

SEXUAL HARASSMENT TASK FORCE REPORT

“UNWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS, AND OTHER VERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE CONSTITUTE SEXUAL HARASSMENT WHEN: (1) SUBMISSION TO SUCH CONDUCT IS MADE EITHER EXPLICITLY OR IMPLICITLY A TERM OR CONDITION OF EMPLOYMENT; (2) SUBMISSION TO OR REJECTION OF SUCH CONDUCT BY AN INDIVIDUAL IS USED AS THE BASIS FOR EMPLOYMENT DECISIONS AFFECTING SUCH INDIVIDUAL; OR (3) SUCH CONDUCT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH AN INDIVIDUAL'S WORK PERFORMANCE OR CREATING AN INTIMIDATING, HOSTILE, OR OFFENSIVE WORKING ENVIRONMENT.”

...definition used by Equal Employment Opportunity Commission

COUNCIL ON THE ECONOMIC STATUS OF WOMEN

SEXUAL HARASSMENT TASK FORCE REPORT

The COUNCIL ON THE ECONOMIC STATUS OF WOMEN is a legislative advisory commission established by the Minnesota legislature in 1976. Council members include state senators and representatives as well as public members. The Council studies all matters relating to the economic status of women in Minnesota and publishes reports and recommendations to the legislature and to the Governor.

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SUMMARY & RECOMMENDATIONS

Sexual harassment is now recognized as a widespread problem for women in employment and education. Because of sexual harassment, many women leave their jobs, drop out of school, and in other ways lose opportunities for job security and advancement. It has also become clear that sexual harassment is a function of unequal power relationships, and that its victims often have little recourse.

Legal precedent is developing rapidly in this area, and a number of states have adopted statutory prohibitions of sexual harassment. However, additional efforts are needed to eliminate the problem and to provide adequate support for victims. Policies and procedures for addressing sexual harassment are still relatively rare. Many individuals are unsure what kinds of behavior are inappropriate, how to avoid or address the problem, and what legal remedies are available. Women who have pursued existing remedies are frequently unable to prove their cases, unable to pay for the services of attorneys, and unable to find new jobs or remain in their current jobs.

Recommendations endorsed by the Task Force on Sexual Harassment and by the full Council on the Economic Status of Women address the need for statutory change, additional public awareness, and additional support for victims. Specific recommendations include:

- Amending the state Human Rights Act to include a specific definition of sexual harassment as a prohibited form of sex discrimination in employment and education. The proposed definition is that used by the Equal Employment Opportunity Commission: "Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature" under certain conditions.

- Amending the state unemployment compensation law to include sexual harassment among other "good causes" for leaving a job, to allow victims who can prove sexual harassment to qualify for unemployment compensation.

- Continuing consideration of ways to meet the following needs: development and distribution of sample procedures for use by employers and educators; educational programs for the general public; referral resources for victims; and awareness training for employers and educators.

- Urging private and public employers and educators to develop policies and procedures, conduct training and raise consciousness in the work and school environment on the issue of sexual harassment. (See resource section of this report.)

- Urging labor organizations and their representatives to provide awareness training for their leadership and members, to assist victims of sexual harassment, and to work with management on prevention of sexual harassment. (See resource section.)

INTRODUCTION

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"I tried everything, ignoring it, going along and laughing, being as aggressive as they were -- nothing worked, and management did nothing. It has emotional effects, even now when I'm not employed there ... Comments about my body, their sexual ability, I was the brunt of every dirty joke. It made me feel worthless, incapable, replaceable. I'm a single mother. This was the first job I had where I earned more than minimum wage."

"If a woman does nothing about the harassment, it simply continues. If she does do something, she is likely to be fired or further harassed. There is nothing the victim can do to change their behavior, since it is all based on power, not sex. Title VII suits take years and are expensive, these women are in jobs where they can't afford an attorney."

"We have had reports from students in vocational school of staring at a woman's body, following her around, making loud comments, a variety of touching and pinching. One instructor had the audacity to say that he pinched students and they enjoyed it."

"It's a form of sexual assault, and has much in common with rape. Public attitudes are laden with myths and misconceptions, especially the overriding myth that women ask for it, it's not serious, it doesn't happen, it only happens to certain kinds of women ..."

These comments, and those on the pages which follow, were presented as testimony at a public hearing conducted in October 1981 by the Council on the Economic Status of Women. The hearing was about sexual harassment. Although the problem has only recently been openly recognized and discussed, testimony before the council suggested that sexual harassment is a pervasive problem with negative effects on the economic status of women.

Subsequent to the hearing, the council established a task force to develop recommendations for the elimination of sexual harassment in employment and education. This report contains much of the information considered by the task force, as well as recommendations for addressing the problem. In addition, a resource section is provided to assist employers and educators in writing policies and procedures, and to assist victims of sexual harassment with legal remedies and counseling.

STUDIES OF SEXUAL HARASSMENT

Widespread attention to sexual harassment is relatively recent. Many of the studies which have been conducted are exploratory in nature, designed to provide some sense of the frequency and seriousness of the problem.

EMPLOYMENT STUDIES

Redbook Magazine, 1976. Although the respondents to this published survey were self-selected rather than randomly chosen, the large number of responses nationwide brought considerable attention to the issue of sexual harassment. Of the 9,000 women who responded, 88 percent said they had experienced one or more forms of harassment and 92 percent said sexual harassment is a serious problem. The study was also noteworthy in providing the personal stories of many women, although the editors indicated that "Many of the letters women wrote tell horror stories that are absolutely unprintable." A significant finding was that, in the majority of reported cases, the harassment did not stop when the victims objected.

Merit Systems Protection Board, 1980. This federal agency conducted a study of sexual harassment in federal employment at the request of a subcommittee of the U.S. House of Representatives. The study used a confidential scientifically designed random sampling of a broad cross section of federal employees, with questionnaires sent to 23,000 male and female employees.

The response rate was 85 percent. According to the researchers, "This extremely high response rate indicates that the data received were very reliable." Preliminary findings focussed on the responses of women, although 15 percent of men surveyed said they also experienced some form of sexual harassment.

A majority of the women considered the following uninvited behavior to be sexual harassment, with a higher percentage considering such behavior as harassment if done by a supervisor rather than a co-worker: (1) letters, phone calls, materials of a sexual nature; (2) pressure for sexual favors; (3) touching, leaning over, cornering, pinching; (4) pressure for dates; (5) suggestive looks or gestures; (6) sexual teasing, jokes, remarks, or questions. The first three behaviors were considered "severe" sexual harassment, and the last three were considered "less severe."

The study showed that 42 percent of the women had experienced some form of sexual harassment on the job over the past two years: 1 percent had experienced actual or attempted rape or sexual assault, 29 percent had experienced "severe" harassment, and 12 percent had experienced "less severe" harassment. Extrapolating this sample to the total federal workforce, about 9,000 women had been victims of actual or attempted rape or sexual assault, 200,000 had been victims of severe sexual harassment, and 85,000 women had been victims of less severe harassment.

"Sexual harassment effectively keeps women in their place. It keeps them from obtaining any real power in the work setting."

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The victims of sexual harassment included women in all job classes, all races, all ages, all educational backgrounds, and all salary levels. The most direct relationships were between incidence of harassment and the victim's age and educational background. The incidence appears to decline with increasing age, ranging from 67 percent for women age 16-19 to 22 percent for women age 55 or older. Incidence appears to increase with increasing levels of educational attainment, ranging from 31 percent for women with less than a high school diploma to 53 percent for women with some graduate school education.

Among the women who provided information about the harasser, 68 percent said the harasser was older than the victim and 63 percent said the harasser was of the same race or ethnic background as the victim. In the majority of cases, the harasser was a co-worker or other employee, while a supervisor was the next most likely to be the harasser. An employee subordinate to the victim was named in only 4 percent of the cases.

Of the women who reported some form of sexual harassment, about half said the incidents led to some negative change in their job status or work situation. The researchers estimate that about 18,000 women employed by the federal government had left their jobs sometime during their federal career because of sexual harassment. Additionally, the researchers emphasized that the sample represented "the survivors of this process" and that many people probably left jobs who were not represented in the study.

The researchers also noted a "generally low level of awareness on the part of victims" about formal avenues of recourse open to them. When asked what recourse was available, only about half of the women knew they could file a discrimination complaint -- a surprisingly low rate for persons generally familiar with government. Only 14 percent of the victims, moreover, felt that filing a discrimination complaint would be effective, and only 2 percent had actually filed a complaint. Of these, just over half had received a favorable resolution.

Survey researchers also noted that sexual harassment was not just a problem in federal employment: over 60 percent of the respondents reported that, in their previous private sector experience, sexual harassment had been just as common and just as severe as in federal employment.

Two Minnesota studies conducted in 1981 provide additional information about sexual harassment from the perspective of private sector employers and personnel officials. A study conducted by the Employers Association of Greater Minneapolis pro-

"The advice I was given was that 'boys will be boys.' I was not taken seriously. 'No' didn't mean anything to them."

vides information on policies, procedures, and charges considered by companies in the Twin Cities area, while a similar survey conducted by the Council on the Economic Status of Women provides information about attitudes and perceptions of personnel officials in the Twin Cities.

Employers Association of Greater Minneapolis, 1981. This study includes the responses of 228 firms, 146 manufacturing companies and 82 non-manufacturing companies, with company size ranging from fewer than 50 employees to more than 700 employees. Overall, 25 percent of the firms reported having a formal policy on sexual harassment. Larger firms with more than 500 employees were more likely than smaller firms to have a policy, and non-manufacturing firms were more likely than manufacturing firms to have a policy.

A somewhat smaller percentage of all the companies -- 22 percent -- have a formal disciplinary procedure for addressing complaints of sexual harassment. Just under one-fourth of all companies surveyed -- 23 percent -- reported a sexual harassment charge made to a company official or government agency within the past year, with non-manufacturing companies more likely to have received such charges. Total charges reported amount to an average of 1.6 charges per firm per year. Of the 85 charges reported, only 15 percent were reported to a government agency.

In examining types of charges, 89 percent were of a man harassing a woman, while 4 percent were of a woman harassing a man and 7 percent were "other" -- most probably same-sex harassment. Forty-nine percent referred to harassment on the part of a co-worker, while 42 percent referred to a supervisor harassing a subordinate, 6 percent referred to harassment on the part of a customer or client, and 2 percent referred to "other" relationships.

The most frequently-used method for employers to communicate their sexual harassment policy was through an employee handbook, followed by bulletin boards, "other," and employee orientation. Most indicated that sexual harassment should be reported to the Personnel or Human Resource Manager, or to the victim's immediate supervisor. Twenty-eight percent of responding firms indicated that someone in the company had received training about handling sexual harassment.

Council on the Economic Status of Women, 1981. This study includes responses from 381 personnel officials, or 30 percent of the 1,250 members of the Twin Cities Personnel Association who received a questionnaire. Overall, 69 percent of respondents felt their company's current policy and complaint process was adequate to deal effectively with sexual harassment. A difference was evident, however, between officials whose company had a written policy and those which did not. Eighty-three percent with a written policy were satisfied that the company's response to sexual harassment was adequate,

"I was becoming dysfunctional and finding excuses to get out of my job and avoid my co-workers. Nobody was listening to me. It was MY problem . . . It was all MY responsibility."

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while only 44 percent of those without a written policy thought their process was adequate. The most frequent resolution of charges, according to the personnel officials, was that "person charged agreed to stop."

Thirty-two respondents to the council survey enclosed copies of their company's policy on sexual harassment. Each policy was unique, but the majority included a commitment to eliminating sexual harassment, included a definition of sexual harassment, and specified to whom sexual harassment should be reported. The majority did not indicate how an investigation would be conducted or what possible penalties might be assigned.

Written comments from respondents showed a generally supportive attitude toward development of policy and awareness about the issue of sexual harassment. Several indicated they feel awareness is growing, though a number stated that better definitions or better standards of proof are needed.

Education studies. Very few studies have been conducted to determine the frequency of sexual harassment in education. A 1979 study of senior women at the University of California at Berkeley used a scientifically designed random sample. Of the 269 women who responded, 20 percent had experienced sexual harassment from a professor. A non-random sample of 460 men and women students at the University of Maryland was asked about sex bias on campus, also in 1979. Both women and men cited various kinds of sex discrimination but by far the most prevalent concern was with sexual harassment, defined as grades or privileges being made contingent upon sexual favors.

In summary, these and other studies show that sexual harassment is a common problem, with reliable estimates of incidence ranging from 20 percent of female college students to 42 percent of female employees. The studies also indicate that sexual harassment is a function of unequal power relationships rather than sexual attraction, since it affects women with widely varying personal characteristics and since harassment is rarely initiated by a subordinate. Although victims are skeptical about the effectiveness of legal remedies, and not fully informed about such remedies, awareness appears to be growing among victims, employers, and the general public.

The studies also show that the economic cost of sexual harassment is very high. The pattern of sexual harassment in employment and education affects not only the immediate victims, but also other women who fear sexual harassment, and employers who suffer the high costs of workforce turnover and reduced productivity.

"I've gone to the company . . . the company's attitude is that you've got to take a joke, you've got to be able to go along."

The most obvious effect of sexual harassment is the victim's job loss. About half of victims "voluntarily" leave their jobs when the harassment becomes intolerable and when they perceive no effective recourse. Many others are fired in reprisal when they refuse to tolerate or submit to sexual demands, or for reporting the harassment. Still others are fired when the harassment results in deteriorating work performance or attendance.

Job loss means the immediate loss of income, particularly when unemployment compensation is not available. It also means lost opportunities for accumulating seniority rights, obtaining salary increases or career advancement, and loss of important benefits such as medical insurance or pension coverage.

Sexual harassment in education also presents women with economic barriers. Whether female students are seeking college degrees, vocational preparation, or opportunities for advancement in an existing job, harassment may lead them to drop out of school or participate less actively in the educational community. Lack of equal educational opportunity leads to lower-paid employment.

What happens to the victim who stays on the job or in school, choosing not to report the harassment? The studies show the harassment is very likely to continue. These victims are likely to suffer from loss of the self-esteem and self-confidence necessary to obtain recognition and advancement. They frequently experience severe emotional stress and stress-related illnesses and injuries. As a result, these women too may lose their jobs or leave school eventually, or receive negative performance reviews or poor grades, all of which affect their future opportunities.

Women who have not personally experienced sexual harassment are very likely to have witnessed or heard about harassment of other women, and these women are also affected by their perceptions of the workplace as a hostile environment. Their reactions may include fear of seeking recognition or advancement, fear of pursuing non-traditional careers or pursuing any activity in which they feel vulnerable, and a tendency to lower their expectations.

Employers suffer the costs of recruiting and training new employees as well as the hidden costs of low employee morale and, increasingly, the costs of legal action initiated by victims.

LEGAL STATUS OF SEXUAL HARASSMENT

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COURT DECISIONS

The legal development of the sexual harassment issue, like development of formal studies, is relatively recent. Although court rulings have been based on the facts of individual cases rather than on broad policy issues, considerable legal precedent has now been established.

To prove a violation of Title VII of the federal Civil Rights Act of 1964, it has generally been necessary to demonstrate (1) that submission to sexual harassment was a term and condition of employment, (2) that refusal to submit substantially adversely affected the victim's employment, and (3) that employees of the other sex were not affected in the same way.

Cases in which the courts have said that sexual harassment may constitute sex discrimination in employment, as long as these three factors are proved, include: *Tompkins v. Public Service Electric and Gas Company* (3d Circuit 1977); *Barnes v. Costle* (D.C. Circuit 1977); *Garber v. Saxon Industries Inc.* (4th Circuit 1977); *Miller v. Bank of America* (9th Circuit 1979); and *Rinkel v. Associated Pipeline Contractors* (District Court, Alaska 1978). The *Miller* case established that merely having a sexual harassment policy does not necessarily protect an employer from liability for its supervisors' actions.

Women have succeeded in actually proving discriminatory sexual harassment in a number of additional cases: *Heelan v. Johns-Manville Corporation* (District Court, Colorado 1978); *Kyriazi v. Western Electric* (District Court, New Jersey 1978); *Macey v. World Airways Inc.* (Northern District California 1977); and *Evans v. Sheraton Park Hotel* (District Court of D.C. 1972). The *Kyriazi* ruling required co-workers found guilty of harassing a female engineer to make large cash settlements, which the employer was not allowed to pay on their behalf, in addition to employer liability.

It has been particularly important for women to show that there were adverse effects on the victim's terms and conditions of employment, and that these effects were directly linked to sexual harassment. For example, in the *Miller* and *Heelan* cases, the women showed that they were fired for refusing their supervisors' demands for sexual favors.

When this cause and effect relationship cannot be proven, cases have been unsuccessful. For example, in *Bundy v. Jackson* (District Court D.C. 1979), the plaintiff proved sexual harassment, but was unable to prove that she was promoted any less rapidly than male employees in similar jobs. The judge stated that the sexual advances were "a game played by the supervisor -- you win some and you lose some."

"Throughout my five years there I felt a lot of humiliation, degradation. I was really embarrassed. I was not taken seriously . . ."

In other cases, the adverse action can be demonstrated, but it cannot be linked directly to the harassment. If the employer can show that there were other reasons for the adverse employment action, such as excessive absenteeism or poor work performance, the courts have held that sexual harassment did not constitute sex discrimination under Title VII. Some examples include *Fisher v. Flynn* (1st Circuit 1979) and *Cordes v. County of Yavapai* (District Court, Arizona 1978). In other cases, the courts have ruled that the objectionable behavior was not extreme enough to constitute sexual harassment. In *Smith v. Amoco Chemicals Corp.* (Southern District Texas 1979), the plaintiff proved that her foreman made verbal passes at her but they "did not rise to such a level as to constitute a Title VII violation." In *Purvine v. Boyd Coffee Co.* (District Court, Oregon 1976), one employee made a derogatory remark but the court held that "Title VII does not make the employer responsible for every inconsiderate remark by co-workers."

Federal courts have not yet agreed completely on the question of the extent to which company management is responsible for sexual harassment on the part of supervisors or co-workers. The *Miller* decision held the employer responsible for supervisors' actions even when the company had a policy against sexual harassment, as long as the supervisor is authorized to hire, fire, promote, discipline, or participate in such decisions. The court also ruled in this case that the victim need not exhaust internal mechanisms of the company before filing a Title VII suit. However, in *Luddington v. Sambo's Restaurant* (Eastern District of Wisconsin 1979), the court required the victim to prove that the harassment was approved by the employer or that sexual harassment was the official policy of the employer.

The issue of management's responsibility for supervisors and co-workers was clarified in Minnesota law by a decision of the state Supreme Court, *Continental Can Co. Inc. v. State of Minnesota*, June 1980. The court found that "the prohibition against sex discrimination in (the state Human Rights Act) includes sexual harassment directed at an employee by fellow employees which impacts on the conditions of employment when the employer knew or should have known of the conduct alleged to constitute sexual harassment and fails to take timely and appropriate action." This ruling was reaffirmed in a later case, *Northwest Publications Inc. v. State of Minnesota* (6th Judicial District, July 1980).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

In November 1980, the federal Equal Employment Opportunity Commission (EEOC) issued its "Final Amendment to Guidelines on Discrimination Because of Sex." The new guidelines interpret Title VII to include sexual harassment as a form of sex discrimination in employment, and provide a definition of sexual harassment.

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

STATE LAWS

In addition to the actions taken by courts and the EEOC, a number of states have enacted legislation related to sexual harassment. In most cases, the EEOC definition is used.

Sexual harassment is prohibited and defined as a form of sex discrimination in Michigan, Wisconsin, and Connecticut statutes. In Rhode Island, New York, and Wisconsin, sexual harassment is considered "good cause" for leaving employment for purposes of unemployment compensation eligibility. In Maryland, sexual harassment is defined as a fourth degree sex offense under the state's criminal code. The fact that criminal sanctions generally require a more stringent standard of proof than civil sanctions probably accounts for the fact that no one has yet been prosecuted under the Maryland law.

At this writing, Minnesota has no explicit reference to sexual harassment in the state Human Rights Act, although *Continental Can* established that sexual harassment is covered by the Act. In unemployment compensation law, the official policy of the state Department of Economic Security is to consider proven sexual harassment "good cause" for terminating employment and therefore allows the victim eligibility for unemployment compensation. Testimony before the Council at the public hearing in October, however, indicated that this policy has not been uniformly applied.

LEGAL STATUS OF SEXUAL HARASSMENT IN EDUCATION

No information is available about court cases or other legal action related to sexual harassment of students. Although this area is largely untested to date, many organizations believe that precedents established by cases related to sexual harassment in employment will transfer to education cases. The student who is a victim of sexual harassment does not suffer the loss of employment, but she is deprived of educational opportunities equal to those of male students who are not similarly harassed.

Title IX of the federal Education Amendments of 1972 prohibits sex-based discrimination against students on the part of educational institutions. Institutions are also required to maintain grievance procedures which allow prompt and equitable resolution of sex discrimination complaints. Unlike Title VII, Title IX is not enforced by a single government agency. The law may be enforced through private litigation or by one of the more than 26 federal agencies with jurisdiction, depending on what forms of federal financial assistance the school receives. The federal Department of Education is the lead enforcement agency for colleges. Ultimately, a school found to be in violation of Title IX could lose all federal financial assistance.

The Minnesota Human Rights Act now prohibits sex discrimination in education as well as in employment. Incorporating sexual harassment as a form of sex discrimination in the definitions section of this law would clarify the prohibition of sexual harassment in education as well as in employment. In addition, Minnesota Statutes 124.15 states that special state financial aid to school districts may be reduced for noncompliance with state laws prohibiting discrimination because of sex as well as other prohibited forms of discrimination.

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ORGANIZATIONS

- Government agencies which enforce sex discrimination laws in Minnesota are:

Minnesota Human Rights Department, Bremer Tower, St. Paul MN 55101 (612/296-5663 or toll-free 1-800-652-9747) is the state government agency which enforces the Minnesota Human Rights Act. The state law covers sex discrimination in education and other areas as well as in employment.

Equal Employment Opportunity Commission, Minneapolis Area Office, 12 South 6th Street, Minneapolis MN 55402 (612/725-6101) is the federal government agency which enforces Title VII of the Civil Rights Act of 1964 (employment only).

- Other organizations which provide services such as information and referral, counseling, and/or support include:

Coalition Against Sexual Harassment (CASH) serves as a clearinghouse for victims of sexual harassment. CASH is a coalition of organizations including:

Chrysalis Center for Women, 2104 Stevens Avenue South, Minneapolis MN 55404 (612/871-2603) takes complaints of sexual harassment on the part of employers and attorneys.

Minnesota Women's Center, University of Minnesota, 117 Pleasant Street Southeast, Minneapolis MN 55455 (612/373-3850), takes complaints of sexual harassment on the part of professors and teachers.

Sexual Offense Services, 65 East Kellogg Boulevard, St. Paul MN 55101 (612/298-5898) takes complaints of sexual harassment on the part of employers and clergy.

Walk-in Counseling Center, 2421 Chicago Avenue South, Minneapolis MN 55404 (612/870-0566), takes complaints of sexual harassment on the part of therapists and counselors.

Elizabeth Blackwell Women's Health Center, 3 East 38th Street, Minneapolis MN 55409 (612/823-2443), takes complaints of sexual harassment on the part of physicians.

Local Human Rights Commissions. Usually listed under city or county government offices in local telephone directories, these agencies enforce local ordinances and often perform contract services for the state Human Rights Department.

Local School District Title IX Coordinators. Each school district is required by federal law to designate a Title IX Coordinator and make available the name of this person, who serves as a contact for all issues related to discrimination in education.

Sex Equity Coordinator, Division of Vocational Education, Minnesota Department of Education. Persons in public vocational schools or programs may contact (in addition to the Title IX Coordinator) Donna Boben, Sex Equity Coordinator, 5th floor Capitol Square Building, St. Paul MN 55101 (612/296-1866).

Programs for Victims of Sexual Assault. Twenty-six such programs exist in the state, with partial government funding. All are listed in local telephone directories, or a complete list may be obtained from Minnesota Program for Victims of Sexual Assault, 430 Metro Square Building, St. Paul MN 55101 (612/296-7084).

SAMPLE POLICY - EMPLOYMENT

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A company policy statement on sexual harassment may be simply a brief statement of its commitment to the prevention and elimination of sexual harassment, with reference to other company documents for information on procedures. Regardless of where this information is located, the following should be included: (1) a definition of sexual harassment, (2) the procedure for reporting harassment, including the names of officials to whom harassment should be reported, (3) information about how the investigation will be conducted, including assurance of confidentiality and protection from reprisal against persons reporting harassment, (4) specific penalties which may be imposed on an employee found guilty of harassment, and (5) information about training, counseling, or other services related to sexual harassment which are available within or outside the company.

It is particularly important for an employer to provide alternate methods of reporting. If the only person to whom a victim may report is the immediate supervisor, for example, a person harassed by the supervisor may feel she has no recourse.

I. POLICY STATEMENT

It is the policy of _____ to maintain a work environment free of sexual harassment, a form of sex discrimination in employment prohibited by Title VII of the Civil Rights Act of 1964 and by the Minnesota Human Rights Act. Sexual harassment is unacceptable and will not be permitted. Any employee found to have acted in violation of this policy shall be subject to appropriate disciplinary action which may include discharge.

II. DEFINITION

The federal government definition of sexual harassment states that:

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

Please note that this includes unwelcome verbal behavior such as teasing or joking as well as physical behavior such as patting, pinching, or other inappropriate physical contact. In addition, please note that the courts have held the employer responsible for sexual harassment on the part of non-supervisory as well as supervisory employees.

III. RESPONSIBILITIES

Employees are responsible for conducting themselves in a manner consistent with the spirit and intent of this policy. Any employee who feels that s/he is being sexually harassed should contact his/her supervisor or any representative of the Human Resources Department or EEO/Affirmative Action Division. A prompt and confidential investigation will be conducted by the Human Resources Department, and fair consideration will be given to all the facts presented. The company will not tolerate any retaliation or intimidation directed toward the complaining party.

Managers and supervisors are responsible for conducting themselves in a manner consistent with the spirit and intent of this policy. They shall establish and maintain a climate in the work unit which encourages employees to communicate questions or concerns regarding this policy; recognize incidents of sexual harassment and take immediate corrective action to eliminate such incidents; and notify a representative of the Human Resources Department immediately in the event of sexual harassment allegations so that consistent investigatory procedures may be implemented.

Managers and supervisors are responsible for conducting themselves in a manner consistent with the spirit and intent of this policy. They shall establish and maintain a climate in the work unit which encourages employees to communicate questions or concerns regarding this policy; recognize incidents of sexual harassment and take immediate corrective action to eliminate such incidents; and notify a representative of the Human Resources Department immediately in the event of sexual harassment allegations so that consistent investigatory procedures may be implemented.

The Human Resources Department is responsible for ensuring that managers and supervisors are fully aware of their obligations under this policy; for informing employees of the company's policy regarding sexual harassment, including providing training and posting of this policy; and for investigating sexual harassment allegations and ensuring that appropriate disciplinary action is consistently and fairly administered.

This policy is not intended to deny the right of any individual who feels s/he has been sexually harassed to pursue a union grievance or to contact government enforcement agencies, or to replace legal recourse for any actions which violate criminal statutes.

PREVENTION OF SEXUAL HARASSMENT

Some companies have directed staff to provide or conduct activities designed to prevent sexual harassment and raise awareness of the issue such as:

- Posting notices of company policy and procedures;

- Providing training activities in-house or providing reimbursement for training provided elsewhere (a number of excellent training resources are available; see the resources section of this report);

- Providing counseling or support services to victims, or providing reimbursement for such services provided outside the company;

- Contracting with independent consultants to evaluate sexual harassment policies, procedures, and allegations and suggest additional prevention methods or provide additional training if needed.

SAMPLE CONTRACT LANGUAGE - EMPLOYMENT

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ANTI-DISCRIMINATION CLAUSE

The employer and the union agree to cooperate in a policy of equal opportunity for all employees. Discrimination because of race, color, sex, religion, age, or union activity is expressly prohibited.

Sexual harassment shall be considered discrimination under this Article.

Disciplinary action will be taken against employees and supervisors who engage in any activity prohibited under this Article.

The employer agrees to take corrective action to ensure that such practices are remedied and that such discrimination does not continue. Reprisal against a grievant or witness for a grievant is prohibited.

ARTICLE 00. SEXUAL HARASSMENT

The employer recognizes that no employee shall be subject to sexual harassment. In this spirit a statement of commitment to this principle will be posted in all work areas: Reference to sexual harassment includes any sexual attention that is unwanted. In the case of such harassment, an employee may pursue the grievance procedure for redress.* Grievances under this Article will be processed in an expedited manner. If, after the grievance is settled, the employee feels unable to return to his/her job, the employee shall be entitled to transfer to an equivalent position at the same salary and grade as soon as a vacancy exists for which s/he is qualified.

* Note: Since sexual harassment grievances need to be pursued with more confidentiality than other grievances, some modifications of the grievance procedure may be needed.

-- from a booklet, On the Job Sexual Harassment: What the Union Can Do, American Federation of State, County and Municipal Employees (AFSCME), 1625 L Street NW, Washington, D.C. 20036.

SAMPLE POLICY - EDUCATION

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The sexual harassment policy of an educational institution may incorporate references to employment as well as education, or there may be two separate policies. According to the National Advisory Council on Women's Educational Programs, the most effective systems for addressing sexual harassment in education are those which (1) include widely publicized prohibitions of sexual harassment, (2) increase awareness among faculty, other professionals, and students, (3) have well-defined and widely publicized avenues of complaint, (4) are capable of tailoring sanctions to the nature of the incidents, (5) recognize the inherently suspect nature of any sexual relationship between students and education professionals, and (6) utilize systems for the collection of evidence and the speedy evaluation of complaints that do not pit students directly against faculty in tests of credibility.

I. POLICY

It is the policy of ____ to provide students and employees with an environment for learning and working which is free from sexual harassment, a form of illegal sex discrimination prohibited by the Minnesota Human Rights Act and by Title IX of the Education Amendments of 1972. Sexual harassment is unacceptable behavior and will not be tolerated. Any employee of this institution found guilty of sexual harassment will be subject to appropriate disciplinary action which may include discharge.

II. DEFINITION

Sexual harassment of employees, including student workers, is defined in a separate policy, available from _____. Sexual harassment of students is:

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of a student's access to educational opportunities or evaluation of a student's academic performance or record, (2) submission to or rejection of such conduct by a student is used as the basis for academic, financial aid, or other decisions affecting the student, or (3) such conduct has the purpose or effect of unreasonably interfering with the student's academic opportunities or of creating an intimidating, hostile, or offensive academic environment."

Please note that this definition includes verbal behavior such as making derogatory or dehumanizing remarks about women, as well as other behavior such as making grades or other privileges contingent upon sexual favors.

III. PROCEDURES

Any student who feels s/he is being sexually harassed should report the harassment to the supervisor of the individual charged with harassment, to the Title IX officer, or to the _____ office. All of these offices will provide advice and counsel to the student, and will conduct a prompt and confidential investigation, recommending disciplinary action if appropriate to the _____ office.

The _____ office, in conjunction with the Title IX Officer, will ensure that all employees and students are fully aware of this policy and will conduct appropriate training and awareness programs for the prevention of sexual harassment and for implementation of this policy.

This policy is not intended to deny the right of any individual who feels that s/he has been sexually harassed to pursue other avenues of recourse, which may include filing a Title IX grievance, filing charges with the Minnesota Department of Human Rights, or pursuing legal redress under the state criminal code.

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