor and Congress of Industrial Organizations is a voluntary federation of 55 national and international labor unions that represent 12.5 million working men and women. See The American Federation of Labor and Congress of Industrial Organizations, *About Us*, accessed May 21, 2020, <https://aflcio.org/about-us>.

Appendix II: Participants in GAO Expert Roundtable on Workplace Sexual Harassment Prevalence and Costs

For our 2-day roundtable, we selected 17 experts based on their experience in and knowledge of a number of key areas, as well as recommendations from the National Academies. Specifically, we sought the participation of (1) sexual harassment researchers, (2) survey methodologists, (3) cost estimation specialists, (4) employer representatives, and (5) advocacy group representatives (see table 6). When selecting experts, we considered (1) type and depth of experience; (2) recognition in the professional community, including references from individuals we interviewed over the course of our work; (3) published work and its relevance to our research objectives; (4) professional affiliations; and (5) present and past employment history. Additionally, officials from four federal agencies—the Department of Labor’s Bureau of Labor Statistics, Equal Employment Opportunity Commission, Merit Systems Protection Board, and National Institute for Occupational Safety and Health—participated in a roundtable session focused on a potential federal role in future data collection approaches.¹

Table 7: List of Expert Participants in GAO Sexual Harassment Prevalence and Costs Roundtable, Held July 24-25, 2019

Number	Participant	Participant information
1.	NiCole Buchanan	Associate Professor, Ecological/Community Psychology and Clinical Science, Michigan State University
2.	Kennon Copeland	Vice President and Senior Fellow, Statistics and Methodology NORC at the University of Chicago

¹While officials from the Department of Labor, Equal Employment Opportunity Commission, and National Institute for Occupational Safety and Health participated only in the discussion focused on a potential federal role in data collection, an official from MSPB participated in the entire 2-day roundtable, as one of the 17 experts described above and listed in table 6.

Appendix II: Participants in GAO Expert Roundtable on Workplace Sexual Harassment Prevalence and Costs

Number	Participant	Participant information
3.	Lilia Cortina	Professor, Psychology, Women's Studies, and Management & Organizations University of Michigan
4.	Cynthia Ferentinos	Senior Research Psychologist Merit Systems Protection Board
5.	Louise Fitzgerald	Professor Emerita, Psychology University of Illinois Urbana-Champaign
6.	Heidi Hartmann	President Emerita and Senior Research Economist Institute for Women's Policy Research
7.	Joni Hersch	Cornelius Vanderbilt Chair, Professor, Law and Economics and Co-Director, Law and Economics Ph.D. Program Vanderbilt Law School
8.	Deborah Knapp	Associate Professor, Management and Information Systems Kent State University
9.	Wendy Max	Professor and Co-Director, Institute for Health & Aging University of California, San Francisco
10.	Heather McLaughlin	Associate Professor, Sociology Oklahoma State University
11.	Jeri Mulrow	Vice President, Statistics and Evaluation, Sciences Staff Director Westat
12.	John Pryor	Distinguished Professor, Psychology Illinois State University
13.	Kathleen M. Rospenda	Associate Professor, Psychology in Psychiatry University of Illinois at Chicago
14.	Nora Cate Schaeffer	Interim Associate Vice Chancellor for Research, Social Sciences, and Faculty Director, University of Wisconsin Survey Center University of Wisconsin-Madison
15.	Rebecca C. Thurston	Professor, Psychiatry, Clinical and Translational Science, Epidemiology, and Psychology University of Pittsburgh
16.	Shirley J. Wilcher	Executive Director American Association for Access, Equity, and Diversity
17.	Susan Zhu	Senior Research Fellow Society for Human Resource Management

Source: GAO. | GAO-20-564

Appendix III: Comments from the Equal Employment Opportunity Commission

**Appendix III: Comments from the Equal
Employment Opportunity Commission**



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

September 11, 2020

Cindy Brown Barnes
Managing Director
Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Brown Barnes:

Thank you for the opportunity to review the Government Accountability Office's (GAO) draft report entitled *Workplace Sexual Harassment: Experts Suggest Expanding Data Collection to Improve Understanding of Prevalence and Costs* (Draft Report). The U.S. Equal Employment Opportunity Commission submits the following substantive concerns with the Draft Report, as well as several technical comments that have been annotated on the report itself.

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that prohibit discrimination against a job applicant or employee because of the person's race, color, religion, sex (including pregnancy, transgender status, and sexual orientation), national origin, age (40 or older), disability, or genetic information. The laws apply to a myriad of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits. The agency takes its responsibility to enforce the anti-discrimination laws seriously.

The EEOC prioritizes and deploys our resources to achieve our important mission of preventing and remedying unlawful employment discrimination and advancing equal opportunity for all. In fulfilling our mission, the EEOC relies on the full range of powerful authorities in its education and enforcement repository to serve this public interest imperative. While our mission is broad, the EEOC approaches enforcement and outreach to ensure that we are effectively remedying and preventing discrimination across all the bases of discrimination as well as retaliation.

The EEOC has been at the forefront of the federal government's response to sexual harassment. For decades, the EEOC has educated workers and employers to prevent harassment and has also investigated, mediated, litigated and adjudicated many thousands of claims of workplace harassment based on sex, race, color, disability, age, national origin, and religion.

Combatting all forms of workplace harassment remains a top priority of the EEOC. From the launch of the Select Task Force on the Study of Harassment in the Workplace in 2015, to the release of the Co-Chairs' Report in 2016, and through this past fiscal year, the EEOC ramped up its role as leader, educator, and enforcer. The agency also focused on promoting best practices to stop harassing conduct before it becomes legally actionable, to create an effective anti-harassment system that encourages people to come forward, and to hold leaders and

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supervisors accountable. The EEOC continues to lead the way in preventing workplace harassment on multiple fronts.

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Moreover, the creation of OEDA, the Data Governance Board, and the expanded role of the Chief Data Officer, were designed to provide executive leadership and oversight for the development and implementation of the policies and processes that govern the collection, creation, management, use, and disclosure of the EEOC's data. Additionally, in an effort to accelerate the modernization of the EEOC's data systems, the EEOC was awarded four million dollars in no-year funding from the Technology Modernization Fund,¹ an innovative funding vehicle that makes limited funds available to federal agencies for technology improvements consistent with the President's Management Agenda. The work on this transformational project is well underway. Removing the considerable barriers of old technology; transforming the EEOC to support fully digital services; and providing staff and partners with a modern system will better enable the agency to carry out its critical mission. However, despite the progress we have made to modernize our collection and use of high-quality data, this Draft Report shows a misunderstanding of what data EEOC currently collects and how the agency conducts its mission-critical work.

The report incorrectly asserts that EEOC is not able to systematically analyze data on retaliation charges that may be related to sexual harassment. We systematically analyze the demographics of who is filing retaliation charges – the demographics can tell us whether men or women are more likely to suffer retaliation, or whether certain races or national origins are more at risk of retaliation. While demographic information is not required in the agency's data system, as the below chart indicates, EEOC has charging party race, gender, and national origin information on 70 percent of all charges received since Fiscal Year 2008. The EEOC began collecting charging party demographic information on national origin in 2008.

¹ See <https://tmf.cio.gov/projects/#charge-and-case-management-system-modernization>

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EEOC Charges FY 2008 - Present		
Total	1,066,032	
Race	899,578	84.4%
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All of the above	746,365	70.0%

Also, when a retaliation claim is filed with other types of discrimination within the same charge, we analyze the combinations of bases and issues, such as retaliation and sexual harassment. As the below data demonstrates, we can systematically analyze the vast majority of the retaliation charges in EEOC's data systems. For example, of the 203,310 retaliation charges filed over the five-year time period studied in the Draft Report, 87 percent of those charges also alleged another basis or issue. Therefore, for the time period studied, we can systematically analyze 87 percent of all retaliation charges and examine the bases and issues alleged along with retaliation.² As represented in the below chart, analyzing this information demonstrates that, on average, at least 72 percent of sexual harassment charges also alleged retaliation.

	FY2014	FY2015	FY2016	FY2017	FY2018
All Retaliation	38,730	40,163	42,998	41,620	39,799
Retaliation Only	5,764	5,816	5,597	5,542	4,400
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% SH and Retaliation	71.1%	70.9%	72.1%	72.0%	76.4%

Furthermore, as we have previously discussed with GAO, retaliation charges do not always flow from a previous charge of discrimination filed with the EEOC. When a retaliation charge is filed, the investigator assigned to the charge will examine whether any prior charges filed with the EEOC relate to the charge of retaliation. In the Draft Report, however, GAO

² Conversely, of the 203,310 charges filed over the five-year time period studied in the Draft Report, only 27,119 of those charges were filed without another basis or issue. This means that the EEOC was limited in its ability to systematically analyze the protected activity associated with retaliation charges in only 13 percent of all charges.

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discusses the importance of the EEOC examining the universe of retaliation claims that are filed, presumably to be able to quantify whether the retaliation charge: directly resulted from earlier charge(s) by the charging party; is from a witness who provided information to EEOC pursuant to an investigation; and/or is subsequent to employee reports of harassment to the employer, without any prior charge filed with the EEOC. As presented in the Draft Report, the purpose for this analysis appears aimed at better informing EEOC outreach activities and priorities.

However, this analysis ignores the agency's robust outreach efforts to employers and workers. As discussed in more detail below, the EEOC uses data that we collect from charge filings to prioritize the agency's outreach to employers, and the EEOC conducts extensive outreach on retaliation and harassment across all bases of discrimination.

In the Draft Report, GAO also asserts that without additional data on the protected activities associated with retaliation charges, the EEOC will be hampered in its ability to work with employers to reduce retaliation charges. The EEOC acknowledges that additional data may generally assist the agency in more targeted activities, however the efficacy of that information turns on the quality of the data. Because the vast majority of retaliation charges are filed with another issue, the lack of data on retaliation charges that are filed without another issue does not prevent EEOC from working with employers to reduce retaliatory conduct.³ While this data may be somewhat helpful to further understand what protected activity more often leads to allegations of retaliation, it is essential for the EEOC to educate and work with employers to reduce all forms of retaliation. The Draft Report appears to dismiss this. As all retaliation is prohibited, regardless of the type of underlying protected activity, the EEOC conducts outreach and educates employers on preventing all forms of retaliation.

The Draft Report also states that additional data analysis could help refine EEOC's education and outreach efforts by focusing on the protected activities of greatest concern. However, as noted in this Draft Report in the box at the top of page 36, "In fiscal year 2018, EEOC reported that it held more than 3,926 outreach events, providing more than 398,650 individuals nationwide with information about their rights and responsibilities. About a fourth of these events (949) covered sexual harassment, while a slightly higher number of events (976) covered retaliation, according to EEOC." This data clearly demonstrates that EEOC utilizes data, including charge data, to inform its education and outreach efforts and has prioritized issues of retaliation and sexual harassment because of the very prevalence of such allegations in charges. In fact, the EEOC uses many sources of data to inform its outreach and education activities, including national and local priorities, which are based on charge data as well the demographics of populations located within the jurisdiction of EEOC's District Offices.

Moreover, as discussed above, it is important to note that the EEOC has taken, and continues to take, significant steps towards enhancing its data and data analytics capabilities through the creation of the Office of Enterprise Data and Analytics, successfully obtaining an award from the Technology Modernization fund to improve EEOC's Integrated Mission System (IMS), and our Data Governance Board.

³ As discussed above, the EEOC has extensive data on retaliation charges that are filed with another basis or issue. Therefore, the only retaliation charges that lack this data are the small percentage of retaliation charges that are filed without another basis or issue.

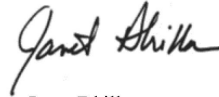
**Appendix III: Comments from the Equal
Employment Opportunity Commission**

While we prioritize outreach as a mission-critical function, the agency's work extends beyond that. Thus, any data collected must inform and reinforce the agency's other mission-critical functions, including enforcement and litigation activities. It is essential that EEOC be able to extrapolate data to identify workforce trends that support our systemic investigations and litigation. Consequently, the additional information discussed in the Draft Report may have limited impact on how EEOC executes its mandate.

Finally, the Draft Report demonstrates the lack of comprehensive data on sexual harassment prevalence and costs, argues the need to collect additional data, and suggests potential methods for gathering important representative data that could fill the gaps identified in the report. However, the recommendation made in the Draft Report, which would call for EEOC to explore the nature of retaliation charges in more detail, will not provide the nationally representative sexual harassment prevalence and cost information that was the focus of the Draft Report.

We appreciate the opportunity to review the Draft Report and to submit these comments for your consideration. We hope that you find this information helpful.

Sincerely,



Janet Dhillon
Chair

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Cindy S. Brown Barnes, (202) 512-7215 or brownbarnesc@gao.gov

Staff Acknowledgments

In addition to the contact named above, Rebecca Woiwode (Assistant Director), Amber Yancey-Carroll (Analyst-In-Charge), Sherwin Chapman, Haley Dunn, Adrian Good, and Margaret Hettinger made key contributions to this report. Also contributing to this report were Lucas Alvarez, Susan Aschoff, James Bennett, Sarah Cornetto, Bradley Crofford, Charles Culverwell, Clifton Douglas, Jr., Edda Emmanuelli Perez, Sarah Gilliland, Gretta Goodwin, Yvonne Jones, Christy Ley, Dawn Locke, Dan Luo, Lorin Obler, Oliver Richard, Sheila R. McCoy, Daniel Silva, Almeta J. Spencer, Sonya L. Vartivarian, and Walter Vance.

Appendix V: Accessible Data

Data Tables

Accessible Data for Examples of Costs Associated with Workplace Sexual Harassment

Health costs

- Mental health symptoms
- Physical symptoms
- Additional health services

Productivity costs

- Absenteeism
- Reduced performance
- Lower job satisfaction

Career costs

- Employee's costs of changing jobs
- Employer's costs to replace employee

Reporting/legal costs

- Legal fees
- Filing/processing reports
- Settlements or awards
- Damage to reputations

Source: GAO analysis of relevant literature. | GAO-20-564

Accessible Data for Figure 1: Various Reporting Options for Workers Who Experience Workplace Sexual Harassment

Depending on the circumstances, workers may choose more than one reporting option, but not all options are available to all workers. Time limits may also apply.

1. Report to police: When workplace harassment involves sexual assault or other criminal conduct, workers may report it as a crime to local police.
2. Sue the employer: After reporting sexual harassment to EEOC or state or local EEO agency, workers may file a lawsuit against their employer upon receiving a Notice of Right to Sue.
3. Report to state or local EEO agency: State and local equal employment opportunity (EEO) agency will investigate reports falling under its jurisdiction, which may result in dismissal, settlement, or litigation. For charges that may also involve state and/or local anti-discrimination laws, EEOC may coordinate with state and/or local agencies that are responsible for enforcing these laws.
4. Report to EEOC/OFCCP: EEOC will investigate charges falling under its jurisdiction, which may result in dismissal, settlement, or litigation. Workers employed by a federal contractor may also report to the Office of Federal Contract Compliance Programs (OFCCP). Routine OFCCP compliance evaluations may also identify sexual harassment.
5. File a union grievance: Union may help facilitate a resolution, consistent with its bargaining agreement. Workers may also have to file a complaint with the employer to allow them to investigate the complaint and remedy the situation.
6. Report to employer: Employer is legally obligated to stop harassment. Employer should investigate the complaint and may try to resolve it through an internal complaint resolution procedure or arbitration. Federal agencies generally process reports of sexual harassment from their employees internally.
7. Choose not to report: Most workers experiencing workplace sexual harassment do not report to their employer or public agency. In addition, some workers may not be covered by a federal or state anti-discrimination law because of the size of their employer.

Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) guidance and interviews. | GAO-20-564

Accessible Data for Figure 2: Odds of Federal Workers Reporting in the MSPB Survey That They Experienced Sexual Harassment in the Past 2 Years, by Gender

Compared with men, Women are 3 times as likely to report experiencing sexual harassment

Source: GAO analysis of Merit Systems Protection Board Survey 2016 data. | GAO-20-564

Accessible Data for Figure 3: Odds of Federal Workers Reporting in the MSPB Survey That They Experienced Sexual Harassment in the Past 2 Years, by Race

Compared with Whites

- American Indian/Alaska Natives are 2.7 times as likely to report experiencing sexual harassment
- Black/African Americans are 30% less likely to report experiencing sexual harassment

Source: GAO analysis of Merit Systems Protection Board Survey 2016 data. | GAO-20-564

Accessible Data for Figure 4: Odds of Federal Workers Reporting in the MSPB Survey That They Experienced Sexual Harassment in the Past 2 Years, by Educational Level

Compared with federal workers who have a high school diploma or less:

- Workers with some college/Bachelor's degree are 2.6 times as likely to report experiencing sexual harassment
- Workers with a Master's degree or higher are 3.1 times as likely to report experiencing sexual harassment

Source: GAO analysis of Merit Systems Protection Board Survey 2016 data. | GAO-20-564

Accessible Data for Figure 5: Odds of Federal Workers Reporting in the MSPB Survey That They Experienced Sexual Harassment in the Past 2 Years, by Workplace Gender Composition

Compared with groups with equal gender representation, workers are 1.4 times as likely to report experiencing sexual harassment in groups with substantially more men than women

Source: GAO analysis of Merit Systems Protection Board Survey 2016 data. | GAO-20-564

Accessible Data for Figure 6: Examples of Employee and Employer Costs Associated with Workplace Sexual Harassment

Health costs

- Mental health symptoms (e.g., depression, anxiety, post-traumatic stress disorder)
- Physical health symptoms (e.g., higher blood pressure)
- Employer health care costs (e.g., providing counseling services)

Productivity costs

- Absenteeism (e.g., using leave)
- Reduced performance
- Decreased job satisfaction

Career costs

- Employee's costs associated with changing jobs (e.g., lost or decreased earnings, unemployment)
- Employer's costs to replace employee (e.g., recruitment, training)

Reporting and legal costs

- Legal fees
- Time cost of filing and processing reports
- Expense of settlements or litigation awards
- Damage to employer and employee's reputation if report is made public

Source: GAO analysis of relevant literature. | GAO-20-564

Accessible Data for Figure 7: Administrative Charge Resolution and Litigation Resolution Amounts, for Charges and Cases Alleging Sexual Harassment, Fiscal Years 2009-2018

Fiscal year	Litigation resolutions	Administrative charge resolutions
2009	14.17	51.69
2010	23.9	45.54
2011	26.25	48.62
2012	14.04	45.82
2013	13.3	47.66
2014	7.31	36.68
2015	11.82	47.25
2016	9.49	43.15
2017	1.43	47.04
2018	13.47	57.11

Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) data. | GAO-20-564

Accessible Data for Figure 8: Sexual Harassment Charges and All Other Charges Filed with the Equal Employment Opportunity Commission (EEOC), Fiscal Years 2009-2018

Number of charges filed

Fiscal year	Sexual harassment	Other charges	Total charges
2009	8230	85185	93,415
2010	8015	92222	100,237
2011	7865	92450	100,315
2012	7700	92461	100,161
2013	7309	86962	94,271
2014	6978	82798	89,776
2015	6887	83049	89,936
2016	6918	85705	92,623
2017	6768	77991	84,759
2018	7674	69049	76,723

Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) data. | GAO-20-564

Accessible Data for Figure 9: Percentage of Sexual Harassment Charges Filed with the Equal Employment Opportunity Commission (EEOC), by Gender of Filer, Fiscal Years 2009-2018

Percentage of charges filed.

Fiscal year	Women	Men	Gender not reported
2009	80.3	16.6	3.1
2010	80.7	16.7	2.5
2011	81	16.7	2.4
2012	78.9	18.1	3
2013	78.6	18.5	3
2014	79.1	18.3	2.5
2015	78.9	18.2	2.9
2016	80	17.6	2.4
2017	79.6	17.7	2.8
2018	77.6	16.2	6.2

Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) data. | GAO-20-564

Accessible Data for Figure 10: Percentage of Sexual Harassment Charges Filed with the Equal Employment Opportunity Commission (EEOC), by Race of Filer, Fiscal Years 2009-2018

Percentage of charges filed (by racial group)

Fiscal year	White	Black	Asian	AI/AN	Other	Missing/unknown
2009	52.9	23.5	1.8	1.1	1	19.7
2010	53	25	1.8	0.9	0.9	18.4
2011	51.3	25	1.8	1.1	1	19.8
2012	48.4	25.4	1.7	1.2	1.1	22.2
2013	45.9	25.7	2.1	1	1.3	24
2014	43.7	24.7	1.9	1	1.5	27.2
2015	39	25	2.2	1.2	1.6	31
2016	37.3	25.7	1.5	1.2	1.4	32.9
2017	36.4	25.8	2.1	1.1	1.5	33.1
2018	31.3	24.2	2	0.8	1.2	40.5

Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) data. | GAO-20-564

Accessible Data for Figure 11: Percentage of Sexual Harassment Charges Filed with the Equal Employment Opportunity Commission (EEOC), by Age of Filer, Fiscal Years 2009-2018

Percentage of charges filed (by age group)

Fiscal year	Younger than 30	30 to 39	40 to 49	50 to 59	60+	Missing/Unknown
2009	24.5	25.1	24	9.5	1.5	15.5
2010	26.1	26.1	24.3	10	1.6	12
2011	26.1	25.6	23.4	9.9	1.8	13.1
2012	25.7	25.2	23.9	11.4	1.9	11.9
2013	24.8	25.2	23.3	12.2	1.8	12.8
2014	24.4	27	22.4	12.1	2.1	12
2015	23.6	26.6	23.2	13.2	2	11.5
2016	24.4	26	22.8	12.6	2.4	11.8
2017	24	26.4	21.9	12.6	2.5	12.6
2018	17.3	20.9	18.6	11.9	2.5	28.8

Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) data. | GAO-20-564

Accessible Data for Figure 12: Sexual Harassment Complaints as a Percentage of All Discrimination Complaints Filed by Federal Employees against Federal Agencies, Fiscal Years 2013-2018

Number of complaints filed

Fiscal year	Sexual harassment	Other charges	Total charges
2013	510	14518	15,028
2014	574	14428	15,002
2015	502	14817	15,319
2016	485	15343	15,828
2017	585	14897	15,482
2018	685	15880	16,565

Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) data. | GAO-20-564

Accessible Data for Figure 13: Percentage of Charges Filed with the Equal Employment Opportunity Commission (EEOC) That Include an Allegation of Retaliation, Fiscal Years 2009-2018

Percentage of charges filed (by age group)

Fiscal year	Included a retaliation allegation	Did not include a retaliation allegation
2009	36.4	63.6
2010	36.5	63.5
2011	37.5	62.5
2012	38.3	61.7
2013	41.4	58.6
2014	43.1	56.9
2015	44.7	55.3
2016	46.4	53.6
2017	49.1	50.9
2018	51.8	48.2

Source: GAO analysis of Equal Employment Opportunity Commission (EEOC) charge data. | GAO-20-564

Accessible Data for Figure 14: Hypothetical Example of a Retaliation Charge Based on a Previous Workplace Sexual Harassment Charge Filed with the Equal Employment Opportunity Commission (EEOC)

2015: Individual files a sexual harassment charge

2016: EEOC closes sexual harassment charge^a

2018: Individual is denied a promotion, believes it was in retaliation for the 2015 charge, and files a retaliation charge

Source: GAO analysis of U.S. Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on Retaliation and Related Issues, (Aug. 25, 2016). | GAO-20-564

Agency Comment Letter

Accessible Text for Appendix III: Comments from the Equal Employment Opportunity Commission

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September 11, 2020

Cindy Brown Barnes

Managing Director

Education, Workforce, and Income Security Issues

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441 G Street, N.W.

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Percentage SH and Retaliation	71.1 percent	70.9 percent	72.1 percent	72.0 percent	76.4 percent

Furthermore, as we have previously discussed with GAO, retaliation charges do not always flow from a previous charge of discrimination filed with the EEOC. When a retaliation charge is filed, the investigator assigned to the charge will examine whether any prior charges filed with the EEOC relate to the charge of retaliation. In the Draft Report, however, GAO

² Conversely, of the 203,310 charges filed over the five-year time period studied in the Draft Report, only 27,119 of those charges were filed without another basis or issue. This means that the EEOC was limited in its ability to systematically analyze the protected activity associated with retaliation charges in only 13 percent of all charges.

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discusses the importance of the EEOC examining the universe of retaliation claims that are filed, presumably to be able to quantify whether the retaliation charge: directly resulted from earlier charge(s) by the charging party; is from a witness who provided information to EEOC pursuant to an investigation; and/or is subsequent to employee reports of harassment to the employer, without any prior charge filed with the EEOC. As presented in the Draft Report, the purpose for this analysis appears aimed at better informing EEOC outreach activities and priorities.

However, this analysis ignores the agency's robust outreach efforts to employers and workers. As discussed in more detail below, the EEOC uses data that we collect from charge filings to prioritize the agency's outreach to employers, and the EEOC conducts extensive outreach on retaliation and harassment across all bases of discrimination.

In the Draft Report, GAO also asserts that without additional data on the protected activities associated with retaliation charges, the EEOC will be hampered in its ability to work with employers to reduce retaliation charges. The EEOC acknowledges that additional data may generally assist the agency in more targeted activities, however the efficacy of that information turns on the quality of the data. Because the vast majority of retaliation charges are filed with another issue, the lack of data on retaliation charges that are filed without another issue does not prevent EEOC from working with employers to reduce retaliatory conduct.³ While this data may be somewhat helpful to further understand what protected activity more often leads to allegations of retaliation, it is essential for the EEOC to educate and work with employers to reduce all forms of retaliation. The Draft Report appears to dismiss this. As all retaliation is prohibited, regardless of the type of underlying protected activity, the

EEOC conducts outreach and educates employers on preventing all forms of retaliation.

The Draft Report also states that additional data analysis could help refine EEOC's education and outreach efforts by focusing on the protected activities of greatest concern. However, as noted in this Draft Report in the box at the top of page 36, "In fiscal year 2018, EEOC reported that it held more than 3,926 outreach events, providing more than 398,650 individuals nationwide with information about their rights and responsibilities. About a fourth of these events (949) covered sexual harassment, while a slightly higher number of events (976) covered retaliation, according to EEOC." This data clearly demonstrates that EEOC utilizes data, including charge data, to inform its education and outreach efforts and has prioritized issues of retaliation and sexual harassment because of the very prevalence of such allegations in charges. In fact, the EEOC uses many sources of data to inform its outreach and education activities, including national and local priorities, which are based on charge data as well the demographics of populations located within the jurisdiction of EEOC's District Offices.

Moreover, as discussed above, it is important to note that the EEOC has taken, and continues to take, significant steps towards enhancing its data and data analytics capabilities through the creation of the Office of Enterprise Data and Analytics, successfully obtaining an award from the Technology Modernization fund to improve EEOC's Integrated Mission System (IMS), and our Data Governance Board.

³ As discussed above, the EEOC has extensive data on retaliation charges that are filed with another basis or issue. Therefore, the only retaliation charges that lack this data are the small percentage of retaliation charges that are filed without another basis or issue.

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While we prioritize outreach as a mission-critical function, the agency's work extends beyond that. Thus, any data collected must inform and reinforce the agency's other mission-critical functions, including enforcement and litigation activities. It is essential that EEOC be able to extrapolate data to identify workforce trends that support our systemic investigations and litigation. Consequently, the additional information discussed in the Draft Report may have limited impact on how EEOC executes its mandate.

Finally, the Draft Report demonstrates the lack of comprehensive data on sexual harassment prevalence and costs, argues the need to collect

additional data, and suggests potential methods for gathering important representative data that could fill the gaps identified in the report. However, the recommendation made in the Draft Report, which would call for EEOC to explore the nature of retaliation charges in more detail, will not provide the nationally representative sexual harassment prevalence and cost information that was the focus of the Draft Report.

We appreciate the opportunity to review the Draft Report and to submit these comments for your consideration. We hope that you find this information helpful.

Sincerely,

Janet Dhillon

Chair

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