SEXUAL HARASSMENT IN EMPLOYMENT

Sexual harassment is an invasion of one's intimate, personal privacy, whether on the street or in the work place. Privacy is, philosophically speaking, a condition of limited access to one's dominion, one's personal decisions, and one's personal life.[1] Privacy is a condition about which claims may be made as to an individual's freedom from unwanted intrusions upon or disclosures of their affairs, as well as their freedom to limit and define for themselves their engagements with others. Individuals have the right to expect freedom from intrusions into their personal life and activities and autonomy in their personal associations. Sexual harassment of an employee by supervisors, by managers, by co-workers, is an abuse of power which violates decisional privacy rights and territorial privacy rights. It is a form of sex discrimination which has a serious effect upon the personal integrity of workers.

Sexual harassment is defined as unsolicited and unwelcomed sexual overtures, be they written, verbal, physical, and/or visual, that occur when:

1. Submission is made, either explicitly or implicitly, a term or condition of employment;

2. Submission or rejection by an employee is used as a basis for employment decisions affecting the employee; or

3. Such conduct has the potential to affect an employee's work performance negatively and/or create an intimidating, hostile or otherwise offensive work environment.

This definition is derived from the Federal Equal Employment Opportunity Commission (EEOC) Guidelines on Sexual Harassment as a form of sex discrimination. Absent a more enlightened sensitivity to what constitutes sexual harassment, in the minds of many people, the only form of sexual harassment is the blatant one - "If you don't go to bed, you don't get the promotion." In a majority of cases, such overt harassment will not be manifested. Sexual harassment can take many forms. The various categories of behavior women workers had said they found objectionable include:

Verbal harassment or abuse

Subtle pressure for sexual activity

Sexist remarks about a woman's clothing, body or sexual activities

Unnecessary touching, patting or pinching

Leering or ogling a woman's body

Constant brushing against a woman's body

Demanding sexual favors, accompanied by implied or overt threats concerning one's job, promotion, letters of recommendation, etc.

Physical assault[2/]

Sexual harassment is distinguished from voluntary sexual relationships by the introduction of coercion, threat, or unwanted attention. What makes this sex discrimination and illegal under Title VII of the Civil Rights Act is its presence in the work place. Title VII makes it an unlawful employment practice for an employer to discriminate against any individual with respect to conditions and/or privileges of employment on the basis of sex. Every agency, every public and private employer has an obligation to assure that the work environment is free from all types of discrimination - including sexual harassment. The EEOC Guidelines are clear in stating the employer's responsibility and liability. Under Title VII, an 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." With respect to the conduct between fellow employees and acts of nonemployees, the employer is also responsible for the acts of sexual harassment, if the organization had not taken any action upon receiving knowledge of the harassment.

This paper was prepared to comply with a grant from the Intergovernmental Personnel Act Advisory Council. This paper is an assessment of invasion of privacy in sexual harassment matters based on a review of existing literature and discussions with staff in organizations which deal with sexual harassment complaints and describes means to educate people about attitudes and activities that contribute to these problems.

Sexual Harassment Surveys

Surveys conducted by Redbook Magazine, Harvard Business Review and the U.S. Merit Systems Protection Board, and articles in the New York Times, Ms. Magazine, Ladies Home Journal and Newsweek have shown that sexual harassment is not a minor, isolated issue. It is an illegal employment practice described as "not epidemic - it is pandemic."[3/]

In a 1976 survey conducted by Redbook Magazine, 9000 women responded to the questionnaire, and close to nine out of ten women said that they have experienced sexual advances on the job, ranging from leers to outright propositions. Harvard Business Review Magazine conducted a survey of their subscribers on sexual harassment and published their findings in their March-April 1981 Issue. They found that men and women disagreed strongly on how frequently sexual harassment occurred and that many women despaired of having traditionally male dominated management understand how much harassment humiliates and frustrates them. Fifty-nine percent of the men responding to the survey agreed with the statement: "A smart women employee ought to have no trouble handling an

unwanted sexual approach," compared with the same proportion of women who disagreed with this statement. Two-thirds of the men responding agreed or partly agreed that the reported amount of sexual harassment at work is greatly exaggerated. This agrees strongly with the U.S. Merit Systems Protection Board survey which found that 44% of the men vs. 23% of women agreed with the statement that the issue of sexual harassment was exaggerated, and that most incidents are simply normal sexual attractions between people. Despite the views expressed by the men in the Harvard Business Review survey, a survey of readers conducted by Redbook Magazine in 1976 indicated that 88% of the respondents had experienced some form of sexual harassment on the job. A survey of the membership of the Working Women's Institute in 1981 indicated that 70% had experienced sexual harassment. The survey conducted by the U.S. Merit Systems Protection Board, which is perhaps more reliable as it surveyed a more general population of working women than the self-selected Redbook and Working Women's Institute surveys, found that 42% of the women in the Federal work place - the equivalent of 294,000 women - had experienced some form of overt sexual harassment, ranging from assault to sexually suggestive jokes and gestures in the 24-month period covered by the survey. The Merit Systems survey also found that many sexual harassment incidents occurred repeatedly and were of relatively long duration.

The perceived seriousness of the harassment seems to depend on who is making the advance, the degree of interpreted intent, and the victim's perception of the consequences. Sexual harassment is seen by both men and women as an issue of power. In responses to vignettes described by the Harvard Business Review survey, out of six situations dealing with a range of behavior from extreme incidents of sexual harassment to more ambiguous ones, in four of them the respondent rated a supervisor's behavior as more serious and threatening than the same action by a co-worker. The Merit Systems study divided sexual harassment behaviors into three groups. Less severe sexual harassment was described as sexual remarks, suggestive looks and deliberate touching; severe, pressure for dates, pressure for sexual favors, letters and phone calls of a sexual nature; most severe, actual or attempted rape or assault. In the Merit Systems survey, slightly less than half of the victims of severe sexual harassment (letters, phone calls of a sexual nature, pressure for sexual favors, deliberate touching, cornering or pinching) were harassed by their supervisors. Fifty-one percent of the victims of actual or attempted rape or sexual assault during the period of the survey were victimized by their own supervisor or other higher level supervisor. The Merit Systems study found, however, that overall most harassers of men and women were co-workers or other Federal employees who had no direct supervisory authority over the victim. While this appears to contradict the popular notion that most sexual harassment originates from those in a position of power (supervisors) who choose to wield that power in a sexual way against their subordinates, it may be that while supervisors may not be direct perpetuators of sexual harassment, they "may be giving tacit approval to the behavior and, thus, creating an environment wherein sexual harassment is not only tolerated but encouraged".4/

Other findings of the Merit Systems study included the characteristics of perpetrators of sexual harassment against women.

1. The harasser is usually a man.

2. The harasser usually acts alone.

3. The harasser is usually older than the victim.

4. The harasser usually is married.

5. The harasser usually is someone of the same race or ethnic background.

6. Many women are harassed by someone who has harassed others on the job.

This last finding corresponds closely to a study conducted by the National Advisory Council on Women's Educational Programs on Sexual Harassment in Postsecondary Educational Institutions. The Council found that allegations of harassment against school officials indicated that the behavior is often repetitive - that the complainant is likely to be one of several persons victimized by the same initiator. They also found, similar to the Merit Systems study, that faculty involved in the more serious cases seemed to be primarily persons who had an unusual degree of influence over the academic careers of the victims - department heads, graduate advisors, and others were often named in the complaints.

A number of surveys conducted by various organizations and scholars (e.g., Working Women's Institute; Gutek, Nakamura, et al.) using a variety of sampling techniques (e.g., random telephone interviews, questionnaires to students in the university, survey of police officers) has shown there are also some similarities in the characteristics of women who are most likely to be sexually harassed. It is commonly believed that a typical victim of sexual harassment is a young, unmarried and attractive woman working in a low paying, low status job. Some studies have found, such as the Merit Systems survey, that victims of sexual harassment tended to be young - in their 30s or younger, although all studies have reported victims of all ages. Evidence that unmarried women are more vulnerable to harassment than married women is mixed. The Merit Systems survey shows that, generally, unmarried women were more likely to have been sexually bothered by others. While the majority of victims in the Redbook Magazine survey were married, the Working Women's Institute found that three-quarters of their respondents were single, separated, divorced or widowed. Undoubtedly, this is partly attributable to the self-selected nature of these samples. Attractiveness is a characteristic that has been difficult to analyze. Psychologists Barbara Gutek and Charles Nakamura, in a telephone survey of randomly chosen names from the Los Angeles Telephone Book, asked the respondents to rate themselves on their attractiveness, both physically and in personality. They found that 73% of the persons who rated themselves as very attractive reported at least one incident of sexual harassment, as opposed to 33% of those who described themselves as less

attractive. However, many victims of sexual harassment who have responded to other surveys have described themselves as "fat and 40". The racial characteristics of the female victims have not been found to be a significant factor by the Merit Systems survey, although males who are members of minority groups reported a higher incidence of experiencing sexual harassment than nonminority men. However, the New Responses, Inc., survey in 1979 of persons from three Federal departments who attended their training seminars reported that White respondents accounted for 64% of the victims, while Blacks accounted for 35%.

Years of employment also appears to have no relationship to vulnerability to sexual harassment. However, most victims described themselves as very dependent on their jobs. The Working Women's Institute's survey found some evidence that victims tended to be working in low status, traditionally female jobs, such as clerical workers or waitresses. Other studies have found that women in a wide range of jobs, from unskilled to professional, have experienced sexual harassment. The Merit Systems survey found that higher educated women have a greater likelihood of reporting that they had been sexually harassed, possibly because they have a greater awareness or sensitivity to behaviors which can be characterized as sexual harassment. Another factor which may have contributed to this response is that higher educated victims were two and one-half times more likely than less educated counterparts to hold down nontraditional jobs, giving some credence to the belief that women in male-dominated professions are more likely to be harassed.

Sexual Harassment and Sexism

Victimization by practice of sexual harassment, as far as it is currently known, occurs across lines of age, marital status, physical appearance, race, class, occupation, pay range and any other factor that distinguishes women from each other. The common denominator to all this is that, overwhelmingly, the victims are women while the harassers are men. Given the nature of sexual harassment as an abuse of power, this is not surprising. Few women are in a position to harass men sexually since they do not control men's employment destinies. Powerful social conditioning of women to passivity, submissiveness and receptivity to male initiation tends to constrain women from expressing their sexuality assertively. Women consistently occupy the lowest status, lowest paying jobs, much lower than men of the same education and experience.

Sexual harassment is one manifestation of inherent sexism in the work place. The near universal response of men in authoritative positions, whether employers, judges or referees, to women's complaints of sexual harassment is to characterize them as "personal" incidents or "natural" expressions of the sex phenomenon.[5/] To consider it a "personal" issue is to describe an illegal employment practice as a mere personality conflict. To consider it a "natural sex phenomenon" is to render it so universal and so immutable that to fight sexual harassment would be going against biology. The harassment of women at work by men has been described by some courts as merely "satisfying a personal urge", the

harassing behavior becoming "his proclivities" and "habits and traits". Other courts have described the harassment as "natural sex attraction", a manifestation of sexual desire. Women who complain have been told they were overreacting, being overly sensitive, or on the other hand making trouble for and "trying to get back at" the accused harasser.

This difference in view could be based on a question of sexual signals getting crossed. Women who view their behavior as open and friendly may have their friendliness interpreted as being seductive. Many women have been trained from girlhood to behave in a way that will gain approval from men, and many men interpret this behavior as a sexual signal.[6/] If a man's advances are rejected, he'll get angry and may feel that he has a right to retaliate. It has long been common in our society to hold women responsible for arousing men's sexual interest in them by their appearance, clothing or behavior. The assumption is that men are unable to control themselves sexually and, therefore, could not be held responsible for their behavior, even when repulsed.

When coercive sexuality manifests itself through physical force as in rape, the criminal system and society take action to punish the offenders. Lesser forms of coercive sexuality, such as sexual harassment, are largely ignored. The coercive element becomes almost invisible in the work place. There are a number of predominant myths about sex on the job which still find widespread acceptance:

1. Women Who Object have No Sense of Humor

   Sexual harassment is not a harmless or humorous behavior. It is economic coercion where a woman's livelihood is held as ransom for her capitulation to sexual demands, and where her working conditions are made so intolerable that in many cases it causes physical and/or psychological breakdown. Remarks about women as "broads", "girls", "fat housewives" and "dumb blondes" is neither funny nor trivial. Language does influence people. The endemic pejorative naming of a group of people has a powerful effect on the way they see themselves and the way others see them. It separates and excludes them. It has a negative effect on their aspirations and perception of their abilities.

2. A Firm No is Enough to Discourage Any Man

   It is true that the most common reaction of women is to ignore the harassment and hope that the man won't do it anymore. The Merit Systems survey found that most Federal employees felt that asking or telling the person to stop would stop the harassment. This may work if the harasser does not realize that his actions were offensive. However, tied with this myth is the societal myth that when a woman says "No", she means "Yes". A response that is neutral and friendly may be taken

as flirtatious. The harassment may continue despite her more vigorous protests based on the man's belief that eventually she will agree. In sexual harassment, the employer uses his economic power over the employee as a reprisal should she refuse his advances. Women who experience sexual harassment are often powerless. They are powerless in that they often are at the bottom of the organization, and they lack control over their work environment. They may also be expected to engage in a variety of demeaning and humuliating activities, of which sexual acquiescence may be one. They are also powerless in the job market. If a person has other job options, he or she can quit and find another job. If the person also has family responsibilities, as do many single parents, the powerlessness is compounded. They feel that they are powerless to remove themselves from the employer's demands. The Merit Systems survey found that most victims of sexual harassment said they needed their jobs very badly. Many of the respondents to the Working Women's Institute survey were the sole breadwinners. There are numerous interviews with victims of sexual harassment whose protests, though firm and unequivocal, were completely ignored and overridden.

3. Women Often Make False Accusations of Sexual Harassment

As with all sexual crimes, society seems to fear that many women will accuse men of sexual harassment without justification. Women who do complain will often find themselves under attack. The reaction is very much like that of a case of rape. The courts in many jurisdictions, no matter how violent the attack, will bring up the woman's past sexual history. In sexual harassment also, the accused harasser will respond by saying: "She's putting out to everyone in the office" or "She's flirtatious - she approached me." The pressures brought on a woman who files a complaint are enormous. Threats and passes are not usually made in front of witnesses; it often becomes her word against his, and his word by virtue of his sex and his position is given more credence. In the eyes of management, she is more expendable. A woman who brings forward a complaint of sexual harassment will face disbelief, ridicule and accusations of enticement. Often, she will lose her job because she complained openly. Other employers will be reluctant to hire a "troublemaker". A woman who makes charges of sexual harassment has little to gain and much to lose.[7]

There are two sexual harassment lawsuits which illustrate the lack of credibility which women have been forced to endure. In June 1980, Ximena Bunster, a visiting Associate Professor at Clark University, filed a complaint with the University charging her department head, Sydney Peck, with sexual harassment. During a faculty committee hearing

four additional women who worked in the department, including one graduate student, testified that they had experienced or witnessed sexual harassment by Peck. The University and Peck signed a settlement of all charges unilaterally without informing the complainants. Peck then filed a $23.7 million damage suit against Bunster and all the women who had testified against him. The University students and faculty were split into two camps; those supporting Peck insist that he was being harassed for political reasons and, because of his political activism, he could not be guilty of the charge of sexual harassment. Those supporting Bunster accused Peck of using his reputation as a radical to turn the issue into a political controversy and propaganda campaign. Bunster's supporters felt that this was a classic example of a well-respected man who was given the overwhelming benefit of the doubt and who was able to turn his own power into a backlash campaign, evading the actual issue. This is not the only case of an alleged harasser filing a countersuit against his accusers. However, because Peck's suit focused also on the women who provided corroborating testimony against Peck, this raises the fear that even those who witness harassment occurring will not come forward.

In a significant 1978 Title VII case, Kyriazi v. Western Electric Company, Ms. Kyriazi filed a lawsuit against Western Electric Company on the basis of sexual harassment. Kyriazi's personality and her ability to "get along" with others was challenged by Western Electric. It was central to Western Electric's defense to Kyriazi's charges that she was "a person who acted irrationally, was abusive to co-workers and superiors, and was in general impossible to work with". The court, finding for Kyriazi, had this to say about Western's counterallegations:

> "The court concludes that while Kyriazi was and is a strong-willed person, who understandably and justifiably bridled at the discriminatory treatment she received by the defendant, she was not irrational nor was she unduly difficult to get along with, unless that term is construed to mean that she refused to supinely accede to the male-female stereotyping which confronted her at Western."

It is exactly the male-female stereotyping and sexism in the work place that sets the range of behavior by management and male workers from a tacit acceptance of sexual harassment to an actual fostering of this behavior. Many nonexplicit or subtle discriminatory practices in employment are not covered by the category of sexual harassment as it has been described by EEOC or the courts. There are many instances of subtle discrimination against women which are below the threshold of what the courts or the compliance agencies will consider an actionable complaint. These instances of subtle discrimination together amount to an employer-sanctioned environment or atmosphere of harassment. Nevertheless, despite the EEOC Guidelines which prohibit harassment which creates an "intimidating, hostile, or offensive working environment," nonexplicit, underlying harassments are such an inherent part of the job that it is unlikely that, outside of a class action suit, the courts or compliance agencies would seriously consider such cases. These have

been termed "microinequities" and are described as incidents that damage, demean, and restrict women.[8] In a 1981 publication "Institutional Self-Study Guide on Sex Equity" by Karen Bogart, et al, these micro-inequities were categorized into these various forms of subtle discrimination against women.

Condescension: The refusal to take women seriously communicated through posture, gesture and tone of voice.

Role Stereotyping: Expectation of behavior that conforms to the sex role stereotypes, such as passivity and deference in demeanor and traditional career choices.

Sexist Comments: Expressions of derogatory beliefs about women, such as sentiments that women are inferior, lacking in originality, not serious, not intelligent, and a distraction.

Hostility: Avoidance, expressions of annoyance, resentment, and anger, and jokes and innuendos at the expense of women.

Exclusion: Unintentional and intentional oversights denying women access to events, such as meetings which directly concern their work.

Denial of Status and Authority: The refusal to acknowledge a woman's position or her scope of authority, such as the bypassing of a woman staff member by subordinates reporting to her superiors.

Invisibility: The failure to recognize the presence or contributions of women, such as ignoring statements made by women in staff meetings.

Double Standards: Differential evaluation of behavior as a function of gender attribution, such as application of more stringent standards and criteria in evaluating a woman's application for promotion.

Tokenism: The discretionary inclusion of one or a few women only, such as in assigning task force members or participation in management staff meetings.

Divide and Conquer: The use of tactics that maximize the social distance of women from each other, such as providing "perks" and praise for women who meet stereotypic expectations.

Backlash: The rejection of women and men who support efforts to improve the status of women.[9]

It is the pervasiveness of sexism in the work place which leads to sexual harassment and also contributes to the socialization of women to become victims and not to fight. Women who have been harassed for the most part do not complain because (1) they feel nothing will be done, (2) they feel it would be treated lightly or they would be ridiculed, and (3) they feel they would be blamed and there would be some repercussions.

The milder forms of sexual harassment are viewed as part of the general sexual byplay endemic to our working environments. Most people believe that the office flirtation in itself is not a bad thing - that it adds spice to the daily working life, that it is a normal interaction between men and women. The late Margaret Mead argued that what were needed were "new taboos" in the work place regarding relations between men and women on the job, because of the great potential that flirtation can become coercion. Women have found that their fears that admitting that sexual harassment is humiliating and offensive do receive the reactions they fear from men - evasion, defensiveness, ridicule. Even those men who are sympathetic to the effects of overt attacks on women, such as rape and propositions laced with threats, do not accept that the milder expressions of sexist coercion against women constitute sexual harassment. As one woman executive stated:

> "I think it is extremely difficult for a man to understand the demeaning nature of sexual harassment to a woman and to investigate it objectively. Men don't understand what it is, and I find this true without exception. It is hard to recognize something as negative when it has been a part of your own way of thinking, and harassment has survived in the corporate locker room attitudes for a long time."10/

What the Civil Rights Act of 1964 endeavored to instill is the moral responsibility of employers to combat racism and sexism in all its pernicious forms. There are myths common to racism and sexism. Blacks, Hispanics and Asians have been kept in subservient roles, as women have. They've been paid less, given the lowest paid, dead-end jobs and are subjected to harassment and prejudice, as women have. It is central to the responsibility of employers to provide a healthy working environment for women. Title VII of the Civil Rights Act of 1964 equally prohibits employment discrimination based on race and based on sex. However, in enforcing the law the courts have recognized as actual, far more subtle forms of race discrimination than sex discrimination. Requiring Blacks to use exaggerated courtesy titles in addressing Whites, or allowing employees to make derogatory ethnic jokes, or exposing Blacks to racist graffiti have been found to create a Title VII liability on the employer. The EEOC guidelines on race discrimination declare that "behavior which is directed at members of a racial or ethnic group and which evokes memories of past subordinate treatment creates an illegal employment atmosphere." The prohibition of sexual harassment is a step toward providing women (and men) with protection of discrimination equal to that provided to minorities. It is only in the last few years that court cases on sexual harassment have been filed, much less upheld, as a cause of action under Title VII.

Case Law

Only a few years ago, sexual harassment was considered by the courts to be a problem of interpersonal relationships. The first women to complain that sexual harassment is sex discrimination - Jane Corne and Geneva DeVane, Paulette Barnes, Margaret Miller, and Adrienne Tomkins - were all unsuccessful in lower courts. In Corne v. Bausch and Lomb, Inc., case in 1975, the plaintiffs alleged that the sexual advances by their supervisor were so offensive that they were forced to resign. Their male supervisor had repeatedly subjected them to verbal and physical advances and was notorious among all the women employees of the company for harassing on a daily basis all the women he supervised. The lower court found no cause of action under Title VII and dismissed the case, citing that the supervisor was satisfying a personal urge and there was no employer policy involved. The employer had been found to have no responsibility for the "personal proclivity, peculiarity or mannerism" of the employee because his sexual advances had no relationship to the nature of the employment.

In another case, Miller v. Bank of America (1976), a White male supervisor promised a Black woman bank worker a better job if she would be "sexually cooperative". Once she refused, he had her fired. The court in this case dismissed the woman's argument, stating that she should have filed a complaint first with the company's employee relations department. Further, the court concluded that:

> "The attraction of males to females and females to males is a natural sex phenomenon, and it is probable that this attraction plays at least a subtle part in most personnel decisions. Such being the case, it would seem wise for the court to refrain from delving into these matters short of specific, factual allegations describing an employer policy which in its application poses or permits a consistent, as distinguished from isolated, sex-based discrimination on a definable employee group."

The courts in both Corne and Miller were, in effect, stating that:

1. The recipient of unwelcome sexual advances must first exhaust all administrative remedies before bringing the case to court.

2. That sexual lust plays a part in all personnel actions; and

3. That women who bring sexual harassment cases to court must prove that the organization has a policy of endorsement of sexual harassment in order for the employer to be liable.

A New Jersey case, Tomkins v. Public Service Electric and Gas Company (1976), further confirmed the court's initial reluctance to deal with sexual harassment cases. Ms. Tomkins' supervisor had made physical sexual advances to her, told her that a sexual relationship was essential to a satisfactory working relationship, threatened her with work-related reprisals when she resisted, and then physically restrained her from leaving his presence. She had complained of this incident to his supervisors and was later subjected to disciplinary layoff, threats of demotion, and salary cuts. Ultimately, she was fired. The court in Tomkins dismissed the case concluding that "the abuse of authority by supervisors of either sex for personal purposes is an unhappy and recurrent feature of our social experience" and, although the conduct may be criminal or subject to civil court action, it was not discrimination within the meaning of Title VII. The court took such a dim view of the inevitability of sexual harassment in employment that it stated the belief that: "If an inebriated approach by a supervisor to a subordinate at an office Christmas party could form the basis of a Federal lawsuit for sex discrimination if a promotion or raise is later denied to the subordinate, we would need 4000 Federal trial judges instead of some 400."

Tomkins appealed this decision and the Appeals court reversed the lower court ruling. Nevertheless, it is clear from these early cases that sexual harassment was not treated seriously as an illegal employment practice. Since Miller, however, case law has made great strides in this area and there is more clarity in legally determining what is sexual harassment. The later court cases virtually overturned all the initial findings in Corne, Miller and Tomkins.

The Federal courts have now made it clear that sexual harassment does constitute sex discrimination within the meaning of Title VII, where the supervisor conditions career enhancement or continued employment on sexual submission. Nearly every case has involved a male supervisor or employer demanding sexual favors from a female employee. Cause of action on the basis of sex discrimination was found in these cases since such supervisors had not or implicitly would not make such demands on male employees. In Barnes v. Costle, the court affirmed "that the statutory embargo on sex discrimination in employment is not confined to differentials founded wholly upon an employee's gender. On the contrary, it is enough that gender is a factor contributing to the discrimination in a substantial way".

While it is now firmly established that Title VII covers sexual harassment as a form of sex discrimination when made a condition of employment, there is still some confusion in the courts whether abuse that can be visited upon either gender or upon the same gender as that perpetrator cannot be treatment based on sex. The judges in Corne and Tomkins both made the point that heterosexual harassment could not be considered sex based because "to do so would mean that if the conduct complained of was directly equal to males, there would be no basis for the suit". It is

clear that when a woman imposes sexual conditions on male employees, the cause of action under Title VII should be identical to that with the sexes reversed. Indeed, in a recent Wisconsin case, a Federal jury awarded $196,500 in compensatory and punitive damages to a male civil service employee who contended he was demoted from his job because he resisted sexual overtures from his female supervisor.

All cases following Miller held that sexual advances, coupled with retaliation for their refusal, constituted actual sex discrimination. In order to establish a cause for action under Title VII, the courts looked to whether the harasser harassed only women or whether women and men were harassed equally. In cases such as Garber v. Saxon Business Products, Inc., (1975) the defendants argued that Ms. Garber's discharge was not sex based, i.e., that she was not allegedly terminated because she was a woman, "but rather that her claim is that her employment was affected because she rejected the advances of a supervisor who found her physically attractive". The Court of Appeals in Garber, as in Tomkins, disagreed with this type of contention, holding that the discrimination was plainly based on the appellant's gender. In Tomkins, the appeal court stated that "retention of her job was conditioned upon submission to sexual relations - an exaction which the supervisor would not have sought from any male".

The fact that the courts have had to compare the gender of the harasser and harassed results from the framework of existing legislation concerning employment discrimination. None of the Title VII legislation specifically prohibits sexual harassment so the subject is dealt with as a form of sex discrimination rather than as a punishable behavior in and of itself. Because of the tie of sexual harassment to gender, then, on its face, homosexual harassment - that is, same sex harassment on the job - is not sex discrimination under Title VII, in that it does not involve a difference between the sexes which is the rationale EEOC and the courts have recognized as the raison d'etre of sexual harassment. EEOC does not recognize employment discrimination complaints based on homosexuality as prohibited under Title VII. Until discrimination on the basis of homosexuality is considered sex discrimination for other purposes, gay sexual harassment would probably not be considered sex discrimination. However, in a 1981 Illinois district court case, Wright v. Methodist Youth Services, in which the court found that termination of an employee allegedly for his rejection of homosexual advances by his supervisor is cognizable under Title VII, since his discharge was allegedly based upon sexual demands which would not have been placed upon him but for his sex. The court in this case followed the argument in Barnes v. Costle, in which the Appeals court found that discrimination against "only one" individual, so long as it is sex based, was held prohibitive.

> "It is no answer to say that a similar condition could be imposed on a male subordinate by a heterosexual female superior or upon a subordinate of either gender by a homosexual superior of the same gender. In each instance, the legal problem would be identical to

that confronting us now - the exaction of a condition which, but for his or her sex, the employee would not have faced... In the case of a bisexual superior, the insistence upon sexual favors would not constitute gender discrimination because it would apply to male and female employees alike".

This argument that only a bisexual can discriminate without cause of action under Title VII is an ambiguous area which has, of yet, not been tested by the courts. While it may not be sex discrimination, it still remains that sexual harassment, whoever the perpetrator is exploitative, oppressive, and an abuse of power which can be litigated under other civil remedies, which will be discussed later.

Now that it has been established that sexual harassment is sex discrimination, a relationship between the sexual harassment and the employment must be established to prove a Title VII case. In all cases discussed above, a supervisor-subordinate relationship was involved, there was present the potential for retaliation by the supervisor whose approaches were rejected, and actual retaliatory action by such supervisor was alleged to have occurred. This raised two primary issues. One is whether the initial harassment by the supervisor constituted sex discrimination or whether it was the retaliation of the supervisor to the rebuff of his advances which established that cause for action has occurred. The second is whether employees who make sexual advances to a co-worker and, thus, are not in a position to retaliate should their advances be rejected, are immune to the strictures of Title VII.

Title VII explicitly prohibits sex discrimination in "terms, conditions and privileges of employment". Catherine MacKinnon, in Sexual Harassment of Working Women, states: "The employment discrimination consists not only in retaliation for refusal of advances but, also, in the imposition of the sexual condition, itself, which places the woman in the position of having to choose between tolerating or complying with sexual demands on the one hand and suffering employment deprivation on the other." Sexual harassment should be considered a condition of work within the meaning of Title VII, and is a burden not placed upon other employees; it is coercive behavior which places the woman in a position to either tolerate or fulfill the sexual conditions placed upon her by the harasser or leave work. In a race discrimination case, Rogers v. EEOC (1971), the judge stated that a discriminatory atmosphere in the work environment may constitute an unlawful employment practice as described under Section 703 of Title VII. In Tomkins, the plaintiff made the argument that Title VII mandates that employees be afforded "a work environment free from psychological harm flowing from the atmosphere of discrimination". In a significant 1981 case, Bundy v. Jackson, the Appeals court ruled, in effect, that sexual harassment in and of itself is a violation of Title VII. Prior to Bundy, no court had construed employee responsibility for terms, conditions and privileges of employment to extend to nontangible injury to the victim. In Bundy, the court said that the law does not require the victim to prove she resisted harassment and was

penalized for that resistance. The court analogized other "work environment" Title VII cases which dealt with, for example, the use of racial epithets, and reasoned that "conditions of employment" include the "psychological and emotional work environment".

The fact that the employer had not known of harassment has also not stood as a barrier to a cause of action under Title VII. In Miller v. Bank of America, the Appeals court reversed a lower court ruling dismissing the case, holding that the plaintiff was not required to exhaust remedies available through the company before filing a Title VII complaint and that the employer was liable for the sexual harassing acts of its supervisor, even if the company has a policy of prohibiting such conduct.

The EEOC Guidelines on Sexual Harassment and the courts have imposed strict liability upon the employers for acts of their agents or supervisors, regardless of the knowledge of the employer. However, with regard to co-workers or "others" over whom the employer may exercise some degree of control, the Guidelines impose a less strict standard of liability which is limited to circumstances "where the employer, its agents or supervisory employees know or should have known of the conduct". There is little litigation in this aspect of sexual harassment, but two significant recent court cases appear to uphold the liability of the employer in co-worker harassment.

The Minnesota Supreme Court in a 1980 case, Continental Can Co., Inc., v. State of Minnesota, found that sex bias prohibitions include sexual harassment of an employee by co-workers when the employer knows or should have known of the conduct and fails to take appropriate action. In this case, a female employee, one of only two females employed by the plant, was repeatedly patted on the posterior and was the target of derogatory remarks about her sex life and verbal sexual advances by several male co-workers. When she complained to her supervisor, the supervisor informed her that there was nothing he could do and that she had to expect that kind of behavior when working with men. Continental took no action as a result of her complaints and did not take any action against the offending employees until the situation had escalated into a violent confrontation and community groups threatened the company with adverse publicity and boycotts. The Minnesota Supreme Court cited comparisons to racial harassment suits, stating that: "In our view, verbal and physical sexual harassment includes sexually motivated physical contacts, sexually derogatory statements and verbal sexual advances." The Court also found the Company culpable because it permitted the condition to continue without attempting to discourage it.

The only other case dealing in detail with the issue of sexual harassment by co-workers is Kyriazi v. Western Electric Company (1979). The district court found the co-workers of a Western Electric engineer liable for conspiracy to deprive her of her civil rights by subjecting her to "odious personal harassment". The court pointed out that three male co-workers made Ms. Kyriazi's work environment intolerable by

shooting rubber bands at her, loudly speculating about her virginity, and circulating an obscene cartoon of her. Ms. Kyriazi's supervisors were aware of this harassment but ignored her complaints. The Company's response to her complaints about this treatment was that she seek psychiatric help. When she refused, she was fired. In 1978, the court ordered her reinstated to a higher position with full back pay and benefits. In 1979, the court made the ruling that she was also entitled to collect $1500 in punitive damages from each of the three co-workers and two supervisors involved in the abusive practices for conspiracy to deprive her of her civil rights. Furthermore, the ruling specified that Western Electric could not pay the damages assessed to the individual defendants.

In Kyriazi, the court found liability of co-workers for sexual harassment, not upon Title VII, but upon pendant state law causes of action alone. The case law in this area, however, is still not clear. In a 1981 New Jersey district court case, Guyette v. Stauffer Chemical Company, the judge found in the case of harassment upon a co-worker who was not supervisory, the co-worker was not subject to liability under Title VII. Further, in Kyriazi, the decision against the co-workers was later vacated based on a recently decided Supreme Court decision (Great American Savings and Loan v. Novotny), where the Supreme Court found that a conspiracy to violate rights protected by Title VII cannot ground a cause of action under Section 1985 of the Civil Rights Act of 1964.

Cases which deal with the liability of co-workers are few. Cases which deal with the employer's liability with regard to harassment by "others" (nonemployees) are nonexistent. The only case dealing with this situation remains somewhat tangential to the "harassment by others" issue. In a 1980 New York district court case, Equal Employment Opportunity Commission v. Sage Realty Corporation, a female lobby attendant was fired for refusing to wear a revealing and provocative uniform which subjected her to sexual harassment by members of the public. The court upheld the charge that the uniform requirement was sex based, in that male workers had not been subjected to similar requirements. The court found that the uniform requirement had an adverse, discriminatory impact upon the terms and conditions of her employment in violation of Title VII, and this requirement stated the cause of action under the Civil Rights Act of 1964.

Case law in the area of sexual harassment is inconsistent and still developing. At this point, it is firmly established that Title VII covers sexual harassment as a form of sex discrimination when made a condition of employment. What constitutes a condition of employment is not clear. The liability of the employer for the discriminatory acts of its supervisors is generally established; however, there is almost no case law on harassment by co-workers and "others".

EEOC Guidelines

The courts have looked to the 1980 EEOC Guidelines on Sexual Harassment, but the Guidelines do not overrule inconsistent case law, nor are they necessarily binding on any court. In the landmark Bundy case, the court looked to numerous court cases that found Title VII violation to support its decision, and utilized wording similar to that of the EEOC Guidelines, but did not do so on the basis that the Guidelines were precedential over supporting case law.

The EEOC Guidelines stress that an employer is responsible for sexual harassment by his agents and supervisory employees, regardless of whether the specific acts were forbidden by the employer or whether the employer even knew of their occurrence. With respect to other employees, the employer is responsible if it knows or should have known of the conduct. An employer in these cases, however, is permitted to rebut liability by showing that it took "immediate and appropriate action". The EEOC Guidelines also recognize broadened employer liability in circumstances of sexual harassment by defining sexual harassment as occurring when submission to such conduct is made either explicitly or implicitly a term or condition of employment, and also if such conduct has the purpose or effect of substantially interfering with an employee's work performance or creating an intimidating or hostile working environment. The EEOC in its Guidelines interprets Section 703 of the Civil Rights Act to prohibit sexual harassment just as it prohibits harassment based on race, religion and national origin. The Guidelines have gone far beyond the narrow situations the courts have considered. Although not binding on the courts' and agencies' interpretations, they are ordinarily accorded "great deference".[11/] The new Guidelines with its inference of broad employee liability may substantially affect future sexual harassment court rulings.

FEHC Regulations

The California Fair Employment and Housing Commission regulations have defined sexual harassment to include verbal harassment, physical harassment, visual forms of harassment (such as derogatory drawings), or sexual favors such as unwanted sexual advances that condition an employment benefit on an exchange of favors. The EEOC rules place more emphasis on the tie of sexual harassment to employment conditions or decisions than the FEHC regulations. The FEHC regulations maintain that sexual harassment as defined above is in and of itself illegal without requiring the connection between the harassment and the employment conditions.

In 1982, the California Government Code sections relating to fair employment practices in the State were strengthened with regard to the prohibition of harassment of employees through the passage of AB 1985, chaptered September 20, 1982. Originally introduced to speak specifically

to the issue of sexual harassment, the Bill was amended several times to become a more general prohibition of harassment in employment on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age. Passage of AB 1985 amended Section 12940 of the Government Code and made it an unlawful employment practice for any person, because of these specified factors, to harass an individual or to knowingly permit or fail to take reasonable precautions to prevent this harassment. The Section also provides that loss of tangible job benefits would not be necessary to establish harassment. The significance of the passage of this Bill is that it now places the prohibition of harassment based on sex into statute rather than relying upon judicially nonbinding administrative guidelines. Sexual harassment becomes a violation of California state law in and of itself, without having to tie the practice to sex discrimination, and its attendant varying interpretations.

Other Legal Remedies

Victims of sexual harassment are not limited to a Title VII cause of action; they may combine the sex discrimination complaint with other civil charges against an employer in order to obtain a more extensive remedy and/or damages. Common law doctrines on assault and battery, rape, attempted rape, and intentional infliction of emotional stress, as well as breach-of-contract actions, may be issued to establish employee liability for sexual harassment in some circumstances where a prima facie case of discrimination under Title VII may not be readily established.

1. Wrongful Dismissal

Upon acceptance of employment with an employer, there is an implicit contract between the employee and the employer - the employee contracts to work for the employer, the employer contracts to pay the employee. Sexual harassment that results in the wrongful dismissal of the victim and economic loss may also provide the basis for a suit against the employer for interference with the employment contract or breach of contract. In such cases, an employer may be liable for back pay and, conceivably, even damages awarded for the mental suffering that sexual harassment causes. As a rule, however, courts do not award damages for mental suffering in breach-of-contract actions which is a disadvantage of filing a contract action rather than a tort action, which is described later.

Four sexual harassment cases pleaded a cause of action for breech of contract. One successful wrongful dismissal action was Monge v. Beebe Rubber Company (1974) in New Hampshire. A married female employee working as a machinery worker in the factory was demoted when she refused to go out with her foreman. She was also subjected to ridicule and abusive treatment by the foreman. The Personnel Manager was aware that the foreman had been harassing her

and other female employees under his authority, but did not take any action. In fact, the Personnel Manager asked Mrs. Monge "not to make trouble". Mrs. Monge became ill as a result of the treatment she received at work and was hospitalized. The Company deemed her subsequent absence to be a voluntary quit. She sued for wrongful dismissal to recover compensation for a breach of her oral contract of employment and the court upheld her claim stating, "the foreman's overtures and the capricious firing, the seeming manipulation of job assignments, and the apparent connivance of the Personnel Manager in this course of events all support the jury's conclusion that the dismissal was maliciously motivated". The court awarded the pay she would have received over a 20-week period, which the court construed as a reasonable period of notice the employer was obliged to give.

As a general rule in American case law, most employers are not required to give employees reasonable notice. Union employees and public employees can pursue their wrongful dismissal actions through arbitration; however, generally in private employment where an employment agreement does not specify the length of employment or the length of notice, none is judicially required. The Monge decision is an unusual one and does represent one case which may be precedential on future wrongful dismissal cases.

2. Torts

Tort liability is a civil cause of action which is primarily to compensate the injured person by compelling the wrongdoer to pay for the damage he or she has done. It parallels criminal prosecution in which the State brings action against an individual in order to protect society as a whole. In civil tort action, the action is taken by the aggrieved person, not the State. There are some activities, such as assault and battery, which are subject to both criminal and civil actions, in which the wrongdoer may be punished criminally and also forced to make compensation to the victim.

A wide range of compensatory relief, including damages, are available through common law actions. Victims of employment-related harassment have sought recovery directly from their harassers and, under the tort doctrine of respondeat superior hold the employers liable for the misconduct of their workers. (Respondeat superior is the theory an employer is liable for all the acts of an employee committed "within the scope of employment".) Employers may be held liable for failing "to take any and all steps necessary" to eliminate employee harassment and intimidation by other employees. EEOC decisions on racial discrimination have held the employer liable for the harassment of employees, even when the company has an explicit policy designed to ensure the working environment is free from racial harassment. The announcement of such a policy to

supervisors and co-workers is not a sufficient claim to immunity from liability if management has a reason to believe that the policy has not been followed or ignored. In some circumstances, an employer may be held liable for the actions of a supervisory employee even when the employer has taken steps to partially remedy the discriminatory act of its supervisor.[12]

Several recent sexual harassment cases have suggested - usually as a reason for holding sexual harassment not to be sex discrimination - that sexual harassment should be considered tortious. In Barnes, one appellate judge stated that, "an act of sexual harassment which has caused the victim because of her rejection of such advances to be damaged in her job would constitute a tort." There is a range of common law torts which might prove helpful to victims of sexual harassment. These include such causes of action as assault and battery, the intentional interference with contractual relations, malicious interference with employment, and the intentional infliction of emotional distress. A battery is a harmful or offensive contact which is intentionally caused. Historically, the tort of battery in sexual harassment situations has been formulated to be "taking indecent liberties with a woman without her consent" or "putting hands upon a female with a view to violate her person". The tort of assault consists of placing a person in fear of an immediate harmful or offensive contact. The invasion is mental rather than physical. In the late 1800s and the early 1900s, women have recovered compensatory amounts for "forcible hugging and kissing". Contemporary sexual mores have made such lawsuits on these bases uncommon. However, in 1961, a 65-year-old Arizona woman was granted $3500 in actual damages and $1500 in punitive damages in a sexual harassment in employment case brought under the tort theory of assault and battery (Skousen v. Nidy). In this case, the employer of the woman forcibly touched her in a sexual manner and later discharged her when she resisted his advances. In a similarly situated case, Gomez v. AFL-CIO Construction and General Laborers Union, (California Superior Court, Alameda County, filed December 20, 1978), a woman worker sued her employer and supervisor for physical assault and battery.

Propositions of a sexual nature have generally not been considered torts where there is no physical violation. Although some sources believe that because verbal sexual harassment creates an apprehension of offensive physical contact in the woman worker, a cause of action for assault is appropriate.[13] Sexual harassment that consisted solely in propositions as a condition of work could also constitute "intentional infliction of emotional distress", which is a tort. The standard of proof of this tort requires the plaintiff to demonstrate: "(1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of the

probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct."[14]

In a 1961 nonemployment case, Samms v. Eccles, the Utah Supreme Court decided that sexual harassment had resulted in the commission of the tort of intentional infliction of nervous shock. Ms. Samms claimed that she suffered great anxiety and fear for her personal safety, along with severe emotional distress due to the persistent solicitations for sexual relations from Mr. Eccles. In a pending tort case, Fuller v. Williames, (Oregon Circuit Court 1977) the plaintiff alleged that the intentional infliction of emotional distress was a condition of her work. Offensive remarks concerning the unsuitability of women as photographers and, specifically, regarding her sex life and body were made by two male superiors. She alleged that she suffered headaches, had difficulty sleeping, suffered mental anguish and humiliation, and damage to reputation and impairment of her earning capacity.

In Kyriazi v. Western Electric Company, a Title VII case described earlier, the court awarded Kyriazi compensatory and punitive damages based not only upon her Title VII claim, but also upon her claim that her co-workers and supervisors interfered with her employment contract with Western Electric. The court determined that Ms. Kyriazi was entitled to recovery under the tort of malicious interference with her employment.

Punitive and compensatory damages have also been awarded in sexual harassment cases outside of the judicial setting. In a 1981 California Department of Fair Employment and Housing administrative decision, Department of Fair Employment and Housing v. Ambylou Enterprises, Inc., the Department ordered the employer to pay the complainant $11,250 in back pay, $15,000 in compensatory damages, and $25,000 in punitive damages. In this case, the president of the company repeatedly sought to caress and fondle the complainant and also made constant lewd remarks to her. She consistently rejected his advances. At one point, he had held a razor to her neck in order to pressure her into submitting to his advances. As a result of the final incident a few days later in which the president started to push his body against her, the complainant became so distraught that she was sent home for the rest of the day and was terminated by the president. The Department ordered compensatory damages to compensate the complainant for the "untangible but nonetheless very real injury suffered as a consequence of respondent's actions in the form of fear, emotional distress, shame and humiliation", stating that the courts have recognized the humiliation and other emotional distress occur as a logical consequence of discrimination and have awarded compensatory damages on these grounds. The Department also awarded punitive damages to provide

an example to deter others from similar conduct. The president of Ambylou Enterprises, Inc., was found, due to his repeated unwelcome verbal and physical assaults, to have acted with malice. The complainant was found to have suffered actual harm, as her homelife was disrupted; she was unable to eat; much of her energy at work was diverted to avoiding him or coping with his assaults; she became nervous, stressed and irritable; and she finally lost her job and was unemployed for 15 months.*

3. Criminal Actions

An extreme instance of sexual harassment in the work place may also constitute a criminal offense, ranging from rape, sexual assault and battery to solicitation, self-exposure, deviate sexual intercourse and adultery. Taken to its literal meaning, a great many instances of sexual harassment in essence amount to solicitation for prostitution. The harasser, by making submission necessary for material survival, is in effect acting as his own pimp. Sexual harassment can also be considered as a form of other, more esoteric crimes (depending on jurisdiction) such as lewdness, criminal conversation, fornication, insult, bribery, oppression, exploitation and blackmail. While these may subject the perpetrator to criminal prosecution, normally they do not involve employer liability. Under certain circumstances and in some jurisdictions, however, employers may be subject to civil liability related to such criminal actions for failing to provide a safe and secure work environment.

Many acts of sexual harassment are technically crimes and should be prosecuted. There are two California sexual harassment cases, however, which involved rape or attempted rape, both in 1979. There are no reported cases of sexual harassment that have been prosecuted on these other grounds listed above. The problem appears to be that, unlike most other crimes, criminal acts relating to sexual injuries often require corroboration and juries are cautioned that women who accuse men of sexual injury cannot be judged by ordinary standards of credibility.15/ It often becomes the word of the woman against that of the man.

The model Penal Code, which is used as a basis of the development of State Penal Codes, defines sexual assault as subjecting "another (not spouse) to any sexual contact", including those circumstances in which "he knows that the contact is offensive to the other

*The complainant never recovered the awarded settlement as the employer was bankrupt.

person". Catharine MacKinnon, in her book Sexual Harassment of Working Women, suggests that the conditions of sexual harassment may tend to disqualify it as sexual assault. Because threats made by the harasser are economic and because of the working woman's social conditioning to be agreeable, the victim of harassment may not be sufficiently explicit about the offensiveness of the man's behavior to meet the statutory requirement of sexual assault. In a survey conducted by the U.S. Merit Systems Protection Board on sexual harassment in Federal Government, the survey team found that most victims responded to the sexual harassment by either passively ignoring it or avoiding the harasser.

Further, the male harassers' perceptions of their sexual advances to women are quite different than the assaults the women feel them to be. In sexual harassment cases, the male harassers commonly appear dumbfounded that the women resented their "show of friendliness" and "kidding around", even when the women resisted explicitly. This also indicates the difficulty in showing that the perpetrator of the assault "knew the contact to be offensive".

5. Workers' Compensation

In California, Workers' Compensation is the exclusive remedy for most work-related injuries. Workers' Compensation has been seen as the main barrier to a tort action for sexual harassment.16/ If the court decides Workers' Compensation is the appropriate remedy, the tort action is defeated.

The Workers' Compensation Act was created to offer the worker some protection when injured on the job. Under Workers' Compensation, the only injuries compensated are those which result in a disability affecting the individual's earning capacity, and the amount of compensation is determined by a set formula based on the individual's earning capacity at the time of injury. If the employer injures the worker through intentional misconduct, punitive damages may be collected, but that amount is based on the amount of the compensation and has a maximum limit of $10,000. In Workers' Compensation, the basic test for liability is the work connection. The personal fault of the employer or supervisor who inflicts the injury is irrelevant in determining liability. It is not intended to cover all the losses of consequences of an injury; it gives the worker a sum which will enable him/her to exist without being a burden on others.

Recompense for the suffering of sexual harassment at work through Workers' Compensation is inadequate compared to the remedy which can be received through tort action. For example, in Doney v. Tambouratgis (a 1979 California Supreme Court case) a women worker filed suit against the owner of the drinking establishment after he physically assaulted her in his office after working hours. The

owner had asked her to stay on the pretense that he wanted to discuss a work-related matter. This could have been a case covered under Workers' Compensation, as she was technically still performing her duties at the time of the assault. However, her tort action was upheld and the jury awarded her $16,445; of this, $12,500 was punitive damages. Under the Workers' Compensation Act, because her actual medical costs and lost work time were minor she would probably have received no more than $750, of which the employer's contribution would be only a $250 penalty, certainly an ineffective deterrent to the employer's acts of aggression. The employer is responsible only for that portion of the Workers' Compensation which is awarded for serious and willful misconduct.

Administrative Remedies - What Management Can Do

Perhaps the most significant thing an employer can do is take seriously the problems of sexual harassement.

Numerous men in sexual harassment surveys have indicated that they don't know "where the line is" - don't know, for example, when a joke that is funny to them is offensive to women. They believe it is up to women to tell them when a remark is not funny. By ignoring it or failing to take assertive action right away, the woman risks letting the harasser think it is welcome. Before women can feel safe enough to speak up, however, managers must promote a supportive atmosphere to reinforce organizational policies that make clear what behavior is not permitted. Over two-thirds of the men responding to the Harvard Business Review Survey have indicated that their organizations do not have a policy disapproving of sexual harassment although 73% favored such a policy. The survey also found that many companies failed to communicate to employees what policies they do have. In the 1975 Working Women United survey, only 18% of the more than 100 victims had complained through established channels. In the 1979 New Responses, Inc., survey, only 13% of the victims reported the incident (usually to a supervisor or co-worker) and only 4% have initiated a formal grievance action.

Prevention is the best tool for the possible elimination of sexual harassment. Preventive measures such as by both EEOC and FEHC include:

1. Affirmatively raising the subject and expressing disapproval.

2. Developing and becoming aware of sanctions on those who are sexually harassed.

3. Informing the employees of their right to complain of sexual harassement.

4. Explaining how to make a complaint internally and under Federal and State law.

5. Developing methods to sensitize the employees and supervisors to conduct that might constitute sexual harassment.

By taking all of the above measures and taking prompt appropriate action when a case of sexual harassment occurs, the employer may avoid or reduce the liability should the case come to court. A strong policy may have a potent impact. Complaints at University of Washington dropped by 75% in 1980 after the president initiated a forceful statement against harassment. An employer's approach to sexual harassment complaints should be no different than for any other complaint of employment discrimination. The employer should have an internal procedure for an employee to make a complaint which is widely publicized in the organization. An in-depth investigation should be conducted which includes statements from the employee, the alleged offender and others who may have knowledge of the conduct or of surrounding circumstances. As with any other complaint of discrimination, there will be some concern for a possible slander and employee morale. In many situations, it will simply be one employee's word against another's. Even assuming that there is insufficient corroborative or circumstantial evidence on either side, the employer should act to resolve the matter. Gary R. Siniscalco, a private attorney formerly with the EEOC, recommends that "the only unchanging element and appropriate action, regardless of the facts uncovered, should be that the complaining employee not be required to accept the less favorable employment situation to rectify the problem."17/

It is of utmost importance that the person who conducts the investigations not only be qualified to investigate discrimination complaints but also have empathy for the issue of sexual harassment. The actions of the investigator whether the Equal Employment Opportunity Officer, the Affirmative Action Officer or the Personnel Officer or the legal staff can minimize or maximize the employer's liability later should the complainant bring the complaint to an outside compliance agency or through the courts,. The investigator must not bring his/her personal bias into the work place. Sexual harassment is a difficult issue to remain neutral on. What the victim of sexual harassment may feel is demeaning and abusive, another person may not. The issue is not whether the investigator thinks the action of the harasser is personally distasteful but whether the complainant felt that the action was harassment. The complainant must not be left with the feeling that her job is in jeopardy or that she is on trial. Sexual harassment by its nature does not lend itself to normal rules of investigative procedure. The complainant if left unprotected is open to reprisals from her harasser.

Sensitivity training of all employees, particularly managers and supervisors, is recommended by virtually all of the studies conducted on sexual harassment. Gary Siniscalco recommends regularly scheduled meetings and training sessions where it is clear that social relationships cannot be permitted to interfere with work performance or business decisions. Jeanette Orlando, Director of the Center Against Sexual Harassment in Los Angeles recommends that sexual harassment, sensitivity

and education should be a part of the new employee orientation and that an ongoing training conducted by qualified consultants and trainers is necessary to help stop or prevent instances of sexual harassment. She particularly sees front line managers as needing this training: "They are usually the first ones to get the complaint (and many times the ones who the allegations are against). They are also a major source of frustration, anger, fear and humiliation for those making their complaints. This is due to the ignorance of those front line managers to the seriousness of the issue of sexual harassment as a valid form of discrimination in employment."[18]

Employers should also provide information to all employees on effective techniques for resolving incidents of sexual harassment. Either through pamphlets or training sessions, employers should inform employees regarding:

1. What the most effective actions are for them to take to stop sexual harassment.

2. What their rights of redress of sexual harassment are, including the availability of formal complaint channels.

3. Who has the responsibility for processing the complaints or assisting with problems associated with incidents of sexual harassment.

Since studies have shown that the most assertive responses are the most effective in dealing with incidents of sexual harassment, assertiveness training for women may be a good vehicle for emphasizing that harassment is not tolerated.

Policy and sensitivity training alone is not an adequate deterrent nor a preventive measure against sexual harassment. Of importance is the establishment of a fair, unbiased and timely complaint procedure that is known to all employees. The complaints process should be confidential and complainants should be allowed to remain anonymous. Jeanette Orlando recommends that all complaints be taken in writing and that a fact-finding meeting be held in which the accused harasser and complainant attempt to work out the situation to this problem with the assistance of a qualified outside mediator. The employer should emphasize the use of informal resolution of the complaints as a means of combating sexual harassment since processing of formal complaints is both time-consuming and costly. The Project on the Status and Education of Women of the Association of American Colleges recommends the establishment of a crisis hotline to provide counseling on a confidential basis and information on how to make formal complaints whether internally or with outside compliance agencies.

There should be a plan of action for dealing with offenders. Employers should emphasize their strong commitment to prohibiting sexual harassment on the job by imposing sanctions where appropriate against the behavior, including enforcing penalties against those who sexually bother others and against managers who knowingly allow this behavior to continue. The range of disciplinary measures that management has at its disposal can range from issuing a warning, to transfer, demotion, or dismissal of the harasser.

The needs of the complainant should not be ignored. If wages or promotions are lost as a result of the harassment, she should be awarded these. If she desires a transfer, then that should be accommodated so long as it does not adversely affect the complainant. The sanctions imposed and the remedial action taken should be commensurate with the violation. What is the key to the success of an employer's plan of action for dealing with sexual harassment is that allegations are taken seriously and forceful and fair resolutions are enforced. An efficient, responsive mechanism for dealing with this problem will help to restore the faith of victims, gain the support of supervisors for the employer's program, as well as mitigate the liability of the employer.

The Failure of Internal Complaint Systems

The section above describes the elements of a preventive program which the EEOC advises employers to incorporate in order to avoid liability. However, surveys of sexual harassment victims have found that in actual practice existing internal complaint systems, at least in public agencies, are less than successful. The Merit System survey of Federal employees found that only 6600 women (approximately 3% of all federally employed women who described their sexual harassment incidents) and 1700 men (2% of all male respondents who said they had been harassed) indicated that they filed formal complaints. Most of the complainants were requesting an investigation by the organization or appealing an adverse action. Overall, 59% of the men and women who filed formal complaints found that the actions taken were effective. Conversely, 41% found that their efforts had no effect or made things worse. The survey report did not indicate what proportion of complaints filed were judged to be founded, so it is unclear whether respondents were dissatisfied with the rulings on their complaints, the actions taken on founded complaints, or some other aspect of the system. During the congressional hearings on sexual harassment in the Federal Government, this 59% success rate was considered to be only "middling" and the reason why so many employees consider formal actions ineffective or think that nothing would be done if incidents of sexual harassment were reported. Eighty percent of the female victims and 100% of the male victims of the most severe sexual harassment (actual or attempted rape or assault) found that going to an outside contact such as a lawyer, a civil rights group, Congress or another agency "made things better", whereas none of the victims of the most severe harassment found that going to an internal EEO official,

such as an EEO Counselor or a Women's Program Manager, was effective. Eight out of 20 women victims who made formal complaints said that management found the charge to be true. However, only 16% of the group of female victims (and none of the victims of less severe harassment) who took formal action reported that the damage done to them as a result of the harassment had been corrected. For some, the corrective action took years in coming, and only through the intervention of an outside agency.

Sexual Harassment in California State Civil Service

The State Personnel Board is responsible for ensuring that each State department has a sexual harassment policy statement. On March 29, 1981, the State Personnel Board disseminated a general policy statement prohibiting sexual harassment, urging all departments to sensitize employees, supervisors and managers to behaviors that constitute sexual harassment. The Board memo stated that all departments are required to establish a process to deal with complaints of discrimination and that State employees who believe that they are or have been victims of sexual harassment should be advised to seek informal remedies through their departmental discrimination complaint process.

In June 1982, the Institute for Local Self Government on behalf of the State Personnel Board surveyed a range of public agencies on the topic of sexual harassment, with primary focus on State agencies. Detailed information was received from 11 of the 14 State departments surveyed. The survey was sent to the Affirmative Action Officer and the Women's Program Officer in each department. The survey found that all of the State departments who responded had a policy prohibiting sexual harassment and that 92% of the departments distributed the policy to all existing and new employees, in most cases through the orientation package or via the supervisor. However, only 58% explained or discussed the policy when distributed. Only four of the departments felt that sexual harassment was a significant problem in their department. However, only two departments had surveyed their employees to see if their assumptions were correct, and two other departments indicated they planned such a survey in the near future. Sixteen formal complaints and 16 informal complaints were reported as received by the departments, although some departments did not know how many complaints they had received. At least 17 of the complaints had been acted upon at the time of the survey. Of these, 13 were determined to be founded and 4 were judged unfounded. Disciplinary action was taken against the perpetrator in 10 of the 13 cases in which complaints were judged to be founded. In-service training on sexual harassment was held for managers and supervisors, affirmative action personnel and Women's Program Officers in approximately 67% of the departments. This training is held annually in two departments, biannually in one department, quarterly in two departments and as-needed in one department. Only two departments felt that training was needed for nonsupervisory personnel and only five departments actually conducted sexual harassment training for nonsupervisory employees. The discrimination complaints process was cited as the process used to resolve

sexual harassment complaints in four of the responses. Other departments indicated that sexual harassment complaints were to be filed with the supervisor of the employee or the Affirmative Action Officer or Women's Program Officer.

The findings of the Institute of Local Self Government survey are significant despite the small sample of State departments surveyed because the survey indicates that many of the steps urged by the State Personnel Board are not being taken by some of the State agencies. Since the memo of 1981, there has been no follow-up to determine if all departments have disseminated policies, or given training, or to what degree they have complied with the steps the Board has established. According to the Board staff member responsible for developing statewide policy on sexual harassment, some departments have made no efforts to inform their employees about the prohibition against sexual harassment, much less conduct sensitivity training.

The State Personnel Board urges State employees to utilize the internal discrimination complaint process in the department. The Federal Merit System survey discussed previously found that one of the greatest stumbling blocks to preventing sexual harassment in employment was the internal mechanisms and procedures for handling complaints of sexual harassment. One of the problems with the formal discrimination complaint process in State service is the length of time the process takes. A complaint in the department typically begins with an employee filing a complaint within 30 days of the event with an EEO Counselor who has approximately 15 calendar days to effect informal resolution. If the complaint is not resolved, the complainant can file a formal complaint with the Affirmative Action Office or the Equal Employment Opportunity (EEO) Office, at which time an investigator is assigned to conduct an investigation. The report of the investigator goes to the Affirmative Action Officer or an EEO Officer for review and subsequently to the department's chief executive for a final decision. Departments have a maximum of 180 days to investigate and reach a final decision on the complaint, although decisions typically are rendered much sooner. A review of a small sample of sexual harassment complaints showed an average response time of three months.

If the department denies the complaint, then the complainant can appeal to the State Personnel Board. Under Government Code Section 18671.1, the State Personnel Board is required to render a decision within six months of the filing of a complaint, although this time limit may be waived by the complainant. Failure to render a timely decision constitutes exhaustion of the complainant's administrative remedies, and the complaint may then be taken directly to court. In the past, because of limited resources assigned to discrimination complaint cases, about a year was required for the Board to assign a discrimination complaint case, complete the investigation and render a final decision by the Board's Executive Officer. Some discrimination complaint cases have taken considerably longer, and three remain active two to three years after their filing. Part of the delay in these cases has been at

the request of the parties. Added resources and expedited processes have resulted in Executive Officer decisions in cases filed since November 1, 1982, being issued in an average of four months. Nevertheless, even with expedited processing, the combined time for the departmental and State Personnel Board processes can take up to 10 months. In addition, if either party provides evidence of error or omission, then the Executive Officer's decision may be appealed to the five-Member Personnel Board which can add another two to three months to the process.

The State Personnel Board has the authority under constitutional mandate and statute to investigate and adjudicate complaints of discrimination from civil service employees. There is a jurisdictional dispute with the Department of Fair Employment and Housing. The issue regarding which agency has the authority to make determinations on discrimination complaints from State civil service employees is still being litigated. At present, the Department of Fair Employment and Housing is prohibited by court order from accepting any complaints from State civil service employees. State employees do, however, have the option of filing a complaint with the Federal Equal Employment Opportunity Commission.

The Personnel Board has closed four sexual harassment cases over the last two years. The Board has found discrimination or "irregularities" in all four of these cases (they do not have records prior to the last two years). Most of the Board's actions on founded discrimination complaints have been to provide personal remedy to the complainants in some form. In a few cases, besides such recompense as a retroactive appointment, transfer or other remedies which affect the complainant, the complainants have also asked that punitive action be taken against the persons who harass them. Government Code Section 19583.5 allows the Personnel Board to conduct a hearing and take appropriate adverse action where it finds sufficient evidence to warrant a hearing and sufficient evidence to support adverse action. However, complainants by law are required to provide the Board with a notarized statement of the charges against specific departmental employees. The Board advises complainants of the Request to File Charges process if they request punitive action be taken against another employee as remedy for their complaint. Complainants are not often aware of the full extent of remedies available to them. The Board does not necessarily advise the complainants of other remedies but deals only with the remedies requested. However, Board staff indicates that if the investigation reveals that actions beyond the requested remedies are appropriate, then the staff would recommend that these other measures be taken. Although the Board to date has not been presented with a request to file charges which involves allegations of sexual harassment, several cases are currently under investigation and will be deliberated on this year. The Board has not independently taken action against an employee in connection with a discrimination complaint. However, in a number of cases adverse action has been taken by departmental management before a discrimination complaint is filed with the Board.

In the Federal Merit System survey, the three actions most often recommended by all victims of sexual harassment were "conduct swift and thorough investigation of complaints of sexual harassment, enforce penalties against those who sexually bother others and establish and publicize policies which prohibit sexual harassment". The length of time it takes to resolve some cases (10 months) in the State system raises concerns about the effectiveness of the system. The Appeals Division of the State Personnel Board recently embarked on a review of the discrimination complaint process that is used to deal with sexual harassment. The timeliness of the process is one of the issues their study will address.

Negative Effects of Sexual Harassment on Women Workers and Employers

Besides the strong personal damage sexual harassment has on women who are harassed, there are more general effects resulting from the existence of harassment in the work place which are felt by all women.

1. Sexual harassment hinders integration of women into traditionally male jobs. Men may use sexual harassment as a conscious or unconscious strategy to discourage women from pursuing such careers. This strategy is successful unless management supports the presence and contribution of these women.

2. Sexual harassment reinforces job inequality. Men may encourage (and women may go along with) trading work for sex, such as doing the woman's job in exchange for sexual favors. Men view this as proof of the woman's inability to handle the job.

3. Sexual harassment reduces women's career commitment if in the work atmosphere sexual harassment is allowed to flourish. Men see women not as co-workers but as sexual objects. Men who treat women at work in the same way they would outside the work environment may be acting in a way that is inappropriate in a work setting. Women begin to believe that they are not rewarded for their efforts or achievements in their work but are instead rewarded for fulfilling men's expectations of women's role. They are less motivated to achieve or exert effort on the job and have lower career aspirations.

4. Sexual harassment causes dissension in the office. The problems between the victim and the harasser may spill over into the work group, becoming a distraction if not causing additional office problems. Co-workers and management could be split into factions depending on their reactions to both the victim and the harasser. Sexual harassment lessens contact between

women and men. Women may avoid contact with harassing male workers even though the contact is desirable or necessary to do their job.[19]

All of these negative effects of sexual harassment on women workers have a corresponding cost to the employer in a loss of productivity and reduction in work performance. The Federal Merit Systems Survey found that over the two-year period of their survey, sexual harassment cost the Federal Government an estimated $189 million. These figures represent the cost of:

1. Replacing employees who left their jobs because of sexual harassment.

2. Paying medical insurance claims for service to employees who sought professional help because of physical or emotional stress brought on by their experiences.

3. Paying sick leave to employees who missed work.

4. Absorbing the costs associated with reduced individual and work group productivity.[20]

Other studies have shown that up to 17% of women have quit their jobs because of sexual harassment and 7% have missed work because of it.

The employees also may be hampered in fulfilling their affirmative action programs. Women may be recruited and hired for traditionally male jobs but unless the employer sees to it that they work in a harassment-free environment, they may leave.

Finally, the courts in the EEOC regulations hold the employer responsible for the sexually harassing acts of their employees. Assessments for compensatory and punitive damages against the employers can amount to significant costs, not including litigation expenses the employer will also incur.

Conclusion

There is a growing general awareness of the problem of sexual harassment in the work place. Women are demanding career opportunities equal to men, as well as the egalitarian, nondiscriminatory and harassment-free working conditions. There is more litigation in this area and recent court cases have demonstrated a broader view of what constitutes sexual harassment and the responsibility of the employer to act assertively and responsively when confronted with sexual harassment. Hopefully, as people become more aware of this issue, they will become more sensitive to the problem, evaluate their behavior and learn how their attitudes and actions contribute to the problem.

The goal to eliminate sexual harassment in the work place does not necessitate the elimination of sexuality in the work place. There will always be differing roles and responses between men and women and there are many benefits in the integration of male and female workers. Many people begin enduring social relations in a work context, but sexual harassment is not a mutual attraction. It is exploitative behavior. The employer's objective should not be to ban all relationships at work, but to develop conditions that permit meeting and getting to know people without engaging in sexual harassment. One way of doing this is to divorce sexist behavior from the work place. Men whose views of women as fulfilling stereotypic roles of wife, mother, or lover tend to carry these views with them to the work place and impose these stereotypes on the women that they work with. This creates an atmosphere which fosters the possibility of sexual harassment. Another way is a commitment on the part of the employer and individuals to avoid using their position and status to promote inappropriate personal goals. Sexual harassment is an abuse of power. Persons who utilize their position to coerce women and retaliate against women who refuse to go along with their wishes are abusing their authority and place their employers in a position of jeopardy.

The problem of sexual harassment is not a minor one. Surveys have shown that a majority of working women have been harassed at least once in their working lives. Equality and fairness demand that the problem not be hidden and that employers move to bring about a better climate for their employees.

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FOOTNOTES

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2. Project on the Status and Education of Women, "Sexual Harassment: A Hidden Issue", (Washington, D.C.: Association of American Colleges, 1978), p. 2.

3. Safran, Claire, "What Men Do to Women on the Job: A Shocking Look at Sexual Harassment", Redbook Magazine, November 1976, p. 149.

4. U.S. Merit Systems Protection Board, Office of Merit Systems Review and Studies, Sexual Harassment in the Federal Workplace: Is it a Problem?, Washington, D.C., March 1981, p. 61.

5. MacKinnon, Catharine, Sexual Harassment of Working Women (New Haven, Conn.: Yale University Press, 1979), p. 83.

6. Rivers, Caryl, "Sexual Harassment: The Executive's Alternative to Rape", Mother Jones, June 1978, p. 49.

7. Backhouse, Constance and Leah Cohen, Sexual Harassment on the Job (Englewood Cliffs, N.J.: Prentice Hall, Inc., 1981), pp. 40-42.

8. Center for Women Policy Studies, Harassment and Discrimination of Women in Employment, Working paper prepared for the Conference on Harassment in the Workplace, July 7-9, 1981, p. 16.

9. Ibid., pp. 16-17.

10. Collins, Eliza G.C. and Timothy Blodgett, "Sexual Harassment . . . Some See it . . . Some Won't", Harvard Business Review, March-April 1981, p. 94.

11. Siniscalco, Gary R., "Sexual Harassment and Employer Liability: The Firtation that Could Cost a Fortune", The Employee Relations Law Journal, Vol. 6. No. 2, Autumn 1980, p. 279.

12. White, Barbara A., "Job Related Sexual Harassment and Union Women: What Are Their Rights?" Golden Gate University Law Review, Vol. 10:929, pp. 943-4.

13. Montgomery, Alice, "Sexual Harassment in the Workplace: A practitioner's Guide to Tort Actions", Golden Gate University Law Review, Vol. 10:879, p. 902.

14. Restatement (Second) of Torts § 46, Comment (d) (1977).

15. MacKinnon, op. cit., p. 162.

16. Montgomery, op. cit., p. 906.

17. Siniscalco, op. cit., pp. 289-290.

18. Letter from Jeannette Orlando, Assistant Director, Women's Legal Clinic, 11544 West Pico, Los Angeles, CA, dated July 1, 1982.

19. Allgeier, Elizabeth Rice and Natomi B. McCormick, Eds., Changing Boundaries: Gender Roles and Sexual Behavior (Palo Alto, CA: Mayfield Publishing Company, pp. 196-8.

20. U.S. Merit Systems Protection Board, op. cit., p. 76.

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SEXUAL HARASSMENT SURVEY

June 9, 1982

Institute for Local Self Government

THE SEXUAL HARASSMENT SURVEY

The Institute for Local Self Government, on behalf of the Policy and Standards Division of the State Personnel Board, surveyed a range of public agencies on the topic of sexual harassment. Our primary focus was on state departments. Detailed information was received from eleven of the fourteen state departments. Information was also received from two California Community Colleges, two State Universities, one University of California campus, one city, and eight counties.

Some of the more significant findings of the survey were:

1. All but two of the agencies surveyed have a written policy prohibiting sexual harassment.

2. Respondents appear satisfied with the sexual harassment policies of their agency.

3. 73% of all agencies conduct training programs on sexual harassment issues for managers and supervisors. 40% conduct training programs for rank and file employees.

4. Better and more training was recommended by more respondents than any other improvement in the sexual harassment programs.

TABLE OF CONTENTS

INTRODUCTION TO SURVEY AND METHODOLOGY

This survey was conducted by the Institute for Local Self Government, through a grant from the Intergovernmental Personnel Act, on behalf of the California State Personnel Board.

Survey Goal

To determine the need for improvements in programs (training, enforcement, policies) that deal with problems of sexual harassment.

Survey Content

The survey asked respondents to provide the following information:

- Existing written policies on sexual harassment which each of the departments have adopted;
- Any educational programs on sexual harassment in employment which have been conducted during the past two years within the department - description of the program when it was conducted, who presented it, as well as any plans for future programs;
- A description of the type of complaint system which is used to process a sexual harassment complaint;
- A description of the types of sexual harassment complaints which have been received and processed over the past two years;
- Identification of the types of attitudes which they think contribute to sexual harassment in the workplace;
- Suggestions from them as to what means could be employed by public jurisdictions;
- What changes in law or in the complaint process might they suggest.

Survey Implementation

A short questionnaire[1] was sent to selected individuals in state departments identified by the State Personnel Board, city and county personnel departments, and college districts. Two questionnaires were sent to each of the state departments, one to the women's program coordinator and another to the affirmative action officer. One questionnaire was sent to local government officers and college districts.

[1] See Appendix A for a copy of the questionnaire.

Activities

The questionnaire[1] was designed by the Institute with input from Duane Morford, Division Chief, Policy Standards Division, State Personnel Board. The Institute distributed, collected and tabulated the results. The data and summary was then submitted to the State Personnel Board.

Pre-Test

The survey was pre-tested on four state departments, two colleges, one county department and a consulting firm. Questionnaires were mailed to the women's program coordinator at:

1. California Coastal Commission;
2. Department of Insurance;
3. Department of Savings and Loan;
4. Department of Industrial Relations; and,

the affirmative action officer at:

5. University of California, Berkeley;
6. Canada College;
7. County of Alameda; and,
8. Menkin-Lucero and Associates.

Response and Revision

We received responses from No.'s 1,2,3,5,7, and 8. Based on these responses and input from the Institute staff and Morford, the Institute revised the questionnaire. The final questionnaire was then mailed out.

Sample

The final survey was sent to:

- 14 State Departments
- 13 County and City Governments
- 10 University and State Colleges
- 8 Community Colleges

Response Rate

State Departments - 79% Response - Eleven of the fourteen state departments surveyed responded. In each case, two surveys had been sent to each department; one to the affirmative action officer; one to the women's program officer. Subsequent phone calls revealed that AAOs and WPOs in all but one department had decided that their answers would be identical, and one or the other filled out the survey. In one case the AAO and WPO both sent in questionnaires; their answers differed to some extent.

University of California - 40% Response - Two of the five University of California campuses responded. (One response could not be counted in our statistics).

[1]See Appendix B to see who survey was mailed to and who responded.

California State Universities - 40% Response - Two of the five state universities surveyed responded.

California Community Colleges - 25% Response - Two of the eight community colleges surveyed responded. Most contacts reached ascribed their failure to respond to the amount of time needed to fill out the survey.

City and County Governments - 69% Response - Nine of the thirteen cities and counties surveyed responded.

RESULTS OF THE SURVEY

The tallied responses to the Sexual Harassment Survey follow. Percentages are given only for the state departments and overall responses, which represent 80% of all departments surveyed. Given the low response rate for the state higher education system, it was felt that percentage figures would be more misleading than helpful.

RESULTS OF THE SURVEY

POLICIES	OVERALL		STATE DEPARTMENTS		CALIF. COMMUNITY COLLEGES	CALIF. STATE UNIV.	UNIV. OF CALIF.	CITIES AND COUNTIES	
	26 Responses		12 Responses		2 Resp.	2 Resp.	1 Resp.	9 Responses	
Department/Agency Has Written Sexual Harassment Policy	24	92%	12	100%	2	2	1	7	78%
Policy Distributed to All Existing Employees	24	92%	14	92%	2	2	1	5	55%
Policy Distributed to All New Employees	17	65%	11	92%	1	1		4	44%
Method of Distribution:									
• In Orientation Package	9	35%	6	50%	1			2	22%
• By Supervisors	3	12%	2	17%				1	11%
• By Trainers	1	4%	1	8%					
• By Personnel Staff	2	8%	1	8%				1	11%
• By Affirmative Action Staff	1	4%	1	8%					
• By Mail/Paychecks	2	8%	1	8%				1	11%
• By Bulletin Boards	3	11%	1	8%		1		1	11%
• By Notices in Newsletters and Other Publications	1	4%			1				
Policy Explained/Discussed When Distributed	19	73%	7	58%	1	2	1	8	89%
Employees Comment on Policy	18	69%	7	58%	1	2	1	7	78%
Original Policy Modified to Include:									
• Visual Harassment	1	4%	1	8%					
• Names of Advocacy Groups	1	4%	1	8%					
• Additional Information from SPB Guidelines	1	4%	1	8%					

POLICIES (Cont.)	OVERALL		STATE DEPARTMENTS		CALIF. COMMUNITY COLLEGES	CALIF. STATE UNIV.	UNIV. OF CALIF.	CITIES AND COUNTIES	
	26 Responses		12 Responses		2 Resp.	2 Resp.	1 Resp.	9 Responses	
• Provision Forbidding Discrimination	1	4%	1	8%					
Sexual Harassment Policy Also Prohibits Sexual Orientation Discrimination	5	19%	4	33%				1	11%
Sexual Orientation Discrimination Prohibited by a Separate Departmental Policy	11	42%	4	33%	2	1	1	3	33%
Department/Agency's Policy is to Take Immediate Action on Instances of Sexual Harassment, even if Victim Requests no Action Be Taken	14	54%	6	50%	1	1		6	67%
Department/Agency Policy is to Inform Police or Local Prosecutor when a Violation of the Criminal Law comes to Department's Attention	10	38%	3	25%	2	2		3	33%
Department/Agency Policy is to Advise Victims of Their Right to Report Incident to Police/Prosecutor	14	54%	7	58%	2	2		3	33%
Respondents with Suggestions for Changes in Statutes*	3	11%	1	8%				2	22%
Respondents with Suggestions for Changes in Policies*	2	8%	1	8%				1	11%

COMPLAINT PROCESSES	OVERALL		STATE DEPARTMENTS		CALIF. COMMUNITY COLLEGES	CALIF. STATE UNIV.	UNIV. OF CALIF.	CITIES AND COUNTIES	
	26 Responses		12 Responses		2 Resp.	2 Resp.	1 Resp.	9 Responses	
Sexual Harassment Felt to be a Significant Problem in Department/Agency	6	23%	5	42%				1	11%
Certain Attitudes felt to Contribute to Problem (See Narrative Responses)									
Survey Conducted by Department/Agency on Sexual Harassment									
• Informal Survey	4	15%	2	17%				2	22%
• Formal Survey	2	8%						2	22%
Planning to Conduct a Survey in the Near Future	8	31%	2	17%		1	1	4	44%
Types of Sexual Harassment Experienced Last Year by Department/Agency:									
<u>Physical Assault</u>									
• No Instances	23	88%	11	92%	1	1	1	9	100%
• 1 Instance									
• 2 Instances									
• 3 Instances									
• Occurred-Don't Know Amount	1	4%	1	8%					
<u>Sexually Suggestive Touching</u>									
• No Instances	11	42%	5	42%				6	67%
• 1 Instance	6	23%	4	33%	1	1			

COMPLAINT PROCESSES (Cont.)	OVERALL		STATE DEPARTMENTS		CALIF. COMMUNITY COLLEGES	CALIF. STATE UNIV.	UNIV. OF CALIF.	CITIES AND COUNTIES	
	26 Responses		12 Responses		2 Resp.	2 Resp.	1 Resp.	9 Responses	
• 2 Instances	1	4%						1	11%
• 3 Instances	1	4%	1	8%					
• 5 Instances	1	4%	1	8%					
• Occurred-Don't Know Amount	4	15%	1	8%			1	2	22%
Psychological Pressure for Sexual Favors									
• No Instances	17	65%	8	67%	1			8	89%
• 1 Instance	2	8%	1	8%		1			
• 2 Instances	1	4%	1	8%					
• Occurred-Don't Know Amount	3	11%	1	8%			1	1	11%
Sexually Harassing Phone Calls or Letters									
• No Instances	17	65%	6	50%	1	1		9	100%
• 1 Instance	1	4%	1	8%					
• 2 Instances	2	8%	2	17%					
• Occurred-Don't Know Amount	3	11%	2	17%			1		
Sexual Remarks, Jokes, Verbal Teasing									
• No Instances	8	31%	2	17%	1			5	55%
• 1 Instance	3	11%	2	17%		1			
• 2 Instances	2	8%	1	8%				1	11%
• 3 Instances	3	11%	3	25%					
• 4 Instances	1	4%						1	11%
• Occurred-Don't Know Amount	4	15%	2	17%			1	1	11%
Sexually Suggestive Looks or Gestures									
• No Instances	15	58%	7	58%		1		7	78%

COMPLAINT PROCESSES (Cont.)	OVERALL		STATE DEPARTMENTS		CALIF. COMMUNITY COLLEGES	CALIF. STATE UNIV.	UNIV. OF CALIF.	CITIES AND COUNTIES	
	26 Responses		12 Responses		2 Resp.	2 Resp.	1 Resp.	9 Responses	
• 1 Instance	4	15%	1	8%	1			2	22%
• 2 Instances	2	8%	2	17%					
• 3 Instances	1	4%	1	8%					
• Occurred-Don't Know Amount	2	8%	1	8%			1		
Informal Complaints									
• None	8	31%	5	42%				3	33%
• One	2	8%	1	8%				1	11%
• Two	6	23%	2	17%	1	1	1	1	11%
• Three	1	4%						1	11%
• Five	2	8%	1	8%				1	11%
• Six	2	8%	1	8%				1	11%
• Seven	1	4%						1	11%
• Not Sure of Number									
Formal Complaints									
• None	12	46%	4	33%	1			7	78%
• One	5	19%	3	25%		1	1		
• Two									
• Three	1	4%						1	11%
• Four	2	8%	2	17%					
• Five	1	4%	1	8%					
• Not Sure of Number	2	8%	1	8%				1	11%
Administrative Appeals									
• None	22	85%	10	83%	1	1	1	9	100%
Lawsuits Filed									
• None	20	77%	8	67%	1	1	1	9	100%
• One	2	8%	2	17%					

COMPLAINT PROCESSES (Cont.)	OVERALL		STATE DEPARTMENTS		CALIF. COMMUNITY COLLEGES	CALIF. STATE UNIV.	UNIV. OF CALIF.	CITIES AND COUNTIES	
	26 Responses		12 Responses		2 Resp.	2 Resp.	1 Resp.	9 Responses	
Of Complaints Filed, Cases Resulted in the Following:									
Complaint Withdrawn									
• One	3	11%	1	8%			1	1	11%
• Two	2	8%	1	8%		1			
• Three	1	4%						1	11%
• Five	1	4%						1	11%
• Seven	1	4%						1	11%
Complaint Determined to be Unfounded									
• One	2	8%					1	1	11%
• Two	3	11%	2	17%				1	11%
• Not Sure of Number	1	4%						1	11%
Complaint Determined to be Founded									
• One	3	11%	1	8%		1		1	11%
• Two	2	8%	1	8%				1	11%
• Five	2	8%	2	17%					
• Not Sure of Number	2	8%	1	8%				1	11%
Complaint Pending									
• One	6	23%	3	25%			1	2	22%
• Not Sure of Number	1	4%						1	11%
Process for Resolving Sexual Harassment Complaints (See Narrative Responses)									

COMPLAINT PROCESSES (Cont.)	OVERALL		STATE DEPARTMENTS		CALIF. COMMUNITY COLLEGES	CALIF. STATE UNIV.	UNIV. OF CALIF.	CITIES AND COUNTIES	
	26 Responses		12 Responses		2 Resp.	2 Resp.	1 Resp.	9 Responses	
Affirmative Action Officer/ Women's Program Officer's Role in the Sexual Harassment Complaint Process:*									
• Advises Victim of the Process	24	42%	10	83%	2	2	1	9	100%
• Tries to Resolve Complaint Informally	22	85%	9	75%	2	2	1	8	89%
• Provides Counseling	24	92%	10	83%	2	2	1	9	100%
• Provides Special Counseling to Victims of Sexual Harassment	12	46%	5	42%	1	1		5	55%
• Advises Victims of Possibility of Retaliation if they file a Complaint	16	61%	5	42%	1	2	1	7	78%
Cases Resulting in Disciplinary Action Against the Perpetrator:									
• One	4	15%	2	17%		1		1	11%
• Three	2	8%	1	8%				1	11%
• Five	1	4%	1	8%					
Suggestions with Respect to Counseling Victims (See Narrative Responses)									

TRAINING & EDUCATION	OVERALL		STATE DEPARTMENTS		CALIF. COMMUNITY COLLEGES	CALIF. STATE UNIV.	UNIV. OF CALIF.	CITIES AND COUNTIES	
	26 Responses		12 Responses		2 Resp.	2 Resp.	1 Resp.	9 Responses	
In-Service Training on Sexual Harassment for:									
• Managers and Supervisors	19	73%	8	67%	2	1	1	7	78%
• Affirmative Action Personnel	20	77%	8	67%	2	1	1	8	89%
• Women's Program Officers	15	58%	9	75%	1	1	1	3	33%
In-Service Training Held:									
• Annually	4	15%	2	17%		1		1	11%
• Bi-Annually	1	4%	1	8%					
• Quarterly	4	15%	2	17%			1	1	11%
• Monthly	1	4%						1	11%
• As Needed	1	4%	1	8%					
Training on Sexual Harassment Provided to New Employees	7	27%	1	8%	1		1	4	44%
Training Course Outline Developed	14	54%	7	58%	1	1	1	4	44%
Training Distinguishes Between Laws, Policies, and Procedures for Sexual Orientation Discrimination and Sexual Harassment	11	42%	7	58%			1	3	33%
Additional Training on Sexual Harassment Needed:									
• For Non-Supervisory Employees	2	8%	2	17%					

TRAINING & EDUCATION (Cont.)	OVERALL		STATE DEPARTMENTS		CALIF. COMMUNITY COLLEGES	CALIF. STATE UNIV.	UNIV. OF CALIF.	CITIES AND COUNTIES	
	26 Responses		12 Responses		2 Resp.	2 Resp.	1 Resp.	9 Responses	
• More Training on Laws and Policies for New Employees	1	4%	1	8%					
• More for Workers in Non-Traditional Roles	1	4%	1	8%					
Employees Receive Written Material Regarding Their Rights as Victims of Sexual Harassment	10	38%	5	42%		1		4	44%
Employees not Clear on Difference between Sexual Harassment and Sexual Orientation Discrimination	6	23%	4	33%	1		1		
Educational Programs on Sexual Harassment for Rank and File Employees Conducted	11	42%	5	42%	1	1		4	44%
Suggestions with Respect to Training Managers, Supervisors and Affirmative Action Personnel (See Narrative Responses)									
Suggestions with Regard to Education of Rank and File Employees (See Narrative Responses)									

NARRATIVE RESPONSES

All of the narrative responses we were able to read and make sense of follow. In some cases several responses saying substantially the same thing are condensed to one response with the actual number of responses following in parentheses.

POLICIES

Do you have any suggestions for changes in statutes dealing with sexual harassment?

The statutes should have more explanatory material on sexual harassment.

Do you have any suggestions for changes in departmental policy on sexual harassment?

The policy should more clearly identify counselors and investigators.
More money should be allocated to implement the policy.

COMPLAINTS OF SEXUAL HARASSMENT

Are there certain attitudes that contribute to making sexual harassment a problem in your department?

There is a lack of sensitivity on the part of male employees.
There is a lack of awareness on the part of many.
Not many women work for the Department of Forestry.
Law enforcement is a dominant white male organization.

What is the process for resolving sexual harassment complaints?

State Departments

The internal affairs unit conducts an investigation prior to any action.
Complaint goes through the employee's supervisor to file a documentation of complaint.
Discrimination complaint process is used.
Employees work with their supervisor, AAO, or WPO.
Affirmative Action Coordinator deals with the complaint.
Employee goes first to the supervisor. If this is unseccessful, employee goes to affirmative action officer.
Discrimination complaint process is used (4 responses).
If complaint cannot be resolved informally, then a formal procedure is used.

Community Colleges

Discrimination complaint procedure is used. Employees or students report the incident to his or her supervisor or to the affirmative action officer.

An administrative review of the employee's alleged conduct is held. Administration mediates between complainant and alleged agressor. The University Affirmative Action Committee holds a review.

University of California

A pre-grievance process to settle the matter informally is used. At the formal grievance stage it is handled through the regular faculty and staff and students grievance procedure.

Local Governments

Complaints of discrimination procedure is used (7 responses).

Do you have any suggestions with respect to the counseling of victims of sexual harassment?

Be honest with employees, explain retaliation possibility so that there are no surprises.
More legal information and counseling. The administrative remedies are not sufficient.
The complaint should be handled as soon as possible.

TRAINING AND EDUCATION

Do you have any suggestions with respect to training for managers, supervisors, and affirmative action personnel?

Managers and supervisors need more training in sensitivity to the issue of sexual harassment (6 responses).
Training in good management techniques for individual employees and male/female teams. Trainers should keep their sense of humor.
Stress the seriousness of sexual harassment and the backing of the Director.
Remind employees that males can be the victims of sexual harassment too.
Include updates in employee newsletters.
It can be more effective to have men do the training.

Do you have any suggestions with respect to the education of rank and file employees on this subject?

Training should be offered to all employees.
Immediate supervisors should stress the seriousness of the issue and the backing of the Director.
Training should be offered to individual employees and male/female teams.
Trainers should keep their sense of humor.

FINDINGS & ANALYSIS

1. All but two of the agencies surveyed has a written policy prohibiting sexual harassment. One has a draft policy, and one has "guidelines" for employees which prohibit sexual harassment.

2. Over 90% of all agencies surveyed (92% of state departments) have distributed this policy to all employees.

3. Four of eleven (36%) of state department sexual harassment policies expressly forbid sexual orientation discrimination.

4. Four of eleven (36%) state departments have a separate policy prohibiting sexual orientation discrimination.

5. About one-half of all agencies and state departments do not have a definite policy concerning informing the police of violations of criminal law, advising victims of their right to inform the police, or taking immediate action regardless of the victim's desires. It appears that definite policies do not exist because most agencies have not experienced a serious case of sexual harassment. Some agencies prefer to not make rigid policies, but react to individual cases.

6. Respondents appear satisfied with the sexual harassment policies of their agencies.

7. Although most respondents are satisfied with their sexual harassment policies, four state departments still saw sexual harassment as a significant problem in the agency.

8. It is worth noting that not all of the agencies that reported sexual harassment to be a problem in the department are agencies which are likely to hire women into non-traditional roles. There is a popular assumption that agencies that hire women to do law enforcement, manual labor or other non-traditional jobs are likely to have the most problem with sexual harassment. However, from the very limited information we have, it appears that this assumption is unfounded. About an equal number of agencies that hire women into traditional roles and those that hire women into non-traditional roles see sexual harassment as a problem.

9. Only two state departments have surveyed their employees about sexual harassment. Four cities and counties have surveyed their employees. Surveys are felt by many experts to be an important first step in preventing sexual harassment (see Affirmative Action in Progress, Vol. 7, No. 1, Sexual Harassment: Developments and Progress).

10. Sexually suggestive touching and sexual remarks, jokes, and teasing were the most common types of sexual harassment reported.

11. Formal and informal complaints occur about equally.

12. Complaints of sexual harassment are most often resolved through the agency's discrimination complaint procedure.

13. Nearly all affirmative action personnel make an attempt to resolve complaints informally. Nearly all provide counseling to victims of sexual harassment.

14. There were far more instances of sexual harassment reported and complaints determined to be founded than disciplinary action taken against perpetrators.

15. Seventy-three percent of all agencies (67% of state departments) train managers and supervisors on sexual harassment issues.

16. Forty-two percent of the agencies conduct educational programs on sexual harassment for rank and file employees.

17. About one-half of the training programs distinguish between laws, policies, and procedures for sexual orientation discrimination and sexual harassment.

18. More respondents recommended better and more training than recommended any other improvement in sexual harassment programs.

APPENDIX A

A. Departmental Policy

1. Does your department have a written policy on sexual harassment in employment? ___ Yes ___ No

2. If yes, has this policy been distributed to all existing employees? ___ Yes ___ No

3. Is it distributed to all new employees? ___ Yes ___ No

4. Who distributes it and what method is used?

_____

_____

5. Is there any explanation of this policy or discussion about it at the time of the distribution or subsequent to the distribution?

___ Yes ___ No

6. Has your department received any feedback from your employees about the policy? ___ Yes ___ No

7. Has the policy been modified since the date of original distribution?

___ Yes ___ No

a. If yes, please explain: _____

_____

_____

8. Although sexual orientation discrimination in state employment is illegal, it is generally not considered a form of sexual harassment under federal and state laws. There has been some confusion about this in the past, so that some departments have prohibited sexual orientation discrimination in their sexual harassment policy statement.

a. Has your department prohibited sexual orientation discrimination in your sexual harassment policy? ___ Yes ___ No

b. Is sexual orientation discrimination prohibited by a separate departmental policy? ___ Yes ___ No

9. Is it the policy of your department to take action as soon as an instance of sexual harassment comes to your attention, even if the victim requests that no action be taken? ___ Yes ___ No

10. Is it the policy of your department to notify the police or local prosecutor when a violation of the criminal law comes to your attention (sexually motivated touching as an assault or battery, indecent exposure, etc.)? ___ Yes ___ No

11. Is it your policy to advise a victim of his/her rights to report the incident to the police or prosecutor as a possible violation of the criminal law? ___ Yes ___ No

12. Do you have any suggestions for changes in statutes dealing with sexual harassment? ___ Yes ___ No

a. If yes, please explain _____

_____

_____

13. Do you have any suggestions for changes in departmental policy on sexual harassment? ___ Yes ___ No

a. If yes, please explain _____

_____

_____

B. Complaints of Sexual Harassment

1. Do you feel that sexual harassment is a significant problem in your department? ___ Yes ___ No

a. If yes, do you feel that there are certain attitudes contributing to this problem in your department? Explain _____

_____

2. Has your department ever conducted a survey regarding sexual harassment in employment? ___ Yes ___ No

a. Formal survey? ___ Yes ___ No
b. Informal survey? ___ Yes ___ No
c. If a formal or informal survey was done, when was it conducted?

_____

d. If a survey has not been done, are you planning to conduct one in the near future? ___ Yes ___ No

3. What types of sexual harassment activities have come to the attention of your department within the past year? How many? (if none, state none)

a. Physical assault (rape or attempted rape) _____
b. Sexually suggestive touching _____
c. Psychological pressure for sexual favors _____
d. Sexually harassing phone calls or letters _____
e. Sexual remarks, jodes, or verbal teasing _____
f. Sexually suggestive looks or gestures _____

4. What is the process for resolving sexual harassment complaints?

_____

_____

5. What is your role in the sexual harassment complaint process?

a. Do you advise victim of the process? ___ Yes ___ No
b. Do you try to resolve the complaint informally? ___ Yes ___ No
c. Do you provide counseling? ___ Yes ___ No
d. Do you provide any special counseling for victims of sexual harassment? ___ Yes ___ No
e. Do you advise victims of the possibility of retaliation if they file a complaint? ___ Yes ___ No
f. Other _____

6. Within the past year, how many instances of such harassment have resulted in the following actions:

a. Informal complaints _____
b. Formal complaints _____
c. Administrative appeals _____
d. Lawsuits filed _____

7. Of complaints filed (either formal or informal), how many cases resulted in the following:

   a. Complaint was withdrawn by complainant _____
   b. Complaint determined to be unfounded _____
   c. Complaint determined to be founded _____
   d. Complaint still pending _____

8. In those cases in which the complaint was determined to be founded, how many resulted in disciplanary action being taken against the perpetrator? _____

9. Do you have any suggestions with respect to the complaint system as it now operates for these types of cases? ___ Yes ___ No

   a. If yes, please explain _____

   _____

10. Do you have any suggestions with respect to the counseling of victims of sexual harassment? ___ Yes ___ No

    a. If yes, please explain _____

    _____

C. Training and Education

1. Is training on sexual harassment included in regular in service training classes for the following employees?

   a. Managers and supervisors ___ Yes ___ No
   b. Affirmative action personnel ___ Yes ___ No
   c. Women's program officers ___ Yes ___ No

2. How often is in service training given on this topic? _____

3. Is training on sexual harassment provided to new employees? __Yes __No

4. Do you have a course outline or other written materials on sexual harassment for use in your training classes for managers, supervisors, and affirmative action personnel? ___ Yes ___ No

5. In your training of such personnel, do you distinguish between laws, policies, and procedures for sexual orientation discrimination and those for sexual harassment? ___ Yes __ No

6. Do you feel that additional training on sexual harassment is needed in your department? ___ Yes ___ No

   a. If yes, what topics should be covered and for which employees?

   _____

   _____

7. Do employees receive any written material regarding their rights should they become a victim of sexual harassment in the workplace (in addition to the department policy on sexual harassment)? ___ Yes ___ No

8. In your experience, have you found employees confused about the difference between sexual harassment and sexual orientation discrimination? ___ Yes ___ No

9. With regard to rank-and-file employees, do you conduct any educational programs or classes in which the topic of sexual harassment in employment is covered? ___ Yes ___ No

   a. If yes, please describe the programs _____

   _____

10. Do you have any suggestions with respect to training for managers, supervisors, and affirmative action personnel? ___ Yes ___ No

    a. If yes, please explain _____

    _____

    _____

11. Do you have any suggestions with respect to education of rank-and-file employees on this subject? ___ Yes ___ No

    a. If yes, please explain _____

    _____

    _____

APPENDIX B

DEPARTMENTS CONTACTED AND DEPARTMENTS THAT RESPONDED

State Departments	Respond	Did Not Respond in Time
BanKing	X	
Corrections		X
Developmental Services		X
Board of Equalization		X
Fish & Game	X	
General Services	X	
Forestry	X	
Highway Patrol	X	
Housing & Community Development	X	
Motor Vehicle	X	
Recreation & Parks	X	
Social Services	X	
Youth Authority (2)	X	
Ananymous (Health Services?)	X	
University of California System & State Colleges		
U.C. Davis		X
U.C. Los Angeles	X	
U.C. Riverside	X	
U.C. San Diego		X
U.C. Santa Cruz		X
Chico State	X	
Fresno State		X
Hayward State		X
Long Beach State	X	
San Jose State		X
Community College District		
Chancellor's Office of California Community Colleges	X	
Cerritos Community College		X
Glendale Community College		X
Imperial Community College		X
Kern Community College		X
Long Beach Community College		X
San Diego Community College		X
San Francisco Community College	X	

APPENDIX B (Continued)

LOCAL GOVERNMENTS	RESPOND	DID NOT RESPOND IN TIME
City of San Jose	X	
County of Fresno	X	
County of Stanislaus		X
County of Santa Clara	X	
County of Sonoma	X	
County of Solano	X	
County of San Mateo	X	
County of San Diego		X
County of Sacramento	X	
County of San Bernardino	X	
County of Kern		X
County of Humboldt		X
County of Contra Costa	X	