

Teen Workplace Harassment & the Foley Scandal – The Untold Story

by [Debra Katz and Justine F. Andronici](#)

The partisan game of “gotcha” politics is in full swing with the Mark Foley scandal occupying center stage. Unfortunately, in this political drama that has overtaken Washington, an issue of critical importance has been overlooked. Republican leaders who were given strong indications that something was gravely amiss in the interactions between Congressman Foley and the Congressional pages, failed miserably in their legal obligations to protect their young employees from sexual harassment. In this respect, Congress joins the ranks of many of the nation’s leading retail and food service establishments – workplaces where teens have been subjected to harassment with impunity in what has increasingly become a vile rite of passage for youth joining the American workforce.

Studies indicate that throughout America, sexual harassment on the job is a fact of life for many teens. A recently completed study by professors Susan Fineran of the University of Southern Maine and James Gruber of the University of Michigan-Dearborn found that 46.8 percent of female working students had been sexually harassed in the last year. In a previous study, Fineran had found that 35 percent of high school students who worked part time had experienced sexual harassment on the job.

Teens are particularly vulnerable to workplace harassment because of their low status and a lack of awareness about their rights. In recent years, the number of sexual harassment complaints filed by teens with the Equal Employment Opportunity Commission (EEOC) has dramatically increased. Recently, the EEOC has made some effort to respond to this growing problem, by initiating an educational campaign (www.youthatwork.org) and bringing cases against some well known retail and service establishments for permitting sexual harassment of teenagers including McDonald's and Burger King franchises, Kmart, often resulting in large settlements.

However, many of our nation’s teenagers unfortunately continue to launch their working lives in environments where submitting to sexual harassment is often the price of a good job. And for many, as in the case of the Congressional pages who endured vile harassment but chose to remain silent about it, the message has been reinforced that “you have to go along to get along” in order to get good references and advance in one’s career. The response by the Congressional leadership to this debacle has been almost as indefensible as the harassment itself.

Although all the facts are not yet in, it seems undeniable that Republican leaders turned a blind eye to the sexual harassment they knew was occurring, leaving teenage employees prey to Rep. Foley’s sexually predatory conduct. Those inclined to ignore or explain away the Republican leadership’s failure to take action, might pause to consider, would they be given a similar reprieve if they failed to protect teens under their supervision from the predatory behavior of an adult supervisor? Not likely.

In 1964, Congress passed Title VII, which banned workplace gender discrimination for employers with 15 or more employees. Twenty years ago, in its landmark case, *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986), the U.S. Supreme Court ruled that sexual harassment, which includes unwelcome sexual advances and sexualized banter of the type featured in Foley's e-mails, constitutes unlawful sex discrimination. Congress chose not to hold itself accountable under this law until 1995, when it passed the Congressional Accountability Act. You would not know it by their responses to reports made to them about Foley’s blatantly improper conduct vis-a-vis the Congressional pages – which included a late night drunken attempt to enter their dorm – but this law imposes the same legal

obligations on members of Congress and their staff as it does on other employers.

In two 1998 landmark cases, *Burlington Indus. v. Ellerth* and *Faragher v. City of Boca Raton*, the Supreme Court held that an employer must exercise "reasonable care to prevent and correct promptly any sexually harassing behavior" in order to avoid liability for a sexually hostile work environment. A chat with the accused, accepting his patently implausible explanation and telling him not to do it again, does not meet that standard. Nor does failing to act out of deference to an employee's parents' wishes absolve Republican leaders from legal responsibility here.

Taking real action to prevent sexual harassment of teens at work requires first, an acknowledgement that this is serious problem that gives rise to obligations on the part of the employer which are heightened by the vulnerable status of the teen employee. Second, it requires facing the problem head on, and taking responsibility to ensure protection of the victim and any other potential victims.

Often we hear politicians talk about the importance of setting examples for our kids, and in election season, we hear constantly from politicians on both sides of the aisle about how important it is that we protect our children and families from the dangers that lurk in our world. This is a perfect opportunity for the Congress to set a real example for Americans. Show us that you take teen sexual harassment seriously, hold the responsible parties accountable.

The law is clear: after Republican leaders learned about the inappropriate e-mail to a congressional page, they were obligated, as employers, to act to correct the problem. Their inaction in the face of obvious risk to the teens was a clear breach of their legal obligations, and the pathetic attempts to deflect responsibility and blame Democrats since the scandal broke constitutes a tremendous breach of public trust.

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