Sex Discrimination and Title VII in Virginia

April 1981

—A report of the Virginia Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission and the Commission will make public its reaction. In the meantime, the recommendations in this report should not be attributed to the Commission, but only to the Virginia Advisory Committee.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

Sex Discrimination and Title VII in Virginia

—A report of the Virginia Advisory Committee to the U.S. Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the Virginia Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

RIGHT OF RESPONSE:

Prior to the publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses have been incorporated, appended, or otherwise reflected in the publication.

LETTER OF TRANSMITTAL

VIRGINIA ADVISORY COMMITTEE
TO THE
U.S. COMMISSION ON CIVIL RIGHTS
April 1981

MEMBERS OF THE COMMISSION
Arthur S. Flemming, *Chairman*
Mary F. Berry, *Vice Chairman*
Stephen Horn
Blandina C. Ramirez
Jill S. Ruckelshaus
Murray Saltzman

Louis Nuñez, *Staff Director*

Dear Commissioners:

The Virginia Advisory Committee to the U.S. Commission on Civil Rights transmits to you this report on *Sex Discrimination and Title VII in Virginia* as part of its responsibility to advise the Commission about civil rights problems within the State of Virginia.

As you know, Congress did not charge the U.S. Commission on Civil Rights with the duty to study denials of equal protection of the law based on sex until 1972. This report deals specifically with complaints of sex discrimination in employment in Virginia filed under Title VII of the Civil Rights Act of 1964 as amended between 1972–1979. In studying the employment discrimination complaints made by women in Virginia, the Virginia Advisory Committee learned that Virginia does not have a State law prohibiting employment discrimination. No State agency or commission is empowered to handle employment discrimination complaints from the general public. The State has only recently given statutory authority to the Virginia Equal Employment Opportunity Committee to monitor the State Equal Employment Opportunity Program, the latter established by Executive Order. There are only three local human rights commissions in Virginia and they are restricted to handling complaints of employment discrimination within their geographic areas. The majority of employment discrimination complaints are handled by the U.S. Equal Employment Opportunity Commission, with three areas offices serving Virginia (Washington, D.C., Norfolk, and Richmond).

The Advisory Committee is proposing several recommendations to appropriate Federal, State, and local officials in an effort to improve the equal employment opportunities of women in Virginia and to strengthen compliance with Title VII of the Civil Rights Act of 1964, as amended. The Advisory Committee requests the Commission's endorsement of these proposals.

Respectfully submitted,

RUTH HARVEY CHARITY, *Chairperson*
Virginia Advisory Committee

VIRGINIA ADVISORY COMMITTEE

Ruth Harvey Charity, *Chairperson*
Danville

Curtis W. Harris, *Vice Chairperson*
Hopewell

O. Oliver Adkins
Providence Forge

Anthony Azores
Vienna

Bettie Baca-Fierro
Alexandria

Selma Baxt
Fairfax

Virginia D. Bourne*
Danville

Joan W. Brackett*
Alexandria

Edward L. Brown, Sr.
Virginia Beach

Joan C. Caplinger*
Richmond

Leonardo A. Chappelle**
Richmond

Flora M. Crater
Falls Church

Cesar Deleon*
Annandale

H. Clay Gravely, III*
Martinsville

Maya Hasegawa**
Richmond

Elise B. Heinz*
Arlington

William S. Hubard*
Roanoke

Anna L. Lawson*
Troutville

David H. MacPherson
Richmond

Lulu K. Meese
Waynesboro

Calvin M. Miller
Ettrick

William B. Muse
Martinsville

Bertha Silva Pla
McLean

George C. Rawlings, Jr. *
Fredericksburg

David W. Sprunt*
Lexington

Ricardo Villalobos*
Reston

*former members
** did not participate in formulating the findings and recommendations of this report.

ACKNOWLEDGMENTS

The Virginia Advisory Committee wishes to thank the staff of the U.S. Commission on Civil Rights in the Mid-Atlantic Regional Office in Washington, D.C., for their assistance in both researching, writing, and preparing this report for publication. The project was the principal assignment of Wanda Hoffman. Yvonne Schumacher reviewed the report and made many useful suggestions. The report was edited by Suzanne Crowell, and legal research for the report was performed by Robert Vance under the direction of Linda Huber. Secretarial assistance was rendered by Christine Scarnecchia and Barbara Stafford. The project was supervised by Deputy Director Everett Waldo and MARO Director Edward Rutledge.

The Advisory Committee also wishes to thank the staff of Federal, State, and local agencies that provided data and general advice to the authors.

CONTENTS

Chapter 1

Introduction

The Virginia Advisory Committee has monitored legal developments in Virginia regarding sex discrimination in employment and in other areas since the early 1970s, when sex discrimination became part of the mandate of the U.S. Commission on Civil Rights.[1] However, it was not until the Advisory Committee decided to investigate employment discrimination based on sex that it realized the full extent to which Virginians must depend upon Title VII for equal employment opportunity protection.

Between 1965 and 1968, the only source of help available regarding employment discrimination in Virginia was the U.S. Equal Employment Opportunity Commission (EEOC) in Washington, D.C. EEOC administers Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, national origin, and sex.[2] No other agencies located in the State were authorized to investigate formal complaints of employment discrimination until 1968. At that time, the Richmond Commission on Human Relations was established by the Richmond City Council to take charges of discrimination brought against an employer within the City of Richmond, but the Richmond commission had no enforcement power.[3]

In 1974 and 1975, respectively, the Fairfax County Human Rights Commission and the Alexandria Human Rights Commission were established to handle charges of discrimination made against employers in Fairfax County and Alexandria, respectively.[4]

In 1976, a Virginia Equal Employment Opportunity Program was established by the Governor of Virginia to handle charges of discrimination made by employees working for State agencies.[5] Again, the program was restricted to a small part of the State's population.

In 1977, EEOC opened a field office in Richmond to receive and investigate charges of discrimination filed under Title VII of the Civil Rights Act of 1964. Since then, EEOC has opened another area office in Norfolk.[6]

In 1979, the Richmond City Code was revamped and its provisions strengthened to include the power to seek subpoenas and injunctions and to enforce contract compliance.

Thus even after 1968, EEOC remained the only source of aid for the vast majority of Virginians with discrimination complaints. There is no general State law prohibiting employment discrimination per se in State government, local government, or in the private sector, based on sex or any other basis.

The Virginia Equal Pay Irrespective of Sex Act (referred to below as the Virginia Equal Pay Act)[7] and the Fair Employment in Contracting Act,[8] both of which were passed in 1976, are antidiscrimination laws affecting employment but are not comprehensive. The Virginia Equal Pay Act applies only to

[1] Civil Rights Act of 1957, §§101-106, 71 Stat. 634; as amended by the Civil Rights Act of 1960, 74 Stat. 86; as amended by the Civil Rights Act of 1964, 78 Stat. 241; as amended by 81 Stat. 582 (1967); and as amended by 84 Stat. 1356 (1970); 86 Stat. 813 (1972); 42 U.S.C. 1975 (1976); and by 92 Stat. 1067 (1978) (codified at 42 U.S.C. §§1975-1975e (1978)).

[2] Civil Rights Act of 1964, Pub. L. No. 88-352, Title VII, §§701-715, 716(c), 718; as amended by 86 Stat. 103 (1972); as amended by 92 Stat. 2076 (1978) (codified at 42 U.S.C. §§2000e-2000e-13, 2000e-15, 2000e-17 (1978)).

[3] Richmond, Va., Richmond City Code of 1975, as amended, ch. 17.1, Human Rights (1975); as amended by Ordinance 79-79-77 (1979).

[4] Fairfax, Va., 1976 Code of the County of Fairfax, as amended, ch. 11 (1980), and Alexandria, Va., 1963 Code of the City of Alexandria; as amended, ch. 18A, Human Rights (1975).

[5] Virginia Executive Order No. 1, Aug. 5, 1976; as amended Jan. 31, 1978.

[6] See chapter 5 regarding the establishment of EEOC area offices between 1977 and 1979 in Virginia and throughout the U.S.

[7] Equal Pay Irrespective of Sex Act, Va. Code §40.1-28.6 (1976).

[8] Fair Employment in Contracting Act, Va. Code §§2.1-374 through 376 (1979).

employers not covered by the Federal Equal Pay Act.[9] The Virginia Department of Labor and Industry, which administers the Virginia Equal Pay Act,[10] has no authority to initiate suits on behalf of complainants.[11] They must sue on their own.[12]

The Fair Employment in Contract Act requires that all State government contracts involving an amount more than $10,000 must include provisions in which the contractor agrees not to discriminate in employment on the basis of race, religion, color, sex, or national origin, and to post the nondiscrimination clause and include it in solicitations of employment. However, the act explicitly states that State agencies are not empowered to require affirmative action hiring plans from government contractors. The act lacks any enforcement mechanism.

Men have filed very few charges of employment discrimination based on sex under Title VII. This report focuses on complaints filed by women, since they make up almost the entire population of persons filing such charges.

Some of the data published in this report are published here for the first time. EEOC furnished data specifically requested by the Virginia Advisory Committee on sex discrimination complaints it received between 1972 and 1979. The information between 1977 and 1979 is less detailed due to the recent reorganization of EEOC and changes in the way complaints are being processed that affect data collection.

According to complaints analyzed in the course of this study, in preemployment interviews women are still being asked about marital status, pregnancy, future childbearing plans, child-care plans, the number and age of their children, and other such questions that clearly violate Title VII.[13] Furthermore, women who complain of sex discrimination named the same employment issues in all of the major labor areas in Virginia, with roughly the same frequency, regardless of whether or not their employers were in the public or private sector.[14]

It is the hope of the Advisory Committee that this report will provide new insights into the problems faced by women in Virginia in achieving equal employment opportunity and will lead to renewed voluntary efforts of employers to seek ways to end employment discrimination in Virginia based on sex.

[9] Equal Pay Act of 1963, Pub. L. No. 88-38, §3, 77 Stat. 56, (codified in 29 U.S.C. §206(d)(1978)); Fair Labor Standards Act of 1938, ch. 676, §6, 52 Stat. 1062.
[10] Virginia Code §40.1-1 (1979 Supp.).
[11] Virginia Code §40.1-49.4 (1979 Supp.).
[12] Virginia Code §40.1-28.6 (1976).
[13] Pre-employment Inquiries as to Sex, 29 C.F.R. §1604.7 (1979).
[14] CCR staff review of EEOC Washington, D.C., Area Office files, January 1972-April 1977 (hereinafter called staff review).

Chapter 2

Working Women in Virginia

Population and Labor Area Statistics

Since World War II, concentration of economic activity in Virginia has shifted from farms to towns and cities. In 1977, the State contained 27 labor market areas (LMAs). LMAs, as defined by the Virginia Employment Commission, are geographic areas consisting of a central city or cities and the surrounding territory in which there is a concentration of economic activity and in which workers can generally change jobs without changing their residence.[1]

The largest concentrations of economic activity (LMAs) are in those areas of the State designated as Standard Metropolitan Statistical Areas (SMSAs) by the U.S. Bureau of the Census.[2] They are the Virginia portion of the Johnson City-Kingsport-Bristol, Tennessee-Virginia SMSA; the Lynchburg SMSA; the Newport News-Hampton SMSA; the Norfolk-Virginia Beach-Portsmouth, Virginia-North Carolina SMSA; the Northern Virginia portion of the Washington, D.C., SMSA;[3] the Petersburg SMSA; the Richmond SMSA; and the Roanoke SMSA.

In 1975, 61 percent of all females in Virginia 14 years of age and over were living within one of the State's metropolitan areas.[4] Concentration of economic activity in these areas has generated job opportunities that have been taken by an increasing number of women. In 1940, one female worked for every three males in Virginia's civilian labor force.[5] By 1970 the ratio stood at two to three.[6] Estimates for 1977, made by the Virginia Employment Commission, placed the ratio at about the same as in 1970; 39.8 percent of the State's civilian labor force was comprised of women.[7]

In 1977, an estimated 947,790 women were part of the State's civilian labor force; that is, they were either working or unemployed and actively seeking work.[8] The number of women in the civilian labor force in the Northern Virginia LMA represented 23 percent of the State total. The Norfolk SMSA and Richmond SMSA, respectively, represented 13 and 14 percent of the total. These three areas combined accounted for 50 percent of all women in the civilian labor force in Virginia in 1977.[9] (See Table 2.1)

Table 2.2 shows that three LMAs had unemployment rates for women in 1977 that were 2 percentage points lower than the 7.2 percent unemployment rate for all women in Virginia's civilian labor force. They were the Lynchburg SMSA, the Northern

[1] State of Virginia, Virginia Employment Commission, *Labor Market Information for Affirmative Action Programs* (November 1978), p. 409.

[2] Standard Metropolitan Statistical Areas (SMSAs) are defined as a county or group of contiguous counties which contain at least one city of 50,000 inhabitants or more, or "twin cities" with a combined population of at least 50,000. In addition to the county or counties containing such a city or cities, contiguous counties are included in an SMSA if, according to certain criteria, they are socially and economically integrated with the central city. The population living in SMSAs is designated as the metropolitan population. The population is subdivided as "inside central city or cities" and "outside central city or cities." In New England, SMSAs are composed of cities and towns.

[3] In Virginia, these SMSAs are generally referred to as Bristol SMSA, the Lynchburg SMSA, the Newport News SMSA, the Norfolk SMSA, and the Northern Virginia SMSA.

[4] Based on data from U.S. Department of Commerce, Bureau of the Census, *Consumer Income*, June 1978, p. 99.

[5] State of Virginia Employment Commission, *Report on Women in Virginia* (September 1978), p. 8.

[6] Ibid., p. 8.

[7] *Labor Market Information*, p. 1.

[8] Ibid.

[9] Percentages computed from data in *Labor Market Information*, p. 1, 8–13.

Virginia LMA, and the Richmond SMSA. They were also the three LMAs with the highest percentage of employed women in their civilian labor force, or 40.3 percent, 41.5 percent and 41.1 percent, respectively.

Women Employees: Public Sector

The total number of employed workers in Virginia in 1977 was 2,256,000, of which 39 percent (879,840) were women.[10] The largest employer in Virginia is government—Federal, State, and local governments combined.[11] In November 1977, 33.2 percent of the 133,409 Federal employees in Virginia's civilian labor force were women.[12] Federal employees were 6 percent of all employed persons in Virginia. An additional 100,000 Virginians worked for the Federal Government in Washington, D.C.,[13] for a total of approximately 233,409, or 9.7 percent of the total number of employed persons in Virginia at that time.

The largest concentrations of Federal workers in Virginia are located in Newport News, Norfolk, Richmond, and Northern Virginia. In November 1977, 79,000 Federal workers lived in the Northern Virginia LMA, 13,822 in the Newport News-Hampton SMSA, 32,274 in the Norfolk-Virginia Beach-Portsmouth, Virginia-North Carolina SMSA, and 8,144 in the Richmond SMSA.[14] Women, as a percent of Federal workers in these areas were, respectively, 40 percent, 34 percent, 22 percent, and 37 percent.[15]

The number of persons employed by the State government in Virginia is less than either the Federal or local levels of government (towns, cities, and counties). In June 1977, 75,656 persons worked for the State; of these, 35,338 were women, or 46.7 percent.[16]

In June 1977, the ten largest State agencies and the percentage of women each employs were the Department of Highways, 9.85 percent; Department of Mental Health and Mental Retardation, 71.34 percent; Virginia Commonwealth University, 67.39 percent; University of Virginia, 54.09 percent; Virginia Polytechnic Institute and State University, 43.27 percent; Department of Corrections, 25.78 percent; Department of Community Colleges, 49.32 percent; Department of Health, 70.49 percent; Alcoholic Beverages Control Board, 14.38 percent, and Division of Motor Vehicles, 74.56 percent.[17]

1978 was the first year in which the State of Virginia gathered statistics on the number of women employed as government workers (non-Federal) in the State. Including not only full-time workers, but also part-time workers and students, 213,500 persons worked at the town, city, and county levels of government in Virginia in 1978, of which 117,500 or 55.0 percent were women. An addition 115,400 persons were employed by State agencies, for a total 328,900. Women numbered 176,200 or 53.6 percent.[18]

Women Employees: Private Sector

While the largest single employer in Virginia is government, the majority of those in the civilian labor force in all of the labor market areas in the State work for industry. Within the private sector, the single largest employer is the Newport News Shipbuilding and Dry Dock Company, which employs about 22,000 persons.[19] Among other large employers in the private sector providing services are the C&P Telephone Company, General Electric Company, I.B.M. Corporation, Western Electric Company, Westinghouse Electric Corporation, Computer Sciences Corporation, and Xerox Corporation.[20]

Manufacturing industries throughout the State of Virginia include employers such as Burlington Industries, E. I. Dupont, Phillip Morris, Inc., Dan River, Inc., Reynolds Metals Company, Hercules, Inc., Lynchburg Foundry Company, Bassett Furniture Industries., Babcock & Wilcox Company, Brown & Williamson Tobacco Corporation, and Craddock-Terry Shoe Corporation.[21]

Trade industries in Virginia include Sears, Roebuck & Company, J.C. Penny Company, K-Mart,

[10] *Labor Market Information*, p. 1.
[11] State of Virginia, Virginia Employment Commission, *1985 Industrial and Occupational Employment Projections for the State and Six Metropolitan Areas* (January 1978), p. 2.
[12] U.S., U.S. Civil Service Commission, *Equal Employment Opportunity Statistics* (November 1977), p. 520.
[13] George W. Wilburg, "Va. good 'recession-proof state,'" *The Free Lance-Star*, Fredericksburg, Va. (Nov. 20, 1979), p. 9.
[14] *Equal Employment Opportunity Statistics*, pp. 522–527.
[15] Ibid.
[16] Appropriations Request, FY 78 and FY 79, for the Governor's EEO Committee, in U.S., Commission on Civil Rights, Mid-Atlantic Office files (hereafter referred to as CCR Files).
[17] Maya Hasegawa, Acting State EEO Coordinator, telephone interview, Nov. 19, 1979.
[18] Ruby Butler, Current Employment Statistics, Virginia Department of Labor and Industry, telephone interview, July 7, 1980.
[19] Peter Bacque, "Growth Industry, Big Government Growing Bigger at All Levels," *Richmond Times-Dispatch* (Nov. 4, 1979), G-1.
[20] Virginia Employment Committee, "List of U. I. Covered Employers in Virginia by Size of March Employment—1978," unpaged.
[21] Ibid.

TABLE 2.1

Women in Virginia Civilian Labor Force: 1977 Estimates

SMSA	Number	Percent
Bristol LMA	12,130	1.0
Lynchburg SMSA	28,120	3.0
Newport News-Hampton SMSA	61,630	7.0
Norfolk-Virginia Beach-Portsmouth SMSA	124,500	13.0
Northern Virginia LMA	216,130	23.0
Petersburg SMSA	24,040	3.0
Richmond SMSA	129,480	14.0
Roanoke SMSA	39,820	4.0
All other areas of State	311,940	33.0
Total	947,790	101.0*

* Does not equal 100 percent due to rounding.

Source: State of Virginia, Labor Market Information for Affirmative Action Programs (1977). Condensed from pp. 1-14.

TABLE 2.2

Status of Women in Labor Market Areas in Virginia (1977 estimates)

	Women as a Percent in LMAs				
Labor Market Areas (LMAs)	Population	Civilian Labor Force	Employed	Unemployed	Unemployment Rate
Bristol LMA	52.2	33.8	33.6	37.9	6.4
Lynchburg SMSA	52.6	40.6	40.3	47.5	5.1
Newport News-Hampton SMSA	49.1	40.1	39.0	57.0	8.5
Norfolk-Virginia Beach-Portsmouth SMSA	48.3	40.4	39.2	60.1	8.7
Northern Virginia LMA	50.7	41.8	41.5	49.2	5.0
Petersburg SMSA	47.6	41.5	40.5	59.3	7.8
Richmond SMSA	52.4	41.6	41.1	54.0	5.1
Roanoke SMSA	52.2	39.4	38.6	53.7	7.1
Eight LMAs	50.6	39.9	39.2	52.3	6.8
Women as percent in entire State	50.6	39.8	39.0	53.5	7.2

Source: State of Virginia, Labor Market Information for Affirmative Action Programs (1977). Condensed from pp. 1-14.

Montgomery Ward & Company, Giant Food, Inc., and Holly Farms Poultry Industries, Inc.[22]

Occupations of Women

In 1977, of all women who were employed in Virginia, 7.1 percent were managers and administrators. This represented almost double their percentage in 1970, which was 3.6 percent.[23] As Table 2.3 indicates, no other occupation showed such dramatic change in the 7-year period. For the most part, however, the employment status of women has remained relatively unchanged despite some gains; they are still concentrated in clerical, service, operative, and those professional and technical jobs that have traditionally been associated with female workers, such as nursing and teaching.

In 1977, of all women who were employed in Virginia, over one-third (33.9 percent) were clerical workers.[24] Statistics displayed in Table 2.3 show that the percentage of women employed in this occupation has increased steadily since World War II. And indications are that job opportunities for women in Virginia in this occupation in the 1980s will continue to attract a substantial portion of female job seekers, as shown in Table 2.4. In fact, Table 2.3 shows that among the 20 occupations with the expected largest number of job openings until 1985, secretarial and other 'traditional' occupations for women predominate.

The Virginia Employment Commission estimates that the applications they receive represent about 75 percent of all jobseekers in the State at any given time.[25] Table 2.5 shows the total a number of applications received in the public employment agencies, located throughout Virginia, on February 28, 1978, and the percent of the total applications that were filed by women for each of the occupational groups.

Table 2.3 shows that in 1977, women were 17 percent of professional and technical workers and 7.1 percent of managers and administrators employed in Virginia—a combined total of 24.1 percent of all employed female workers. Table 2.5 indicates that in February 1978, women represented 42.2 percent of the applicants for professional, technical, and managerial positions processed by State employment agencies in Virginia. Thus while more than 40 percent of women applied for such positions in February 1978, only 24 percent held such jobs in 1977. Table 2.4 also shows that women were the majority of applicants for clerical and sales work, service jobs, and other jobs generally associated with low income.

Income

A 1976 survey conducted by the U.S. Department of Labor showed that working women in Virginia were clustered at the lower income range.[26] (See Table 2.6) Sixty-one percent had incomes less than $6,000 a year; 14 percent were between $6,000 to $7,999 a year; and 10 percent were between $8,000 and $9,999 annually. The percentages, respectively, for men in Virginia in 1976 were 28 percent, 10 percent, and 10 percent. Eighty-five percent of the women employed in Virginia in 1975 had incomes under $10,000 a year, compared to their male counterparts, only 38 percent of whom had incomes less than $10,000 a year.[27]

The same survey also found that 14 percent of the women had incomes between $10,000 and $19,999 a year, compared to 37 percent of the men. One percent of women had incomes of $20,000 a year or more, compared to 15 percent of the men.

Income and Education

Of women in Virginia who were 25 years of age and over in 1975, 21 percent attended 8 years of school, 52 percent attended up to 4 years of school, and 28 percent had attended 1 or more years of college.[28] In 1975, 23 percent of men 25 years of age or older had attended up to 8 years of school, 42 percent attended up to 4 years of high school, and 35 percent had attended college.[29]

For women who obtained only an elementary education, 78 percent received income of $4,000 a year in 1975. Only 4 percent received an income of $10,000 or more. On the other hand, of men with an elementary education, only 20 percent received an income less than $4,000 a year, while 38 percent received $10,000 or more.[30]

Of women with a high school education, 40 percent received an income of $4,000 a year, compared to only 9 percent of the men who had completed high school. Only 14 percent of women

[22] Ibid.
[23] *Report on Women in Virginia*, p. 9.
[24] Ibid.
[25] *Labor Market Information*, p. iv.
[26] U.S., Department of Labor, Bureau of Labor Statistics, *U.S. Working Women: A Databook 1977*, as cited in *Report on Women in Virginia*, p. 21.
[27] Based on *Consumer Income* (June 1978), pp. 99–100.
[28] Ibid.
[29] Ibid.
[30] Ibid.

TABLE 2.3

Distribution of Total Female Employment by Occupation in Virginia, 1940-1977[1]

Occupation	1940	1950	1960	1970	1977
Total Female Employment[2]	100.0	100.0	100.0	100.0	100.0
Professional & Technical	12.4	12.7	13.6	15.8	17.0
Managers & Administrators	2.8	3.8	3.7	3.6	7.1
Sales Workers	5.8	8.2	7.7	6.4	6.0
Clerical Workers	16.3	25.7	28.3	32.4	33.9
Craftsmen	0.8	1.2	1.1	1.7	1.5
Operatives[3]	19.1	18.5	15.1	14.5	13.0
Nonfarm Laborers	1.4	0.9	0.8	1.0	1.5
Services	35.6	24.5	23.4	18.6	19.4
Farm Workers	4.4	2.5	1.7	0.5	0.6

[1] Figures for 1940-70 taken from the decennial census; estimates for 1977 taken from the Virginia portion of the national Current Population Survey.
[2] 1940-70 distributions do not add to 100.0 percent because occupation was not reported on some returns.
[3] *Operatives* includes all types of machine operators in both manufacturing and nonmanufacturing—most female factory workers are operatives and in Virginia they are concentrated in the textile & apparel industries—plus types of truck drivers, bus drivers and taxi drivers, a very small percentage of whom are women.

Source: Virginia Employment Commission, *Report on Women in Virginia* (September 1978) p. 9.

TABLE 2.4

Projected Job Openings in Virginia, 1974-1985

Occupation	Total	Growth	Replacements
1. Secretaries	115,020	36,950	78,070
2. Typists	29,970	6,190	23,780
3. Bookkeepers	25,210	3,870	21,340
4. Cashiers	23,870	5,710	18,160
5. Elementary School Teachers	22,820	1,730	21,090
6. Sewers and Stitchers	22,620	3,760	18,860
7. Waiters	22,220	5,800	16,420
8. Registered Nurses	17,610	4,740	12,870
9. Nurses Aides, Orderlies	16,720	6,060	10,660
10. Checkers, Examiners, Etc., Mfg.	16,460	7,670	8,790
11. Cooks, Except Private	16,220	5,930	10,290
12. Carpenters and Apprentices	15,150	6,310	8,840
13. Practical Nurses	14,480	5,600	8,880
14. Farmers (Owners and Tenants)	14,330	1,980	16,310
15. Janitors and Sextons	13,920	4,400	9,520
16. Receptionists	12,860	3,700	9,160
17. Child Care Workers, Except Private	11,690	4,400	7,290
18. Accountants	10,940	3,390	7,550
19. Hairdressers, Cosmetologists	10,080	1,170	8,910
20. Auto Mechanics and Apprentices	9,980	5,690	4,290

Source: Virginia Employment Commission, Virginia 1985 industrial and Occupational Employment Projections (January 1978), p. 14.

TABLE 2.5

Occupation of Job Applicants in Virginia by Sex February 28, 1978

Major Occupational Group	TOTAL*	FEMALE Number*	FEMALE Percent of Total
TOTAL	151,775	66,745	44.0
Professional, Technical & Managerial	19,103	8,064	42.2
Clerical & Sales	30,138	22,580	74.9
Service	26,942	19,550	72.6
Processing	5,387	2,973	55.2
Machine Trades	8,691	2,302	26.5
Bench Work	9,186	6,926	75.4
Structural Work	28,770	624	2.2
Farming, Forestry & Fishing	2,917	432	14.8
Miscellaneous	20,641	3,294	16.0

* Includes all "registered" applicants available who were active on February 28, 1978.

Source: Virginia Employment Commission, ESARS Table 96.

TABLE 2.6

Educational Attainment of Persons 25 Years Old and Over By Total Money Income in 1975 by Sex

Females

	Elementary (8 years)	High School (4 years)	College (4 yr. or more)
Under $4,000	43,000	142,000	51,000
$4,000 to $5,999	9,000	65,000	11,000
$6,000 to $7,999	2,000	61,000	11,000
$8,000 to $9,999	1,000	38,000	27,000
$10,000 to $11,999	1,000	25,000	21,000
$12,000 to $14,999	—	18,000	20,000
$15,000 to $19,999	—	5,000	18,000
$20,000 to $24,999	—	—	6,000
$25,000 and over	—	2,000	5,000
	56,000	356,000	170,000

Males

	Elementary (8 years)	High School (4 years)	College (4 yrs. or more)
Under $4,000	14,000	32,000	11,000
$4,000 to $5,999	12,000	30,000	12,000
$6,000 to $7,999	9,000	31,000	6,000
$8,000 to $9,999	8,000	40,000	10,000
$10,000 to $11,999	7,000	63,000	22,000
$12,000 to $14,999	8,000	60,000	34,000
$15,000 to $19,999	6,000	69,000	53,000
$20,000 to $24,000	3,000	26,000	44,000
$25,000 and over	2,000	15,000	90,000
	69,000	366,000	282,000

Source: Virginia Employment Commission, *Report on Women in Virginia* (September 1978), p. 35.

TABLE 2.7

Women in the Civilian Labor Force Spring, 1976*

All Women:	Number	% Never Married	% Married With Spouse	No Spouse Present	% Divorced	% Widowed
United States	40,012,000	25.3	55.8	4.2	8.5	6.1
South Atlantic Region	6,589,000	22.5	57.0	5.7	8.1	6.8
Virginia	991,000	23.4	59.6	3.8	7.1	6.1

Women Married With Spouse Present:	Number	Percent of Total Number					
		No Children Under 18	With Children Under 18	Total	With Children 6-17 14-17	6-13	Children Under 6
United States	22,364,000	46.5	53.5	33.3	9.9	23.3	20.2
South Atlantic Region	3,756,000	45.1	54.9	33.8	9.6	24.2	21.1
Virginia	591,000	46.5	53.5	34.4	8.7	25.7	19.1
Women Married Without Spouse Present:							
United States	1,764,800	80.7	19.3	12.4	3.7	8.7	6.9
South Atlantic Region	283,300	76.4	23.6	14.5	4.3	10.2	9.1
Virginia	40,000	82.1	17.9	11.4	2.9	8.5	6.5

Source: Virginia Employment Commission, *Report on Women in Virginia* (September 1978), p. 12.

high school graduates received $10,000 a year or more, compared to 90 percent of the men.[31]

Women with 4 or more years of college suffer most in comparison to men with equivalent educational achievement. Thirty percent of college-educated women made less than $4,000 a year. They were in the same income bracket as 78 percent of women with only an elementary education and 40 percent of those with a high school education. Only 4 percent of college-educated men had income of less than $4,000, and 86 percent had incomes of $10,000 and over annually, compared to 41 percent of the women with equivalent years in college.[32]

Types of Industry and Income

Ten percent of men were service workers with a mean income of $5,129, while 23 percent of women were service workers with incomes of only $2,672. Blue collar men (44 percent) received $8,481, while such women (17 percent) received only $4,470. Ten percent of men were sales and clerical workers with incomes of $9,110; 38 percent of women were sales and clerical workers and earned $5,091. Thirty-one percent of men were professionals and managers with mean incomes of $17,208. Women in these categories (21 percent) had incomes of only $8,356.[33]

Marital Status and Children

An estimated 991,000 women in Virginia 16 years of age and over were in the civilian labor force in 1976. (See Table 2.7) Of these women, 23.4 percent had never been married, 7.1 percent were divorced, and 6.1 percent were widowed. Of those who were married (63.4 percent), 59.6 percent were living with their spouses, and 3.8 percent had spouses who were not present in the household. Thus 40 percent of the women in the work force in Virginia in 1976 did not have spouses and 60 percent did.[34]

Of the women who were married with spouses present, 53.5 percent had children under the age of 18; 46.5 percent had no children under 18. Married women with spouses present worked in the labor force at a higher rate when their children were under 13 years of age than when their children reached the ages of 14 and 17. Of married women with spouses present and with children under 18

[31] Ibid.
[32] Ibid.
[33] Ibid.
[34] *Report on Women in Virginia* (September 1978), p. 12.

years of age, 19.1 percent had children less than 6 years old, 25.7 percent had children 6–13, and 8.7 percent had children 14–17. The majority of married working women with spouses present had children less than 14 years old.[35]

[35] Ibid.

Chapter 3

Grounds for Complaint

Title VII prohibits employers from failing or refusing to hire or discharge an individual on the basis of sex, from discriminating against any individual with respect to compensation, training and apprenticeship programs, testing, promotion, layoffs, and other terms, conditions, or privileges of employment on the basis of sex, and from discriminating against any individual because she has opposed any of the forementioned unlawful employment practices or has made a charge, testified, assisted, or participated in any manner in Title VII enforcement proceedings [1] A complaint filed with EEOC must allege one of the above-mentioned unlawful employment practices. To help employers comply voluntarily with the law, EEOC has specified what constitutes sex discrimination in employment in various published guidelines and regulations.[2] An analysis of the issues commonly involved in discrimination cases follows.

Terms and Conditions

This category includes most charges of sex discrimination filed with EEOC by women from Virginia[3]

Unlike some other issues, such as denial of equitable fringe benefits, terms and conditions are not monetary in nature. They involve a wide variety of rules, policies, and practices relating to general working conditions, the job environment, and employment privileges, such as assignment to an unpleasant work station based on sex, failure to provide women comparable tools with which to work, inequities in shift assignments or vacation preference, and certain restrictions regarding mode of dress or appearance.[4]

An issue in this category receiving more attention recently is sexual harassment. Current EEOC policy states:

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.[5]

[1] 42 U.S.C. §§2000e-2, 2000e-3 (1978).

[2] See EEOC *Guidelines on Discrimination Because of Sex*, 29 CFR Part 1604 (1979), as amended by the *Guidelines* and Questions and Answers relating to enforcement of the Pregnancy Discrimination Act (P.L. 95-555, 92 Stat. 2016), published at 44 Fed. Reg. 23804 (Apr. 20, 1979) and the *Interim Guidelines on Sex Discrimination Harrassment*, published at 45 Fed Reg. 25024 (Apr. 11, 1980). See also, *Interpretive Guidelines on Employment Discrimination and Reproductive Hazards*, published at 45 Fed. Reg. 7514 (Feb. 1, 1980).

[3] Staff review. Annual reports published by EEOC do not break down by State the bases and issues involved in sex discrimination charges.

[4] In 1974, the Virginia General Assembly repealed a series of laws regulating the terms and conditions of labor for women workers only. [Va. Code §§40.1-34 through 38, repealed by Acts of 1974, ch. 272 (1974) (codified in scattered sections of 34, 40 Va. Code).] Typically, the laws were designed to "protect" women from the rigors of employment by limiting the number of hours they were permitted to work and by requiring the provision of restrooms and seating facilities for use by female employees. Men were not afforded similar protections, nor were they restricted or limited by any of these statutes.

[5] 45 Fed. Reg. 25025 (1980) (to be codified in 29 C.F.R. §1604.11). Final policy guidelines on sexual harrassment are expected from EEOC in October 1980, according to Preston David, Executive Director, EEOC, letter to Edward Rutledge, Sept. 26, 1980, (CCR files).

Many believe sexual harassment is widespread, but few surveys of the problem have been conducted. In a landmark decision in April 1978, Denver District Court Judge Sherman G. Finesilver ruled that:

> An employer is liable under Title VII when refusal of a supervisor's unsolicited sexual advances is the basis of the employee's termination; acceptance of sexual advances by a supervisor cannot be made a condition of job retention and it constitutes discrimination under Title VII.[6]

Employers have an affirmative duty to maintain a work place free of sexual harassment and intimidation.

Benefits

This kind of discrimination includes such practices as maintenance of different retirement criteria, requiring different lengths of service for women and men in order to qualify for insurance benefits, different benefits for spouses based on sex, the provision of free or reduced parking rates to men but not to women, gifts or cash bonuses at holidays, employee discounts, and similar benefits that can be reduced to monetary value.

In April 1978, the U.S. Supreme Court affirmed in the *Manhart* case[7] that a contributory pension plan with higher contribution rates for female employees than for male employees violated Title VII. But the court's decision did not rule out the possibility of sex differentiation in such matters:

> All that is at issue today is a requirement that men and women make unequal contributions to an employer-operated pension plan. Nothing in our holding implies that it would be unlawful for an employer to set equal retirement contributions for each employee and let each retiree purchase the largest benefit which his or her accumulated contribution could command in the open market. Nor does it call into question the insurance industry practice of considering the composition of an employer's work force in determining the probable cost of a retirement. . .benefit.[8]

A Federal appeals court decided in *Colby College* [9] that it is a violation of Title VII to provide a different level of benefits for male and female employees under a money purchase pension plan requiring equal contributions.

Pregnancy

In 1972, seven women at the General Electric plant in Salem, Virginia, backed by the International Union of Electrical, Radio, and Machine Workers of American (AFL-CIO), filed suit under Title VII. They charged that G.E.'s refusal to grant pregnancy benefits discriminated against female workers. In December 1976, in *General Electric* v. *Gilbert,* [10] the U.S. Supreme Court decided that the omission of pregnancy benefits from an employee health benefits program was not discriminatory. It overturned rulings by five lower courts[11] and contradicted EEOC guidelines.[12] The courts had held that pregnancy-related disabilities must be treated the same way that other temporary disabilities are treated.

In October 1978, Title VII was amended to reflect EEOC's interpretation of Title VII and that of the lower courts. The Pregnancy Discrimination Act[13] makes clear that discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII.

According to EEOC guidelines on the Pregnancy Disability Act,[14] pregnancy, as such, may not be taken into account in hiring, requiring leave of absence, requiring a return from leave of absence, or permitting a return to work following absence. Only the ability to perform the major functions of the job and the rules applicable to all sick leave may be considered. If other workers with temporary disabilities are customarily given alternative assignments or a leave of absence, the same treatment must be given to those disabled by pregnancy.

Benefits (such as sick leave) for disabilities caused by pregnancy must be provided to the same extent

[6] Heelan v. Johns-Manville Corp., 451 F.Supp. 1382, 1390 (D. Colo. 1978).
[7] Los Angeles v. Manhart, 435 U.S. 702 (1978).
[8] *Id.*, at 717-718.
[9] EEOC v. Colby College, 589 F.2d 1139 (1st Cir. 1978).
[10] General Electric Co. v. Gilbert, 429 U.S. 125 (1976).
[11] Communication Workers v. American Tel. & Tel., 513 F.2d 1024 (2nd Cir. 1975), cert. granted, vacated, and remanded in light of General Electric Co. v. Gilbert, 429 U.S. 1033 (1977); Wetzel v. Liberty Mutual Ins. Co., 511 F.2d 199 (3rd Cir. 1975), vacated on jurisdictional grounds, 424 U.S. 737 (1976); Tyler v. Vickery, 517 F.2d 1089 (5th Cir. 1975), cert. denied, 426 U.S. 940 (1976); Satty v. Nashville Gas Co., 522 F.2d 850 (6th Cir. 1975), aff'd in part, vacated in part, remanded, 434 U.S. 136 (1977); Hutchison v. Lake Oswego School District No. 7, 519 F.2d 961 (9th Cir. 1975), cert. granted, vacated, and remanded in light of General Electric Co. v. Gilbert, 429 U.S. 1033 (1977), cert denied, 429 U.S. 1037 (1977).
[12] 29 C.F.R. §1604.10(b)(1792).
[13] Pregnancy Discrimination Act, Pub. L. No. 95-555, 92 Stat 2076 (codified at 42 U.S.C. §2000e(k)(1978)).
[14] 29 C.F.R. §1604.10 (1979).

that they are available to employees disabled for other reasons.[15] In addition, health care benefits must be provided for pregnancy-related conditions to the same extent that they are provided for other conditions.[16]

EEOC guidelines state that Title VII has always prohibited an employer from firing or refusing to hire or promote a woman because of pregnancy or related conditions and from failing to accord a woman on pregnancy-related leave the same seniority retention and accrual accorded those on other disability leave.[17] Thus the practice of requiring teachers to resign early in their pregnancy is prohibited.[18]

Wages

Wages include hourly, weekly, or monthly salary and tips, gratuities, commissions on sales, amounts paid for completion of specific items of work, granting and general use of incentive rates or bonuses, granting of stock options, and other monetary means of determining total wages earned.

The Federal Equal Pay Act of 1963—part of the Fair Labor Standards Act of 1938 as amended[19]—requires that male and female employees who perform substantially equal work in the same establishment on jobs that require equal skill, effort, and responsibility, and that are performed under similar working conditions shall receive equal wages. (Complaints about unequal pay may be filed under either the Equal Pay Act, Title VII, or both.) Coverage by the act was extended in 1972 to include executive, administrative, and professional employees and outside salespersons.[20] In 1974, coverage was extended to employees of the U.S. Government and employees of State and local governments not previously covered.[21] During the same year, the Supreme Court issued its first ruling under the Equal Pay Act, upholding the law's basic premise of equal pay for equal work.[22]

Enforcement of the Equal Pay Act (and Age Discrimination Act) was transferred to EEOC from the Department of Labor on July 1, 1979, under Reorganization Plan No. 1[23] Previously, complaints about wages received from women in Virginia and elsewhere by EEOC ranked about third in frequency.[24]

Related to the issue of equal pay for equal work is the broader issue of equal pay for work of comparable value. That issue involves the concept of "women's work" and the methods by which the complexity of a particular job is analyzed. For example, an examination of entries in the U.S. Department of Labor's *Dictionary of Occupational Titles* [25] found that a cluster of traditional women's jobs related to mothering and homemaking (nurse's aide, practical nurse, home attendant, child care center worker, and other similar categories) have ratings that appear to be greatly undervalued in comparison with other jobs less often filled by women.[26] On April 28–30, 1980, EEOC held a public informational hearing on Job Segregation and Wage Discrimination Under Title VII and the Equal Pay Act. EEOC has also contracted with the National Academy of Sciences for a study of job evaluation plans.

Hiring

Women in Virginia also complained about discriminatory job advertising. It is illegal to express a preference or restriction as to sex, except when such restrictions are *bona fide* requirements[27] for the job, such as the need for a female actress to play a female role in a play. However, the practice of showing preference by sex is still a frequent occurrence in newspaper ads, for example.

Another difficulty women encounter is that the kind of work they have done is not considered equivalent to the work experience of male applicants for the same job. The research project on the *Dictionary of Occupational Titles* (DOT) led to the

[15] 29 C.F.R. §1604.10(b)(1979).
[16] *Id.*
[17] 29 C.F.R. §1604.10, Appendix, Questions and Answers on the Pregnancy Discrimination Act (1979).
[18] *Id.*
[19] Equal Pay Act of 1963, Pub. L. No. 88-38, §3, 77 Stat 56, codified at 29 U.S.C. §206(d)(1)(1978).
[20] Education Amendments of 1972, Pub. L. No. 92-318, Title IX, §906(b)(1), 86 Stat 375, codified at 29 U.S.C. §213 (a)(1980 Supp.).
[21] Pub. L. No. 93-259, §b(a)(6), 88 Stat 58, 64, codified at 29 U.S.C. §203(x)(1978).
[22] Owens Corning v. Brennan, 417 U.S. 188 (1974).
[23] Reorganization Act of 1977, Pub. L. No. 95-17, 91 Stat 29 (codified at 5 U.S.C. §§901-912 (1978)).
[24] Staff review.
[25] Mary Witt and Patricia K. Naherny, *Women's Work-Up From .878, Report on DOT Research Project* (Madison, Wisc.; University of Wisconsin, January 1975). p. 12.
[26] Ibid.
[27] See Pittsburg Press Co. v. Pittsburgh Com'n on Human Relations, 413 U.S. 376 (1973). A local ordinance forbade newspapers from printing "help wanted" advertisements in sex-designated columns except where the employer is free to make hiring or employment referral decisions on the basis of sex; i.e., unless sex is a bona fide requirement. The court found that the practice of printing want ads for nonexempt employment in sex-designated columns did indeed aid employers to indicate illegal sex preferences. The ordinance was upheld against a freedom of speech challenge.

revision of the codes for homemaker, home attendant, and nursey school teacher from .978 (the lowest possible skill complexity level) to higher levels.

These code revisions appeared in the most recent (fourth) edition of the *DOT* published in 1977. The Department of Labor has since contracted with the National Academy of Sciences to evaluate the usefulness of the functional job analysis system on which the *Dictionary* is based.[28]

Women who seek nontraditional jobs, such as coal miner, often face intimidation by supervisors and coworkers in the form of behavior that is intended to bother, torment, trouble, ridicule, or coerce them into traditional employment for women. This form of discrimination covers a wide range of possible manifestations, among which are an employer's making, allowing, or condoning the use of jokes, epithets, or graffitti based on a women's sex, race, color, religion, or national origin; application of different or harsher standards of performance or constant or excessive supervision; assignment to more difficult, unpleasant, menial, or hazardous jobs as a means of intimidation; threats or verbal warnings, written reprimands, or imposition of fines or temporary suspensions because of sex.

[28] U.S., Department of Labor, Employment and Training Administration, *Employment and Training Report of the President* (1979), p. 108.

Chapter 4

Federal Laws and Regulations

Title VII covers employers in the public and private sectors of the economy who employ 15 or more persons. Employers exempt from the coverage include elected public officials, persons chosen by such officials to be on their personal staffs, appointees on a policymaking level, and immediate advisors with respect to the exercise of the constitutional or legal powers of the office, unless those persons are subject to the civil service laws of a governmental agency.[1]

Employers covered by Title VII include Federal, State, and local governments, labor unions with 15 or more members, agencies that refer persons for employment or that represent employees of employers covered by Title VII, joint labor-management apprenticeship programs of covered employers and unions, and public and private educational institutions.[2]

On May 5, 1978, President Jimmy Carter's Reorganization Plan No. 1[3] designated the EEOC as the principal Federal agency responsible for fair employment enforcement. The Equal Employment Opportunity Coordinating Council was abolished on July 1, 1978, and its function of coordinating all Federal equal employment programs was transferred to EEOC. Under the plan, the Justice Department will continue to bring job discrimination suits as necessary against State and local governments, Federal contractors, and Federal grant recipients.

As the lead agency for all other Federal agencies with any EEO enforcement responsibilities, specific duties of EEOC now include developing uniform definitions of employment discrimination, developing uniform standards for complaint investigations and compliance reviews, ensuring the development of procedures for enforcement actions, developing uniform recordkeeping and reporting requirements, and developing uniform programs for enforcement staffs.[4]

On January 1, 1979, authority for fair employment enforcement within the Federal sector was shifted from the Civil Service Commission (now known as the Office of Personnel Management) to EEOC.[5] Responsibility for ensuring nondiscrimination compliance by Federal contractors was consolidated in the Labor Department's Office of Federal Contract Compliance Programs on October 1, 1978, as a part of the reorganization plan.[6]

Affirmative Action

Affirmative action is the development by an employer of a specific program to eliminate discriminatory barriers in employment. Such a program, called an affirmative action plan, usually includes goals and timetables for completion. Affirmative action may be pursued by an employer in response to a Federal requirement attached to the provision of funds (such as a grant or contract); as a remedy ordered by the courts in response to proven discrimination (or in a pre-trial conciliation agreement or out-of-court settlement); or voluntarily (in response

[1] 42 U.S.C. §2000e(f)(1978).
[2] 42 U.S.C. §§2000e(b)-(j), 2000e-2 (1978).
[3] Reorganization Act of 1977, Pub. L. No. 95-17, 91 Stat 29 (Codified at 5 U.S.C. §§901-912 (1978)).
[4] U.S., Equal Employment Opportunity Commission, *EEOC: The Transformation of an Agency* (July 1978), p. 10.
[5] Ibid., p. 10.
[6] Ibid., p. 11.

to demands made by an employees' union or a community group).

Typically, an affirmative action plan includes measures affecting hiring, promotion, training, assignments, recruitment, and similar matters that aid individuals from particular groups that are underrepresented in an employer's workforce or in certain job categories or wage levels.

The fundamental premise of any valid affirmative action plan is that it is remedial, not preferential.[7] That is, the effects of past and present discrimination will be perpetuated, absent the implementation of an affirmative action plan. EEOC has issued specific guidelines[8] regarding the standards to be used in judging the legality and the efficacy of affirmative action plans. These standards are to be used by other Federal agencies with responsibilities for affirmative action regarding contractors, grantees, or other recipients of Federal funds.

On January 19, 1979, EEOC published guidelines on voluntary affirmative action.[9] EEOC's new guidelines assert that there is no separate concept under Title VII of "reverse discrimination," but rather that all discrimination is covered under Title VII. EEOC will continue to treat complaints received from white males the same as complaints received from other persons.[10] The guidelines set forth a protective framework to encourage employers to adopt voluntary, no-admission-of-guilt affirmative action remedies. They also explain what would be an adequate defense, in EEOC's view, to charge that a particular affirmative action plan is in itself illegally discriminatory. For more information regarding current affirmative action law, consult the U.S. Commission on Civil Rights publication *Statement on Affirmative Action,* available free from the Commission (Washington, D.C. 20425).

Executive Order 11246

Executive Order 11246 issued in 1965 prohibits Federal contractors and subcontractors from discriminating in employment because of race, color, religion, or national origin. In 1967, Executive Order 11246 was amended by Executive Order 11375 to include sex as a prohibited basis for discrimination.[11]

The Office of Federal Contract Compliance Programs (OFCCP) of the U.S. Department of Labor, then responsible for coordinating and monitoring the contract compliance process carried out by other contracting agencies, issued sex discrimination guidelines for implementing Executive Order 11246 on June 9, 1970.[12] Under these guidelines, contractors must not show sex preference in job recruitment, advertisement, or hiring. Personnel policies and practices such as wages, hours, promotions, transfers, fringe benefits, and other conditions of employment must not show any distinctions based upon sex unless the distinctions are reasonably necessary to the normal operation of the particular business or enterprise or reasonably related to the job.

In 1974 OFCCP issued guidelines, known as Revised Order No. 4,[13] that require contractors to establish and maintain affirmative action programs. These programs must include, among other things, a utilization analysis of the workforce, indicating areas where the contractors underutilizes minority groups and women; goals and timetables for correcting this underutilization; and precise procedures for implementation of the plan.

If contractors and subcontractors do not comply with Executive Order 11246, their contracts are subject to cancellation, termination, or suspension, and they may be barred from bidding on other Federal contracts.[14] As noted above, enforcement of Executive Order 11246 is now consolidated in OFCCP.

Executive Order 11478

All Federal agencies have been required since the issuance of Executive Order 11478[15] in 1969 to develop and implement an affirmative action plan. The Civil Service Reform Act of 1978[16] transferred enforcement of Executive Order 11478 and Title VII (as it applies to Federal employees) to EEOC.

[7] Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971). See also U.S. v. Virginia Electric Power Co., 327 F. Supp. 1034 (E.D. Va. 1971) (consent decree). In the latter case, affirmative hiring was ordered for black workers as well as back pay to compensate them for wages they would have earned had they not been denied promotions under a discriminatory promotion system. The court ordered that at least 25 percent of the new union hires were to be nonwhites until their level of employment in union jobs reached 21.5 percent. Affirmative hiring goals were also ordered for clerical jobs.

[8] Guidelines on Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964, as amended, 29 C.F.R. Part 1608 (1979).

[9] See comments at 44 Fed. Reg. 4422 (1979).

[10] *Id.*, at 4423.

[11] 29 C.F.R. §1608 (1979).

[12] Executive Order No. 11375, 3 C.F.R. 169 (1979), reprinted in 42 U.S.C. §2000e note, at 281–286 (1978).

[13] 3 C.F.R. 169 (1979).

[14] 41 C.F.R. §60–20 (1979).

[15] 3 C.F.R. 169 (1979).

[16] Executive Order No. 11478, 34 Fed. Reg. 12985 (1969), reprinted in 42 U.S.C. §2000e note, at 286–287 (1978).

Sources of Information

In 1976, the U.S. Commission on Civil Rights published a *Guide to Federal Law and Regulations Prohibiting Sex Discrimination,* in which various Federal laws, regulations, and executive orders were described, along with their requirements for affirmative action.[17] For example, U.S. Department of Agriculture regulations require land-grant unversities that operate Cooperative Extension Programs to develop and implement affirmative action programs.[18] Federal Communications Commission regulations require the broadcast media and telephone and telegraph companies to establish equal employment opportunity programs and to submit them with their application for license renewal.[19]

The General Accounting Office has prepared a list of Federal EEO programs, including those with affirmative action components, in its publication *A Compilation of Federal Laws and Executive Orders for Nondiscrimination and Equal Opportunity Programs.*[20]

Finally, EEOC has surveyed Federal agencies to locate EEO and affirmative action requirements. The results of the survey were reported at the January 16, 1980, Federal Conference on the Equal Employment Coordinating Function.[21]

[17] Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat 1111 (codified in scattered sections of 5, 10, 15, 28, 31, 38, 42 U.S.C.).
[18] U.S. Commission on Civil Rights, *A Guide To Federal Laws and Regulations Prohibiting Sex Discrimination* (revised) (July 1976).
[19] 7 C.F.R. Part 18 (1979).
[20] 47 C.F.R. §§23.55, 73.125 (1979).
[21] U.S. General Accounting Office, *A Compilation of Federal Laws and Executive Orders for Nondiscrimination and Equal Opportunity Programs* (Aug. 2, 1978).

Chapter 5

EEOC Complaint Processing

Between January 1972 and the end of April 1977, EEOC received a total of 542,758 charges of employment discrimination from people throughout the United States.[1] Of these, 10,885 charges were made by Virginians. Virginia's women filed 1,827 charges based on sex, or 16.79 percent of the State total. The Virginia Advisory Committee was able to obtain further information from EEOC about the issues involved in 1,732 (95 percent) of these charges.[2] Sex discrimination was the only basis for 1,346 of the charges; in 386 charges, sex discrimination was part of a multiple charge that included more than one type of discrimination, usually race or color.

Of the 1,827 charges of sex discrimination filed by women, 5.69 percent of them were filed in 1972, 15.33 percent in 1973, 12.75 percent in 1974, 15.60 percent in 1975, 27.42 percent in 1976, and 23.21 percent in the first four months of 1977.

Of the 1,732 charges examined, 93 percent named private employers as respondents, 4 percent named the State or local government as respondent, and the remaining 3 percent named other types of employers covered by Title VII.

Of the total charges of sex discrimination filed in Virginia between January 1972 and May 1977, 49 percent were resolved.[3] Resolution of cases, as defined then by EEOC, involves a finding of "no cause," "cause but unsuccessful conciliation," "cause and successful conciliation," "predetermination settlement," or "administrative closure."[4]

Of those resolved, 20 percent resulted in a finding of no cause, 5.5 percent were resolved by a cause and successful conciliation finding, 1.1 percent were resolved by a finding of cause but unsuccessful conciliation, 10.6 percent were resolved by predetermination settlement, and 62.7 percent were resolved by administrative closure.[5]

The rest of the charges were part of the backlog of cases existing in April 1977.[6] (A few had been referred for litigation.)

Starting in late 1977, EEOC revised its procedure for handling charges of discrimination.[7] The revised procedure was undertaken partly to cope with the large number of backlogged cases that EEOC has accumulated, and partly because of the large proportion of cases resolved by administrative closure. The new procedure is called the "rapid charge processing system."

Original Complaint Procedure

Under Title VII, EEOC must defer processing complaints to the appropriate State or local agency in jurisdictions where there are provisions for the enforcement of laws prohibiting employment discrimination.[8]

Effective May 1972, a State or local agency wishing to receive charges of employment discrimination filed with EEOC on a deferred basis can

[1] Unpublished data furnished by the U.S. Equal Employment Opportunity Commission, Washington Area Office, June 1978, CCR Files.
[2] Staff review.
[3] Ibid.
[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] 42 Fed. Reg. 42022 and Appendix A (1977).
[8] 29 C.F.R.

apply to EEOC for status as a "706 Deferral Agency."[9] Such agencies have 60 days to process a discrimination complaint before jurisdiction returns to the EEOC. The law also requires EEOC to give substantial weight to the findings and order of such deferral agencies when determining whether or not there was "reasonable cause" to believe discrimination had occurred. The procedure for filing, processing, and deferral of charges may be formalized by a negotiated worksharing agreement between EEOC and a State or local agency.[10]

In addition, effective May 1980, EEOC will defer charges "to a qualified agency or authority even though the agency or authority has made no request for 706 designation."[11] This change in regulation was made to comply with the U.S. Court of Appeals decision in *White v. Dallas Independent School District,* [12] which, in effect, made deferral status automatic.

The two 706 deferral agencies in Virginia are the Fairfax County Human Rights Commission and the Alexandria Human Rights Commission.[13] Their relationship with EEOC is explained in chapter 7 below.

Until late 1977, a complaint made to EEOC was reviewed and given a charge number. If required, the charge was deferred to a State or local agency where it might be resolved under State or local law and procedures.[14]

Final actions taken by a State or local agency were reviewed by EEOC, given substantial weight as required by Title VII, and then usually were adopted by EEOC. Such final actions could include, for example, "no cause" dismissals or "successful conciliation" settlements. Where a State or local agency had made a "cause" finding but concilation was unsuccessful, EEOC would usually adopt the agency's cause finding, if consistent with Title VII standards, and then attempt its own conciliation before closing the case.[15]

Where a deferred charge was not processed by a State or local agency; where their findings were not acceptable to EEOC under Title VII standards; or where deferral was not required, EEOC assigned the charge for investigation and then, in some instances, depending on the issue raised in the charge, made an attempt to resolve the matter with a predetermination settlement, or "p.d.s." If p.d.s. was not attempted or was unsuccessful, a more complete investigation would be conducted. EEOC would then issue a written determination as to whether there was reasonable cause to believe discrimination has occurred.[16]

If cause was found, EEOC attempted conciliation. If the attempt was unsuccessful, EEOC's Office of General Counsel would decide whether or not the case was worthy of litigation, and if so, whether to recommend to the 5-member Commission that a suit be filed.[17]

Since March 24, 1972, EEOC has been empowered to file suit in Federal district court.[18] If the case involves a State or local government, the Commission refers it to the U.S. Attorney General, who may decide to file suit in Federal court.[19]

The complainant could also sue to obtain relief after obtaining a right-to-sue letter from EEOC. Such letters may be issued 180 days after the complaint was filed with EEOC. In addition, if EEOC was not convinced that a violation has occurred, or if EEOC dismissed the charge for any reason, it informed the charging party of the right to sue and provided a right-to-sue letter giving the charging party 90 days to take legal action.[20]

Revised Complaint Procedures

The comprehensive plan for reform of the agency proposed by Eleanor Holmes Norton, EEOC Chair, contained 8 major components:

1) A new rapid charge processing system with emphasis on revised intake procedures, face-to-face factfinding, and an early negotiated settlement.

2) A separate processing system to give systematic and priority attention to removing the backlog of cases.

3) A "direct service," consumer-oriented structure patterned after the National Labor Relations Board.

4) Integration of litigation, investigation, and conciliation functions.

[9] 42 U.S.C. §2000e-5 (1978).
[10] *Id.*, note 7.
[11] 45 Fed. Reg. 33605.
[12] *White v. Dallas Independent School District* 581 F.2d 556 (1978).
[13] 45 Fed. Reg. 7542 (1980) (to be codified at 29 C.F.R. §1601.74).
[14] 42 U.S.C. §2000e-5(b) (1978).
[15] 29 C.F.R. §1601.19b(e) at 37 Fed. Reg. 20165 (1972).
[16] 29 C.F.R. §§1601.19a, 1601.19b(d) at 37 Fed. Reg. 20165 (1972).
[17] 42 U.S.C. §2000e-5(f)(1) (1978).
[18] Pub. L. No. 92-261, §§4, 5, 86 Stat 104 and 107 (1972)(codified at 42 U.S.C. §§2000e-5, 2000e-6 (1978)).
[19] 42 U.S.C. §2000e-5(f)(1) (1978).
[20] 42 U.S.C. §§2000e-5(f)(1), 2000e-5(f) (3) (1978).

5) A program to deal with systemic discrimination, addressing first those whose actions have demonstrated clear disregard of the purpose of Title VII.

6) A new program office to aid development of Title VII guidelines, interpretations, and other rulings.

7) A new management accountability and information system to insure that the above programs take hold and are implemented.

8) A national training program and standards to assure that the staff will be able to administer the new system effectively.[21]

Rapid-Charge Processing System

Under the revised procedures, complaints are not automatically given a docket number and made a part of the inventory of charges within the agency. Instead, complainants are counseled immediately as to whether or not their complaints are covered by Title VII. If not, EEOC will refer the complainant to the most appropriate place for assistance.[22]

If the case is within EEOC's mandate, EEOC will call the parties together shortly after the filing of the charge for a face-to-face factfinding conference. At this time, an EEOC investigator tries to bring about a successful settlement of the charge before a detailed investigation is made.[23] It is the expectation of EEOC that most charges of employment discrimination will be settled during these conferences.[24]

However, if a charge is not settled as a result of the conference, it is assigned for more complete investigation and a determination as to its merits, as under the old system.[25] EEOC's intention is to make a reasonable cause finding only if the case appears to be "litigation worthy."[26]

Class Action

EEOC Commissioners will decide when to bring class action suits based on data developed showing systemic patterns of employment discrimination. It is less likely that individual cases will become class action suits.[27] Criteria to be used include the importance of the employer to the geographic area in which it is located, the number of persons employed, the possible impact of the case on minorities and women in the area, the degree of culpability under Title VII, and the like.

On July 27, 1977, Eleanor Holmes Norton stated that:

> I am aware that the filing of a Commissioner's charge alleging discrimination will require considerable time, effort, and expense by respondents. It is only fair that the initiation of these charges of discrimination be organized on a rational basis before the government imposes such costs on respondents. We intend to develop a rational and sensible basis for proceeding on systemic discrimination matters. A first indicator would be a poor statistical profile of minorities and women. . . .We have already begun an analysis of our own statistical data to identify appropriate subjects for further inquiry. While we will emphasize the statistics, the net judgment as to whether to proceed will be based not only on the statistics but on all other information available to us and to other government agencies, as well as on an analysis of petitions for a systematic inquiry filed by individuals and organizations.[28]

Area Offices of EEOC

In order to make EEOC more accessible to the public and to facilitate faster case processing, EEOC also restructured its field offices. As of January 1979, EEOC has 22 district offices and 37 smaller area offices located throughout the United States.[29]

Two EEOC area offices are located in Virginia. A field office was originally opened in Richmond in January before the revisions in procedures and organizational structure of EEOC took place. It became an area EEOC office in January 1979.[30] An additional EEOC area office opened for the first time in Norfolk in mid-1979.[31] Persons who live in Northern Virginia are directed to the EEOC area office located in Washington, D.C. The three area offices are located in the three largest labor areas of the State, where the majority of both women and men work, and where most of the largest employers are located.

A Title VII complaint may be filed with any of these offices or with the EEOC district office

[21] "Norton Outlines Plan for EEOC Reorganization," *Mission* (EEOC newsletter), vol. 5, no. 5, (1977), p. 3.
[22] 29 C.F.R. §1601.19(a)(1979).
[23] 29 C.F.R. §1601.20 (1979).
[24] Eleanor Holmes Norton, speech before the Washington Press Club, Dec. 1, 1977, EEOC files, pp. 6-7.
[25] 29 C.F.R. 1601.21 (a)(1979).
[26] "Norton Outlines Plan," p. 10.
[27] Ibid., p. 6.
[28] "Norton Outlines Plan," p. 11.
[29] *EEOC: The Transformation of an Agency*, pp. 6-7.
[30] Keziah Walker, Area Director, EEOC Richmond, Va., Area Office, interview at Richmond, Virginia, Feb. 8, 1979.
[31] Gloria Underwood, Area Director, EEOC Norfolk, Va., Area Office, telephone interview, Nov. 15, 1979.

located in Baltimore, Maryland. Area offices generally will handle rapid charge processing—charge intake procedure, face-to-face factfinding conferences, and early resolution attempts. EEOC litigation staff and compliance staff who handle Virginia-based systemic cases, EEOC lawsuits, and full investigations and conciliations are based in the Baltimore District Office. The addresses and phone numbers of the EEOC offices available to Virginia workers are in the appendix.

Chapter 6

State and Local Enforcement

The State EEO program operates under the authority of Executive Order No. 1 issued by Governor Mills Godwin on February 6, 1974, and reissued by Governor John N. Dalton on January 31, 1978.[1] The ultimate responsibility for equal employment opportunity and affirmative action rests with the Governor as Chief Executive Officer of the Commonwealth of Virginia. But the State EEO coordinator is responsible for coordinating and monitoring equal opportunity and affirmative action plans of State agencies, as well as receiving and assisting in the resolution of charges of discrimination filed by State employees.[2]

Complaints of employment discrimination by State employees may also be filed under Title VII with EEOC. While the State EEO program does not have status as a 706 deferral agency, until 1979 EEOC did refer some cases to the State EEO program with the approval of the person filing the charge.[3] This informal arrangement was used by EEOC when, for example, a complainant had filed a charge with EEOC sometime after the charge had also been made to the State EEO program and investigated by the State EEO coordinator.

State EEO Program Complaint Procedure

Complaints accepted by the State EEO coordinator must raise a specific allegation of discrimination. When a complaint is filed, the State employee or job applicant is informed that additional means of resolving complaints are available, such as appeals, grievance procedures, and informal conciliation with management personnel.[4] If the complainant filed with the State EEO coordinator between 1974 and July 1979, the following procedures[5] were used:

1. Any complaint that was the subject of, or could affect, pending litigation was referred to the attorney general for the Commonwealth of Virginia for advice or disposition.
2. Charges of employment discrimination received by EEOC and referred to the State EEO program were accepted by the State EEO coordinator. (This practice has been eliminated.)
3. Complainants filled out a "Complaint of Discrimination Form" for all complaints filed directly with the State EEO Office. The target for resolution of complaints was 180 days after filing.
4. A State EEO investigator was assigned by the assistant State EEO coordinator.
5. An in-depth interview was conducted with the complainant.
6. A copy of the complaint was sent to the agency involved with the request for specific information relevant to resolving the complaint.
7. The material supplied by the agency and by the complainant was reviewed.
8. Further investigation was done when necessary. This included interviewing witnesses, confirming information, and seeking additional information and/or documentation.

[1] Va. Executive Order No. 1 (Feb. 6, 1974). See also Va. Executive Order No. 1 (Jan. 31, 1978).
[2] Va. Executive Order No. 1, sec. V, p. 6 (Feb. 6, 1974).
[3] Maya Hasegawa, acting EEO coordinator, State EEO Program, telephone interview, Nov. 15, 1979.
[4] Ibid.
[5] Ibid.

9. Where conflicts of opinion existed, meetings were held with both sides and facts in dispute were reviewed.
10. When the investigation was completed, a preliminary summary of facts was submitted to the EEO coordinator. This summary included background, facts, conclusions, and the preliminary recommendations of the investigator. The coordinator made the final decision on the merits of the complaint.
11. Where no discrimination was found, the complainant was informed, in detail, as to the coordinator's findings. In cases where the issues were particularly complex, the complainant was given an opportunity to discuss the findings and to provide additional information.
12. Where discrimination was indicated, the coordinator discussed the findings with the agency head or the agency head's designee. A letter outlining the coordinator's findings and legal assessment was sent to the agency. If the agency head accepted the coordinator's conclusions and implemented the recommendations, the complainant was informed of the recommendations and the facts that led to those recommendations.

Where the agency head rejected the coordinator's conclusions and recommendations, a detailed memorandum outlining the facts and stating the grounds of rejection was sent to the Governor for his decison. The complainant was informed in writing of the referral to the Governor, and of any change in the status of the complaint as a result of his decision.[6]

Since the State EEO program began to process claims of employment discrimination, charges filed by women alleging sex discrimination range between 22 and 28 percent of all such charges each year.[7] The actual number has been small. In fiscal year 1974, there were six; in FY 1975, there were 13; in FY 1976, there were 15; in FY 1978, there were 6; in FY 79, there were 8.[8]

State EEO Committee

The State EEO committee was established in 1974[9] to assist the State EEO program. This committee, composed of citizens appointed by the Governor, has had no direct contact with the complaint resolution process. Its 16 members acted in an advisory capacity to the State EEO coordinator and the State EEO program until 1979.

In the 1979 session of the General Assembly, the State EEO committee (not the State EEO program) was given statutory existence.[10] The new responsibilities and duties of the State EEO committee changed its working relationship with the State EEO program. The committee is to monitor State EEO program practices to assure that they fulfill the State's obligation to all State agency employees and applicants.

> The committee may (1) call upon the director of personnel and training and other State officials for information and reports to assist them in their work;(2) act as a communications channel for groups both inside and outside of State government that wish to have their views on equal employment opportunity expressed to State government; (3) make recommendations to State agencies concerning the implementation of their affirmative action plans and programs.
>
> The committee members shall refer employees who have work-related discrimination complaints to the director of equal opportunity and employee programs (State EEO Coordinator). Once the discrimination complaint is referred to the director, the matter shall be reviewed in accordance with the equal employment opportunity complaint procedure of the department of personnel and training or, at the employee's option, the State grievance procedure. The committee shall audit and review the State's equal opportunity posture at least once a year and recommend improvements to the Governor.
>
> The committee shall review the progress of State agency affirmative action plans and programs and make recommendations for changes as warranted.[11]

The Virginia Equal Employment Opportunity Committee law did not authorize any staff or additional funds for the Virginia EEO committee to carry out the assigned duties. The Virginia committee is composed of 16 persons selected and appointed by the Governor from State employees and private citizens, who "shall serve without compensation, but

[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Va. Executive Order No. 1 (Feb. 6, 1974), p. 5.
[10] Va. Code Title 2.1, ch. 10.2 §§2.1-116.10-2.1-116.14 (1979). This legislation created the Equal Employment Opportunity Committee to monitor the State's equal employment practices.
[11] Va. Code §2.1-116.14 (1979).

shall receive their necessary expenses incurred in the discharge of their official duties."[12]

On December 1, 1976 (before it acquired statutory responsibilites and duties in 1979), the committee held its first public hearing concerning the effectiveness of the Commonwealth's affirmative action program and procedures for handling complaints. The committee found that few State employees or members of the public were aware of the existence and functions of the State EEO program or the State EEO committee.[13] On April 29, 1977, the Secretary of Administration endorsed the recommendation of the State EEO committee that more funds be made available for increasing public awareness of the State's efforts to provide equal opportunity.[14]

Affirmative Action

Governor Linwood Holton first issued an executive order to assure State employees that Virginia was committed to removing discriminatory barriers to employment based on sex (as well as race, color, national origin, religion, age, physical handicap, and political affiliation) effective January 1, 1973.[15] However, it was not until he issued Executive Order No. 1 on February 6, 1974, that he made his concerns about affirmative action a matter of public policy:

> This Executive Order is not intended to foster unsound practices such as:
>
> 1. Discrimination in favor of any employees or applicants for employment on the basis of race, color, religion, political affiliation, sex, age, or national origin to the detriment of employment opportunities of any other qualified employee or applicant.
>
> 2. Lowering of requirements or performance standards for the purpose of favoring any employee or applicant on the basis of his or her race, color, religion, political affiliation, sex, age, or national origin.[16]

The Virginia Affirmative Action Plan for Equal Employment Opportunity included in the 1974 version of Executive Order No. 1, and amended March 20, 1975, and August 5, 1976,[17] also required the establishment of a complaint resolution procedure for handling employment discrimination charges made by State employees (discussed above).[18]

On January 31, 1978, Governor John N. Dalton also issued an executive order[19] that included the language and provisions of Executive Order No. 1 issued by his predecessor. However, employees in the legislative and judicial branches of State government and faculty members of State-supported institutions of higher education were exempted unless the executive order was adopted by the governing boards of those institutions. At Governor Dalton's direction, the secretary of administration and finance asked the institutions to adopt Executive Order No. 1 in February 1978 by appealing to their governing boards for such approval. Approval was unanimous.[20]

The administration of Executive Order No. 1 has been centralized in the State EEO program since the program was begun in 1974. Among other responsibilities, the State EEO coordinator must monitor the affirmative action plans of State agencies. All State agencies with 20 or more full-time employees must have a written plan. State agencies with fewer than 20 full-time employees are required to certify in writing that they are operating within the policies, practices, and procedures required by Executive Order No. 1. The State EEO coordinator receives these plans and review and audits them to assure compliance with equal opportunity.[21]

Since March 1978, nearly all of the State agencies with 20 or more employees have submitted affirmative action plans to the State EEO program and have had them approved.[22] The State EEO program audits the affirmative action plans within an 18-month period following their approval. The State EEO program committee has been required by the Virginia General Assembly to participate in the monitoring of affirmative action plans since March 23, 1979.[23]

The State EEO program conducts other routine activities as well. Between January 1, 1979, and June

[12] Va. Code §2.1-116.13 (1979).
[13] "Appropriations Request for the Governor's EEO Committee," 1978-1979, CCR files.
[14] Ibid.
[15] Va. Executive Order No. 29 (Jan. 1, 1973).
[16] Va. Executive Order No. 1 (Feb. 6, 1974), pp. 1-2.
[17] Va. Executive Order No. 1, as amended (Mar. 20, 1975); as amended (Aug. 5, 1976). The 1975 amendment required all State agencies with 20 or more employees to have a written affirmative action plan.
[18] Va. Executive Order No. 1 (Feb. 5, 1974), Appendix B.
[19] Va. Executive Order No. 1 (Jan. 31, 1978).
[20] *Annual Report to the Governor on the Administration of Executive Order Number One* (March 1980), CCR files.
[21] Va. Executive Order No. 1, (Feb. 6, 1974, section IV, pp. 4-5; amended (Mar. 20, 1975), Appendix C.)
[22] Hasegawa interview.
[23] Va. Code §2.1-116.14 (1979).

30, 1979, 34 State agencies received information needed to update their affirmative action plans in four workshops conducted by State EEO program staff. The staff assisted 39 colleges and universities in developing numerical objectives for hiring faculty. Four State agencies reviewed for affirmative action compliance by the Federal government received assistance from State EEO program staff. Of the 39 affirmative action plans developed by the colleges and universities in the third quarter of 1978, 35 were audited by the State EEO program.[24]

Executive Order No. 1 also covers local governmental units in Virginia that are subject to approved Merit System Council standards. The State EEO program coordinator and staff have assisted local governments in preparing affirmative action plans and provided technical assistance, such as publishing the *Equal Employment Opportunity Handbook for Local Governments* [25] in June 1978.

The Virginia Fair Employment in Contracting Act[26] covers State contracts over $10,000. The law requires that in such cases the contract must contain nondiscriminatory provisions, which are to be displayed in public areas so that employees will have notice of their rights.[27] The law specifically states, however, that it does *not* empower or require affirmative action programs or any form of preferential treatment.[28] The intent of the law is only to parallel Title VII. There are no specific enforcement provisions in the Virginia Fair Employment in Contracting Act.[29]

[24] State of Virginia, Equal Employment Opportunity Program, *Equal Employment Opportunity Handbook for Local Governments* (revised June 1978).
[25] "EEO Component—Statewide Personnel Improvement Project—Project Narrative," (May 18, 1977, rev. June 13, 1977), Appendix A, CCR files.

[26] Va. Code §§2.1-374 to 2.1-376 (1979).
[27] Va. Code §2.1-376 (1979).
[28] *Id.*
[29] *Your Legal Rights as a Woman*, p. 36.

Chapter 7

Local Civil Rights Commissions

Virginia has only three local civil rights commissions. Each handles employment discrimination complaints based on sex, among the other categories covered in their enabling legislation. Two—the Alexandria Human Rights Commission and the Fairfax Human Rights Commission—have work-sharing agreements with EEOC as 706 deferral agencies.

Alexandria Human Rights Commission

In 1976, EEOC designated the Alexandria Office of Human Rights as an EEOC 706 deferral agency, a recognition of "substantial equivalency" between Title VII of the Civil Rights Act of 1964 and the Alexandria Human Rights Ordinance.[1]

The ordinance was adopted by the Alexandria City Council in April 1975, at which time the Alexandria Human Rights Commission was created to carry out its provisions.[2] The law prohibits discrimination and requires affirmative action of city agencies and contractors. The Alexandria commission, composed of 13 members, has a staff of 8.[3]

The Alexandria commission is only authorized to process complaints of discrimination against employers located in Alexandria or against the city government of Alexandria itself. The Alexandria commission, as a whole, sits as a hearing body when complaints of discrimination are not satisfactorily resolved at the staff level. With the assistance of the city attorney's office, the Alexandria commission is able to secure compliance with the ordinance through enforcement by court injunction.[4]

Deferral status means that charges filed with EEOC are deferred to the Alexandria commission for 60 days, giving it an opportunity to resolve the charges. The city commission became an operating deferral agency in March 1977.[5]

The Alexandria commission receives approximately $350 for investigating each deferred case sent from EEOC to cover expenses, including staff time.[6] The administrator, an investigator, and a secretary are paid from city funds; an investigator and clerk-typist are paid with money from EEOC, and one clerical aide is paid out of CETA(Comprehensive Employment and Training Act) funds.[7]

From October 1976 to September 1977, EEOC deferred 25 cases of all types to Alexandria. Of those, 9 probable cause determinations were issued and all 9 were conciliated.[8] From September 1977 to October 1978, EEOC deferred 68 charges, or 22 percent of all charges handled by the Alexandria commission.[9] From October 1978 to September 1979, the Alexandria commission handled about 100 deferred charges from EEOC.[10] A September 1978 EEOC review of Alexandria's employment complaints resulted in a commendation of the agency by

[1] 29 C.F.R. §1601.74 (1979).
[2] Alexandria, Va., 1963 Code of the City of Alexandria, as amended, ch. 18A, Human Rights; as amended by Ordinance 2011 (1975).
[3] Judith J. Greene, administrator, interview in Alexandria, Va., Nov. 14, 1979.
[4] Alexandria, Va., 1963 Code of the City of Alexandria, as amended, §18A-25 (1975).
[5] Local governments must apply for 706 deferral status to the U.S. Equal Employment Opportunity Commission if they wish to have such status.
[6] Greene interview.
[7] Comprehensive Employment and Training Act of 1973, Pub. L. No. 93-203, 87 Stat. 839 (codified in scattered sections of 18, 29, 42 U.S.C.).
[8] Greene interview.
[9] Ibid.
[10] Ibid.

EEOC for its efficient and effective case resolution process. All cases where probable cause was found were conciliated.[11]

From October 1, 1976, through September 30, 1977, the Alexandria commission handled 70 charges of sex discrimination, about 27 percent of the employment total.[12] Between October 1977 and September 1978, 101 charges of sex discrimination were processed, comprising 33 percent of all employment cases.[13] Between October 1978 and September 1979, Alexandria handled 268 charges of sex discrimination, or 22 percent of its employment cases.[14]

Employment discrimination charges are the largest complaint category handled by the Alexandria commission.[15] In 1976–1977, employment discrimination charges represented 70 percent of all charges;[16] in 1977–1978, 68 percent;[17] and in 1978–1979, 90 percent.[18]

Although statistics by category have not been kept, it has been the experience of the Alexandria commission that the major issues contained in charges of sex discrimination are differential treatment, termination of employment, and terms and conditions of employment. Few of the terminations have been related to pregnancy. More often, pregnancy has been an issue in charges filed by women who were not hired.[19]

Charges of sexual harassment have been made since 1976, but they have increased recently. During September and October 1979, the Alexandria commission received 5 sexual harassment charges.[20] Of these, two were pending as of November 1979, and three had been dismissed because investigators had not found probable cause. Because of recent publicity given this form of sex discrimination, the Alexandria commission anticipates an increase in sexual harassment charges during fiscal year 1980.[21]

Since 1975, the agency has monitored contract compliance by approximately 1,034 employers and approximately 3,500 vendors who contract to supply goods or services to the city.[22] Each contractor/vendor must agree in writing to comply with the equal employment opportunity provisions of Alexandria law, which requires affirmative action plans with goals and timetables.[23] As of 1979, one contract was not renewed by the city for failure to comply. Thirteen contracts were returned for insufficient information, and 11 contractors had sent statements to the city indicating that the EEO information requested was not applicable to their organization. Those contracts were reviewed by the human rights administrator and the finance director.[24] Alexandria does not have a "set-aside" program for minority or female contractors.[25]

The Alexandria commission does not have a full-time contract specialist; nothing is done to monitor compliance further until a complaint is filed.[26]

The city of Alexandria has its own affirmative action plan[27] that the Alexandria commission also monitors. The commission works with the city personnel office to ensure that the city's employment application form and hiring procedures eliminate discriminatory practices and avoid any appearance of discrimination. However, city departments are not uniformly diligent in their efforts to seek out and employ women and minorities, according to the experience of the Alexandria commission. "I just want to hire the most qualified," is the frequent response of employers who have underutilized women and minorities.[28]

Fairfax County Human Rights Commission

The Fairfax Commission, composed of 11 commissioners and 7 staff persons, was created by ordinance on July 29, 1974.[29] The ordinance prohibits employment discrimination by employers in the county who employ four or more persons,[30] whereas Title VII of the Civil Rights Act of 1964 is limited to employers of 15 or more persons. In other respects,

[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] Ibid.
[18] Ibid.
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] Alexandria, Va., 1963 Code of the City of Alexandria, §§18A-3, 18A-6.1(b) (1975).
[24] Greene interview.
[25] Ibid.
[26] Ibid.
[27] Alexandria, Va., 1963 Code of the City of Alexandria §18A-5.3 (1975).
[28] Greene Interview.
[29] Fairfax, Va., 1976 Code of County of Fairfax, as amended, ch. 11, Human Rights (1980).
[30] Fairfax, Va. 1976 Code of the County of Fairfax, as amended §11-1-2(a)(8) (1980).

the ordinance is similar to Title VII. Fairfax was given EEOC deferral status in 1976.[31]

Between July 1, 1976, and June 30, 1977, the Fairfax commission processed 44 employment discrimination complaints, of which 19 were based on sex.[32] Between July 1977 and June 1978, it processed 62 employment charges; 34 were based on sex.[33] Between July 1978 and June 1979, 74 employment charges were processed, of which 31 were based on sex.[34]

The most frequent issue in fiscal year 1978–1979 was promotion.[35] Between July 1976 and July 1977, termination of employment because of pregnancy was mentioned often, but since then such complaints have dwindled.[36] Between July 1977 and July 1979, only 10 such complaints were made to the Fairfax commission.[37]

In 1977–1978, the Fairfax commission received 76 charges of employment discrimination. Of the investigations completed that year, reasonable cause was found in 19 and not found in 18.[38] The number of completed investigations involving sex discrimination was unavailable as such.[39]

Since EEOC adopted rapid-charge processing, both the Fairfax commission and the Alexandria commission have adopted similar procedures.[40]

On the whole, employers have cooperated with efforts of the Fairfax commission to resolve charges. However, in the fall of 1978, for the first time, the legality of the ordinance establishing the Fairfax commission was challenged.[41] A company refused to cooperate with the Fairfax commission's investigation of a complaint, claiming that since Virginia has no State law prohibiting sex discrimination in employment, any local human rights ordinance is invalid.

Local governments in Virginia are subject to the so-called Dillon's Rule, a legal doctrine essentially meaning that a local government has only the authority expressly delegated to it by the State legislature.[42] Unless the State legislature delegates authority to a local government to impose sanctions and issue subpoenas, at least one court has ruled that these powers cannot be exercised.

In February 1979, the circuit court ruled in the Fairfax case.[43] In its order, the court stated that the county board of supervisors could set up a human rights commission to investigate and conciliate discrimination complaints. However, the board could not endow the commission with two specific powers: the power to award monetary damages and the power to issue subpoenas. The court was of the opinion that these two powers cannot "be implied from the 'general grant of powers charge,' Virginia Code §15.1-510, and no express authority for the same appears. Nor can it be said that [these] purported [powers are] 'essential and indispensable'. . . ."[44]

While the ordinance creating the Fairfax commission in 1974 gave it specific enforcement powers,[45] the power to subpoena information, for example, has never been used by the commission. The impact of the court order in February 1979 removing the exercise of such power has had minimal impact thus far on the daily operation of the Fairfax County Human Rights Commission.[46]

According to one member of the commission's staff:

> Out of the hundreds of complaints that have been investigated, only a small percentage of companies have refused to cooperate voluntarily. Most companies realize that refusal to cooperate with the local investigative agency, which has been granted deferral status of EEOC, will only result in the complaint being handled by EEOC. The Fairfax commission provides an opportunity to resolve complaints on a local level, quickly, inexpensively, and confidentially, which are benefits that have not been diminished by the court's ruling. The most significant impact the court's ruling has had has been that of identifying certain statutory changes that are necessary to clarify and strengthen the ordinance.[47]

[31] Fred Allen, human rights specialist, Fairfax Commission, interview in Fairfax, Va., Nov. 13, 1979.
[32] Ibid.
[33] Ibid.
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Ibid.
[40] Allen and Greene interviews.
[41] *Fairfax County Human Rights Commission v. Giovannoni*, in ch. 57174 (Cir. Ct. Fairfax County 1979).
[42] For an exhaustive treatment of Dillon's Rule, see *Com. of Va. v. County Board of Arlington County*, 232 S.E. 2d 30, 217 Va. 558 (1977).
[43] *Id.*
[44] *Id.*, at 2.
[45] Fairfax, Va., 1976 Code of the County of Fairfax, as amended §11-1-7 (1978). As a result of the *Giovannoni* case, the enforcement provisions struck down by the circuit court were amended and are now codified in Fairfax, Va., 1976 Code of the County of Fairfax, as amended §11-1-5 (1980).
[46] Allen interview.
[47] Ibid.

Under the human rights ordinance, the Fairfax commission is responsible for monitoring affirmative action plans in the county government.[48] On October 17, 1977, the county adopted an affirmative action plan,[49] as required under Executive Order 11246 because the county receives Federal funds in contracts and subcontracts with the Federal Government. However, the Fairfax commission does not have a full-time contract compliance specialist. Thus monitoring of its own affirmative action plans is minimal.[50]

Richmond Human Relations Commission

The Richmond Commission was established by the city council in 1968.[51] The 1968 law was repealed in 1972[52] and on May 29, 1979, a new ordinance replaced the 1972 law[53] giving the Commission the power to apply for subpoenas and to seek injunctions.[54] The city commission is composed of 15 members and has an authorized staff of 9 persons.

The May 1979 ordinance required that a positive program for city employees and city contracts be designed to ensure that a good faith effort will be made to employ qualified applicants without regard to race, sex, color, religion, and national origin.[55] The affirmative action program is to be developed by the the city council and monitored by the Richmond Human Relations Commission. The affirmative action plan, when adopted, shall include recruitment and recruitment advertising, selection and selection criteria, upgrading, promotion, demotion or transfer, lay-offs or termination, rates of pay or other forms of compensation, other terms or conditions of employment, and selection for training, including apprenticeship, and shall include realistic and attainable goals, methodology, and timetable for implementation of the program.[56]

In July 1973, the Richmond commission drew up an affirmative action plan for the city that included goals and timetables. The plan went to the director of personnel. Subsequently, an affirmative action policy statement was adopted, but without required goals and timetables.[57]

The Richmond commission handles complaints of employment discrimination that involve Richmond employers or the Richmond city government. A complainant, of course, may file such a charge with both the city commission and EEOC. The Richmond commission does not have 706 deferral status.

If a complaint cannot be resolved by the staff, a public hearing is held before the commission members as a whole.[58] Between July 1, 1971, and November 1979, the Richmond commission handled 222 charges of employment discrimination. Thirty of the charges were based on sex.[59]

The staff of the Richmond commission has been carrying out training programs and seminars to help both employers and employees comply with Title VII.[60]

Among other duties of the human rights commission is that of compiling data on the status and treatment of members of the protected classes (including women) for the purpose of developing the best means of improving human relations and of measuring the effectiveness of programs established to eliminate discrimination in the community.[61]

In 1977, the city council passed a resolution requiring that 10 percent of the contracts awarded by the city go to minority enterprises. Women were not included either as a separate group or as a part of the defined minority group.[62]

[48] Fairfax, Va., Board of Supervisors of Fairfax County, Res. (unnumbered) §C-2 (July 29, 1974).
[49] Allen interview.
[50] Ibid.
[51] Richmond, Va., Richmond City Code of 1968, ch. 2, Art. X, Human Relations Commission (1968).
[52] Richmond, Va., Richmond City Code of 1968, ch. 2, Art. X, Human Relations Commission (1968), as amended by Ordinance 72-241 (1972).
[53] Richmond, Va., Richmond City Code of 1975, as amended, ch. 17.1, Human Rights (1975), as amended by ordinance 79-79-77 (1979).
[54] Richmond, Va., Richmond City Code of 1975, as amended, §§17.1-13(a)(1), 17.1-13(k) (1979).
[55] Richmond, Va., Richmond City Code of 1975, as amended, §17.1-5(c) (1979).
[56] Richmond, Va., Richmond City Code of 1975, as amended, §17.1-3 (1979).
[57] Leonardo A. Chapelle, executive director, Richmond Human Relations Commission, interview at Richmond, Nov. 12, 1979).
[58] Richmond, Va., Richmond City Code of 1975, as amended, §17.1-13(d) (1979).
[59] Chappelle Interview.
[60] Ibid.
[61] Richmond, Va., Richmond City Code of 1975, as amended, §17.1-12 (1979).
[62] Richmond, Va., Richmond City Council Res. 78-R53-53 (Apr. 10, 1978).

Chapter 8

Findings and Recommendations

Finding No. 1: Virginia has only three local human rights agencies empowered to enforce antidiscrimination laws. They serve relatively small geographic areas.

The U.S. Equal Employment Opportunity Commission has two area offices in Virginia, in Norfolk and Richmond, and one in Washington, D.C., serving Northern Virginia. EEOC's litigation center covering Virginia is located in Baltimore, Md., a site quite distant from much of the State.

Thus antidiscrimination agencies with enforcement power are unavailable at the local level to many Virginians.

There is no State human rights agency serving all Virginia citizens and no State law applicable to all Virginia citizens and their employers prohibiting discrimination in employment.

Recommendation No. 1: Virginia should adopt an antidiscrimination statute equivalent to Title VII and establish a State human rights agency to enforce it. The State agency should maintain offices at appropriate locations throughout the State, such that all Virginians may easily travel to a nearby State office to file a complaint. The State agency should seek 706 deferral status from EEOC.

Finding No. 2: Only three local jurisdictions have local laws prohibiting discrimination and local agencies to enforce them. Without a specific grant of power from the State legislature, none of these agencies may issue a subpoena or subpoena duces tecum (the Alexandria Human Rights Commission's subpoena power has yet to be challenged in a legal proceeding), or award monetary damages in cases of proven sex discrimination without obtaining the permission and/or assistance of appropriate local authorities. The efficient operation of these agencies is reduced because of these cumbersome enforcement regulations.

Recommendation No. 2: Virginia should pass a State law that would enable local jurisdictions to establish local agencies with the power to issue a subpoena or subpoena duces tecum and award monetary damages in cases of proven discrimination. The power to award monetary damages, as opposed to obtaining court injunctions, would provide a formidable deterent effect and be more effective than injunctions in securing compliance with local antidiscrimination laws.

Finding No. 3: The Virginia EEO Committee, authorized by law to monitor the State EEO program, has no budget or staff authorized by law to carry out its responsibilities that is separate from the State EEO program.

Recommendation No. 3: Virginia should amend its Equal Employment Opportunity Committee law to provide staff and funds such that the committee may fulfill its responsibilities.

Finding No. 4: The Virginia Fair Employment in Contracting Act requires State contractors whose contracts are $10,000 or more to include an antidiscrimination clause in their contracts. The law does not contain affirmative action requirements or debarment sanctions.

Recommendation No. 4: Virginia should amend its Fair Employment in Contracting Act to require State contractors to adopt affirmative actions plans. The law should also provide that a State human rights agency should monitor compliance with the

law and be empowered to bar contractors who fail to follow the law's provisions. The law should parallel Executive Order 11246, as amended.

Finding No. 5: Uniform data regarding issues raised and outcome of discrimination complaints is unavailable from the Richmond, Alexandria, and Fairfax agencies, the State internal EEO program, and EEOC. EEOC data is not available by State.

Recommendation No. 5: EEOC should promptly establish a format for reporting complaint data that includes the issues involved and the outcome of complaints. Local and State agencies should adopt the EEOC format. EEOC should release data by State.

* U. S. GOVERNMENT PRINTING OFFICE : 1981 726-073/1267

U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

BULK RATE
POSTAGE AND FEES PAID
U.S. COMMISSION ON CIVIL RIGHTS
PERMIT NO. G73