

Effective anti-harassment policies must also prohibit retaliation

by Vince Cronin, delivered April 10, 2018 at the EGU General Assembly in Vienna

SLIDE 1 Last Wednesday was the 50th anniversary of the murder of Martin Luther King, Jr. -- a day I remember well.

SLIDE 2 He worked his entire adult life to bring an end to racial and economic discrimination. That work continues and has expanded to include a broad range of discriminatory behaviors. It is our responsibility to continue this work for the benefit of generations yet to come.

As Dr. King said on the steps of the Lincoln Memorial on August 28, 1963, "I have a dream --- that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character." We still seem to have trouble getting past our minor differences to recognize our overwhelming kinship.

SLIDE 3-12 We know that illegal or unethical discrimination occurs when someone inflicts harmful words or actions on another person because of their intrinsic attributes. These include • age, • disability, • genetic information, • race, • skin color, • matters of sex and • gender identity/orientation, • national origin, • or ancestry.

To discriminate against someone for their intrinsic attributes -- the unchosen context of their life -- or for their choice of religion or religious expression -- is to deny that person the dignity and respect they are entitled as a fundamental human right.

SLIDE 13 Under United States Federal Law, harassment is a form of discrimination. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, offensive remarks about a person's sex -- attractiveness, for example -- or other unwanted verbal or physical interactions of a sexual nature. In the US, Universities receive federal funding, so sexual harassment is prohibited under Title IX. (Title VII of the Civil Rights Act of 1964; <https://www.eeoc.gov/laws/types/harassment.cfm>)

SLIDE 14 Under US law, an employer is always liable for harassment by a supervisor that results in negative employment consequences for the victim. Workplace harassment by coworkers and other non-administrative persons can also result in employer liability. (ibid.)

Interestingly, the victim does not have to be the person harassed, but can be anyone affected by the offensive conduct. (ibid.)

SLIDE 15 "Federal law also prohibits retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding." (Retaliation - Making It Personal: El Kharzazi et al, EEOC)

Under US Federal employment law, retaliation against a victim of harassment who complains about that harassment is illegal.

"Over the past decade, the Equal Employment Opportunity Commission (EEOC) has reported that retaliation is the most common issue alleged by federal employees and the most common discrimination finding in federal sector cases." (ibid.)

From 2009 through 2013, almost 83,000 discrimination complaints were filed by federal employees, of which 45% alleged retaliation. Of the cases in which discrimination was found to have occurred, 44% were based on retaliation.

"In a large number of these cases, it is common for [the] original discrimination allegation [to be dismissed], but the subsequent retaliation allegation results in a discrimination finding." (ibid.)

SLIDE 16 Fear of retaliation continues to have the effect of suppressing the filing of reports of sexual assaults, rapes, and sexual harassment.

In higher education and research, most faculty, staff, and students are not wealthy enough to afford the legal costs associated with filing a harassment complaint and the subsequent retaliation. Even if a victim could afford a lawyer, the act of filing a complaint is broadly considered to be an act of career suicide. (e.g., Krakauer, 2015, *Missoula: Doubleday*)

Perhaps 10-20% of the time, the victim of a significant incident of harassment files a complaint. The vast majority of incidents probably go unreported. Of this small group of complaining victims, perhaps half will be re-victimized by retaliation.

Retaliation might be overt, but it is more likely to be subtle. For example, a message might be sent quietly to potential employers, alerting them that the complaining victim has displayed a worrisome tendency to file complaints that might lead to litigation. Retaliation might not come from the primary harasser but rather from his friends or co-dependent colleagues.

SLIDE 17 Without minimizing the prevalence, impact, and seriousness of sexual harassment in the geosciences, non-sexual harassment and bullying in the geosciences also has the capacity to destroy the career hopes and aspirations of geoscience students, novice geoscientists, and even senior geoscientists.

The protocols for complaining about research misconduct involving senior researchers or mid- to high-level administrators are often weak, if they exist at all.

The protections against retaliation by these same senior persons do not exist, for the most part.

In a recent case, two doctoral students and a very senior tenured full professor conducted research that yielded reproducible results and peer-reviewed published papers. They were subsequently threatened with termination by an administrator if they pursued their research further. Their research tended to contradict that administrator's prior interpretations related to the same research topic. There are no safe paths to travel in complaining about this harassment, which will undoubtedly recur because there were no adverse consequences for the harasser.

SLIDE 18 If anti-harassment policies are going to be effective, they must also prohibit retaliation. The threat of retaliation extends a veil of silence over harassment and all other forms of discrimination and scientific misconduct. Retaliation is misconduct, and as such cannot be tolerated in the scientific community.

SLIDE 19 With Martin Luther King on the steps of the Lincoln Memorial was a young man named John Lewis, who presented one of the ten speeches delivered that day more than a half century ago. Last Wednesday on the 50th anniversary of Dr. King's assassination, Congressman John Lewis reminded us of the need for moral courage in the face of injustice. "It is very simple," he said. "When you see something that is not right, something that is not fair, something that is not just, you have a moral obligation to say something, to do something. You cannot be quiet."

SLIDE 20 Instances of retaliation must be confronted and opposed. Institutions and professional organizations that represent the geosciences community must establish effective measures to prevent and penalize retaliation.