

Current sexual harassment penalties are too low: Study

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Joni Hersch. Credit: Vanderbilt University

The current federal cap on monetary damages for workplace sexual

harassment is far too low to incentivize firms to take stronger measures to prevent the behavior, writes Vanderbilt economist Joni Hersch in "Valuing the Risk of Workplace Sexual Harassment," published in the *Journal of Risk and Uncertainty*. Hersch is the Cornelius Vanderbilt Professor of Law and Economics and co-director of the Ph.D. program in Law and Economics at Vanderbilt Law School.

Though workplace [sexual harassment](#) is illegal under Title VII of the Civil Rights Act, the #MeToo movement has shown that it remains prevalent and pernicious. Hersch believes that this may be in part due to the fact that systemically addressing the problem is difficult and expensive, making it more cost-effective for companies to simply pay any penalties that arise.

"The question is: Can we make the threat of damages high enough to be a deterrent?" Hersch asked. "How can we monetize the value of these harms?"

The [federal government](#) currently caps damages for the largest firms at \$300,000, a figure that was set in 1991. Hersch says that today's cap has to be much, much higher—\$7.6 million.

Sexual harassment is a job risk

"My approach to identifying the level of damages that would incentivize firms to deter sexual harassment started by recognizing that sexual harassment is a job risk," Hersch said. "We know workers must be paid more to work on jobs with a higher risk of fatality or injury. But it wasn't known whether firms had to pay workers more when they face a higher risk of sexual harassment."

Using sexual harassment charge data from the Equal Employment Opportunity Commission, Hersch calculated the risk of sexual

harassment by gender, industry, and age. She found that in industries where sexual harassment is more prevalent, women were paid more.

That worked out to average about \$500 per year per female worker in a firm with an average rate of sexual harassment relative to no risk of sexual harassment.

The Value of Statistical Harassment

Using the risk of harassment, average wages, hours worked and the number of employees, Hersch was able to develop a formula for calculating the value of statistical harassment—the necessary damages award at which it is more cost-effective for a company to avoid one case of sexual harassment that results in a legal charge than to pay employees to bear the risk of it.

In today's dollars, that works out to \$7.6 million on average. This figure reflects the average societal harm caused by sexual harassment as revealed by the hazard pay workers require to be willing to be exposed to this risk.

Hersch says that it's important to set the possible damages awards to the level that represents the full societal cost of the harm because there simply aren't any other effective incentives to address it. She notes that harassers are often valued employees, implementing measures to stop sexual harassment cost money, these cases rarely get to court and damages are capped at very low levels.

"You'd think the cost of paying women more for their exposure to sexual [harassment risk](#) would deter companies from ignoring the problem," Hersch said. "But obviously that's not sufficient."

More information: Joni Hersch. Valuing the risk of workplace sexual

harassment, *Journal of Risk and Uncertainty* (2018). [DOI: 10.1007/s11166-018-9288-0](https://doi.org/10.1007/s11166-018-9288-0)

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