

**Risks and Costs Associated with Sex Harassment in the Workplace**  
The Continuing Argument for Return on Investment and Training

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The general public is being inundated day after day with sensationalist news regarding alleged sexual harassment by prominent politicians, news media and Hollywood icons. It seems that the list grows daily and women impacted feel empowered to make their case known to the public. One wonders how long it will take for C-Suite higher ups and senior managers to be outed, thus becoming part of the continuing saga of this watershed moment in our countries business and social history!



Internet news outlets vie for the biggest headlines to report the most recent sex harassment settlement. For example, 21 Century Fox agrees to \$90 million to resolve “derivative claims” against Roger Ailes’s estate, CEO Rupert Murdoch and his son Lachlan Murdoch.

The table below summarizes estimates of hard and soft costs to employers to resolve a sex harassment charge (Sample, 2007, p. 44; Hiscox , 2017):

Hard Costs (average)

• Fees for attorney if the case goes to trial	\$150,000 to \$250,000
• Fees for attorney if case is settled prior to trial	\$95,000 to 120,000
• Estimate of costs for jury awards	\$150,000 to \$250,000
• Estimate of costs for defense and settlements	\$160,000
• Number of hours expended by manager	30 to 40 hours
• Number of hours expended by employee making claim	30 to 40 hours
• Number of hours spent by employee investigating claim	40 to 60 hours
• Number of hours spent by employee trial preparation	40 to 60 hours

Soft Costs

- Impact on the work group in terms of distraction and reduced morale
- Impact on the cost of insurance if company is covered and experiences losses.
- Impact on stock price and reputation if there is publicity around the claim.
- Potential of copycat lawsuits or other claims due to internal and external publicity
- Impact on attracting the best employees given potential negative publicity of a claim

## Are Some States More at Risk Than Others?

According to the *Hiscox Guide to Employee Lawsuits (2017)*, small and mid-sized businesses with under 500 employees carry a 1 in 10 (or 10%) risk opportunity for an employee allegation of workplace discrimination. Further, it will require on average of 318 days to resolve the claim for the company. “Without employment practices liability insurance, each of these companies would face an average \$160,000 payment for defense and settlement charges” (Hiscox, p. 7).

Not all states are created equal when it comes to risk for charges of workforce discrimination. According to the *Hiscox Guide (2017)*, some states have higher risk rates than other states. For example, companies located in Washington, D.C. face the greatest risk of being sued by their employees, 81% higher than the national average. Other states where employers are at a high risk of facing charges of discrimination, when compared to the national average, include Delaware and Nevada (+55%, respectively), New Mexico (+50%), California (+46%), Mississippi (+43%), Alabama (+39%), Illinois (+35%), and Connecticut and Georgia (+19%, respectively). The remaining states are at risk at the national average of 10.5%.

Finally, research reported by Hiscox concluded that “76% of cases resulted in no payment by the insurance company, highlighting the nuisance potential of employment charges” (2017 Hiscox Guide, p. 7). Even if an allegation is unfounded, employers are urged to treat such allegations very carefully so as to avoid an emotional response, such as retaliation against the complainant.

## Return on Investment (ROI) for Harassment Prevention Training

Training focused on reducing claims and litigation associated with harassment related charges demonstrate a clear return on investment (ROI) to businesses. Chapman (2003) argued this point forcefully by comparing the benefits, detriments, and costs associated with proactive training and reactive approaches to resolving harassment-related litigation. The chart on the following page is based on a hypothetical business with 500 employees. Costs for the business are estimated by Chapman based on jury verdict and settlement amounts in 2003. I update the 2003 cost estimates for 2017 using inflation rates calculated by the US Department of Labor (DOL). According to the DOL Bureau of Labor Statistics, the dollar experienced an average inflation rate of 2.06% per year from 2003 to 2017. Costs in 2017 are 33.0% higher than costs in 2003 (Bureau of Labor Statistics).

The chart on the next page is useful for explaining to C-Suite executives and senior managers the importance of estimating costs related to legal threats against a business enterprise. Note that the costs for training remains the same for both proactive and reactive estimates. The dramatic change in estimates are for the reactive approach if a trial is necessary. If the claim goes to trial and the plaintiff prevails, the cost in 2003 dollars is estimated at \$2.73 million, or \$3.63 million in 2017 dollars.

## Comparison of Proactive and Reactive Costs for Litigating a Sexual Harassment Claim in 2003 and 2017

Example: Business with 500 Employees

<b>PROACTIVE</b>	<b>COSTS</b>	<b>REACTIVE</b>	<b>COSTS</b>
Cost of training before trial	2003 \$15,000 (\$30 x 500 employees) 2017 \$20,000 (\$40 x 500 employee)	Cost of training after trial	2003 \$15,000 (\$30 x 500 employees) 2017 \$20,000 (\$40 x 500 employee)
No other costs	\$0	Jury verdict: \$500,000 compensatory and \$1.5 million punitive damages in 2003	2003 * \$2,000,000 2017 * 2,660,000
No other costs	\$0	Defense attorneys' fees and expenses	2003 \$4000,000 2017 \$532,000
No other costs	\$0	Plaintiff's attorneys' fees and costs	2003 \$200,000 2017 \$266,000
No other costs	\$0	Investigation of incident	2003 \$8,000 2017 \$10,600
No other costs	\$0	Hiring public relations firm to improve business reputation	2003 \$25,000 2017 \$33,200
No other costs	\$0	Two expert witnesses (\$10,000 per witness)	2003 \$20,000 2017 \$26,600
No other costs	\$0	Eight depositions (\$5,000 per witness)	2003 \$40,000 2017 \$53,200
No other costs	\$0	Cost of appeal	2003 \$25,000 2017 \$33,200
Total	<b>2003 \$15,000</b> (\$30 x 500 employees) <b>2017 \$20,000</b> (\$40 x 500 employees)	vs.	<b>2003 \$2,73 million</b> (\$5,456 per employee) <b>2017 \$3,63 million</b> (\$7,270 per employee)

\*According to the DOL Bureau of Labor Statistics, the dollar has experienced an average inflation rate of 2.06% per year. Costs in 2017 are 33.0% higher than costs in 2003. Source: <http://www.in2013dollars.com/2003-dollars-in-2017?amount=15000>. This chart is modified and updated based on Chapmans (2003) cost estimates. Estimates for 2017 are rounded to be consistent with 2003 estimates.

As evidenced in the chart above, harassment prevention training places the employer in a position to argue a “good faith” attempt to protect its employees from discrimination and harassment, to reduce the potential for extended defense costs, and to avoid of punitive damages. Chapman (2003) also states that there are “other priceless benefits associated with creating a respectful environment, including greater productivity, better understanding of and adherence to company policies, less risk of future complaints, improved morale and reduced EPLI premiums” (p. 36).

Effective training has the potential of negating or reducing the initiation of claims, as well as providing good faith effort that may result in the avoidance of punitive damages. The following examples demonstrate several ways to formulate a return on investment argument.

- A nationally known law firm specializing in harassment prevention training was retained by a large organization that was averaging 110 employment-related claims annually between 1995 and 1998. Since instituting a prevention training program in 1998, the organization has experienced a 42 percent reduction in the number of claims per year, down from an average of 110 claims per year to 64. An independent study, not commissioned by the law firm, confirmed that, excluding settlement and award costs, the organization had a hard cost saving of \$2.2 million dollars per year (Employment Law Learning Technologies, 2002).
- In a return on investment case study published by Hill and Phillips (1997), the client healthcare company found that sexual harassment prevention training resulted in a reduction of internal complaints by 36 percent and the number of claims litigated dropped by 41 percent. Expenses attributed to legal fees and settlement expenses fell by 49 percent saving the company over \$800,000 in one year. Additional benefits included a reduction in turnovers attributed to harassment from 11 percent to 3 percent in the year of implementing the prevention training.

The return on investment argument for harassment prevention training is a powerful one that makes good business sense for the employer, employees, and shareholders. Supreme Court cases, such as *Farragher v. City of Boca Raton* (1998), *Burlington v. Ellerth* (1998), and *Kolstad v. American Dental Association* (1999) and Title VII mandates for training sets the stage for an employer arguing a good faith effort, which is key for an affirmative defense (Sample, 2007, pp. 45-46).

In addition to training, Hiscox (2017) tells employers to prevent behaviors that could cause a lawsuit, detect discriminatory behavior even if its not reported, and to mitigate the impact on the employer’s business in the event of an allegation of discrimination. Also, use the recruitment and selection process to carefully screen for potential harassers, internal thievery, violence in the workplace, and alcohol and substance abusers, thus avoiding allegations of negligent selection (Sample, 2007).

### References

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