

Workplace Conditions In Wyoming:

Women and Minorities
in the Mineral Extraction Industries

March 1982



A report of the Wyoming 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 findings and recommendations of this report should not be attributed to the Commission, but only to the Wyoming Advisory Committee.

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ATTRIBUTION:

The information and recommendations contained in this report are those of the Wyoming Advisory Committee to the U.S. 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.

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LETTER OF TRANSMITTAL

Wyoming Advisory Committee to the
U.S. Commission on Civil Rights
March 1982

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Dear Commissioners:

The most rapidly expanding industry in Wyoming and throughout the Rocky Mountain West is mineral extraction. Many new jobs are being created in extraction industries. Increased numbers of women and minorities have been hired into such jobs because of affirmative action efforts and labor shortages in some of the drilling and mining areas. Rising demands for miners, drillers, refiners, and other extraction-related jobs are projected for the 1980s. Opportunities for more women and minorities to enter these fields ought to occur.

Little attention has been paid to workplace conditions encountered by women and minorities when hired by the mineral extraction industry. In some instances, when women and minorities have entered the so-called "non-traditional" occupations dominated by white males, they have been harassed and have faced barriers to their integration into the work force. Because of this harassment and these barriers, the Wyoming Advisory Committee to the U.S. Commission on Civil Rights determined to examine employment conditions for women and minorities in mineral extraction fields and sought to discover if mineral extraction industries maintained a discrimination-free atmosphere.

As a result of its study the Wyoming Advisory Committee found women employed in Wyoming's mineral extraction fields have experienced various types of job harassment such as verbal abuse, undesirable work, sexual advances, and physical violence. Verbal harassment in the workplace is illegal race and sex discrimination and can lead to emotional debilitation and hostility. Equal Employment Opportunity guidelines make employers legally liable for sexual harassment even when they are unaware of it. Additionally, the Committee found that women and minority workers in Wyoming's mineral extraction industry are not aware of their State and Federal rights regarding sex and race discrimination. Neither do these persons know where to file a formal complaint. The Wyoming Fair Employment Practices Commission, already challenged to keep pace with the workload it encounters in Wyoming's expanding economy, can expect a substantially greater workload.

The Wyoming Advisory Committee has asked managers of the State's extraction operations to provide strong and effective enforcement against sexual harassment and to take immediate steps to investigate and remedy harassment complaints.

We urge you to consider this report and make public your reaction to it.

Sincerely,

JAMIE C. RING, *CHAIR*
Wyoming Advisory Committee

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The project was the principal staff assignment of Dr. Roger C. Wade with assistance provided by Joanne Birge, Esq. and Cal E. Rollins and support by Phyllis Santangelo and Karen E. Dyson. The project was undertaken under the overall supervision of Dr. Shirley Hill Witt, director, and William F. Muldrow, deputy director, Rocky Mountain Regional Office.

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Introduction

The most rapidly expanding industry in Wyoming and throughout the Rocky Mountain West is mineral extraction.¹ Many new jobs are being created in extraction industries. Increased numbers of women and minorities have been hired into such jobs because of affirmative action efforts and labor shortages in some of the drilling and mining areas.² Rising demands of miners, drillers, refiners, and other extraction-related jobs are projected for the 1980s. Opportunities for more women and minorities to enter these fields ought to occur.³

While considerable attention has been focused upon insuring equality of opportunity in hiring practices, less attention has been paid to workplace conditions encountered by women and minorities when hired. Traditionally, mineral extraction fields have been white-male-dominated. In some instances when women and minorities have entered the so-called "non-traditional" occupations they have been harassed and have faced barriers to integration into the work force. Because of this harassment and these barriers, the Wyoming Advisory Committee to the U.S. Commission on Civil Rights, aware of job opportunities in mineral extraction and of the Nation's need for minerals from Wyoming, determined to examine employment conditions for women and minorities in mineral extraction fields. The Commit-

tee sought to discover if mineral extraction industries maintained a discrimination-free atmosphere.

Avoidance of and remedying discriminatory job practices is in the best interests of women and minorities and of mineral extraction corporations. Equal employment disputes, high employee turnover, and decreased productivity due to low morale are costly in terms of both time and money. Many minority leaders believe that the Nation could maximize solving the problems of the poor through economic opportunity. Mr. Lawrence Chickering, Executive Director of the Institute for Contemporary Studies, has said:

...many costly government programs have only perpetuated the dependence of blacks and other minorities rather than encouraging their participation in the economic mainstream.⁴

In this report, the Wyoming Advisory Committee assesses workplace conditions and provides constructive suggestions for overcoming inequities when and where they are found. The report outlines difficulties women and minority workers have met in mineral extraction employment and seeks the amelioration of conditions conducive to full and productive cooperation on the part of the mineral extraction industry.

¹ Alvin Wiederspahn, "Wyoming, the Changing of Restless Land," *Rocky Mountain Magazine*, March/April 1981, p. 42 (hereafter cited as *Rocky Mountain Magazine*).

² Interview with Mary Ann Wanush, Researcher for Quality Development Associates, Denver, Colorado, June 25, 1980.

³ U.S., Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 1980-81* (Washington, D.C.: U.S. Government Printing Office, March 1980), p. 493. (hereafter cited as *Occupational Outlook*).

⁴ "How Supply-Siders Would Help Minorities," *Business Week*, December 22, 1980, p. 78.

Demographics

Preliminary reports for the 1980 census show an increase in Wyoming's total population from 332,416 in 1970 to 470,816 in 1980, growth of 41.1 percent in ten years.⁵ Approximately 10 percent of the State's population are minority persons, 24,499 in number. Of that total, five percent are Hispanic, 1.5 percent are Native American, 0.7 percent are black, 0.4 percent are Asian American, and "other" is two percent.⁶

Much of Wyoming's increase in population can be attributed to the growth in the State's mineral extraction industry.⁷ Wyoming has large deposits of coal, oil, gas, uranium, trona, and other valuable minerals. During the last decade these resources were developed at an ever-increasing rate. Indications are that accelerated exploration and exploitation should continue.

Speaking of employment on the national level, the U.S. Department of Labor stated:

Employment in the mining and petroleum industry is expected to increase faster than the average for all industries through the 1980s, but different growth patterns are likely within the industry. Employment in coal mining and in petroleum and natural gas extraction should increase rapidly as the Nation strives to become self-sufficient in energy sources.⁸

⁵ U.S. Department of Commerce, Bureau of the Census, *1980 Census of Population and Housing*, Table 1, Advance Counts, "Persons by Race and Spanish Origin and Housing Unit Counts: 1980," p. 4.

⁶ Ibid.

⁷ *Rocky Mountain Magazine*, p. 42.

⁸ *Occupational Outlook*, p. 493.

⁹ Ibid.

¹⁰ Wyoming Employment Security Commission, *Wyoming Occupational Outlook*, n.d., p. 5.

As of 1978, 837,000 workers were employed in mineral extraction.⁹

The pace of resource development in Wyoming is exceeding expectations. A 1975 report, *Wyoming Occupational Outlook*, produced by the Employment Security Commission of Wyoming, projected a 129.9 percent increase in mining jobs in the State between 1974 and 1985. In 1974 there were 16,090 such jobs and in 1985 the number was projected to 36,980.¹⁰ Data for 1980 show 36,000 mining jobs were available as of November 1980.¹¹ Over 3,000 mining jobs were created in the State between November of 1979 and November 1980. Construction jobs in Wyoming also increased during that period by some 13 percent. Almost all new jobs in Wyoming are in mineral extraction or in related fields.¹²

The total workforce for Wyoming in 1978 was 208,000.¹³ Women constitute 35 percent of the State's total workforce.¹⁴ No data are available on the total number of women working in mineral extraction occupations. Information provided by the Wyoming Department of Labor Statistics gives numbers of women employed in the coal strip mining, petroleum, natural gas, and uranium indus-

¹¹ Ibid.

¹² Telephone interview with Lewis E. Wessel, Statistician, Wyoming Department of Labor and Statistics, Jan. 12, 1981.

¹³ Ibid.

¹⁴ Wyoming Employment Security Commission, Research and Analysis Section, "Wyoming Annual Average Labor Force By Sex and Race," p. 7.

CHART I

1978 Wyoming Annual Average Labor Force by Sex & Race

COUNTY	Total	Sex		Male							Female						
		Male	Female	White	Negro	Indian	Orien- tal	Other	Spanish	Minority Group	White	Negro	Indian	Orien- tal	Other	Spanish	Minority Group
Statewide	208,000	135,157	72,843	133,098	582	1,059	232	186	5,954	8,013	71,611	432	590	130	80	2,998	4,230
Albany	14,252	8,816	5,436	8,682	44	19	43	28	554	688	5,368	30	12	19	7	283	351
Big Horn	5,401	3,648	1,753	3,639	1	4	2	2	108	117	1,750	0	1	2	0	52	55
Campbell	12,136	9,062	3,074	9,007	2	41	0	12	173	228	3,054	0	17	1	2	72	92
Carbon	9,240	6,236	3,004	6,190	22	7	9	8	704	750	2,977	17	15	2	3	328	355
Converse	6,175	4,310	1,865	4,295	0	9	2	4	51	66	1,857	0	4	2	2	17	25
Crook	2,504	1,891	613	1,887	0	2	2	0	0	4	611	0	2	0	0	0	2
Fremont	15,961	10,337	5,624	9,505	4	806	7	15	365	1,197	5,151	3	451	7	12	168	641
Goshen	5,852	3,982	1,870	3,969	3	5	3	2	235	248	1,859	1	5	3	2	112	123
Hot Springs	2,158	1,319	839	1,291	3	21	3	1	0	28	826	2	11	0	0	0	13
Johnson	2,892	1,969	923	1,960	1	4	1	3	28	37	920	0	2	1	0	16	19
Laramie	27,416	16,377	11,039	15,957	303	25	68	24	1,652	2,072	10,751	225	17	38	8	833	1,121
Lincoln	5,199	3,589	1,610	3,577	2	3	5	2	52	64	1,604	1	2	2	1	26	32
Natrona	33,765	21,363	12,402	21,168	104	45	13	33	613	808	12,255	82	33	11	21	306	453
Niobrara	1,480	968	512	966	0	2	0	0	0	2	511	0	0	1	0	0	1
Park	11,635	7,661	3,974	7,623	8	15	13	2	166	204	3,955	4	6	9	0	121	140
Platte	4,104	2,721	1,383	2,704	1	1	2	13	89	106	1,378	0	1	0	4	20	25
Sheridan	10,183	6,306	3,877	6,262	9	19	3	13	103	147	3,860	3	7	2	5	41	58
Sublette	2,319	1,673	646	1,672	0	1	0	0	5	6	645	0	1	0	0	11	12
Sweetwater	17,165	11,431	5,734	11,316	60	13	32	10	756	871	5,643	55	8	20	6	417	506
Teton	6,010	3,661	2,349	3,651	0	7	1	2	35	45	2,348	0	1	0	0	12	13
Uinta	4,552	2,861	1,691	2,835	3	3	12	8	69	95	1,682	2	2	2	3	37	46
Washakie	4,520	3,042	1,478	3,017	3	9	8	5	148	173	1,464	2	5	5	2	96	110
Weston	3,081	2,058	1,023	2,050	1	6	0	1	24	32	1,020	0	2	1	0	11	14

Prepared by: Wyoming Employment Security Commission Research and Analysis Section
 Labor Force distributed by sex and race on basis of 1970 Census data.
 Detail may not equal totals due to sampling and rounding.

CHART II

1978 Wyoming Annual Average Unemployment by Sex and Race

COUNTY	Total	Male	Female	Male							Female						
				White	Negro	Indian	Oriental	Other	Spanish	Minority Group	White	Negro	Indian	Oriental	Other	Spanish	Minority Group
Statewide	7,000	4,048	2,952	3,792	39	150	39	28	338	591	2,833	58	42	13	6	252	371
Albany	448	239	209	220	2	2	11	4	30	49	201	3	2	2	1	23	31
Big Horn	198	94	104	94	0	0	0	0	4	4	104	0	0	0	0	4	4
Campbell	380	226	154	220	0	5	0	1	12	18	153	0	1	0	0	6	7
Carbon	224	105	119	102	1	0	1	1	39	42	117	2	0	0	0	23	25
Converse	165	111	54	111	0	0	0	0	1	1	54	0	0	0	0	1	1
Crook	68	46	22	46	0	0	0	0	0	0	22	0	0	0	0	0	0
Fremont	710	480	230	340	0	135	2	3	14	154	191	1	36	1	1	14	53
Goshen	214	122	92	122	0	0	0	0	9	9	92	0	0	0	0	9	9
Hot Springs	54	31	23	27	9	3	1	0	0	4	22	0	1	0	0	0	1
Johnson	98	63	35	62	0	1	0	0	1	2	35	0	0	0	0	1	1
Laramie	956	497	459	452	22	5	13	5	96	141	418	34	1	5	1	81	122
Lincoln	96	188	108	188	0	0	0	0	2	2	108	0	0	0	0	2	2
Natrona	820	462	358	443	6	6	2	5	23	42	346	7	2	1	2	18	30
Niobrara	61	26	35	26	0	0	0	0	0	0	35	0	0	0	0	0	0
Park	376	174	202	172	0	1	1	0	10	12	200	0	1	1	0	8	10
Platte	133	86	47	83	0	0	0	3	6	9	47	0	0	0	0	1	1
Sheridan	369	238	131	232	0	3	0	3	3	9	128	1	1	0	1	3	6
Sublette	60	37	23	37	0	0	0	0	1	1	23	0	0	0	0	0	0
Sweetwater	620	363	257	347	6	1	6	3	60	76	246	8	0	3	0	41	52
Teton	353	221	132	221	0	0	0	0	5	5	132	0	0	0	0	0	0
Uinta	152	106	46	106	0	0	0	0	4	4	46	0	0	0	0	4	4
Washakie	150	99	51	94	0	3	1	1	7	12	50	0	1	0	0	7	8
Weston	95	49	46	48	0	1	0	0	1	2	46	0	0	0	0	0	0

Prepared by: Wyoming Employment Security Commission Research and Analysis Section
 Labor Force and Unemployment distributed by race on basis of 1970 Census data.
 Detail may not equal totals due to sampling and rounding.

tries as of 1979. Of the 3,675 employees in the strip coal industry, 284 were women.¹⁵ These women were concentrated in 14 of the 33 occupations identified in that industry.¹⁶ Haul truck driver and laborer tied for the largest number of women employees (32 women each); warehouse worker ranked second with nine women; driller and utility oiler each had eight women. These five categories accounted for 85.6 percent of all female coal strip miners.¹⁷ Women totaled 7.7 percent of all strip miners.¹⁸ They were over-represented in the lower paying jobs in the industry. For example, 18.5 percent of the janitors, warehouse workers, safety inspectors, and watchmen were women.¹⁹ These jobs pay less than production worker and maintenance positions in which women were under-represented with 3.7 percent and 2.5 percent of the positions respectively.²⁰

Women totaled 899 out of the 14,835 employees in the petroleum and gas extraction fields and 6.1 percent of all workers.²¹ None of these women held a foreman's position in 1979.²² According to the 1979 report on the uranium industry,

. . . 90.4 percent of the males and 45.5 percent of the females had wages within the \$9.01 to \$11.50 interval. . . due to the preponderance of women in the lower paid occupations of janitor and watchman.²³

There were 186 female workers in surface mining operations, only four women in underground mines, and 230 women employed in uranium milling.

¹⁵ Ibid.

¹⁶ Wyoming Department of Labor and Statistics, *Wyoming Coal Strip Mining: A Wage and Employment Survey*, 1979, p. 3.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid., p. 23.

²⁰ Ibid., pp. 8-18.

²¹ Wyoming Department of Labor and Statistics, *Wyoming Crude Petroleum and Natural Gas Extraction: A Wage and Employment Survey*, 1979, p. 25.

²² Ibid.

²³ Wyoming Department of Labor and Statistics, *Wyoming*

Women totaled 9.7 percent of the 4,431 uranium industry employees. There were no women foremen in this industry, either.²⁴

As of 1979, the total number of women workers in the coal strip mining, oil, gas, and uranium industries stood at 1,603.²⁵ While the above data do not include workers in trona, iron, and other mineral fields, it does provide an indication of the numbers, percentages, and distribution of female workers in such occupations.

No statistics are available for the number of minority workers employed in Wyoming's mineral fields. Nationally, according to the Equal Employment Opportunity Commission, minorities hold 10 percent of the jobs in the oil and gas extraction industry, five percent in the coal fields, and 12 percent in petroleum refining.²⁶ The breakdown of the 1980 census data by race and occupation is not yet available.

Minority workers in all fields in Wyoming totaled 12,243 in 1978.²⁷ Hispanics, by far the largest minority group in the workforce, account for 8,952 of the minority workers. There were 1,649 workers of American Indian descent, and 1,014 black workers.²⁸ Minority female workers included 2,998 Hispanic women, 590 Native American females, and 432 black women. The total number of minority female workers in Wyoming was 4,020.²⁹ (See chart I.)

Uranium Mining and Milling: A Wage and Employment Survey, 1979, p. 15.

²⁴ Ibid., p. 29.

²⁵ See footnotes 16, 21, and 23.

²⁶ Melvin Humphery, "Minorities in the Energy Industries," in *Energy and Equity: Some Social Concerns*, ed. Ellis Cose (Washington, D.C.: Joint Center for Political Studies, 1979), pp. 69-70.

²⁷ Wyoming Employment Commission, Research and Analysis Section, "Wyoming Annual Average Labor Force by Sex and Race," p. 7.

²⁸ Ibid.

²⁹ Ibid.

Methodology

Previous studies of workplace conditions, relevant demographic data, legal materials, and—most centrally—interviews, form the basis of this report. Initially, it was hoped that two separate samples of workers in mineral extraction fields could be obtained; one consisting of those women and minorities who voluntarily came forward to be interviewed regarding workplace conditions; and the other sample would attempt to draw a scientific cross section of workers from selected mineral companies to be interviewed. The scientific sample was seen as a way of eliminating biases inherent in a volunteer sample. It was anticipated that workers who came forward on their own would likely be motivated by difficulties they had experienced, and that conclusions based upon their accounts would be suspect. To offset this bias, a sample of corporations was selected from a list of Wyoming companies in the mineral extraction fields. Three criteria guided the selection of these companies: a geographic distribution of the State of Wyoming was sought in order to overcome local circumstances which would limit ability to generalize from the sample; companies in a variety of mineral fields were chosen as a further effort to increase comprehensiveness; and corporations with relatively large numbers of women and minorities in their workforce were selected to accomplish the study most efficiently.

Each of the companies chosen for the sample was sent a letter (see appendix) asking for their cooperation in the study. A total of 20 workers from each site, including foremen, supervisors, white male, female, and minority workers was to be interviewed.

Interviews would be conducted by staff of the Rocky Mountain Regional Office of the U.S. Commission on Civil Rights. Had all companies participated the sample of workers obtained in this manner would have totaled 120, with equal numbers of white males, women, and minorities. Initial letters were followed up by phone conversations with officers of the corporations. It was made clear to the companies that the interviews could be done at whatever time and place was most convenient to them, including off-the-job site, during non-work hours. If companies could not cooperate in any other fashion they were asked to supply a list of their employees so that researchers could contact them directly and ask if they would be willing to be interviewed. Only two of the six companies selected agreed to participate. These corporations were extremely helpful, and allowed interviews to be conducted at the job site.

Due to the limited corporate participation, it has not been possible to obtain a representative sample of mineral workers. Instead of reporting on two separate samples, all workers interviewed have been treated as part of one sample. While this could be viewed as a sample biased toward the negative aspects of conditions in the mineral extraction industry, some factors may have tilted the bias in the opposite direction. It seems reasonable to assume that the two corporations which agreed to take part in the research might well have better workplace conditions than those that refused to be examined. Also, by selecting companies with large numbers of women and minorities in their workforces, the

sample was likely to contain the companies with formal and active affirmative action efforts.

The sample of workers has been reduced from the planned 120 to 67. They represent eight different mineral extraction companies, in oil, coal, trona, and uranium fields. Interviews were conducted in Gillette, Green River, Rawlins, Sheridan, and Shirley Basin, Wyoming. In addition to interviews with workers, several persons knowledgeable in employ-

ment discrimination and the mineral fields were interviewed.

Though it is not possible to determine with precision how extensive or how typical are the conditions described by those interviewed, reports from other parts of the Nation indicate similar situations to those found in Wyoming. That is to say, no evidence from other sources contradicts the findings of this study.

Barriers to Women in Mining

Historically, women have not played an important role in mineral extraction industries. Women working for mining and drilling companies were generally limited to secretarial and custodial positions. Recently this has begun to change with more women entering labor and professional positions. In the coal industry, for example, there were no women known to be employed among the 190,000 coal miners in 1973.³⁰ Today, women hold approximately 1,000 mining jobs.³¹ Many more women indicate they would like to enter such positions. In the areas of the country in which mineral development is taking place, the positions offered by extraction companies pay far more than other local jobs available to women. Though many of these towns are conservative in their attitudes towards women working in non-traditional jobs, women nonetheless do have interest in obtaining these positions.³² A recent study of 209 women in the boomtown areas of Colorado found that women saw employment in the oil shale industry as an opportunity to make more money and to have a steady job. Better than half of the people interviewed for this study indicated a desire to work in the oil shale industry.³³

Research conducted in Wyoming in 1978 by the Wyoming Commission for Women stated:

³⁰ Kentucky Commission on Human Rights, "Coal Mining Women," taken from *Kentucky Business Ledger*, August 1978.

³¹ Ibid.

³² Mary Ann Wanush, data supplied to Rocky Mountain Regional Office of the U.S. Commission on Civil Rights staff (hereafter cited as Wanush data).

³³ Ibid.

A community's attitude can be a powerful influence on behavior, but 53 percent of all respondents indicated that it would not prevent them from working in a non-traditional occupation if it were available to them. Given the opportunity to learn a "traditional male" job such as plumber or cabinet maker, 20 percent of all respondents would choose to work at that occupation, 51 percent would not and 26 percent are not sure if they would make such a choice.³⁴

Reports from other parts of the Nation indicate that women have met with difficulties when entering non-traditional jobs. A Labor Department survey, *Women in Traditionally Male Jobs: The Experience of Ten Public Utility Companies*, found that women encountered resistance from some of the men with whom they worked. The report states:

The most frequently-mentioned problem encountered by women in the blue-collar jobs was the harassment they took from male peers. A few women maintained that some men were so resentful about their moving into traditionally-male jobs that they went so far as to sabotage some of their work. . . . A number of women in blue-collar jobs maintained that the men frequently helped each other with difficult assignments, but would rarely help a woman in similar circumstances.³⁵

While women indicate they would enter jobs in mineral extraction industries, the perception exists that there are barriers to female employment in these

³⁴ Wyoming Commission for Women, *A Study of Barriers to Employment for Women in Wyoming*, December 1978, p. 43 (hereafter cited as *Barriers*).

³⁵ U.S. Department of Labor, Employment and Training Administration, *Women in Traditionally Male Jobs: The Experiences of Ten Public Utility Companies*, R&D Mongraph 65, n.d., p. 40.

fields. The Colorado study aforementioned found that, of those women interested in oil shale jobs, a sizable number felt that being a woman would be a barrier to their employment.³⁶ Another study by Dr. Jane Lillydahl and Dr. Elizabeth Moen, conducted in Colorado, found that women miners there do encounter difficulties on the job. They maintain that such women

are not only constantly having to prove themselves on the job, but severe harassment has also caused some women to quit their mine jobs; and other women, having heard of such situations, have decided not to apply for mining jobs. Male hostility causes women more than personal discomfort. We found. . . that male miners do not always share the information women need to do the work.³⁷

Women coal miners in Kentucky have faced a variety of problems. Two women were stripped and greased and sent out of a mine as part of an initiation ceremony that died long ago.³⁸ One woman miner stated:

They're just going to sexually abuse us until we drop out of the competition. I've been told I can make more money lying on my back at the pit mouth than working back in the mine. You can be called obscene names just in the general run of conversation. How you initially react can often set the tone of how you will be accepted. They're always testing you. You let them get away with some things, but not everything.³⁹

Ms. Betty Jean Hall of the Coal Employment Project in Oak Ridge, Tennessee contends that verbal abuse and subtle pressures from foremen to extend sexual favors in exchange for keeping their jobs is widespread in the coal mining industry.⁴⁰

In hearings before the Kentucky Human Rights Commission in August 1980 women told of sexual harassment in the mining industry. One said, "It [harassment] can range from staring and leering to rape. The bottom line is that it affects women's ability to do their jobs and affects their feelings about themselves."⁴¹ A West Virginia conference of women miners from ten States identified harassment as the biggest problem in mining.⁴²

³⁶ Wanush data.

³⁷ U.S. Commission on Civil Rights, "Economic Position of Women and Their Employment Opportunities in Energy Boomtowns," Jane Lillydahl and Elizabeth Moen in *Energy Resource Development* (Washington, D.C.: U.S. Government Printing Office, n.d.), p. 70 (hereafter cited as Economic Position).

³⁸ *New York Times*, October 7, 1979, n.p. (hereafter cited as *Times*).

³⁹ Allanna M. Sullivan, "Women Say No to Sexual Harassment," *Coal Age*, August 1979, p. 75.

The study, *Barriers to Employment of Women in Wyoming*, by the Wyoming Commission for Women asked a sample of 1,242 women from around Wyoming questions regarding their experiences and perceptions of women's access to employment in the State. In total, 55 percent of all respondents completed the statement, "Women who attempt to enter all male occupations. . ." with the response ". . . need better enforcement of current laws enabling them to compete on their own merit in a work atmosphere free from harassment."⁴³ Based upon the questionnaire responses, the study found that 70 percent of the women had been asked questions they considered discriminatory when they applied for work. The study stated:

Almost one-fifth of all respondents have been asked or expected to produce more work than a man in the same job for the same or lower wages. Eight percent of all respondents have been interviewed for a job that is regarded as a "man's job" and had the interviewer offer them a "woman's job" for less pay.⁴⁴

The report concluded that sex discrimination is a common practice in Wyoming.⁴⁵

According to the 1978 annual report of the Wyoming Department of Labor and Statistics, the Wyoming Fair Employment Commission reached final actions on 139 complaints of employment discrimination. Of these, 55 percent of the Commission's 1978 complaints were filed by women alleging sex discrimination. The majority of gender based complaints dealt with women seeking non-traditional employment (truck driver, laborer, miner, etc.) in Wyoming's energy industry.⁴⁶ Ms. Sue Dowler, Director of Wyoming's Fair Employment Commission, stated that, in 1979, 75 percent of the Commission's cases were sex discrimination complaints. She cited instances of unequal pay and the segregation of women on the job site into certain job categories as common problems. According to Dowler, an increasing number of complaints are against mineral

⁴⁰ *Times*, n.d.

⁴¹ *The Progress*, August 14, 1980, n.p.

⁴² Betty Jean Hall, Director of the Coal Employment Project, Oak Ridge, Tennessee, interview in Denver, Feb. 17, 1981.

⁴³ *Barriers*, p. 45.

⁴⁴ *Ibid.*, p. 17.

⁴⁵ *Ibid.*, p. 19.

⁴⁶ Wyoming Department of Labor and Statistics, *1978 Annual Report*, p. 47 (hereafter cited as 1978 Annual Report).

extraction companies and, in particular, the larger corporations.⁴⁷ The Wyoming Fair Employment Commission handles nearly all cases of employment discrimination filed in the State. Dowler stated that it is difficult to know what percentage of the harassment instances are reported. She believes that less than half are.⁴⁸ At a recent meeting of women miners held in Gillette, Wyoming, women told of efforts to force women miners off the roads when they were driving trucks, about women being spit and urinated upon, and about a woman being held over the edge of a coal silo by fellow workers.⁴⁹

Sexual harassment, as one form of sex discrimination, has recently received prominent attention. According to the guidelines set down by the Equal Employment Opportunity Commission sexual harassment is:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. . . 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 unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.⁵⁰

The extent of sexual harassment in the workplace is a matter of some conjecture, but two recent surveys indicate it is extensive. A 1976 survey by *Redbook* magazine found that of the 9,000 respondents to the poll, 88 percent reported that they had been sexually harassed at least once.⁵¹ The Working Women's Institute, in another study, found that 70 percent of women had encountered sexual harassment on the job.⁵² While it may be assumed that women who had a negative experience would be more likely to respond to these surveys than those who had never been harassed, there are factors which might lead to an undercount, as well. The Alliance Against Sexual Coercion states:

⁴⁷ Interview in Cheyenne, Wyoming, May 5, 1980.

⁴⁸ *Ibid.*

⁴⁹ *Billings Gazette*, March 2, 1980, p. 8a.

⁵⁰ 45 *Federal Register* 74677 (Nov. 10, 1980.)

⁵¹ Ken Freed, "Sexual Harassment," *Colorado Woman*, July 1980, p. 17.

⁵² A. Nancy Josephson, "Sexual Harassment on the Job: Why More and More Women are Fighting Back," *Glamour*, March 1980, p. 291 (hereafter cited as *Glamour*).

It has been our experience that most women find it very difficult to talk about sexual harassment. Part of this is probably due to a certain reserve we all have about discussing anything of a sexual nature with strangers. However, there are other factors operating. Unlike rape, sexual attention is not always unwanted. Clients therefore often find it impossible to make clear to a third party the violation and the anger they feel.⁵³

Still other reasons why women may not come forward with harassment charges are found in a recent *Glamour* magazine article on the subject. Dr. Lucille E. Wright, a Cleveland State University education professor who recently completed a study on sexual harassment on the job, said, "Women quit to get away from sexual harassment."⁵⁴ She further observed, "Women believe if they do report sexual harassment, little can be done because it's so hard to prove."⁵⁵

The Committee on the Status of Women of the Atlanta Community Relations Commission and the Women's Bureau of the U.S. Department of Labor stated recently that the sexual harassment of women on the job:

has been hidden, treated as a dirty joke, or even attributed to the imagination or poor moral character of the victim. It has been going on for many years, but only recently have women begun to speak up against it. It often escalates from verbal harassment or abuse (lewd comments, propositions) to physical (touching and grabbing) and subtle pressure for sexual activity as well as rape and attempted rape.⁵⁶

According to the former Colorado Commission on Women sexual harassment can be present in all workplace situations.⁵⁷ The Commission commented on various forms of sexual harassment:

They are particularly prevalent, however, in situations where women are working in non-traditional jobs. Men who feel threatened by the presence of women in a formerly all male worksite, or in supervisory positions, frequently resort to this kind of sexual harassment to force women to quit, or to undermine their accomplishments

⁵³ Alliance Against Sexual Coercion, Wendy Sanford, ed. *Fighting Sexual Harassment*, 1979, p. 31 (hereafter cited as *Fighting*).

⁵⁴ *Glamour*, p. 291.

⁵⁵ *Ibid.*

⁵⁶ Committee on the Status of Women, "Sexual Harassment" (paper prepared for the Atlanta Community Relations Commission, Background Paper on Sexual Harassment, n.d.), p. 1.

⁵⁷ Colorado Commission on Women, *Colorado Women's Call*, vol. II, no. 5, Spring 1980, p. 1.

and effectiveness, by refusing to see such women as anything but sex objects.⁵⁸

The Alliance Against Sexual Coercion indicates that women who enter non-traditional jobs may in some instances

. . . confuse it (sexual harassment) with the overall general hostility which their presence at the worksite generates. Others might choose not to separate sexual harassment from the general process of initiation that all new workers in non-traditional fields have to deal with.⁵⁹

Wyoming Survey

The sample of women workers in mineral extraction industries developed by the Wyoming Advisory Committee to the U.S. Commission on Civil Rights was drawn from the coal, oil, iron and uranium industries. Interviews were conducted in Gillette, Sheridan, Rawlins, Shirley Basin, and Green River, Wyoming. Jobs held by female respondents were mostly blue collar occupations; however, some professional women were also interviewed. Interviews were also conducted with white male co-workers in the extraction industry. They were asked to comment upon their feelings and experiences as co-workers with women and minorities. Additionally, some foremen and supervisors were interviewed. Several women interviewed had no complaints about work conditions or the companies they worked for. The majority, however, made one or more allegations of discrimination. Because of the nature of the sample, these may not be representative responses, and generalizations concerning Wyoming's mineral extraction industry as a whole are not warranted. Yet, the results of this survey indicate that many women are experiencing difficulties in non-traditional extraction jobs. These claims of discrimination fall under several headings.

Steering

Some of the women interviewed stated that they had been "steered" by personnel offices into certain kinds of jobs. One woman commented, "I was told I would not be considered for a laborer job because I was too small. A friend of mine was told the same

thing."⁶⁰ Other respondents maintained that they were directed toward lower paying jobs and away from higher paying positions. One comment was, "Women are kept in the same kind of jobs which are lower paying, though they are technical, as opposed to labor, jobs."⁶¹ A woman at another company stated, "No women work out in the yard. They all work in the lab, or offices. There aren't any women in the men's jobs."⁶²

Ms. Patricia Petty, the President of Colorado Women in Mining, believes that steering is not as common a problem as it once was. But the practice is particularly widespread in non-union jobs.⁶³ Women have a difficult time getting into miner jobs, according to Petty, and often get directed to other positions.⁶⁴ Some women complained that even though they were given laboring jobs they were not allowed to do the same sorts of work as men. One interviewee found that the man with whom she was working was assigned all of the mechanical work while she did all of the labor.⁶⁵ When she complained to her supervisor about this, she alleges he told her, "Women are only good for the labor work, not the mechanical." He added that he didn't feel women should work outside of the home. Their job was to have babies.⁶⁶ The woman miner commented, "The men on my crew got their choice of what kinds of work they wanted to do each day. The women got what was left over."⁶⁷

Dirty Work

Women at several different job sites complained that they had to do more of the "dirty work" than the men they worked with. This included both clean up work and distasteful work, as quotes from interviews will show. Lillydahl and Moen found this to be true in the construction industry. In many instances, women were actually segregated into cleaning jobs.⁶⁸ In mining there are no jobs which are strictly labeled "clean up." However, a number of women interviewed claimed they did an unequal share of this type of work.⁶⁹

⁵⁸ Ibid.

⁵⁹ *Fighting*, p. 36.

⁶⁰ Ibid.

⁶¹ Interview No. 1, Green River, Wyoming, Sept. 19, 1980.

⁶² Interview No. 2, Rawlins, Wyoming, Oct. 1, 1980.

⁶³ Interview in Golden, Colorado, Oct. 10, 1980.

⁶⁴ Ibid.

⁶⁵ Interview No. 3, Sheridan, Wyoming, Oct. 22, 1980.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ "Economic Position," p. 70.

⁶⁹ Interview No. 3; interview No. 4, Sheridan, Wyoming, Oct. 22, 1980; interview No. 6, Shirley Basin, Wyoming, Feb. 18, 1980; interview No. 8, Sheridan, Wyoming, Oct. 22, 1980; interview No. 13, Sheridan, Wyoming, Oct. 22, 1980.

According to one female miner, "Dirty jobs that men refuse to do get done by the women."⁷⁰ Male workers will even say, "Get some of the women to do it."⁷¹ At another job site it was claimed that women had to clean the toilets, clean supervisors' trucks, and sweep the floors.⁷² The respondent commented that the men frequently tell the women, "Keep pushing the brooms, girls. The only things that don't work around here are the women."⁷³ At another mine, a female worker claimed that women on every work crew also did all of the cleaning, including the men's restroom.⁷⁴

Women claimed that they are being given dirty work out of hostility or in hopes of getting them to quit their jobs. For example, according to one female interviewee, "The driller we work for was told by our foreman to work our ass off so we would quit."⁷⁵ At another job site, a woman miner claimed she was being treated similarly.⁷⁶ One commented that she was placed on a crew with two men who objected to having to work with a woman. When, from time to time, one of these men would act as foreman, she would be assigned an excessive amount of dirty work.⁷⁷ Still another female told of being assigned to clean up a men's restroom while it was being used. She also complained that, in spite of assurances from the company personnel office that women should voice their problems, when women did complain they were given the worst jobs in retaliation.⁷⁸

Avoidance

Several women interviewed mentioned instances of male workers refusing to interact with them on the job. These incidents ranged from supervisors and foremen failing to give female workers any work assignments or direction to fellow workers refusing to work with female crew members.

One woman miner recalled how, after daily entering the mine and waiting to be assigned work, no direction was forthcoming. The supervisor refused to talk with her when she sought help. After several days she attached herself to a work crew and

began doing what they did. Even though she was, eventually assigned to a regular job, the emotional effects of the earlier treatment remained to plague her.⁷⁹

Another female miner told of being assigned to work with a man who informed company officials he could not work with a woman. He was removed from the job.⁸⁰ In another instance when a female miner was assigned to a work crew, the crew members signed a petition against having her on the crew. This woman withdrew her request to work on that crew and moved to another work group which accepted her.⁸¹

Lack of Assistance

A type of harassment many women encounter, related to avoidance tactics used by some male miners, is withholding from them the verbal and physical assistance they require. Lillydahl and Moen commented upon this in their study of Colorado miners. They pointed out that much of the job is learned on the job site and that, typically, men teach each other. Women are often excluded from this teaching. Consequently, they often do not learn their jobs as well as new male workers. This causes reinforced negative attitudes and stereotypes about women's ability to do traditionally male jobs.⁸²

Lack of information sharing has several consequences. One woman related having the initial probationary period extended to twice the normal time span because her inability to learn the job resulted in a poor evaluation.⁸³ She soon gained the reputation for not working.⁸⁴ Inadequate training often led to low work evaluations which, as Lillydahl and Moen point out, lead to negative images of women's ability to do traditionally male work.⁸⁵

In some instances, women complained that they were not given the same opportunities as men to learn how to use various types of machinery. One of these women commented:

Three or four guys who started about six months after I did are getting more money than me. They have gotten experience on different types of equipment and I haven't

⁷⁰ Interview No. 4.

⁷¹ Ibid.

⁷² Interview No. 5, Gillette, Wyoming, May 6, 1980.

⁷³ Ibid.

⁷⁴ Interview No. 6.

⁷⁵ Interview No. 7, Rawlins, Wyoming, Sept. 30, 1980.

⁷⁶ Interview No. 8.

⁷⁷ Interview No. 9, Sheridan, Wyoming, Oct. 22, 1980.

⁷⁸ Interview No. 4.

⁷⁹ Interview No. 10, Green River, Wyoming, Sept. 9, 1980.

⁸⁰ Interview No. 11, Sheridan, Wyoming, Oct. 22, 1980.

⁸¹ Interview No. 12, Green River, Wyoming, Dec. 2, 1980.

⁸² *Economic Position*, p. 68.

⁸³ Interview No. 10.

⁸⁴ Ibid.

⁸⁵ *Economic Position*, p. 68.

been allowed to get training on different things. A few women have gotten training on different equipment, but not most.⁸⁶

According to Hall, women miners in Kentucky have also been refused opportunities to train on machinery.⁸⁷ The lack of informal and formal training on the job was seen by many women interviewed as leading to either negative evaluations of their work, and/or preventing them from obtaining promotions. Women miners complained of accusations and assumptions that they were responsible for breakdowns in equipment, job-site accidents, and other mishaps. (This will be discussed in detail in a later section.)

Lack of assistance takes another form also. Male miners may refuse to give women assistance with heavy lifting. Most descriptions of mining work indicate it is less physically demanding than it once was; yet, some of the work requires lifting. A male union president in one mine described the situation when he stated:

The ill feelings we have now is about women not being able to do the work. The small women can't do some of the heavy work. Men have to help them with some of this, and resent it. Normally, guys would do this work by themselves. These guys might help a small man do these things, but resent helping a woman.⁸⁸

These resentments are strongly felt. A woman miner in another mine said, "A lot of men don't want us out there." They'll say, "If you can do the job, okay, but if not, go home and be a good wife."⁸⁹ Hall commented, "It has always been understood that the strongest men do some of the heavier types of work, or a bunch of men would work together."⁹⁰ Heavy lifting has been used, according to female respondents, as a way of teasing and harassing them. One woman told of being ordered to do heavy lifting that was normally done by machinery. Machinery was available but she was not allowed to use it.⁹¹ Another stated that crew members put heavy things in places that are difficult to lift in deliberate attempts to embarrass her.⁹²

⁸⁶ Interview No. 31, Rawlins, Wyoming, Sept. 30, 1980.

⁸⁷ Hall interview.

⁸⁸ Interview No. 31, Green River, Wyoming, Dec. 2, 1980.

⁸⁹ Interview No. 13.

⁹⁰ Hall interview.

⁹¹ Interview No. 14, Sheridan, Wyoming, Oct. 22, 1980.

⁹² Interview No. 18, Sheridan, Wyoming, Oct. 22, 1980.

⁹³ Interview No. 12.

⁹⁴ Interview No. 11.

Inappropriate Blame

One interviewee lamented, "The guys will blame me for anything that doesn't go right."⁹³ This complaint was echoed by other women. One said, "We were told that we couldn't handle the job. If accusations were made about misuse of equipment, we were assumed to be guilty without any investigation by the superintendents."⁹⁴ In one case, when a woman was involved in an accident in the mine, she was removed from the crew even though no investigation was made into the cause of the accident.⁹⁵

Many women miners believe that they are treated more sternly than men when they make mistakes on the job. One stated, "Every mistake you make you hear about for months. Men don't get the same treatment."⁹⁶ Another claimed, "Women get more days taken away from them when they are disciplined."⁹⁷ A woman who sustained an on-the-job injury from a bad fall believed the incident influenced her job performance evaluation. She claimed that after the fall she received poor evaluations, where prior to that she had received good ones.⁹⁸

Verbal Harassment

By far the most frequently mentioned complaint of women miners was what might be labeled "verbal harassment." Petty believes that verbal harassment is the most common form of harassment in the mining industry. She says, "There is a lot of sexual language, asking sexual questions of women. We all have to put up with this. Younger women have more trouble with this. Much of it is joking in form."⁹⁹ Verbal harassment includes more than sexually implicit or explicit remarks. According to one interviewee, "The good looking ones get harassed sexually, the not-so-good-looking ones just get harassed."¹⁰⁰

Women have reported these comments made by men:

"If they hire another 50 women I'll quit."¹⁰¹

"We have to hire so many women, but we sure don't have to keep them."¹⁰²

⁹⁵ Interview No. 15, Green River, Wyoming, Sept. 9, 1980.

⁹⁶ Interview No. 8.

⁹⁷ Interview No. 7.

⁹⁸ Interview No. 9.

⁹⁹ Petty interview.

¹⁰⁰ Interview No. 15.

¹⁰¹ Ibid.

¹⁰² Ibid.

(Allegedly said by a foreman) "I'd get more work done if I had men in here."¹⁰³

"Let me see how far the blouse goes down."¹⁰⁴
"I came over here to get a tool, but I'll take you."¹⁰⁵

"Put a woman on it and everything goes to hell."¹⁰⁶

As these remarks make clear, verbal abuse can be quite antagonistic. One female miner told of a fellow employee who kept breaking the light on her vehicle, stealing her tools, and yelling at her.¹⁰⁷ Another mentioned being yelled at by her foreman because of a mistake she had made. She contends that he would not have publicly shouted at a man.¹⁰⁸ A minority woman said she was subjected to many racial slurs, including being called the nickname, "Sapphire."¹⁰⁹ Others reported that comments were made about "having their menstrual period."¹¹⁰ Another woman said she continually heard remarks about how she was a slow worker. This made her even more insecure about her work.¹¹¹

As indicated earlier, a great deal of verbal harassment is sexual. One man commented, "The men have a little trouble changing their language. If they slip, most of the women let it slide by, they ignore it."¹¹² Some women maintain that sexual remarks are a daily occurrence. This might be partially written off as the normal language of male miners, one miner said, but in some cases it seems to be purposeful behavior. Women miners told of men talking to them about the sizes of their penises, passing around copies of *Playboy* magazine and other sexually oriented materials, men telling sexual jokes about a woman miner in her presence, and verbal sexual advances.¹¹³ Many of the women interviewed indicated that they try to shrug off these remarks and incidents. One said, "Most of the women ignore it; put up with it. It goes with the territory."¹¹⁴ Much of the verbal harassment is couched as joking and teasing. Another long-time female miner said, "The cussing and meanness I shove off, but some of these

women can't take it."¹¹⁵ One of those less able to accept sexual remarks said, "It's really gross, it's really is."¹¹⁶ Yet another commented, "It's really scary being down there when you are so outnumbered."¹¹⁷ She indicated that remarks may be taken more seriously than they otherwise might because of the fear of sexual assault.¹¹⁸

In addition to the more direct forms of verbal harassment, interviewees complained about rumors circulated regarding women miners. These usually have a sexual cast to them. A common rumor is that a certain woman is granting sexual favors to male supervisors and foremen so that she will have an easier time on the job. Even some women miners mentioned that they believed other women were, in fact, doing this.¹¹⁹ One said, "The women who hanky-panky with the foremen have it made."¹²⁰ Another woman was outraged by rumors that she was promiscuous.¹²¹

Visual Harassment

Still other forms of harassment complained of might be termed "visual harassment." The most prevalent form is graffiti. One female miner told of drawings of women's private parts next to a woman miner's name. She said, "It's all over the mine."¹²² Another comment, "There is all sorts of filthy junk on the walls about women."¹²³ In one of the mines, an effort was being made by the corporation to prevent graffiti, but to date it had not been very successful.¹²⁴

Visual harassments of other sorts were also mentioned by the women interviewed. One incident reported involved the placement of a black plastic phallus and several prophylactics in the locker of a black female worker.¹²⁵ In another mine, a minority female told of men removing their pants in her presence. They also made obscene drawings with her name beside them on a paper placemat she used

¹⁰³ Interview No. 1.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Interview No. 5.

¹⁰⁷ Interview No. 15.

¹⁰⁸ Interview No. 7.

¹⁰⁹ Interview No. 10.

¹¹⁰ Interview No. 11.

¹¹¹ Interview No. 16, Shirley Basin, Wyoming, Feb. 18, 1980.

¹¹² Interview No. 32, Wyoming, Dec. 3, 1980.

¹¹³ Interview Nos. 4, 8, 10, 11, and 14.

¹¹⁴ Interview No. 15.

¹¹⁵ Interview No. 12.

¹¹⁶ Interview No. 4.

¹¹⁷ Interview No. 1.

¹¹⁸ Ibid.

¹¹⁹ Interview Nos. 7 and 17.

¹²⁰ Interview No. 7.

¹²¹ Interview No. 10.

¹²² Interview No. 15.

¹²³ Interview No. 12.

¹²⁴ Interview No. 33.

¹²⁵ Interview No. 14.

in the lunch area. She was also subjected to obscene gestures by male workers.¹²⁶ A woman engineer said that many of the women she supervised were assaulted by the sight of men who exposed their genitalia. She stated that such activity was difficult to stop since it usually occurred when the man and woman were in a secluded part of the mine with no other witnesses.¹²⁷

Physical Harassment

There were two major types of physical harassment reported by the women interviewees. Many women complained of sexual touching by male miners. Others told of threats of violence. The sexual touching occurred in a number of ways. One respondent mentioned that men often bumped into her in ways that did not seem accidental.¹²⁸ Another stated that she and other women were touched when traveling up and down in the crowded lifts that transport the miners to the mine.¹²⁹ Pinching, patting, and attempts to grab and embrace women also occur.¹³⁰ Some women went to company officials about these acts but most seemed to take the view that they must cope with this themselves. As one woman put it, "I've had some men pat me on the behind and pinch me. I told them to keep their hands off me. But I didn't go to the company because I wanted to handle my own battles, take care of myself. This is part of working with men."¹³¹ One interviewee who supervised other women stated that several times women working for her were threatened physically.¹³²

Unequal Treatment

Allegations of several different types of unequal treatment by foremen and supervisors and also, in some cases, by union officials surfaced during the interviews. The most commonly lodged complaint was that women were not evaluated fairly. This was seen as affecting chances for promotion and, in some instances, causing difficulty on the job, or even causing layoffs. At a recent meeting of women miners in Gillette, Wyoming several women de-

scribed how they were demoted, passed over for promotion, and put through tests no man had to pass to receive promotions.¹³³ A woman professional stated, "Not getting promoted is very prevalent. Many women don't see this as a problem; they think they are doing something wrong."¹³⁴ Women sometimes find themselves in the position of being evaluated by a supervisor who has made sexual advances toward them. One respondent told of being rated by a foreman who had used obscene language around her, had pinched her, and tried to grab her. She claimed she received a low evaluation from him because of her resistance to these advances.¹³⁵ Another woman who worked at the same mine claimed she had had a similar experience.¹³⁶ Still another female miner claimed that she had received an evaluation which said she flirted too much.¹³⁷ She could not believe that this would be put into a man's evaluation, true or not.¹³⁸ Several women reported that foremen and supervisors on their job sites were involved in harassing activities and made comments that women should not be working in the mines since they quit as soon as they were trained.¹³⁹ One woman commented, "Our foreman believes that women should not be working in the mines, but should be home taking care of the kids."¹⁴⁰

Lack of Support

Instances of lack of support from foremen and supervisors were also recounted by women miners. Women who went to their supervisors to complain about problems were told "not to take things so seriously," that such behavior on the men's part was merely "teasing."¹⁴¹ Others maintained that they had a difficult time getting their supervisors to listen to them when they were having difficulty.¹⁴² Stereotypes about women sometimes prevented men from listening to what women said about problems with machinery or other work-related matters. Some men simply would not believe that the women could have informed opinions about the work in which they were engaged.¹⁴³ Complaints were sometimes met with hostile remarks from supervisors who did

¹²⁶ Interview No. 10.

¹²⁷ Interview No. 17, Denver, Colorado, June 26, 1980.

¹²⁸ Interview No. 8.

¹²⁹ Interview No. 17.

¹³⁰ Interview Nos. 8, 10, 11, and 17.

¹³¹ Interview No. 11.

¹³² Interview No. 17.

¹³³ *Star-Tribune*, Feb. 21, 1980, p. 35.

¹³⁴ Interview No. 17.

¹³⁵ Interview No. 14.

¹³⁶ Interview No. 8.

¹³⁷ Interview No. 13.

¹³⁸ *Ibid.*

¹³⁹ Interview Nos. 1, 3, 4, 8, 11, 13, and 15.

¹⁴⁰ *Ibid.*

¹⁴¹ Interview No. 10.

¹⁴² Interviews Nos. 3, 7, and 12.

¹⁴³ Interview No. 5.

not believe women should be working in the mines or, at least, not at particular jobs in the mines. Disparaging remarks were made by foremen and supervisors about work done by women and their ability to do the work.¹⁴⁴ In one situation, a woman was told by her foreman that she was a burden to the other people on her crew while, simultaneously, her supervisor (a step above the foreman) told her that she was doing an excellent job.¹⁴⁵ One woman was told by her personnel supervisor not to apply for a different job because she was pregnant and, supposedly, would no longer be working; yet, the female miner had every intention of returning to the job after her baby's birth.¹⁴⁶

Many women found there were no supervisors on the job site they could approach with a problem. In spite of the fact that they were sometimes encouraged by supervisors to come to them when they had difficulties, there was a belief by some women that such statements were insincere or that reporting would invite retaliation.¹⁴⁷ Women were hesitant to complain because they wanted to avoid giving the appearance of being trouble makers. One woman reported, "I had trouble with one super, but I didn't complain because it would have caused the men to resent me. If you complain too much, others look at you like you expect special favors; you're a queen."¹⁴⁸

Even union officials are not always viewed by women miners as receptive to their problems. Some union representatives are, in fact, seen as sexist. One female miner commented, "I'm now having trouble with a union guy. They see it as a *brotherhood* not a brother and sisterhood. There should be a woman steward. The guy doesn't believe women should be underground. That's no help."¹⁴⁹ Another woman stated that she was told by her union steward not to file a discrimination complaint with the Equal Employment Opportunity Commission but to work through the union. At the time of her interview for

this study she commented that it had been a month since she had any further response from the union steward in regards to her complaint.¹⁵⁰ The Director of the Wyoming Fair Employment Commission stated, "My experience with most of the unions in this State is that they don't think women belong in mining. Almost invariably when women file a grievance it is not followed up."¹⁵¹

Many of the women interviewed echoed the sentiment expressed by one that ". . .there is nowhere to go with a complaint."¹⁵² They voiced a reticence to bring forward problems, not only because they did not believe that they would obtain positive results by doing so, but for fear of being seen as seeking special favor, or being malcontent. One woman simplified the issue thusly: "I'm sure the other women are frightened to speak up because there are so many ways they can get you."¹⁵³ The Wyoming Commission on Women asked reasons for women not filing discrimination complaints. The common response was that employees were frightened to do so. The other frequent response was that workers were often ignorant of their rights and whether there were legal grounds for complaints.¹⁵⁴ A Green River miner commented, "Women are afraid to complain. They talk about it in the wash room, but they won't go to the company."¹⁵⁵

Few, if any, of the foremen, supervisors, or union officials on mining job sites are women. This is most likely a reflection of the time to work their way up the career ladder. The union president at one site said that the union was open to having female stewards and did, in fact, have a few. He further stated that many women do not wish to be stewards because they fear they will antagonize the company by so being.¹⁵⁶ One male interviewed, a foreman, said, "The women don't have anyone to go to talk to. There are no women supers, no staff psychologist. If they want to talk, it's always to men."¹⁵⁷

¹⁴⁴ Interview Nos. 1 and 14.

¹⁴⁵ Interview No. 14.

¹⁴⁶ Interview No. 8.

¹⁴⁷ Interview Nos. 1 and 4.

¹⁴⁸ Interview No. 12.

¹⁴⁹ Ibid.

¹⁵⁰ Interview No. 15, Green River, Wyoming, Sept. 9, 1980.

¹⁵¹ Dowler interview.

¹⁵² Interview No. 15.

¹⁵³ Ibid.

¹⁵⁴ *Barriers*, p. 32.

¹⁵⁵ Interview No. 12.

¹⁵⁶ Interview No. 31.

¹⁵⁷ Interview No. 34, Green River, Wyoming, Dec. 3, 1980.

Male Workers' Opinions of Female Miners

In 1973, when four women applied for mining jobs, the *United Mine Workers Journal* asked male miners in the Clinchfield Coal Company's mines in Virginia what they felt about women in mining. They expressed opinions such as, "I'm against women working here. First of all, there's the superstition against a woman being in the mine. I wouldn't go down there if a woman was there."¹⁵⁸ The same miner continued, "Anyway, I don't believe there's more than one in 25 that could do the work."¹⁵⁹ Another man expressed the concern that women would not be as closely tied to their husbands if they obtained such jobs. He added, "If they come here, you know what the foreman's going to do. He will say, 'All right. All you men work down there and I'll keep the women over here with me.' Or a woman and man might be working alone on a job for a couple of hours. Who knows what could happen in a situation like that."¹⁶⁰ In 1980, some similar opinions were expressed, but there were also some Wyoming men who had praise for the women workers, and found nothing wrong with their presence in the mines or their work.¹⁶¹ The opinion was expressed by some of the men interviewed that younger miners had greater acceptance of the women, and that feelings against women workers were not as great in the jobs above ground,

perhaps because women had worked longer in surface jobs.¹⁶²

Even those who did not express a negative attitude toward women miners had some concerns about women's abilities to do heavy work. One shift foreman, who claimed he tried to treat men and women fairly and equally, found that the woman who worked on his crew could not do the heavy work as well as the men so he did not assign it to her.¹⁶³ But another foreman at the same mine said, "I don't think there is any work that the women can't do."¹⁶⁴ Still another foreman said that there were very few areas where women could not do the work, and it was the smaller women that had any difficulty.¹⁶⁵ Other male workers interviewed did not hold this opinion. One said, "Some men feel that since they have their equal rights they should lift the heavy sacks by themselves like men do."¹⁶⁶ The union president at this mine had received complaints from men that women miners could not "carry their load."¹⁶⁷ While opinions vary as to women's abilities to do this type of work, it is clear that this is an area that rankles some male miners.

Foremen and supervisors in some cases attempt to keep women off jobs that require a great deal of heavy lifting. This is one source of the complaint, voiced by some male miners, that women are receiving favors. A male miner maintained that

¹⁵⁸ *United Mine Workers Journal*, May 15, 1978, p. 13.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

¹⁶¹ Interview No. 35, Green River, Wyoming, Dec. 2, 1980; Interview No. 36, Dec. 3, 1980.

¹⁶² *Ibid.*

¹⁶³ Interview No. 36.

¹⁶⁴ Interview No. 33.

¹⁶⁵ Interview No. 32.

¹⁶⁶ Interview No. 30, Green River, Wyoming, Dec. 3, 1980.

¹⁶⁷ Interview No. 31.

women get away with things that men would not be allowed to get away with and that his company tries to give women opportunities. He said that other men he works with believe the company is “bending over backwards” for women.¹⁶⁸ A woman miner expressed a similar opinion by saying, “I think they are more lenient with women workers than with men, which I don’t think is fair.”¹⁶⁹

While one man said he yet held the superstition that women in the mines brought bad luck, another feared that women were taking away men’s jobs.¹⁷⁰ When a husband and wife were both working the same mine, some male workers felt that the woman

should quit because she was taking a man’s job. None suggested that the man should resign.¹⁷¹

One foreman complained that female miners seemed to have more emotional problems than the males. He related that a couple of women cried when he criticized their work. He believed that a man would have reacted differently.¹⁷² This same foreman said he feels that women workers should have a woman to talk to about their problems on the job. He stated that many women miners felt insecure in the mines and said, “I think a lot of them feel out of place or that they don’t belong there.” This alleged insecurity leads to the emotional reactions he finds difficult to cope with.¹⁷³

¹⁶⁸ Ibid.

¹⁶⁹ Interview No. 37, Green River, Wyoming, Dec. 2, 1980.

¹⁷⁰ Interview No. 38, Green River, Wyoming, Dec. 2, 1980; interview No. 20, Green River, Wyoming, Dec. 2, 1980.

¹⁷¹ Interview No. 31.

¹⁷² Interview No. 34.

¹⁷³ Ibid.

Professional Women in Mining

Ms. Patricia Petty, President of Colorado Women in Mining (there is no equivalent group in Wyoming), expressed the belief that professional women do not encounter as many difficulties as do women miners.¹⁷⁴ Some women professionals agreed with this. They found their working conditions quite satisfactory.¹⁷⁵ Others discussed harassment they or their professional colleagues have encountered. One told of heavy objects being put in places where she would have a difficult time moving them (as did women miners).¹⁷⁶ One professional who had to spend considerable time in the mines told of being touched in a sexual manner. She also experienced sexual advances from her male professional col-

leagues, especially on business trips.¹⁷⁷ She found herself the subject of rumors to the effect that she, like many of the women miners were reputed to have done, made sexual advances toward her boss. Other professional women with whom she worked were threatened with violence and greasing.¹⁷⁸ She commented:

Most of the women are totally unprepared for what they find after four years of college. I would say that mental harassment is much worse than physical harassment. It's more subtle but it's more effective. You're singled out so much. When you walk into a room filled with men the conversation stops and everyone turns to you. In many ways it is pointed out that you are different.¹⁷⁹

¹⁷⁴ Petty interview.

¹⁷⁵ Interview No. 18.

¹⁷⁶ Ibid.

¹⁷⁷ Interview No. 17.

¹⁷⁸ Ibid. Greasing, no longer practiced, was stripping new miners of their clothing and applying grease to their bodies.

¹⁷⁹ Ibid.

Minority Women

The minority women interviewed encountered all the positive, as well as the negative, types of behavior that majority women in the mines encountered. In addition to the derogatory remarks made about women in general, however, these women sometimes were subjected to derogatory racial remarks. In two instances, black women were

¹⁸⁰ Interview Nos. 10 and 17.

subjected to considerable sexual harassment. One told of men dropping their pants in her presence. Obscene gestures and statements were also reported.¹⁸⁰ One of these women indicated that not only was she isolated from the male miners, but that, because of her race, she did not feel that she had any close women friends in the mine either.¹⁸¹

¹⁸¹ Interview No. 10.

Minority Males

Hispanics, blacks, and Native Americans in the mineral extraction industry reported a variety of workplace conditions. In general, however, they did not present as many allegations of discrimination as women workers did. Minority males, of course, were not subjected to the sexual harassment which many women reported, but minorities did report instances of "joking," racially derogatory graffiti, and other prejudicial behavior.¹⁸²

In addition to the potential for problems on the job site, minority workers have to deal with the attitudes of the inhabitants of small rural mining towns. This is not strictly speaking a job-related issue, but, according to some persons interviewed, the lack of minorities and the prejudice they encounter in the towns can have a chilling effect on minorities contemplating work in mineral extraction fields.¹⁸³

Mr. Lawrence H. Borom, executive director of the Denver Urban League, recently spoke of the difficulties minority workers can encounter when they move to mining towns. He stated:

The present demography shows that the energy-impacted sites in Region VIII are for the most part white or Anglo populated. There are reports of significant public accom-

modation and institutional discrimination against minorities in these locales.¹⁸⁴

Borom quoted a black worker in one such town as saying, "If the company would stand behind its black workers, we wouldn't have to take all the insults we get in small towns."¹⁸⁵

Some of the minority workers interviewed by the U.S. Commission on Civil Rights staff indicated that they had experienced prejudice and discrimination in the communities where they lived. One Hispanic worker said, "There is some prejudice, but not a lot. Most of it comes from the local people."¹⁸⁶ A black miner stated that he had moved from one town to another because of the racism he had suffered.¹⁸⁷

Several of the minority workers interviewed indicated that they had had problems with job discrimination in the past. One commented, "When I hired on at the refinery it was a real problem." But he stated that conditions are now much improved.¹⁸⁸ Another said, "We used to be limited in what we could do. I was on a few jobs where, when there was an opportunity to advance and you applied, you never got it." In his present position, this Hispanic miner has not experienced any such limitations.¹⁸⁹ A black miner told of some "Southern guy" making

¹⁸² Interview Nos. 19, Green River, Wyoming, Dec. 2, 1980; interview No. 20, Green River, Wyoming, Dec. 2, 1980.

¹⁸³ U.S., Commission on Civil Rights, "Operation Grubstake," Larry Borom in *Energy Resource Development* (Washington, D.C.: U.S. Government Printing Office, n.d.), p. 148.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid., p. 141.

¹⁸⁶ Debarri Martinez, Sinclair Oil workman, Rawlins, Wyoming, Sept. 29, 1980.

¹⁸⁷ Interview No. 21, Shirley Basin, Wyoming, Feb. 18, 1980.

¹⁸⁸ Debarri Martinez, refinery worker, Rawlins, Wyoming, Sept. 29, 1980.

¹⁸⁹ Interview No. 22, Green River, Wyoming, Dec. 3, 1980.

hangman's nooses with people's names on them when he first started working.¹⁹⁰ In the minds of these minority workers, workplace conditions have improved. These improvements they attributed to the "tight" labor market in Wyoming and to the civil rights movement.¹⁹¹

There is disagreement, however, among those interviewed about improved working conditions in the mines. Ms. A. Mercado does not believe that work conditions have changed very much for minority workers. She maintains that in many cases these workers tend to quit a job rather than file a discrimination complaint because they do not wish to deal with job pressures resulting from filing a complaint. The length of time it takes to settle such complaints is also a deterrent to filing she contends.¹⁹² Nonetheless, miners agree that discrimination and prejudice still exist in the mines. A black miner said, "There's a lot of prejudice out there."¹⁹³ An Hispanic miner claimed, "Some of the supers are prejudiced."¹⁹⁴ Another Hispanic indicated that he would have said a great deal more when interviewed about conditions by commenting, "If this were classified I'd tell you the truth, but since it's public I can't."¹⁹⁵

Two minority miners said that they had experienced what they believed was racially-based harassment when they began working at their jobs. In one mine, this involved non-cooperation in work performance. Allegedly, white machine operators purposefully dumped ore onto the hoods of trucks driven by minority workers. A black truck driver recounted, "I was ready to quit because of it [the incident]. I was frustrated to the point of fighting."¹⁹⁶ He did, however, get into a shouting argument with a machine operator.¹⁹⁷ "When we first came out here we had problems with individuals," another black said. "I got frustrated about this and began to make inquiries to find out what I could do. I discussed it with the other blacks that work here. They had the same kinds of problems with the

same people. The company was overlooking it."¹⁹⁸ Eventually, the company moved these machine operators to another part of the mine.¹⁹⁹

As with women miners, the most commonly alleged form of harassment against minorities in the mines was verbal, much of this taking the form of jokes. Several minority persons saw this joking as positive while others saw no humor in the remarks.²⁰⁰ While an Hispanic commented that most of the joking is against blacks,²⁰¹ a Native American complained that a number of Indian jokes were told with foreman doing nothing to stop the activity.²⁰² The Hispanic worker commented, "There is a lot of racial joking but I don't let it bother me. Sometimes it goes too far, but I don't think much of it."²⁰³

Similar to incidences reported by women miners, minorities reported racial slurs and other forms of graffiti on mine and bathroom walls. One white foreman stated, however, that "About 90 percent of the stuff on the walls is about supervisors." He believed that graffiti ridicule was universal and meant very little.²⁰⁴ One black miner indicated that he took remarks on the restroom wall seriously since much of the graffiti seemed to be Ku Klux Klan motivated.²⁰⁵ His company, however, had painted over the remarks which reassured him somewhat.²⁰⁶

A minority worker claimed that minorities were given the hardest, dirtiest work by their supervisors.²⁰⁷ He stated that dirty work for minorities was a reality. He further commented, "Some of the supers are prejudiced. They give you a lot of shitty work. They can give you extra work."²⁰⁸ A black miner responded that blacks don't have to work harder to get ahead. He commented, "I don't have to work harder than anyone else."²⁰⁹

Claims that minority workers did not get promoted as readily as white males were lodged.²¹⁰ One Hispanic commented, "Hispanics don't get promoted as fast as others. They don't have friends to

¹⁹⁰ Interview No. 23, Green River, Wyoming, Dec. 3, 1980.

¹⁹¹ Interview Nos. 22 and 23.

¹⁹² Telephone Interview, June 31, 1980.

¹⁹³ Interview No. 23.

¹⁹⁴ Interview No. 24, Green River, Wyoming, Dec. 3, 1980.

¹⁹⁵ Interview No. 19.

¹⁹⁶ Interview No. 21.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid. Interview No. 25, Shirley Basin, Wyoming, Feb. 18, 1980.

¹⁹⁹ Ibid.

²⁰⁰ Interview Nos. 24 and 26; interview 27, Shirley Basin,

Wyoming, Feb. 18, 1980, Interview 28, Shirley Basin, Wyoming, Feb. 18, 1980.

²⁰¹ Interview No. 28.

²⁰² Interview No. 26, Sheridan, Wyoming, Oct. 22, 1980.

²⁰³ Interview No. 28.

²⁰⁴ Interview No. 33.

²⁰⁵ Interview No. 21.

²⁰⁶ Ibid.

²⁰⁷ Interview No. 24.

²⁰⁸ Ibid.

²⁰⁹ Interview No. 29, Green River, Wyoming, Dec. 3, 1980.

²¹⁰ Interview No. 19.

help them. There is a group that pretty much runs things here who are all Anglo males."²¹¹

A black foreman complained that he was having difficulty with his crew because of his race. He said, "Most of the men resent taking orders from a black. Other foremen don't have the same problems. Most people I know out here are prejudiced."²¹² Having been a foreman for over three years, this man told of being moved from crew to crew because the men would not work for him.²¹³ His present crew required constant attention because they refused to responsibly carry out his orders.²¹⁴ Although the company had attempted to help him, he did not feel optimistic about the outcome because of the deep-seated nature of the racial feelings of his subordinates.²¹⁵

²¹¹ Interview No. 23.

²¹² Interview No. 19.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

White males, by-and-large, did not report negative experiences with minority workers. One foreman and one supervisor felt that minorities did not encounter race discrimination but did believe that, in some instances, minority workers had a tendency to see prejudice and discrimination where none existed. The foreman noted, "Some of the minorities run around with a chip on their shoulder." He added, "I had one minority who claimed I discriminated against him because I made him do his job."²¹⁶ An Hispanic supervisor said, "Some Hispanics claim discrimination when you try to discipline them, but it's not."²¹⁷ When asked whether they believed minority workers would come forward with a problem, these foremen and supervisors thought they would.²¹⁸

²¹⁶ Interview No. 33.

²¹⁷ Interview No. 35.

²¹⁸ Ibid.; interview No. 38, Green River, Wyoming, Dec. 2, 1980; interview No. 36, interview No. 33.

Turnover Rates

One indicator of the effects of workplace conditions on workers is the rate at which they leave their jobs. If it can be assumed that contented workers are less likely to quit their positions, or to be terminated, then turnover rates can be seen as an index of worker satisfaction. Yet, it must be recognized that a great many other factors can affect such a statistic. Many variables other than harassment or discrimination could cause difference between male and female and minority and non-minority turnover rates. Even though turnover statistics offer only limited proof of worker dissatisfaction with workplace conditions, they do provide one objective indicator.

The two companies agreeing to participate in the Advisory Committee's study were cooperative in providing their turnover of workers rate. (See Charts III and IV.) The information provided by the companies is not strictly comparable, but indicates considerably higher turnover rates for women and minority employees than for white male employees. The turnover rate of female employees for both companies is roughly three times that of white male workers. In one instance, the minority turnover rate

is only slightly higher than that for white males, but at the second company it is approximately three times higher.

Companies and individuals who are concerned about the development of a productive and efficient workforce should find such turnover statistics significant enough to be of concern. High minority and female turnover rates may serve to reinforce stereotypes regarding women and minorities. One male miner commented on the turnover of women at his mine by saying, "Most of the women don't stay very long. They get the big money, then they get married or something."²¹⁹ Perceptions that women do not need to work, that training them or promoting them is a waste of resources since they will soon leave may be reinforced by high turnover rates that can be the result of harassment on the job. Ideas that minorities are shiftless and lazy can also be reinforced by minority worker turnover. Ironically, stereotypes of women and minorities can lead to the types of treatment that cause higher turnover rates for these groups. Additionally, turnover rate bolsters belief in stereotypes.

²¹⁹ Interview No. 33.

CHART III
Turnover Rate
Company I

Group	Average Monthly Employment	Involuntarily Terminated YTD	Monthly Average Involuntary Turnover Rate	Voluntary Terminated YTD	Monthly Average Voluntary Turnover Rate
White Males	1201.1	17	.0014	97	.0081
Females	87.3	1	.0011	19	.02
Minority Males	125.8	3	.0024	11	.0087

Source: Information extracted from data provided by corporation I, December 2, 1980.

CHART IV
Turnover Rate
Company II

Total Employees 1980	Turnover 1980 Number of People	Percentage Turnover
All Employees	All Employees	All Employees
1,574	124	7.8%
Women 33	9	27%
Minorities 39	9	23%

Source: Information extracted from data provided by Corporation II, on February 17, 1981.

Awareness of Legal Recourse

Both minority and female workers were asked questions intended to probe their knowledge of employment rights and civil rights enforcement agencies. These questions revealed a great range in levels of understanding. One female miner in Gillette said, "Women will describe an instance of discrimination but they don't even know that it is."²²⁰ Some workers, women and minorities, said they understood their rights but, when pressed for details, clearly showed their uncertainty.²²¹ Most persons interviewed showed limited knowledge of employment rights.

Workers were asked what they would do if they had a civil rights problem. Unions were the first step according to some respondents.²²² Others felt that they would go to the Equal Employment Opportunity Commission.²²³ Many others voiced uncertainty. A male minority miner said, "If I had a serious problem, I'd quit here and go somewhere else. I've thought about it."²²⁴

The Wyoming Commission for Women asked female respondents whether they would file a complaint against their employer if they believed they had a discrimination case. Those who replied answered affirmatively 54 percent of the time.²²⁵ Whether this stated willingness to lodge a complaint would become a reality when the occasion presented itself is difficult to ascertain. There is a considerable disagreement about the willingness of employees

with civil rights problems to come forward with them. Most supervisors and company officials interviewed for this study believed that anyone having difficulty would speak up.²²⁶ Officials of the Office of Federal Contract Compliance Programs state that they had not been able to unearth evidence of widespread harassment.²²⁷ They additionally felt it was unlikely many such incidents would go unreported.²²⁸ The director of the Wyoming Fair Employment Commission estimated, however, that less than half of the instances of harassment ever reached her office.²²⁹ An attorney handling many such cases said, "Much more harassment goes on than ever comes to light. It's a thousand to one."²³⁰

Mr. Jerry Thompson, an investigator for the Mine Safety and Health Administration (U.S. Department of Labor) in Green River, received 13 cases of alleged discrimination against women miners in 1980, although the handling of such cases was neither his area of expertise nor the function of his office. He maintained that because the women know of nowhere else to turn, by word of mouth they arrive at his office. His practice has been to assist women in preparing cases and then to refer them to the appropriate agency.²³¹ Thompson has experienced difficulty in getting civil rights agencies to pursue these cases. He stressed, "These people out here need help."²³²

Office of Federal Contract Compliance Programs, interview in Denver, Colorado, June 23, 1980.

²²⁸ Santestevan interview, interview Nos. 33, 36, and 38.

²²⁹ Dowler interview.

²³⁰ Leslie Lawson and Lynn Feiger, Denver Attorneys, interview in Denver, Colorado, May 14, 1980.

²³¹ Interview in Green River, Wyoming, Sept. 9, 1980.

²³² Ibid.

²²⁰ Interview No. 5.

²²¹ Interview Nos. 19, 23, and 24.

²²² Interview No. 29, Green River, Wyoming, Dec. 3, 1980.

²²³ Interview No. 30, Shirley Basin, Wyoming, Feb. 13, 1980; interview Nos. 9 and 18.

²²⁴ Interview No. 19.

²²⁵ *Barriers*, p. 29.

²²⁶ Interview Nos. 31, 33, and 38.

²²⁷ Dennis Santestevan, assistant to the Regional Administrator,

The Wyoming Commission for Women asked their sample, in their completed study, if they were aware of what the Wyoming Fair Employment Commission did. Seventy-five percent of those who answered selected the accurate choice from the four provided.²³³ No Federal enforcement agency has offices in Wyoming.

Respondents at three different locations stated that they had encountered various difficulties when they had sought assistance from the Fair Employment Commission. A female miner who attempted to file a complaint with the Commission believed she had been treated poorly. "I got the brushoff from the State Fair Employment Practices Commission," she complained.²³⁴ She claimed that she had been told in a telephone conversation with the agency that complaint forms would be sent to her via mail. She never received them.²³⁵ Another woman miner told of being delayed so long by the Commission that her case was dropped because of exceeding the deadline for bringing a suit. She alleges a three year wait.²³⁶ She asked the Denver office of the Equal Employment Opportunity Commission (EEOC) to handle her complaint but was referred back to the Wyoming agency.²³⁷

Director Dowler of the Wyoming Commission contends that her agency is understaffed and underfunded.²³⁸ The Commission's annual report says: "The number of complaints received grew with Wyoming's energy boom, doubling and tripling the caseload of previous years. . . . Staff size did not increase simultaneously with caseload."²³⁹ The re-

port states that based upon data collected from 1973 through 1978, the Commission's case load could be expected to increase at the rate of 16 new complaints for every 10,000 new workers in the labor force.²⁴⁰ According to Dowler, the office does not have adequate travel money and therefore cannot visit the site of complaints which occur outside of the immediate vicinity of Cheyenne.²⁴¹

The Wyoming Fair Employment Commission has a contract with the Denver EEOC office enabling it to handle all cases of employment discrimination in Wyoming except those where only Federal law applies. Should a worker attempt to go to the EEOC's Denver office with a complaint of employment discrimination there is high likelihood that the person would be referred back to the Wyoming Commission.²⁴² Consequently, the citizens might well believe they had been given the brush off or the bureaucratic run-around. Dowler contends that WFEC can process a charge faster than the EEOC. She says, "As of April 1981, our average case processing time was 144 days. The reason for the delay in processing time is that each case receives thorough treatment."

Dowler sees a need for increased staffing and funding for her agency. She also feels that Federal enforcement agencies could do more in Wyoming. The newly-hired women and minority workers in mineral extraction fields and in all areas of employment are experiencing many difficulties and need protection, she firmly believes.²⁴³

²³³ *Barriers*, p. 28.

²³⁴ Interview No. 7.

²³⁵ *Ibid.*

²³⁶ Interview No. 18.

²³⁷ *Ibid.*

²³⁸ Dowler interview.

²³⁹ *1978 Annual Report*, p. 46.

²⁴⁰ *Ibid.*

²⁴¹ Dowler interview.

²⁴² Anna Frantz, Equal Opportunity Specialist, Equal Employment Opportunity Commission, telephone interview in Denver, Feb. 26, 1981.

²⁴³ Dowler interview.

Legal Review

Introduction

Job performance requirements, working conditions, training opportunities and job benefits need not be at all times and in all places "color blind" and "gender neutral." It is unlawful, however,

to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges or employment, because of such individual's race, color, religion, sex, or national origin. . . .²⁴⁴

It also can be unlawful to discriminate against an individual because she is pregnant,²⁴⁵ because he or she is over 40 years of age,²⁴⁶ or because he or she belongs to a labor union.²⁴⁷

Discrimination is most often defined as making a distinction in favor of or against a person on a categorical basis rather than according to individual merit.²⁴⁸ In a paper recently presented to the U.S. Commission on Civil Rights, several authors were cited emphasizing

. . . the intent to harm lying behind much discrimination may not reflect prejudice or antipathy but simply a desire to protect one's own privileges. Some discriminate because they gain economically or politically from racial and sexual restrictions on the competition. In the historical struggle over resources, systems of race and sex stratifica-

tion were established in which the dominant groups benefit economically, politically, and psychologically. They strive to maintain their privileges, whether or not they rationalize the striving in terms of prejudice and stereotyping.²⁴⁹

The political and legal history of the United States and the United States Constitution posit both a tradition and a legal requirement that equal protection be extended to unequal Americans. J.R. Pole in *The Pursuit of Equality in American History* has said, "It is the individual whose rights are the object of the special solicitude of the Constitution. . . ."²⁵⁰ The Thirteenth, Fourteenth, and Fifteenth Amendments, the Civil Rights Act of 1886,²⁵¹ and the Civil Rights Act of 1964²⁵² protect consideration of the individual and oppose judgment of a person based on immutable characteristics such as race, sex, and national origin.

At the same time, the existence of discrimination cannot be denied. The heaviest stroke against discrimination in employment has been Title VII of the Civil Rights Act of 1964.

Title VII prohibits discriminatory employment practices based on race, color, sex, religion or national origin in hiring, firing, promotions, training, testing, demotions, work assignments, performance standards, work rules, height and weight require-

²⁴⁴ Title VIII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(1).

²⁴⁵ Pregnancy Discrimination Act of 1978, 42 U.S.C. 2000e(k).

²⁴⁶ Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq.

²⁴⁷ Labor Management Relations Act of 1947, 29 U.S.C. 141 et seq.; National Labor Relations Act, 29 U.S.C. 151 et seq.

²⁴⁸ *The Random House College Dictionary*, Rev'd Ed. (1980), p. 379.

²⁴⁹ Joe R. Feagin, "Affirmative Action in an Era of Reaction," Paper presented to the U.S. Commission on Civil Rights in Washington, D.C., March 9, 1981, p. 8 (hereafter cited as Feagin).

²⁵⁰ (Berkeley: University of California Press, 1978), p. 358.

²⁵¹ 42 U.S.C. 1981-1985.

²⁵² 42 U.S.C. 2000a-h.

ments, seniority systems, sick leave, pensions and retirement plans, death benefits, health insurance and general working conditions.²⁵³ The Act proscribes "not only overt discrimination but also practices that are fair in form, but discriminatory in operation."²⁵⁴ Other protections against discrimination in employment are found in the Equal Pay Act,²⁵⁵ the Age Discrimination in Employment Act, the Labor Management Relations Act, Executive Orders of the President, and State law.

Title VII and Race Discrimination

Title VII governs employers with 15 or more employees, employment agencies and labor organizations.²⁵⁶ It does not apply to religious associations or institutions "with respect to the employment of individuals of a particular religion to perform work connected with religious activities."²⁵⁷ It does not apply to the United States or a corporation wholly owned by the United States, an Indian Tribe, or a tax-exempt private membership club.²⁵⁸ It also does not apply "to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business. . . under which preferential treatment is given to any individual because he is an Indian living on or near a reservation."²⁵⁹

Title VII declares employment discrimination based on "race, color, religion, sex, or national origin" to be "an unlawful employment practice."²⁶⁰ Congress rejected the words "solely because of," and thus a Title VII case can be asserted simply by showing that race was a factor—not even a dominant factor—considered in the employer's decision. Even if an employer had other reasons for the action taken, it is enough for a Title VII claim if race or ethnicity are established as a partial factor. If the action taken would not have been taken were the employee of a different race, a violation of Title VII occurs.²⁶¹

In order to invoke any Title VII protections, however, the actions of an employer, employment agency or labor union must have employment consequences. There must be a causal connection between the job activity and a discriminatory practice. For example, refusal to promote would not be a violation of Title VII if it resulted from the employee's "top of the ladder" status in his or her occupation or position.²⁶² If the cause and effect relationship is established, Title VII may cover virtually all conditions of employment, including firing and forced resignations, reassignments, denial of training and instruction, excessive surveillance, and restrictive work rules.

Title VII also prohibits practices which are neutral or fair in form, but which are discriminatory in operation.²⁶³ These may include minimum job requirements, educational standards, occupational and academic testing, use of credit references and arrest records, as well as height, weight and strength requirements. In these situations, Title VII is first triggered by the existence of a disparate impact. It is no defense under Title VII that the employer did not intend in these instances to discriminate.²⁶⁴ An employer must demonstrate that work rules, hiring requirements, testing and the like are job-related. Only these are defensible.

An individual alleging a violation of Title VII in a neutral factor situation first must prove a difference in effect between two races. Work force statistics, while alone may not prove this disparity, can be used as corroborative evidence. Only after a differentiation is established does the second phase of the inquiry take place: job-relatedness. The key words in this stage of a neutral factor case are "business necessity."²⁶⁵

Business necessity is defined as having "a manifest relation to the employment in question." It is a defense only in those cases questioning an employment activity that on its face is neutral as to race.

²⁵³ See: 42 U.S.C. 2000e-2.

²⁵⁴ *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971).

²⁵⁵ 29 U.S.C. 206 (d)(1).

²⁵⁶ 42 U.S.C. 2000e(b) (c), and (d).

²⁵⁷ 42 U.S.C. 2000e-1.

²⁵⁸ 42 U.S.C. 2000e(b).

²⁵⁹ 42 U.S.C. 2000e-2(i).

²⁶⁰ 42 U.S.C. 2000e-2(a).

²⁶¹ See: Arthur Larson, 3 *Employment Discrimination* (New York: Mathew-Bender, 1980), 12-1, and 13-16 to 13-19 (hereafter cited as *Employment Discrimination*).

²⁶² 1 *Employment Discrimination* 8-112 and 8-113.

²⁶³ *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

²⁶⁴ A case based on constitutional protections requires proof of actual intent to discriminate. *Washington v. Davis*, 426 U.S. 229 (1976). A Title VII case claiming sex-based wage discrimination may also require proof of intent to discriminate. *County of Washington v. Gunther*, 49 U.S.L.W. 4623 (June 9, 1981).

²⁶⁵ *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

Job-relatedness or business necessity does not justify overt forms of race discrimination.²⁶⁶

A Title VII claim must be filed within 180 days after the alleged discriminatory act.²⁶⁷ The charge is filed with an office of the Federal Equal Employment Opportunity Commission (EEOC).²⁶⁸ The EEOC must give notice of the charge to the person against whom the claim is made within 10 days of its filing.²⁶⁹ The Commission must then investigate (or permit a designated State agency to do so) and attempt a conciliation. Where a conciliation agreement is not possible the Commission or the Office of the U.S. Attorney General may bring a civil action.²⁷⁰ Title VII states that:

If a charge filed with the Commission. . .is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge. . .the Commission has not filed a civil action. . .or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission. . .shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought. . .by the person claiming to be aggrieved. . . .²⁷¹

This is commonly called a "right-to-sue-letter" and an individual making a Title VII claim *must* file suit within 90 days of receiving such a letter or lose completely the right to pursue the case. When requested by the complainant and found to be "just" by the court, the court may appoint an attorney for the complainant and authorize a lawsuit without payment of court costs.²⁷² A successful complainant may collect attorney's fees after the suit is concluded.²⁷³

At the culmination of the lawsuit, if the court finds that the employer has discriminated against the complainant,

the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment

practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.²⁷⁴

It is unlawful for an employer to retaliate in any way because an employee has filed a Title VII charge or court action or because the employee has otherwise opposed an unlawful employment practice. Neither can an employer retaliate against any employee who participates in or assists a Title VII investigation or hearing.²⁷⁵

Retaliation may be suspension, firing, refusing to hire, undesirable transfer or work assignment, harassment, surveillance, seeking removal from a steward's position, unfavorable references, or deprivation of job benefits or privileges.²⁷⁶ Arthur Larson of Duke University Law School states:

Retaliation has even been held to include the writing of a letter by the employer to the complaining employee stating that the bringing of unfounded charges of discrimination against the employer destroyed the mutual confidence necessary to the employment relation.²⁷⁷

A retaliation charge is filed with the EEOC the same as any other allegation of a Title VII violation.

Title VII and Sex Discrimination

In *Frontiero v. Richardson* four justices of the U.S. Supreme Court agreed that sex, like race, is an immutable characteristic and that classifications based on sex do not reflect individual abilities.²⁷⁸ Such classifications are commonly made in the employment setting, often a result of stereotypic conceptions of one sex or the other. Sex discrimination in employment occurs when the sexes are treated differently by an employer and such differentiation is without recognized justification. Title VII and other laws make sex discrimination illegal

. . .when maleness or femaleness is literally made a condition affecting employment, or when, although no

²⁶⁶ Id.

²⁶⁷ 42 U.S.C. 2000e-5(e).

²⁶⁸ 42 U.S.C. 2000e-4. The Denver office accepts claims from Wyoming. The address in Denver is: 1531 Stout Street, Denver, Colorado 80202. Wyoming claims may also be filed with the Wyoming Fair Employment Commission, Wyoming Department of Labor and Statistics, Barrett Building, Cheyenne, Wyoming 82002.

²⁶⁹ 42 U.S.C. 2000e5(e).

²⁷⁰ 42 U.S.C. 2000e-5(f)(i).

²⁷¹ Id.

²⁷² Id.

²⁷³ 42 U.S.C. 1988.

²⁷⁴ 42 U.S.C. 2000e-5(g).

²⁷⁵ 42 U.S.C. 2000e-3.

²⁷⁶ 3 *Employment Discrimination* 17-25 to 17-28.

²⁷⁷ Id. at 17-28, citing *Stebbins v. Nationwide Mutual Insurance Co.*, 469 F.2d 268 (4th C. 1972), cert. denied, 410 U.S. 939 (1973).

²⁷⁸ 411 U.S. 677 (1973).

reference is made to sex as such, a requirement is imposed that adversely affects the great majority of members of one sex.²⁷⁹

The prohibition against sex discrimination in employment can cover grooming and dress rules, marital status rules, and separate seniority lists for male and female employees.²⁸⁰ As Larson comments, the “most obvious example of sex differentiation occurs when sex is both literally and solely the basis of the employer’s action.”²⁸¹ Examples are often found in job advertisements where classifications are used as screening practices: “A Girl-Friday.” “A few good men.”²⁸²

Sex differentiation can occur without any reference to gender when it is based on traits associated exclusively or predominantly with one sex. Obvious examples of one-sex characteristics are beards and breasts. Title VII mandates similarly situated men and women not be treated dissimilarly. Introduction of a one-sex characteristic into an employment decision leaves no possibility that the sexes can be treated similarly. A cocktail lounge, for instance, cannot hire waiters and waitresses and require the waitresses be full-busted. Nor can it fire a waitress for being flat-chested. Chest measurements are not a job criteria for the male waiters.

It is not necessary to a Title VII violation that the rule in question be directed at what is peculiar to only one sex or be directed at all the members of one sex. Current case law makes it necessary to prove only that gender is a substantial factor in the discrimination, that is, if the complainant were a man she would have been treated differently.²⁸³ Thus sex discrimination can focus on the literal use of sex as a job qualification or on the use of sex-related traits unique or predominant in one sex.

“Sex-plus” rules can be yet another kind of sex discrimination. These rules, on their face having no reference to sex, frequently have a disproportionate negative effect on one sex. The no marriage rule for an airline stewardess is a past example. Here the discrimination resulted from a sex-plus-no motherhood restriction and the non-spouse-rule, which

forbids employment of husbands and wives in the same company. The latter

is appropriately classified as a neutral factor, both because it is indeed sex-neutral on its face in almost all instances, and because it is generally conceded that such rules were originally adopted for nondiscriminatory reasons related to employee morale and internal discipline. The problem typically arises when boy meets girl at the office. They fall in love, get married, and are then confronted with the company rule that one of them has to go.²⁸⁴

Sex neutral rules or requirements are illegal when they disproportionately impact on the employment opportunities of one sex and when there is no business justification for the rule or requirement. Title VII coverage in a sex discrimination case requires the employment consequences, or cause and effect relationship, of any other employment discrimination case. After that relationship is established, two further steps are required: establishing that the difference in treatment is based on sex; establishing that the difference is not justifiable.

Most of the procedural aspects of Title VII that pertain to race discrimination are interchangeable with the law governing sex discrimination. The 180-day filing period applies to all Title VII claims regardless of the basis of the alleged discrimination. The investigatory, conciliatory and court processes are also identical. As in a race discrimination claim, an aggrieved individual in a sex discrimination case (also religious and national origin claims) must file suit, if at all, within 90 days after issuance of an EEOC right-to-sue letter.

Much of the substantive law of race discrimination is also transferable to sex discrimination cases. The “business necessity” concept is explicit in cases involving discrimination based on religion, national origin or sex. Title VII specifically states that distinctions as to religion, national origin or sex are not unlawful where these constitute “a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.”²⁸⁵

A bona fide occupational qualification (BFOQ) must be based on actual sexual characteristics and not on characteristics that correlate with or are

²⁷⁹ 1 *Employment Discrimination* 1-2.

²⁸⁰ EEOC regulations on seniority systems are found in the *Code of Federal Regulations*, volume 29, section 1604.

²⁸¹ 1 *Employment Discrimination* 3-4.

²⁸² See: 29 C.F.R. 1604, 2(A) (1970).

²⁸³ *Tomkins v. Public Service Electric and Gas Co.*, 568 F.2d 1044, 1047 (n.4) (3d C. 1977).

²⁸⁴ 1 *Employment Discrimination* 3-37. A rule forbidding only the employment of wives of male employees, of course, is overtly discriminatory. See: *McArthur v. Southern Airways, Inc.*, 404 F. Supp. 508 (D.Ga. 19975).

²⁸⁵ 42 U.S.C. 2000e-2(e).

usually attributable to one of the sexes as opposed to the other. A supportable BFOQ, in other words, cannot be based on a generally held assumption about women as a class.²⁸⁶

A sex-based BFOQ can be legitimate where (1) physical sexual characteristics are necessary to performing the job (female waitresses in topless bars), (2) the nature of the job requires a particular sex (female models for women's cosmetics), and (3) standards of privacy or morality make a particular sex necessary to the job (female attendants in a women's health spa). Larson states that:

Sex may be a bonafide occupational qualification if the particular sex of the employees in question is necessary to the distinctive "product" of the employer, but, if it is not, a mere showing of customer preference will not ordinarily sustain the exception.²⁸⁷

The "distinctive product" might be women's clothing, burlesque or nursing care. "If that distinctive product inherently includes a component of female sexiness, then female sex is a BFOQ in that business. . . ." ²⁸⁸ An employer must justify a BFOQ, however, on the basis of business necessity and not business convenience. "That is to say, discrimination based on sex is valid only when the *essence* of the business operation would be undermined by not hiring members of one sex exclusively."²⁸⁹

Characteristics predominant in one sex usually cannot support a job requirement as a BFOQ. Thus, height, weight and strength requirements generally demand individual consideration and class-based BFOQs are unacceptable. In the case of *New York State Division of Human Rights v. New York-Pennsylvania Professional Baseball League*²⁹⁰ the employer required all umpires be at least five feet ten inches tall and 170 pounds in weight. Only one percent of all American females can meet these requirements. The rule was found to be sex discriminatory. Occupations such as police officer, lifeguard, airline attendant, security guard, umpire, fireman, and pilot need to administer individual tests for strength and stamina.

The Equal Employment Opportunity Commission also rejects as the basis for a BFOQ the assumptions that men are less capable than women at assembling

intricate equipment, that women are less aggressive than men, and that people take direction better from men than from women.²⁹¹ EEOC takes the position that the expense of providing separate facilities such as restrooms and locker rooms will not support a BFOQ unless the expense would be "clearly unreasonable."²⁹² Larson comments:

The existence of one-sex-only facilities is itself often the by-product of the very past discrimination that the statute was designed to eliminate. To allow this physical limitation to become an independent ground for continued discrimination because of the expense of adapting to the new era would be nothing less than honoring a self-perpetuating vehicle of discrimination.²⁹³

If job differentiations are made on the basis of sex, then, and the rule, workplace condition or other job requisite cannot be justified as a bonafide occupational requirement, a Title VII case has been stated. The intention to discriminate or not to discriminate is irrelevant. The United States Supreme Court held in its most important case on race discrimination in employment, *Griggs v. Duke Power Co.*, that

good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in headwinds" for minority groups and are unrelated to measuring job capability.²⁹⁴

The same is true in regards to sex discrimination.

Title VII and Sexual Harassment

Although courts long disagreed on what constitutes "sexual harassment" on the job and what protections Title VII affords, the last two years have seen articulated standards for both. *Tomkins v. Public Service Electric and Gas Co.* concluded:

The courts have distinguished between complaints alleging sexual advances of an individual or personal nature and those alleging direct employment consequences flowing from the advances, finding Title VII violations in the latter category.²⁹⁵

Sexual harassment within Title VII coverage has been separated from the "attempt to establish per-

²⁸⁶ *Rosenfeld v. Southern Pacific Co.*, 444 F.2d 1212 (9th C. 1971).

²⁸⁷ 1 *Employment Discrimination* 4-17.

²⁸⁸ *Id.* at 4-19.

²⁸⁹ *Diaz v. Pan American World Airways, Inc.*, 442 F.2d 385, 388 (5th C. 1971).

²⁹⁰ 329 N.Y.S.2d 99 (1972).

²⁹¹ 29 C.F.R. 1604.2(a)(1).

²⁹² 29 C.F.R. 1604.1(a)(1).

²⁹³ 1 *Employment Discrimination* 4-58.

²⁹⁴ 401 U.S. 424, 429 (1971).

²⁹⁵ 568 F.2d 1044, 1048 (3d C. 1977).

sonal relationships” and held to be the “endeavor to tie employment to sexual submission.”²⁹⁶ It could well include “any conduct of a sexual nature which is found to be offensive,”²⁹⁷ if that conduct has employment consequences and a work environment marred by sexual harassment is an employment consequence.²⁹⁸ As one author observes:

Sexual harassment has been portrayed. . . as “unsolicited nonreciprocal male behavior that asserts a woman’s sex role over her function as a worker.” The actual mechanisms and practices of harassment include “staring at, commenting upon, or touching a woman’s body; requests for acquiescing in sexual behavior; repeated nonreciprocated propositions for dates; demands for sexual intercourse; and rape.” Verbal abuse is common.²⁹⁹

These harassment practices, whether initiated by supervisors or other employees, are recognized judicially and administratively as an integral part of sex discrimination in employment prohibited by Title VII. A key aspect of this harassment is its reinforcement of other types of employment discrimination. Work becomes a prize men give to women if women permit sexual advances.³⁰⁰

Dramatically stepping up Title VII enforcement against sexual harassment on the job, the Equal Employment Opportunity Commission has issued new guidelines defining harassment as “discrimination because of sex.” Sexual harassment is defined in EEOC’s most recent regulations as:

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 unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.³⁰¹

²⁹⁶ *Heelan v. Johns-Manville Corp.*, 451 F. Supp. 1382, 1388 (D.C. Colo. 1978).

²⁹⁷ D.L. Tillar, “Sexual Harassment: New Rules to the Game,” *Forum* (October 1980), pp. 21, 22.

²⁹⁸ See: “Sexual Harassment and Title VII: The Foundation for the Elimination of Sexual Occupation as an Employment Condition,” 76 *Michigan Law Review* 1007 (1978); and 1 *Employment Discrimination* 8–113.

²⁹⁹ Feagin, pp. 13–14, quoting Lin Farlye, *Sexual Shakedown* (New York: McGraw-Hill, 1978), p. 4.

³⁰⁰ *Id.*, p. 13.

³⁰¹ 29 C.F.R. 1604.11(a).

Going beyond major steps in recent court decisions,³⁰² the new Commission guidelines establish a strict liability on the part of the employer for sexual harassment on the worksite whether or not the employer was aware of the harassment. Proposing to judge on a case-by-case basis, the regulations state that an employer:³⁰³

is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence.

With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

. . . Where employment opportunities or benefits are granted because of an individual’s submission to the employer’s sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but were denied that employment opportunity or benefit.³⁰⁴

Preventive measures undertaken by the employer are “apparently just one factor to be considered”³⁰⁵ in EEOC’s assessment of liability. Even though in some court cases the employer’s attempted preventive efforts appear to be the principal reason for dismissing the case,³⁰⁶ such measures are by EEOC standards only a clear defense where the conduct is “between fellow employees”³⁰⁷ or an act of a non-employee.³⁰⁸

³⁰² See: *Tomkins v. Public Service Electric and Gas Co.*, 568 F.2d 1044 (3d C. 1977); *Miller v. Bank of America*, 600 F.2d 211 (9th C. 1979); *Continental Can Co. v. Minnesota*, 49 U.S.L.W. 2084 (Minn. 1980); and Tillar, p. 22.

³⁰³ Meaning collectively an employer, employment agency, joint apprenticeship committee or labor organization.

³⁰⁴ 29 C.F.R. 1604.11.

³⁰⁵ 1 *Employment Discrimination* 8–109.

³⁰⁶ *Id.* at 8–108.

³⁰⁷ 29 C.F.R. 1604.11(d).

³⁰⁸ 29 C.F.R. 1604.11(e).

The employer must investigate an allegation of sexual harassment and, if appropriate, undertake corrective steps.³⁰⁹ The mere provision of grievance procedures will not wholly satisfy the employer's duty in a sexual harassment charge.³¹⁰ Although Title VII "does not impose a duty on the employer to maintain a pristine working environment. . . it imposes a duty on the employer to take prompt and appropriate action."³¹¹

Use of an employer's personnel grievance procedures is not a prerequisite to filing a Title VII suit. Title VII is completely independent of contract provisions, grievance procedures or other rights.³¹² An allegation of sexual harassment is filed with the Equal Employment Opportunity Commission the same as all Title VII charges, whether or not the employee has chosen to utilize other avenues simultaneously. The Title VII charge, however, must be filed within 180 days of the alleged discriminatory harassment. This deadline is not postponed because an employer's grievance procedure is in process and the time limit could be consumed while the employer's conciliatory mechanisms are at work. Thus if Title VII protection is desired, prompt notice to EEOC is essential.

Equal Pay

In 1963 Congress amended the Fair Labor Standards Act of 1938³¹³ to include a section commonly referred to as the Equal Pay Act.³¹⁴ The Act prohibits an employer from paying different wages to male and female employees where the jobs require equal skill, effort and responsibility and are performed under similar conditions.³¹⁵

The Act was intended as a broad charter of women's rights in the economic field. It sought to overcome the age-old belief in women's inferiority and to eliminate the depressing efforts on living standards of reduced wages for female workers and the economic and social consequences that flow from it.³¹⁶

³⁰⁹ *Miller v. Bank of America*, 600 F.2d 211 (9th C. 1979); *Munford v. Barnes*, 441 F. Supp. 459 (Mich. 1977).

³¹⁰ *Id.*

³¹¹ *Continental Can Co., Inc. v. Minnesota*, 49 U.S.L.W. 2084 (Minn. 1980).

³¹² *Miller v. Bank of America*, 600 F.2d 211 (9th C. 1979).

³¹³ 29 U.S.C. 201 et seq.

³¹⁴ 29 U.S.C. 201(d).

³¹⁵ 29 U.S.C. 201(d)(1).

³¹⁶ *Shultz v. Wheaton Glass Co.*, 421 F.2d 259, 265 (3d C. 1970), cert. denied, 398 U.S. 905 (1970).

³¹⁷ 29 U.S.C. 203(d).

The Equal Pay Act applies to employers, including public agencies, regardless of number of employees; and is not limited to organizations of fifteen or more employees as is Title VII.³¹⁷ The Act exempts certain employers by category, for example, fishing, farming and news publishing.³¹⁸ It originally did not cover executive, administrative or professional positions, but in 1972 was amended to encompass most of these.³¹⁹

In determining what is "equal work" under the Act, the full job is considered. "Equal work" is taken to mean substantially equal, but not necessarily identical. Equal is thus determined by the actual work performed and not by the job title or classification.³²⁰ In any comparison, four factors listed in the Act are mandatory considerations: skill, effort, responsibility and working conditions. These components require weighting and evaluation in order to demonstrate whether or not any two jobs are "equal."

A complaint under the Equal Pay Act is filed with the Equal Employment Opportunity Commission. Either the Commission or the complainant can file a court action.³²¹ Suit must be filed within two years of the alleged discrimination; three years are allowed if the discriminatory practice is proven to be a willful violation of the law.³²² The prima facie case must establish: (1) that male and female workers in the same establishment are paid unequal wages; and (2) that the jobs in question involve equal work.³²³

Neither EEOC nor a court can consider a claim under the Equal Pay Act unless the different wages paid are for *equal* work.³²⁴ Where the work is considered *comparable*, EEOC can accept a charge under Title VII of the Civil Rights Act. In *County of Washington v. Gunther*, decided June 8, 1981, the U.S. Supreme Court held that a Title VII claim can be brought where discrepancies in male and female pay scales involve positions of comparable worth, but not "equal work."³²⁵ If the equal pay complaint is filed as a Title VII charge, the female complainant

³¹⁸ See: 29 U.S.C. 203(s) and 213(a). Equal Pay Act coverage is limited to employers covered by the Fair Labor Standards Act. See also: *County of Washington v. Gunther*, 49 U.S.L.W. 4623 (June 9, 1981).

³¹⁹ 29 U.S.C. 213(a).

³²⁰ *Shultz v. Wheaton Glass Co.*, 421 F.2d 259 (3d C. 1970).

³²¹ Until 1980 the Equal Pay Act was enforced by the Wage and Hour Division of the U.S. Department of Labor, 29 U.S.C. 204.

³²² 29 U.S.C. 216.

³²³ *Corning Glass Works v. Brennan*, 417 U.S. 188 (1984).

³²⁴ 49 U.S.L.W. 4623.

³²⁵ *Id.* 29 U.S.C. 206(d)(1).

must establish the wage differential as (1) intentional undercompensation based on sex discrimination and (2) outside the Equal Pay Act exemptions for pay differences based on seniority systems, merit, quantity or quality of production, or other factors other than sex.³²⁶ (The last category is a catch-all exception often applied to temporary employment, training programs, and differences in the time of day or shift worked.)

In *County of Washington v. Gunther* four jail matrons who were laid off their jobs in 1974 claimed their termination was in retaliation for past equal pay demands. The matrons had been receiving \$525 to \$668 per month, compared to \$701 to \$940 received by male guards. The matrons maintained that even if their work was not substantially equivalent to that done by male correction officers, some part of the wage disparity was due to intentional sex discrimination. The trial court rejected the case under the Equal Pay Act and would not consider it as a Title VII claim. The Court of Appeals reversed the lower court decision. The U.S. Supreme Court agreed that Title VII claims for equal pay are barred only where pay differences are "authorized" by the Equal Pay Act, that is, where based on seniority, merit, quantity and quality of work or non-sex factors.³²⁷ The majority opinion in the *County of Washington* case viewed the Equal Pay Act as available only to those women holding jobs also currently held by men. Therefore, they concluded that without Title VII coverage for undercompensation claims, women holding jobs unique to women would be without legal remedy. The court said:

As Congress itself has indicated, a "broad approach" to the definitions of equal employment opportunity is essential to overcoming and undoing the effect of discrimination. . . . We must therefore avoid interpretations of Title VII that deprive victims of discrimination a remedy. . . .³²⁸

Still in some employment situations, because of the size or nature of the employer, only the Equal Pay Act is available for undercompensation claims.³²⁹

A violation of the Equal Pay Act can be remedied only by raising the wages of the women involved.

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ 49 U.S.L.W. 4623, 4628.

³²⁹ See "Title VII and Race Discrimination" for those employers not covered by Title VII.

³³⁰ 29 U.S.C. 206(d)(1).

³³¹ 29 U.S.C. 621(a)(2).

³³² 29 U.S.C. 621 et seq.

The Equal Pay Act does not permit an employer to reduce the wage rate of any employee in order to comply with its provisions. Neither can the employer cure the unequal wage problem allowing the female complainant to take a job in the higher-paid male category.³³⁰

Discrimination Based on Age or Pregnancy

Finding, among other age problems in employment, that "the setting of arbitrary age limits regardless of potential for job performance has become a common practice,"³³¹ Congress in 1967 passed the Age Discrimination in Employment Act (ADEA).³³² The Act makes it unlawful for an employer:

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with. . . (the Act).³³³

The ADEA applies to employers who, for at least twenty weeks a year, have twenty or more employees; and includes in its coverage labor organizations and employment agencies.³³⁴ The protections provided are limited to persons 40 to 70 years of age.³³⁵

The ADEA, previously administered by the Secretary of Labor, now is under the enforcement authority of the Equal Employment Opportunity Commission. The EEOC can accept complaints, conduct investigations and studies, and file suit against employers. Individuals may also file suit under the ADEA, but only if they have first filed with the EEOC. Notice of intent to sue must be filed with the EEOC within 180 days after the alleged unlawful practice. A successful complainant pursuant to an ADEA claim can be awarded a judgment

³³³ 29 U.S.C. 623(a).

³³⁴ 29 U.S.C. 630.

³³⁵ 29 U.S.C. 631. Nothing in the Act, however, prohibits compulsory retirement at age 65 or older for those in executive or policy making positions and for those in institutions of higher education.

compelling employment, reinstatement in a prior position, promotion, or back wages.³³⁶

The Pregnancy Discrimination Act, passed in 1978, amends Title VII of the Civil Rights Act. It requires an employer to treat pregnancy as other illnesses and declares discrimination because of pregnancy or related medical conditions to be sex discrimination.³³⁷ An employer cannot fire or refuse to hire a woman because she is pregnant, might get pregnant, or has had an abortion. Neither can an employer force a female employee to take leave at an arbitrary point during pregnancy. The woman who does take pregnancy leave cannot be penalized in reinstatement rights, accrual of retirement benefits or accumulated seniority.³³⁸

Fringe benefits are also included in the Act. Thus medical insurance and temporary disability plans must cover pregnancy the same as other illnesses. The Pregnancy Discrimination Act does not require employers to initiate new programs or to treat pregnant workers in any particular manner. The Act does not require employers to pay for health insurance benefits for abortion except where the life of the mother is endangered; neither does it preclude such payments.³³⁹

Pregnancy discrimination charges are filed with the EEOC the same as other Title VII sex discrimination charges. Title VII deadlines and procedural rules also apply.

Race and Sex Discrimination by Unions

Both Title VII and the Equal Pay Act prohibit race and sex discrimination by unions. Title VII covers unions as employers and also unions as referring agencies in a hiring system.³⁴⁰ Under both Acts unions may be liable for an employer's action in which they are directly or indirectly involved.³⁴¹ "The EEOC holds the union liable, not merely for 'causing' a discriminatory contract, but also for acquiescing in it—indeed, even for failure to oppose it actively."³⁴²

³³⁶ 29 U.S.C. 626.

³³⁷ 42 U.S.C. 2000e(k).

³³⁸ *Id.* See also: U.S. Department of Labor, Office of the Secretary, Women's Bureau, *A Working Woman's Guide to Her Job Rights* (December 1978), p. 10.

³³⁹ *Id.*

³⁴⁰ 29 U.S.C. 2000e; 29 U.S.C. 206(d). Executive Order 11246, covering government contractors, also prohibits race and sex discrimination by unions.

³⁴¹ 29 U.S.C. 2000e-2(c)(3).

Title VII prohibits a labor organization from excluding or expelling from membership because of race, color, religion, sex or national origin. It also makes it an unfair labor practice for a union to limit, segregate or classify its members or applicants, to fail to refer for employment, or otherwise to affect an employee's job status or limit his or her employment opportunities because of race, color, religion, sex or national origin.³⁴³

...an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.³⁴⁴

If the alleged discrimination is a failure of a union to represent female members as fairly and as vigorously as male members, the activity is covered by both Title VII and the Labor Management Relations Act (LMRA).³⁴⁵ Failure of a union to process grievances by women is also actionable under LMRA.³⁴⁶ These claims can be made either to the EEOC (under Title VII) or to the National Labor Relations Board, which administers and enforces both the LMRA and the National Labor Relations Act.³⁴⁷

A union is not required by law to process every grievance brought to its attention. It has an obligation, however, to act fairly under the collective bargaining agreement. Because the union has the discretion to settle or to abandon a grievance—so long as it acts fairly—a worker claiming discrimination in representation must prove, first, that the union's conduct was arbitrary or in bad faith, and second, that the union would have acted otherwise had the grievant been a male, in an allegation of sex discrimination, or another race, in an allegation of race discrimination.³⁴⁸ If the LMRA or the National Labor Relations Act is invoked, the claimant must first utilize internal union procedures and appeals

³⁴² 1 *Employment Discrimination* 9-8.

³⁴³ 29 U.S.C. 2000e-2(c).

³⁴⁴ 29 U.S.C. 2000e-2(d).

³⁴⁵ 29 U.S.C. 141 et seq.

³⁴⁶ *Id.*

³⁴⁷ 29 U.S.C. 141 et seq. The Board's structure and authority are set out at 29 U.S.C. 153-156.

³⁴⁸ *Peterson v. Roth Packing Company*, 461 F.2d 312 (8th C. 1972).

before filing with the National Labor Relations Board, unless the claimant can prove such steps would have been futile.³⁴⁹

A union's discriminatory actions in the hiring hall situation are direct violations of Title VII. Whether or not referral practices result from the employer's policy, the acts of the union are subject to Title VII remedies and penalties.³⁵⁰ A labor organization can also be subject to Title VII as an *employer*. As such it is included in all Title VII provisions directed to employers and charges are filed exclusively with the EEOC.³⁵¹

The Equal Pay Act and the Age Discrimination in Employment Act³⁵² specifically prohibit labor organizations causing or attempting to cause an employer to violate equal pay and age provisions. Although no clear cut answer as to what is "cause" exists, unions have won only those cases where they actively urged compliance with the law.³⁵³ Eventual consent to a discriminatory contract, by itself, may be acquiescence, but is not normally sufficient to establish "cause."³⁵⁴ Claims are filed with the EEOC. If an equal pay or age violation is established, the union, the employer or both may be liable for payment of back wages.³⁵⁵

State Law

Wyoming is one of 38 States with a general fair employment practices law.³⁵⁶ Wyoming also has an equal pay law. Both are broader than the Federal laws in that they cover all employers in the State.³⁵⁷

The Wyoming equal pay law, entitled Equal Pay For Women For Equal Work,³⁵⁸ states:

No employer shall pay to any female in any occupation in this state, a salary or hourly wage rate less than that paid to male employees employed by the same employer for the same work.³⁵⁹

Either an aggrieved individual or the Wyoming Commissioner of Labor and Statistics can file suit to enforce the act. An agreement between employer and employee to the effect that the employee consents to the lower pay is not an allowable defense in a court action and a successful complainant is entitled to receive both unpaid back wages and liquidated damages.³⁶⁰

The Wyoming statute also provides a penalty for willful violations of equal pay provisions and for an employer's retaliation against employees because of their complaint or other action under the law. In either instance an employer is subject to a fine for \$25 to \$200 and imprisonment of 10 to 180 days, or both.³⁶¹ "Each day such a violation continues," the law states, "shall constitute a separate offense."³⁶²

The Wyoming Fair Employment Practices Act of 1965³⁶³ defines an employer as the State, any political subdivision, institution or school district of the State, and "every other person employing two (2) or more employees within the state."³⁶⁴ Only religious organizations and associations are excluded.³⁶⁵ The act specifically includes labor organizations and employment agencies.³⁶⁶

The act creates a Fair Employment Commission with authority to receive, investigate and rule on complaints of employment discrimination or unfair labor practices.³⁶⁷ The Commission can hold hearings,³⁶⁸ take testimony under oath,³⁶⁹ issue subpoenas,³⁷⁰ and enforce its orders by district court decree.³⁷¹ When investigations and other processes involve complaints covered by both State and Federal law, the Commission receives reimbursement from the Equal Employment Opportunity Commission.³⁷² Complaints to the Fair Employment Commission must be made in writing.³⁷³ Orders of

³⁴⁹ *Vaca v. Sipes*, 386 U.S. 171 (1967).

³⁵⁰ 42 U.S.C. 2000e-2(c).

³⁵¹ 42 U.S.C. 2000e-2 et seq.

³⁵² 29 U.S.C. 206(d)(2); 29 U.S.C. 623(c).

³⁵³ 1 *Employment Discrimination* 9-26.

³⁵⁴ *Id.* at 9-27 to 9-30.

³⁵⁵ *Hodgson v. Baltimore Regional Joint Board, Amalgamated Clothing Workers of America*, 462 F.2d 180 (4th C. 1972).

³⁵⁶ 1 *Employment Discrimination* 2-136.

³⁵⁷ Wyo. Stat. 27-4-301(b) and (d); 27-9-102(b) (1977).

³⁵⁸ Wyo. Stat. 27-4-301 et seq.

³⁵⁹ Wyo. Stat. 27-4-302 (1977).

³⁶⁰ Wyo. Stat. 27-4-303 (1977). "Liquidated damages" refers to a fixed amount of money agreed upon between the parties or made a part of the court's judgment to cover such of an individual's losses as are certain and calculable.

³⁶¹ Wyo. Stat. 27-4-304 (1977).

³⁶² *Id.*

³⁶³ Wyo. Stat. 27-9-101 to 27-9-108 (1977).

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ Wyo. Stat. 27-9-104(iii) and 27-9-105(a)(ii).

³⁶⁷ Wyo. Stat. 27-9-104(iii).

³⁶⁸ Wyo. Stat. 27-9-104(iv).

³⁶⁹ *Id.*

³⁷⁰ Wyo. Stat. 27-9-104(v).

³⁷¹ Wyo. Stat. 27-9-106(j).

³⁷² Wyo. Stat. 27-9-104(vii).

³⁷³ Wyo. Stat. 27-9-106(a).

the Commission are reviewable by the State's district courts.³⁷⁴

The Wyoming Fair Employment Practices Act makes it an unfair labor practice for an employer:

. . .to refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation against, any person otherwise qualified because of sex, race, creed, color, national origin or ancestry.³⁷⁵

The law does not cover terms, conditions or privileges of employment. It does not extend to

³⁷⁴ Wyo. Stat. 27-9-108.

³⁷⁵ Wyo. Stat. 27-9-105(a)(i).

³⁷⁶ Lawson, Leslie, M. "Employment Discrimination in Wyoming: A New Legal Frontier," *Land and Water Law Review*, XII

training and apprenticeship programs and it has no protections against retaliation. Although the act does not specifically cover advertising, the Fair Employment Commission has taken the position that "publication of an employment advertisement which expresses or indicates any limitation, preference, specification or discrimination based on race, color, religion, national origin or sex is in violation" of the Fair Employment Practices Act.³⁷⁶

(1977), p. 493; see also: Wyoming Fair Employment Commission, *Resolution of Fair Employment Practices with Relation to Discriminatory Employment Advertisements* (1976).

Findings and Recommendations

Finding I

Women employed in Wyoming's mineral extraction fields report that they have experienced various types of harassment on the job. This harassment ranges from being assigned the most undesirable work, to verbal abuse, sexual advances, and physical violence.

Recommendations

Employers should not assume that women are not experiencing problems simply because complaints are not being formally raised. Assessment of workplace conditions should be standard operating procedure. Personal inquiries and a questionnaire could be used as a part of the assessment process.

Managers should provide strong and effective enforcement against sexual harassment and act against the harasser where the facts warrant such action. Policy against harassment should be made known to employees and supervisors.

The affected unions in Wyoming, in cooperation with resource companies, should hold a conference at which corporate leaders and State and Federal experts, including persons from the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs, should examine existing laws and regulations concerning sexual harassment. One outcome of the meeting could be specific recommendations for a program package which unions and industry can use to discourage incidents of sexual harassment. The unions should assume responsibility for the repro-

duction and dissemination of these suggestions as a proper package.

Finding II

Verbal harassment of minorities and women in the workplace is illegal race and sex discrimination. Such harassment can lead to emotional debilitation and hostility. This harassment necessarily limits employment opportunity of individuals on a basis other than individual merit and can be a serious inhibition to self-confidence and ability to perform the job.

Recommendations

Every supervisor in Wyoming's mineral extraction industry should be given an orientation in a program which emphasizes the company's policies on sexual harassment, the employee's rights, and the internal complaint process of the company. Consultant specialists could be brought in periodically to up-grade the supervisor's comprehension of harassment as an employee problem.

Formation of support groups of minorities and women workers within individual companies should be encouraged by managers. Such groups could act as a means of overcoming isolation and as a conduit for voicing the interests and concerns of these workers to management. In order to provide needed support more than one woman should be assigned to a work crew whenever possible.

Finding III

Equal Employment Opportunity Commission guidelines make employers legally liable for sexual harassment even when they are unaware of it. Harassment may also cost the employer in high turnover rates and low employment morale as well as diminished quantity and lesser quality of work product.

Recommendations

Employers should take immediate steps to investigate and remedy harassment complaints. Investigative procedures should be clearly set down. To encourage a discrimination free work environment, management should provide a formal and comprehensive complaint process with adequate staff and funding.

A policy of administering exit interviews to departing female and minority employees should be implemented in order to ascertain the degree to which sexual or racial harassment has contributed to their departure.

Finding IV

Women and minority workers in Wyoming's mineral extraction industry are not aware of their State and Federal rights regarding sex and race discrimination. Neither do these persons know where to file a formal complaint.

Recommendations

The Wyoming Fair Employment Practices Commission should initiate an active education program to inform citizens of employment rights provided by State law. The program should include use of media public announcement time and documents distribut-

ed free of charge and should set out the complaint process.

The Equal Employment Opportunity Commission, in furtherance of its public education function, should distribute Title VII information throughout Wyoming's mineral extraction industries. This information should include the guidelines on sexual harassment and a clear description of the Title VII complaint process.

Labor organizations active in the mineral extraction industries should publicize their willingness to support effective enforcement against sexual harassment.

Labor unions should be encouraged to instruct shop stewards and all other union officials about counseling techniques and legal redress for victims of sexual harassment who seek assistance from the union.

Finding V

The Wyoming Fair Employment Practices Commission is challenged to keep pace with the workload it encounters in Wyoming's expanding economy. With the anticipated increase in the numbers of women and minority workers in the Wyoming mining-extraction industries and in other non-traditional fields, the Wyoming Fair Employment Practices Commission can expect a substantially greater workload.

Recommendations

The Wyoming legislature should continue to provide the Wyoming Commission with funding levels periodically adjusted to account for increased numbers in the Wyoming workforce and FEC's caseload. Funding for outreach, education and training should also be provided.

Appendix A

Corporations can take some simple and inexpensive steps to head off many of the problems of discrimination and harassment described in this report. Companies have a great deal to gain by assuring that women and minority workers are fully integrated into the company workforce. Decreases in EEO complaints, reduced time in dealing with worker problems, and increased productivity can result from taking preventive measures. Company officials

- should not assume that women and minority workers are not experiencing problems;
- should inspect and compare the turnover rates of women, minorities, and white male workers as evidence of possible harassment;
- should conduct informal surveys of worker problems using personnel trusted by women and/or minority workers;

- should publicize policies on harassment and make clear that harassing behavior will not be tolerated;
- should conduct meetings to sensitize supervisors to needs of women and minority groups;
- should educate women and minority workers to be able to distinguish between "normal kidding" and harassment;
- a complaint process should be established and made known;
- should assign more than one woman on a workcrew whenever possible so that support may be provided;
- should take immediate steps to investigate and remedy harassment complaints; and
- should seek expert assistance when setting up anti-harassment programs.

Appendix B

**INFORMATION KIT
ON
SEXUAL HARASSMENT
IN
EMPLOYMENT**

January 1981

Prepared for employers, employment services, joint apprenticeship committees, and labor organizations as a clearinghouse activity of the *Maine Advisory Committee to the U.S. Commission on Civil Rights*. The opinions and interpretations included here are those of the Maine Advisory Committee and therefore should not be attributed to the Commission.

The Advisory Committee wishes to thank the *Kennebec Valley Chamber of Commerce* for its assistance in the distribution of this publication.

UNITED STATES COMMISSION ON CIVIL RIGHTS

NEW ENGLAND REGIONAL OFFICE
55 Summer Street
8th floor
Boston, Massachusetts 02110
(617) 223-4671

January 1981

Dear Maine Employer:

Sexual harassment on the job is illegal. Courts and government agencies have made this clear in the past year, and in the process they have made your responsibilities and liabilities suddenly more complicated.

This information kit is intended to help you to take simple preventive steps by which you can stay on the right side of the law, ensure the dignity and security of your employees, and maintain a businesslike atmosphere in your workplace. Some major Maine employers, such as the Dunfey Hotels, have already taken such measures at their own initiative.

The kit consists of:

- I. Some Basic Questions About Sexual Harassment
- II. Sexual Harassment and the Law
- III. Actions You Can Take in Your Firm
- IV. Model Questionnaire on Sexual Harassment
- V. Sample Company Policy on Sexual Harassment
- VI. Articles on Sexual Harassment

I hope that you will find this information and these recommendations useful. We would like to hear from you regarding which measures are practicable for you and which aren't, what innovations or adaptations you try, what you learn in the course of using the kit, and what additional information or assistance you need.

This material is being provided by the Maine Advisory Committee to the U.S. Commission on Civil Rights in accordance with our clearinghouse responsibilities as a service and not as part of a study.

Sincerely,



MADELEINE D. GIGUERE
Chairperson
Maine Advisory Committee

I. SEXUAL HARASSMENT -- SOME BASIC QUESTIONS

What is sexual harassment in employment?

Sexual harassment is any unwanted attention of a sexual nature that occurs in the process of working or seeking work and jeopardizes a person's ability to earn a living.

Is it a serious problem?

Harassment ranges from annoyances and distractions to deliberate intimidation and frank threats and demands.

Most persons would agree that any employee whose supervisor makes sexual demands accompanied by job-related threats is in a serious, troubling situation. This is especially so where jobs are scarce and the employee has few job skills.

However, far less blatant forms of harassment may also have the serious effect of jeopardizing the employee's income or career prospects. Acts that may appear to the bystander to be humorous or insignificant may be disturbing and distracting from the victim's perspective -- sufficiently so to lead to a decline in work performance or a rise in absenteeism.

Who are the victims?

Most of those who have studied this problem have found that the overwhelming majority of workers who encounter sex-related threats, demands, and annoying behavior are women. This is understandable, for it is consistent with the way power is distributed in the workplace -- women workers are typically at the bottom of the job ladder, and those in supervisory positions are mostly males.

There are many variations of this basic arrangement: professors, mostly male, are in a position to take advantage of students; female enrollment in skilled trades apprenticeships is increasing, but instructors, union officials, and foremen are almost invariably male; and even female professionals employed by corporations, government agencies, and other large institutions are almost always responsible to male executives.

Those who claim that harassment of males by females must get equal consideration do have a point, but very few females are in positions of advantage over males in the workplace.

Is harassment widespread?

Apparently so. Investigators have typically found the problem to be even more common than they anticipated. For example:

- Redbook Magazine found that 92 percent of women in its survey judged harassment at work to be a serious problem, and 88 percent had encountered it themselves;
- A study at Sangamon State University found that more than half of Illinois' State employees had been leered at or propositioned, and many had experienced retaliation when they objected;
- Of women surveyed by Working Women United Institute, 70 percent had had unwanted sexual overtures and 56 percent had encountered physical harassment.

It seems likely that harassment, opposition to it, and retaliation for that opposition will become even more common features of work life as economic necessity forces even greater numbers of women into the labor force and as competition for jobs becomes more severe.

Is this your problem or only the victim's?

Many employers think it is the victim's responsibility to fight or evade harassment. This ignores the many factors that prevent such resistance:

- Fear of retaliation, especially in the low-security positions often held by women;
- Absence of support or assistance in the form of a union, a complaint procedure, or the ability to secure private legal assistance;
- Lack of skills and experience that might make finding another job a realistic alternative;
- Fear that the victim will be misunderstood and get a bad reputation;
- Fear that the victim will be branded a troublemaker;
- Desire to protect the harasser's family and job.

These motives are quite different from the myths that women "enjoy the attention" or that pressure and manipulation by the supervisor is within the realm of courtship and the "battle of the sexes."

Women put up with harassment because there is no simple escape. Court decisions and the guidelines of Federal and Maine State agencies acknowledge this by emphasizing preventive

measures. Specifically, they assign important preventive responsibilities to employers, who are in an ideal position to provide the support and options employees need to confront those who harass them.

Will addressing harassment take a lot of your time?

It need not. The keystone is a convincing effort to let managers and employees know that harassment will not be tolerated. This should take no more effort than it takes to advise them of other company policies. The policy should be backed up by an accessible complaint procedure. An effective in-house complaint procedure should be easier on all concerned than pursuit of complaints through courts and government agencies. Moreover, sound preventive actions should minimize complaint volume -- and there is little evidence that frivolous harassment complaints are made.

Case Law

A Federal court may compel the employer to take corrective actions and may award back pay and payment of the plaintiff's attorney's fees. Some recent Federal court cases where sexual harassment was found to constitute unlawful sex discrimination are:

United States Court of Appeals

Tompkins v. Public Service Electric and Gas Co., 568 F.2d 1044, 15 EPD #7954 (3rd Cir. 1977).

The Third Circuit ruled that by requiring a female employee to submit to the sexual advances of a supervisor, the employer had imposed a "term and condition of employment unlawfully based on sex." It further ruled that Title VII is violated when an employer does not take "prompt and appropriate remedial action" after learning of the supervisor's sexual harassment of a female employee.

Garber v. Saxon Business Products, Inc., 552 F.2d 1032, 14 EPD #7587 (4th Cir. 1977).

The Fourth Circuit Court ruled that an employer who has a policy or acquiesces in a practice of compelling female employees to submit to the sexual advances of male supervisors is in violation of Title VII.

Barnes v. Costle, 561 F.2d 983, 14 EPD #7755 (D.C. Cir. 1977).

The Court found that the employer is liable for the discriminatory acts committed by its supervisory personnel at least when the employer has knowledge and when it takes no action to rectify the situation.

Miller v. Bank of America, 600 F.2d 211, 20 EPD #30086 (9th Cir. 1979).

The most far-reaching sexual harassment decision. The Court ruled that an employer is liable for the wrongs committed by an employee acting in the course of employment, even if company policy forbids such wrongful behavior. The Court also ruled that a complainant need not exhaust company remedies before filing a Title VII charge with EEOC.

United States District Courts

Williams v. Civiletti (Bell), decision on remand 487 F.Supp. 1387, 23 EPD #30,916 (D. C.D. 1980).

Originally filed as Williams v. Saxbe, the 1976 decision of the District Court (413 F.Supp. 655, 11 EPD 10,840) was the first Federal court to rule that sexual harassment could constitute unlawful sex discrimination. The most recent decision in this case upheld the original determination of discrimination and reinstated the award to plaintiff of back pay and attorney's fees.

Munford v. James T. Barnes & Co., 441 F.Supp. 459, 16 EPD #8233 (E.D. Mich. 1977).

The conclusion reached by the Court was that an employer has an affirmative duty to investigate complaints of sexual harassment and to deal appropriately with offending personnel. The employer is in violation of Title VII when it has conditioned an employee's job status on a favorable response to sexual demands, and does not take appropriate action.

See also:

Rinkel v. Associated Pipeline Contractors, Inc., 16 EPD #8331 (D. Ariz. 1978) and Heelan v. Johns Manville Corp., 451 F.Supp. 1382, 16 EPD #8330 (D. Colo. 1978).

State Law

It appears likely that, within the next several years, many States will develop statutory protections and remedies in the area of sexual harassment in employment.

In Connecticut, for example, a law went into effect on October 1, 1980, making sexual harassment at work an unfair labor practice. The innovation was considered significant enough by the Connecticut Bar Association that the association's labor law section held a panel on the subject at the association's annual meeting.

In Massachusetts, a bill submitted for the 1980 legislative session would have set up a grievance system within State government for harassment victims, permitted them to sue the harasser for monetary damages, and enabled them to obtain restraining orders. The Massachusetts bill proposed to attack harassment as a conflict of interest.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**29 CFR Part 1604****Discrimination Because of Sex Under Title VII of the Civil Rights Act of 1964, as Amended; Adoption of Final Interpretive Guidelines****AGENCY:** Equal Employment Opportunity Commission.**ACTION:** Final Amendment to Guidelines on Discrimination Because of Sex.

SUMMARY: On April 11, 1980, the Equal Employment Opportunity Commission published the Interim Guidelines on sexual harassment as an amendment to the Guidelines on Discrimination Because of Sex, 29 CFR Part 1604.11, 45 FR 25024. This amendment will re-affirm that sexual harassment is an unlawful employment practice. The EEOC received public comments for 60 days subsequent to the date of publication of the Interim Guidelines. As a result of the comments and the analysis of them, these Final Guidelines were drafted.

EFFECTIVE DATE: November 10, 1980.

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX**§ 1604.11 Sexual harassment.**

(a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII.¹ 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 unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working/ environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

¹ The principles involved here continue to apply to race, color, religion or national origin.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

(Title VII, Pub. L. 88-352, 78 Stat. 253 (42 U.S.C. 2000e et seq.))
 (FR Doc. 80-33981 Filed 11-7-80; 8:45 am)
 BILLING CODE 6570-06-M

III. ACTIONS YOU CAN TAKE IN YOUR FIRM

1. Determine whether there might be a sexual harassment problem.

This can be done through a modest survey using a questionnaire adapted from the model questionnaire in this kit.

You may be able to assess the situation in a less formal way, just by looking at how work is organized, talking to a few employees, and thinking about the potential for abuse from those in authority and the possible alternatives of those who might be victimized.

2. Seek legal counsel about what the company should do. Send your attorney the legal information in this kit. Your attorney may decide that certain actions are necessary on the basis of self-protection.
3. Prepare and distribute a corporate policy statement on harassment. It should be signed at the highest possible level, and could be distributed to employees in their pay envelopes.
4. Establish a procedure for handling complaints of harassment, or adapt your existing complaint procedure for this purpose.
5. Train the personnel office staff about sexual harassment.
6. Include in your training of supervisors and executives a discussion of sexual harassment and company responsibility.
7. Assign one of your executives or managers responsibility for coordinating the overall effort to prevent harassment. This could be the equal employment coordinator.

For Your Employee Relations Officer

IV. MODEL QUESTIONNAIRE ON SEXUAL HARASSMENT

This company wants all its employees to be able to work in security and dignity. This means that you should be free from sexual harassment, including:

1. Sexual relations or contact with a supervisor or co-worker that you do not want and to which you have not freely agreed;
2. Attention of a sexual nature (degrading comments, propositions, jokes or tricks, etc.) that you do not want; and
3. The threat or suggestion that your job, advancement, assignments, wages, etc., depend on whether or not you submit to sexual demands or tolerate harassment.

To learn whether these problems exist here, we are asking employees to answer a short questionnaire.

MODEL QUESTIONNAIRE ON SEXUAL HARASSMENT

1. Have you been subjected to sexual harassment while working for this company? (If "No," skip to Question 8.) Y N
2. If so, what did you encounter? (Check as appropriate.)
- Sexual relations I did not want. ()
 - Physical contact I did not want. ()
 - Annoying or degrading comments about my body. ()
 - Annoying or degrading remarks about sex. ()
 - Pressure to engage in sexual activity, but without job-related threats. ()
 - Threats or suggestions that my job, working conditions, etc., depended on submitting to sexual demands. ()
 - Other kinds of threats to get me to submit to sexual demands. ()
3. Who harassed you?
- Co-worker ()
 - Supervisor or boss ()
 - Client or customer ()
4. What action did you take to end the harassment? If none, why?
-
-
5. Did the harassment stop when you objected to it? Y N
6. Would you have filed a complaint if there had been a procedure for you to do so? Y N
7. Were you penalized in any way for objecting or complaining? Y N
If so, how?
-
-
8. Do you know of anyone who works here who has been harassed and was afraid to object or complain? Y N
- Was the victim male or female? M F
9. Do you think this is a problem that this company needs to address? Y N
What suggestions do you have?
-
-
10. Has harassment or your fear of it distracted you from work and reduced your efficiency? Y N
11. Are you male or female? M F

V. SAMPLE COMPANY POLICY ON SEXUAL HARASSMENT

Sexual harassment of the employees of this company will not be tolerated.

This means that the following behaviors are grounds for disciplinary action:

1. Abusing the dignity of an employee through insulting or degrading sexual remarks or conduct;
2. Threats, demands, or suggestions that an employee's work status is contingent upon the employee's toleration of or acquiescence to sexual advances; or
3. Retaliation against employees for complaining about the behaviors described above.

If you encounter such abuses from supervisors, fellow employees, or clients, you should contact your supervisor, the personnel office, the equal opportunity coordinator, and/or your union steward.

We want all employees to know that they can work in security and dignity, and are not required to endure insulting, degrading, or exploitative treatment.

VI. ARTICLES ON SEXUAL HARASSMENT

- AFSCME, Sexual Harassment -- On the Job Sexual Harassment: What the Union Can Do, AFSCME Women's Activities, 1625 L Street NW, Washington, DC 20036 (1980).
- Alliance Against Sexual Coercion, Fighting Sexual Harassment, AASC, P.O. Box 1, Cambridge, MA 02139 (1977).
- Backhouse, Constant, and Lea Kohen, The Secret Oppression: Sexual Harassment of Working Women, MacMillan of Canada, Toronto (1979).
- Brodsky, Carroll M., The Harassed Worker, Lexington Books, D.C. Heath, Lexington, MA (1976).
- Farley, Lin, Sexual Shake-Down, McGraw-Hill, New York, NY (1978).
- MacKinnon, Catherine A., Sexual Harassment of Working Women, Yale University Press, New Haven (1979).
- "A Proposal: We Need Taboos on Sex at Work," Redbook, April 1978, p. 31.
- "A Shocking Look at What Men Do to Women on the Job," Redbook, November 1976.
- "Sexual Harassment at the Workplace: Historical Notes," Radical America, July-August 1978, Vol. 12, No. 4, p. 25.
- "Sexual Harassment on the Job: How to Spot It and How to Stop It," Ms, November 1977, p. 47.
- "Sexual Harassment: How You Can Fight Off Your Boss," Mother Jones, June 1978.
- "Sexual Pressure on the Job," McCalls, March 1978, p. 43.
- "The Working Women: Sexual Harassment," Ladies Home Journal, June 1977, p. 24.

MAINE STATE ADVISORY COMMITTEE
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The U.S. Commission on Civil Rights is an independent factfinding agency which investigates issues related to discrimination or denial of equal protection of the laws because of race, color, national origin, religion, sex, handicap and age. The Maine Advisory Committee is one of 51 such bodies composed of private citizens who advise the Commission on civil rights developments in their States.

Appendix C

UNITED STATES COMMISSION ON CIVIL RIGHTS

ROCKY MOUNTAIN REGIONAL OFFICE
Brooks Towers, Suite 2235
1020 Fifteenth Street
Denver, Colorado
Telephone: (303) 837-2211

October 10, 1980

Dear

The U.S. Commission on Civil Rights in cooperation with the Region VIII Office of Federal Contract Compliance Programs, the U.S. Department of Labor, is currently undertaking a survey of workplace conditions for women and minority workers in Wyoming's mineral extraction industries. The purpose of this research is to identify conditions which lead to increased opportunities for women and minorities in these fields, and to discover any possible barriers to their equal employment. In view of the shortage of labor in Wyoming it is in the interest of industry as well as women and minorities to explore means by which to increase employment and retention of female and minority workers and note those programs which are especially helpful.

Six firms in mineral extraction industries are being surveyed for the study. These corporations have been selected because they are geographically dispersed around Wyoming, and because their labor force contains relatively large numbers of women and minority workers in "non-traditional" jobs. To insure that the study obtains objective results a random sample of your women, minority, white males, and supervisory workers will be interviewed by staff of the Rocky Mountain Regional Office of the U.S. Commission on Civil Rights. In all, 15-20 interviews would be conducted at your firm taking no more than 45 minutes each.

When all interviewing is completed the results will be analyzed and published as a report of the Wyoming Advisory Committee to the U.S. Commission on Civil Rights. You will receive a copy. The report will also be distributed to business leaders, State and Federal officials, and interested citizens. The Office of Federal Contract Compliance Programs (OFCCP), although not an active participant in the interview and evaluation process, will receive an action copy of the final report. It is possible that OFCCP, in the course of enforcing Executive Order 11246, will be scheduling participating companies for compliance reviews.

The Rocky Mountain Regional Office of the U.S. Commission on Civil Rights will be contacting you by phone within the next week to answer any further questions you may have about the study. We look forward to a productive effort that can be beneficial to all concerned.

Sincerely,

SHIRLEY HILL WITT, Ph.D.
Regional Director
Rocky Mountain Regional Office
U.S. Commission on Civil Rights

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WASHINGTON, D.C. 20425

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