Justice in the #MeToo era is not nearly as swift for federal employees

By Lisa Rein  April 2

A former Justice Department attorney who waited seven years for a ruling that her male supervisors harassed her still awaits back pay and damages.

A nuclear engineer who says her supervisor told her she dressed “like a flower trying to attract bees” was moved to another floor, while the boss was recommended for a promotion.

And five Immigration and Customs Enforcement employees say the agency has not responded to sexual harassment complaints they filed a year ago against a manager who they say pressured them to view a nude photo and made lewd jokes about President Trump.

The federal government once led the way in addressing sexual harassment in its ranks. But it now lags behind the private sector as the problem gains prominence in the #MeToo era, according to federal officials and employment lawyers.

A new study shows that sexual harassment is commonplace in federal offices. One in 5 women at large agencies say they have experienced some form of inappropriate behavior from a co-worker or supervisor. Nearly 9 percent of male employees report similar problems.

Once employees file complaints, their cases drag on in what lawyers and federal officials describe as an overburdened, underfunded system that has not kept pace with other workplaces, even though the government is the country’s largest employer.
“The biggest problem is that it takes way too long to get relief,” said Chai Feldblum, who serves on the Equal Employment Opportunity Commission, which adjudicates workplace-discrimination claims in the government and at private companies. “In harassment cases, the delay can be devastating.”

It took seven years for Christy McCormick, a former trial lawyer at the Justice Department, to win a ruling from the EEOC confirming she was harassed by two male supervisors during a year-long detail to Baghdad in 2009 to train Iraqi law enforcement officials on legal issues.

The commission concluded last year that McCormick was subjected to a hostile work environment based on her gender. It also found that she was denied an extension of her assignment and given a negative performance review because she complained.

Ten months later, her attorney, Robert Seldon, is still negotiating with the agency over back pay and damages.

“I almost gave up numerous times,” said McCormick, who now serves on the bipartisan U.S. Election Assistance Commission. “They push you so hard to give up.”

The Justice Department declined to comment.

Her former managers still work in senior federal law enforcement jobs, according to government websites.

The government conducted the first study of sexual harassment in 1981, breaking ground in workplace conduct and prompting training and prevention policies. The Merit Systems Protection Board, an independent office that studies long-term trends in the federal workforce, revisited its findings in a new survey that finds the highest rates of harassment at the Navy, Homeland Security and Veterans Affairs.

Just 8 percent of the surveyed employees believe that corrective action was taken against their harassers. The study concludes that federal agencies “must improve their education of employees about their responsibilities and rights regarding workplace conduct and hold employees who commit sexual harassment accountable for their misconduct.”

The study did show improvement from the last time the board examined the problem, in 1994. At that time, more than 40 percent of women and nearly 20 percent of men said they dealt with unwelcome sexual behavior.
Federal workers get 45 days to file a grievance, compared with 300 days for private-sector employees in most states. If government workers prevail — either in federal court or through the EEOC process — their damages are capped at $300,000. But there's no limit on settlements with private companies, and anti-discrimination laws in many states allow private-sector employees to sue in court systems that don't cap damages. In the internal EEOC system, set up to keep cases out of the federal courts, it can take years to come to a resolution.

Some employees say they received poor performance reviews or were denied promotions after filing grievances, while their alleged harassers retired or seemed to escape discipline.

Before they can sue, federal workers must undergo a fuller, more time-consuming administrative process, which includes the EEOC, where staffing has dwindled and funding has stagnated in recent years. While the commission says about half of discrimination complaints are resolved within three months, it took an average of 1,300 days — about 3½ years — to resolve the rest through the EEOC in fiscal 2017, the commission said.

“They tell federal employees there’s a process,” said Josh Bowers, a lawyer who specializes in federal discrimination cases. “It’s collapsed. Six years later, my clients are asking, ‘Josh, what happened?’”

The commission can only recommend that a harasser be disciplined or fired. It cannot order action, and agencies are not required to report whether they took any.

EEOC decisions and settlements with agencies are confidential, naming neither victims nor harassers.

The delays also can fail managers who are unfairly accused of harassment. "When you have a claim that was brought and it doesn’t have merit, it is painfully unfair to the manager" to drag out these cases, said Gary Gilbert, a former EEOC chief administrative judge.

Often, employees say their careers falter, while those of their alleged harassers seem to flourish.

The nuclear engineer, who spoke on the condition of anonymity out of concern that her case could hinder future employment, filed a complaint against her supervisor at the Energy Department’s Office of Enterprise Assessments in 2016, according to her complaint. She alleged that he stalked her and made inappropriate comments about the way she dressed.

Shortly afterward, the supervisor confronted her in the office parking lot and threatened her job, the engineer said in an interview. She was urged to take a temporary position in another office while the case was investigated, she said, and was upset when the supervisor was selected to attend a respected training program that prepares managers for promotion to senior executive, documents show.
Within a month, she reached a confidential settlement with the department, her attorney, Joseph Kaplan, said.

“Even if you do get resolution, there is no accountability when it comes to the harasser,” the engineer said. Energy spokeswoman Shaylyn Hynes said she could not discuss a personnel matter.

In 17 investigations at offices across the government since the beginning of 2015, federal inspectors general found that offenders often were not disciplined but retired, resigned or continued working during the investigations.

Acting EEOC chair Victoria Lipnic said the “single biggest concern” of all employees filing grievances is retaliation, particularly in sexual harassment cases. “The potential for retaliation is big.” Government officials said it is not always apparent when they take action against a harasser because they are forbidden from publicly disclosing disciplinary measures.

Penalties can include reprimands, written warnings, suspensions and dismissals — sanctions that are not always visible to employees. Often, accusers see their alleged harassers move up the ranks, but that doesn’t tell the whole story, said Steven Walker, the State Department’s deputy assistant secretary for human resources.

“Misconduct is often visible, but disciplinary action is not, for privacy reasons,” he said. “People don’t see suspensions or letters of reprimand, but they do see promotion lists. They think nothing happens. Because of privacy issues, we can’t advertise disciplinary actions.”

In February, the agency began issuing quarterly reports on misconduct and disciplinary actions taken against employees, to avoid the perception that nothing is being done.

Harassment allegations also can have serious repercussions for the accused. Retired Army officer Lionel Deschaine said in an interview that his career was ruined when a female intelligence officer filed a harassment complaint against him in 2011 alleging that he made comments about her breasts and legs and repeatedly told her he fantasized about having sex with her.

Deschaine was fired, and the case was settled in 2014. He said it “ended my professional career,” five years shy of retirement from the agency.
The agency “made it appear that I was totally a guilty person in all of this,” but the woman “played a part,” he said. Looking back on the case, he said, “the process was fair. The outcome was not.”

The woman asked that her name and the name of her agency be withheld to protect her privacy and because it could hurt her future job prospects.

Nina Ren, the lawyer representing the five employees at ICE’s international operations division, said she is still waiting for a response from the agency, 13 months after four women and a male colleague filed nearly identical complaints against their unit chief and another supervisor.

Their complaints say the unit chief had a history of making insulting and lewd comments, including several about the president, and made them view a nude photo of a female bodybuilder.

“I was so embarrassed, but I had to take it,” Norma Jordan, one of the workers who complained, said in an interview.

Following their complaints, all the employees said they received poor performance reviews. Jordan said she was ordered to sort through 100 30-pound boxes in a file room to locate a file she knew was not there.

ICE officials declined to comment because the case is pending but said the agency “maintains a strict zero-tolerance policy for any kind of abusive or inappropriate behavior.”

_Alice Crites contributed to this report._

**Read more:**

Conn. congresswoman kept aide on staff for 3 months after learning of threat allegation

How Congress plays by different rules on sexual harassment and misconduct

Some men disagree on what amounts to sexual harassment or assault

*68 Comments*
Justice in the #MeToo era is not nearly as swift for federal employees - The Wa...

Lisa Rein covers federal agencies and the management of government in the Trump administration. At The Washington Post, she has written about the federal workforce, state politics and government in Annapolis, Md., and in Richmond; local government in Fairfax County, Va. and the redevelopment of Washington and its neighborhoods. ⚡ Follow @Reinlwapo