# Sexual Harassment on the Job

## A Guide for Employers

September 1982

This guide has been prepared for employers, employment services, employment and training advisory boards, labor unions and other interested organizations and individuals by the Vermont Advisory Committee to the U.S. Commission on Civil Rights and the Governor's Commission on the Status of Women. The Civil Rights Division of the Vermont Attorney General's Office and the Vermont State Chamber of Commerce have also assisted in its preparation and distribution. The guide is based largely upon the Advisory Committee's study of denial of equal protection of the laws based on sex, and should not be attributed to the U.S. Commission on Civil Rights.

## The United States Commission on Civil Rights

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

## The State Advisory Committees

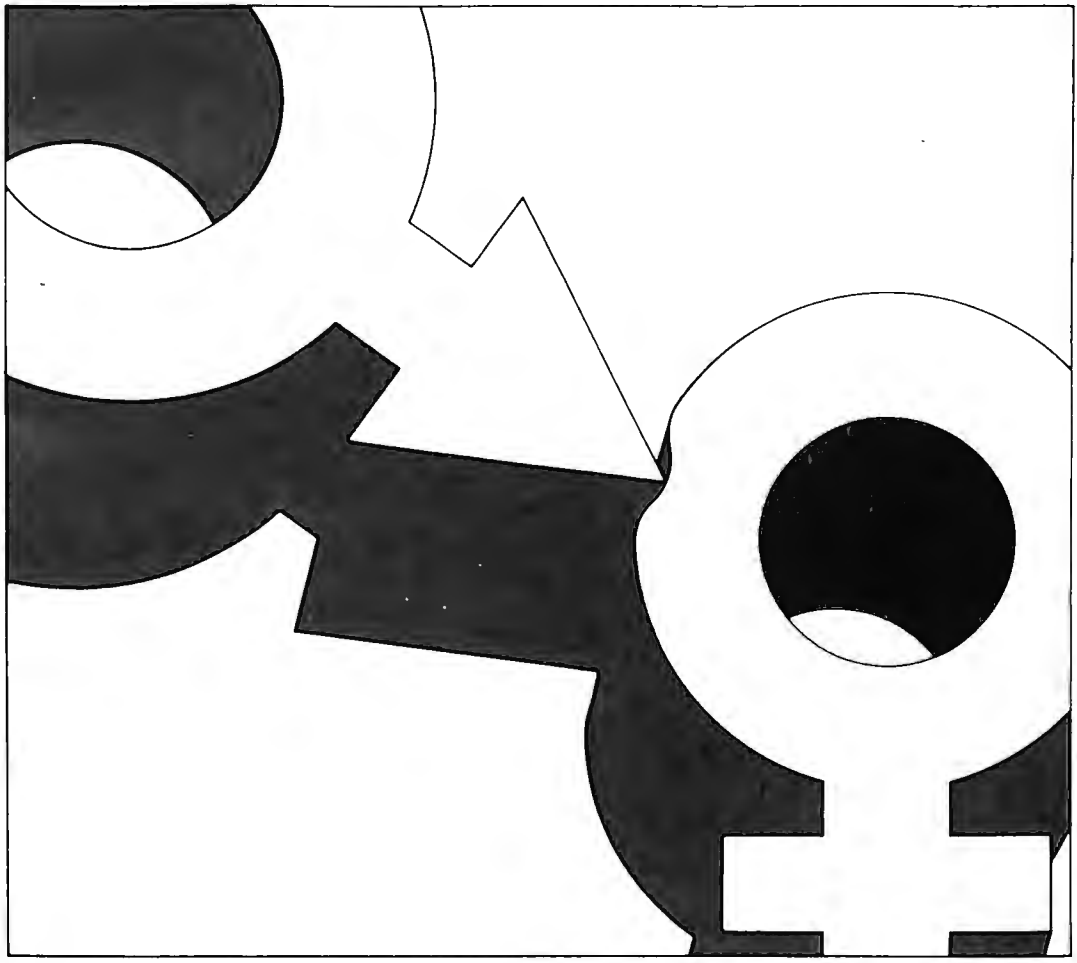
An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation.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

# Sexual Harassment on the Job

## A Guide for Employers

September 1982

A Guide Prepared by the Vermont Advisory Committee to the U.S. Commission on Civil Rights



## The Governor's Commission on the Status of Women

The Governor's Commission on the Status of Women is dedicated to the achievement of equal legal, economic, social and political status for women in Vermont. Established in 1964 by then Governor Philip H. Hoff, the Commission has been reaffirmed by Governors Deane C. Davis, Thomas P. Salmon and Richard A. Snelling. Its authority is by executive order. Commissioners are appointed by the governor for four year terms. They represent a wide range of backgrounds, interests and geographical areas. Meetings are held monthly and are open to the public. The Advisory Council broadens the scope of the Commission to include individuals with special expertise and representatives of women's organizations. A visible and responsive representative of women, the Commission provides a vehicle for a statewide network for study and action. Current priorities include work on legislation, family violence, sexual assault, employment, education and public information.

September 1982

Dear Vermont Employer:

Sexual harassment on the job is illegal. Courts and government agencies have made this clear. This information booklet will help you take simple preventive steps to ensure a dignified and businesslike work environment, comply with the law, and recognize situations of potential liability. Some employers in Vermont already have taken such measures. For example, the State, one of Vermont's largest employers, has taken several steps suggested in this guide to address the problem of sexual harassment.

The guide contains the following sections:

Sexual Harassment—Some Basic Questions
Sexual Harassment and the Law
Actions You Can Take in Your Organization
Model Questionnaire on Sexual Harassment
Sample Policy on Sexual Harassment
Bibliography on Sexual Harassment
Equal Employment Opportunity Commission's Guidelines on Sexual Harassment

We hope you will find this guide useful. Any suggestions you have to improve this booklet or that would help other employers will be appreciated. Let us know if you need further information or assistance.

Sincerely,

PHILIP H. HOFF
*Chairperson*
Vermont State Advisory Committee
to the U.S. Commission
on Civil Rights
New England Regional Office
55 Summer Street
8th Floor
Boston, Massachusetts 02110

BETTY JONES
*Chairperson*
Governor's Commission
on the Status of Women
A.P.O.
126 Stace Street
Montpelier, Vermont 05602

## MEMBERSHIP
## VERMONT ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

Philip H. Hoff, *Chairperson*
Burlington

Stephen E. Bailey
Barre

Louvenia D. Bright
So. Burlington

Edward R. Ducharme
Hinesburg

Andre G. Germain
So. Burlington

Marcia Haines
Westminister

Laurie B. Huse
Fairfax

William G. Kemsley, Sr.
Bellows Falls

Noel A. Neely
Woodstock

Susan H. Webb
Plymouth

Joan G. Webster
Plainfield

A. Peter Woolfson
Burlington

## GOVERNOR'S COMMISSION ON THE STATUS OF WOMEN

Betty Jones, *Chairperson*
Eden Mills

Claire Anderson
Charlotte

Jennifer Barker
Burlington

Anne K. Batten
East Hardwick

Parker W. Brown
Danville

Alan Cheever
Barre

Ann Cummings
Tunbridge

Pat Davis
Tunbridge

Claire Duke
Barre Town

Jean Flack
Enosburg Falls

Ellen Maloney
Dorset

Carolyn Miller
Norwich

Noreen O'Connor
Woodbury

Pamela Rampone
Castleton

Evelyn Smith
Grand Isle

Jeanne VanVlandren
So. Burlington

# CONTENTS

# 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. Harassment ranges from verbal annoyance and demands to physical conduct of a sexual nature.

**Is it a serious problem?**

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, as is the case in many Vermont communities, and when the employee has few job skills.

However, 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.

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. Sexual overtures from the employee to the supervisor hardly entail the threat associated with the reverse.

**Is harassment widespread?**

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

- A 1981 report by the Federal Merit Systems Protection Board on sexual harassment in Federal government employment found that 42 percent of all female Federal employees surveyed reported being sexually harassed.
- A 1979 survey by the Illinois Task Force on Sexual Harassment and Sangamon State University found that more than half of Illinois' female State employees reported that they had experienced some unwanted sexual attention causing them to feel threatened or humiliated.
- Of women surveyed in 1979 by Working Women's Institute of New York, 70 percent had had unwanted sexual overtures and 56 percent had encountered physical harassment.

Even if these figures are greatly discounted because the definitions of "harassment" are too broad or because the responses are subjective, nonetheless a sizeable problem remains. Moreover, 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 ever greater numbers of women into the labor force and as competition for jobs becomes more severe.

**Why is this issue receiving so much attention recently?**

Increases in the numbers of women in the labor force have made us aware of a whole range of heretofore ignored issues of concern to working women—harassment, child care, comparable worth, and others. However, sexual harassment in the workplace is not a new problem. Women have put up with it in the past because there has been no simple escape. Only in the last few years have court decisions and guidelines of Federal and State agencies made it clear that sexual harassment is illegal and defined the responsibilities of employers in dealing with this problem. In particular, agency guidelines and court decisions assign important responsibilities to employers to prevent harassment from occurring since employers are in an ideal position to provide the support and options employees need to confront those who harass them.

**Why is this the employer's problem—and not just the victim's?**

Employers may 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 an internal complaint procedure or the employee's inability to secure private legal assistance;

- Lack of skills and experience, so that finding another job is an unrealistic 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."

Furthermore, it is in the employer's best interest to provide a trouble-free work environment. The existence of sexual harassment often causes tension and turmoil in the workplace. In addition to the likelihood of a negative work environment, sexual harassment may result in two other problems for employers: additional personnel costs and potential legal liability.

The Federal Merit Systems Protection Board estimated the cost of sexual harassment to the U.S. Government between 1978 and 1980 to have been $189 million. This amount represents the costs of (1) replacing employees who left their positions, (2) compensating employees for sick leave for work missed due to sexual harassment, (3) paying medical insurance claims for those employees who sought professional help to deal with this problem, and (4) costs resulting from reduced worker productivity.

Sexual harassment is illegal and employees are increasingly filing complaints against their employers. Defending lawsuits is time consuming and costly, even when you win, and can be even more costly if you lose. Steps taken to prevent sexual harassment from occurring in your workplace can be well worth the time and effort involved.

**Will addressing harassment take a lot of time?**

It need not. The keystone is to make 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.

# Sexual Harassment and the Law

**Federal Law and EEOC Guidelines**

Title VII of the Civil Rights Act of 1964 (42 U.S.C. Sec. 2000e) is the most important Federal law prohibiting sex discrimination in employment. The U.S. Equal Employment Opportunity Commission (EEOC) is the Federal agency charged with the responsibility of enforcing Title VII.

On November 10, 1980, the EEOC issued guidelines on sexual harassment in the workplace (29 CFR 1604.11) embodying the position that sexual harassment constitutes a violation under section 703 of Title VII. (The complete text of the guidelines can be found at the end of this booklet.) The guidelines represent the administrative position that the EEOC will take in investigating complaints of sexual harassment. These guidelines are not law, but courts are entitled to give them "great weight" in deciding cases.

Eleanor Holmes Norton, then Chair of the EEOC, observed that recent case law has established sexual harassment as a form of illegal sex discrimination, and that employers therefore should realize, "You can attack the guidelines all you want, but that won't get you through the courts." (See list of cases below.)

Therefore, although the guidelines may be altered, or even eliminated, case law is developing continually under Federal and State antidiscrimination laws, and an employer's potential liability will be affected by these decisions.

Case law suggests that it makes good business sense for employers to use the EEOC guidelines set forth below in developing their own internal policies.

The behaviors characterized as sexual harassment are "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature." Such behavior is illegal when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition 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 individuals;

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.

The EEOC does not intend to regulate the "purely personal social relationship without a discriminatory employment effect." Therefore, the legality of specific actions will be determined from specific facts, including the context of the incident, on a case-by-case basis.

Perhaps most significant for employers, EEOC's guidelines declare that the "employer should take all steps necessary to prevent sexual harassment from occurring." This applies to employers, employment agencies, joint apprenticeship committees, and labor organizations. The guidelines make clear that the employer is responsible for the actions of supervisory employees or agents regardless of whether the acts were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence.

In addition, the employer may be liable for sexual harassment of its employees by nonemployees and among fellow employees if it knows or should have known about the conduct and if it failed to take immediate corrective action.

The guidelines emphasize that prevention is the best tool for opposing harassment. They urge employers to take steps "affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of sexual harassment under Title VII, and developing methods to sensitize all concerned."

**Federal Case Law**

A Federal court may compel the employer to take corrective action 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 (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 (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 (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 (9th Cir. 1979).
In this 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.

*Bundy* v. *Jackson,* 641 F.2d 934 (D.C. Cir., 1981).
The court ruled that sexual harassment was established in a case in which the employer tolerated a work environment where sexual harassment flourished despite the fact that the plaintiff suffered no measurable loss of job benefits. It found that sexually stereotyped insults and demeaning propositions causing an employee anxiety and debilitation constituted sex discrimination with respect to terms, conditions or privileges of employment, regardless of whether the employee lost any tangible job benefits as a result.

United States District Courts
*Williams* v. *Civiletti (Bell),* decision on remand 487 F.Supp. 1387 (D.C. D of C 1980).
Originally filed as *Williams* v. *Saxbe,* the 1976 decision of the District Court (413 F.Supp. 655) was the first Federal court ruling that sexual harassment could constitute unlawful sex discrimination. This recent decision upheld the original determination of discrimination and reinstated the award to plaintiff of back pay and attorney's fees.

*Munford* v. *Barnes and Co.,* 441 F.Supp. 459 (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 no. 8331 (D. Alas. 1978) and *Heelan* v. *Johns Manville Corp.*, 451 F.Supp. 1382 (D. Colo. 1978).

**State Law and Policies**

The Vermont Fair Employment Practices Act is the State law that prohibits employers, employment agencies, and labor organizations from discrimination on the basis of sex. The law applies to private and public employers alike. The Civil Rights Division of the Attorney General's Office which enforces the Fair Employment Practices Act considers sexual harassment on the job as an unlawful employment practice under that Act.

In addition, the 1981 collective bargaining agreement between the Vermont State Employees Association and the State of Vermont includes an article prohibiting discrimination, intimidation or harassment, and spells out the responsibilities of the parties for educating their members on the provisions of the article. State employees covered by this contract may file a grievance with their union representative if they believe that this article has been violated.

On May 5, 1980, the Vermont Commissioner of Personnel issued a memorandum to all State agency and department heads stating that "any supervisor or manager who condones any form of racial, ethnic or sexual intimidation or harassment of State employees or fails to properly discipline persons responsible for such action, if necessary, will also be subject to discipline."

**Complaint Processing**

The Civil Rights Division of the Vermont Attorney General's Office is the State agency which investigates complaints of sexual harassment on the job. EEOC also will receive complaints, but the agency has no office in Vermont and, under an agreement between the two agencies, EEOC initially "defers" employment complaints filed with it to the Civil Rights Division. State law has a general statute of limitations of six years, but complaints must be filed with EEOC within 300 days of the occurrence. Federal jurisdiction is invoked if an employer has 15 or more employees.

The Civil Rights Division investigates the complaint and encourages the parties to resolve the complaint early in the investigation. If this effort is unsuccessful, the Division continues its investigation without prejudice to either side and determines whether or not reasonable grounds exist to believe that discrimination has occurred. If such grounds are found, it makes an attempt to conciliate the matter. Should conciliation efforts also fail, the case may be litigated by the Civil Rights Division or by the

complaining party or it may be transferred to EEOC for conciliation efforts.

Litigation may lead to court directives that the harassment be ended; that the victim be hired, rehired, promoted, or assigned as appropriate; that the victim be accepted or reinstated in a union; or that the victim be paid damages.

If the case is transferred to EEOC for conciliation, EEOC will make an attempt to reach a settlement. If that fails, EEOC may choose to litigate the matter itself or issue a "right-to-sue" letter authorizing the complainant to take the complaint to a Federal District Court.

## Actions You Can Take in Your Organization

1. Establish a procedure for handling complaints of harassment, or adapt your existing complaint procedure for this purpose.

2. Determine whether there might be a sexual harassment problem. This can be done through a survey using your own version of the model questionnaire in this booklet.

3. Seek legal counsel about what your organization should do. Send your attorney the legal information in this pamphlet. Your attorney may decide that certain actions are necessary on the basis of self-protection.

4. Prepare and distribute a policy statement on harassment. It should be signed at the highest possible level, and could be distributed to employees in their pay envelopes.

5. Be aware of, and train the personnel staff about, sexual harassment.

6. If you have executives, middle management, supervisory personnel, or foremen, include a discussion of sexual harassment and company responsibility in their training or at a staff meeting.

7. Assign responsibility for coordinating the overall effort to prevent harassment. This could be the responsibility of the equal employment coordinator, a personnel officer, or other specially assigned person.

## Model Questionnaire on Sexual Harassment

This organization 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 the short questionnaire on the next page.

**Model Questionnaire on Sexual Harassment.**

| | | | |
|---|---|---|---|
| 1. | Have you been subjected to sexual harassment while working for this organization? (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? If so, how? | Y | N |
| | _____ | | |
| 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? What suggestions do you have? | Y | N |
| | _____ | | |
| 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 |

## Sample Policy on Sexual Harassment

*(This is a suggested policy for employers to adapt to their own business.)*

Sexual harassment of the employees of this organization 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 exploitive treatment.

# Bibliography on Sexual Harassment

A 30-page annotated bibliography on sexual harassment is available from the Alliance Against Sexual Coercion, P.O. Box 1, Cambridge, MA 02139 at a cost of $7. Some other good sources of information are the following:


1. Bureau of National Affairs, *Sexual Harassment and Labor Relations* (1981), 100 pp.; available for $10 from the Bureau of National Affairs, Inc., 1231 25th St., N.W., Washington, D.C. 20037.

A comprehensive report on sexual harassment from this private information service. The report analyzes recent court decisions and legal trends. It includes a bibliography and sample company policies on sexual harassment.

2. U.S. Merit Systems Protection Board, *Sexual Harassment in the Federal Work Place: Is It a Problem?* (1981), 104 pp. plus appendices; available from U.S. Government Printing Office, Washington, D.C. 20402.

A thorough study of sexual harassment in Federal employment which includes sections describing employees' perceptions of the problem, characteristics of the victims and the perpetrators, the cost of sexual harassment, and charts and statistics.

3. "Love in the Office," *Management Review,* vol. 68, no. 11 (November 1979), p. 5.

A brief article that suggests that employers issue policy statements condemning sexual harassment and establish complaint procedures.

4. James C. Resnick, "Sexual Harassment at Work: Why It Happens, What To Do About It," *Personnel Journal,* vol. 59, no. 8 (August 1980), pp. 658–62.

Defines sexual harassment and identifies its major cause as sexual stereotyping of women by men. Includes some suggestions for employers for coping with the problem, such as management training.

5. Alliance Against Sexual Coercion, *Sexual Harassment at the Workplace* (1977), 25 pp.; available for $1.25 from Alliance Against Sexual Coercion, P.O. Box 1, Cambridge, MA 02139.

The booklet explains why sexual harassment occurs and what women can do about it.

6. "Abusing Sex at the Office," *Newsweek,* March 10, 1980, pp. 81–82.

The article discusses the increasing awareness of sexual harassment and its illegality and how women are organizing to combat it.

7. American Federation of State, County, and Municipal Employees, *Sexual Harassment on the Job: What the Union Can Do* (1980),

38 pp.; available from AFSCME Women's Activities, 1625 L St., N.W., Washington, D.C. 20036.

The booklet, designed for union members, discusses the effects of sexual harassment and gives advice on what the union can do about it. It includes a legal analysis, a bibliography, and a list of resources.

# Equal Employment Opportunity Commission's Guidelines on Sexual Harassment

## 29 CFR Part 1604

1604.11 Sexual Harassment

(a)Harassment on the basis of sex is a violation of Sec. 703 of Title VII. 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.

(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.

* United States Government Printing Office:1982--385-394/8518

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

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300


FOURTH CLASS MAIL
POSTAGE AND FEES PAID
U.S. COMMISSION ON CIVIL RIGHTS
PERMIT NO. G73