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**Managing People:
PREVENTING SEXUAL HARASSMENT**



**Minnesota Department of Employee Relations
Equal Opportunity Division**

870306

State Minnesota
Department of Employee Relations
Equal Opportunity Division
Training - 1986

MANAGING PEOPLE: PREVENTING SEXUAL HARASSMENT

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LEARNING OBJECTIVES

After completing this workshop, participants will be able to:

- Recognize behaviors that might lead to charges of sexual harassment.
- Define sexual harassment in terms of employment.
- List some of the potential economic and psychological effects of sexual harassment on the victim, the harasser, and the work unit.
- Know management's liability in instances of sexual harassment.
- Be able to implement the sexual harassment policy and a plan of action to prevent sexual harassment.
- Describe the informal resolution of complaints.
- Know how to follow the complaint procedure if sexual harassment occurs.

WORKSHOP OUTLINE

I. Introduction

- A. Prevalence of sexual harassment in the work place.
- B. Some facts about sexual harassment.
- C. Employer Policy: Prevention.
- D. State of Minnesota Policy and Procedures.
- E. Managers' and supervisors' role.

II. Defining Sexual Harassment

- A. Identifying behaviors that might lead to charges of sexual harassment.
- B. Perception plays an important role in charges of sexual harassment.
- C. Elements of harassing behavior.
- D. Socialization, structure of the workplace, and economic need determine how a victim responds to sexual harassment.

III. The Effects of Sexual Harassment

- A. The economic effects on the victim, harasser and the workplace.
- B. The psychological effects on the victim, harasser and the workplace.

WORKSHOP OUTLINE - cont.

IV. Legal Implications of Sexual Harassment

- A. Sexual harassment is a violation of both federal and state laws.
- B. Equal Employment Opportunity Commission guidelines.
- C. Employer's responsibility.
- D. Employee's responsibility.
- E. Employer's liability.

V. Handling Sexual Harassment in the Workplace

- A. Implementing the employer's policy and a plan of action.
- B. Resolving potential sexual harassment situations.
- C. Using the affirmative action complaint procedure.

INTRODUCTION/PREVALENCE OF SEXUAL HARASSMENT IN THE WORKPLACE

Results of Surveys

Redbook Magazine, 1976

9,000 self-selected women responded to this published survey and brought considerable attention to the issue of sexual harassment. A significant finding was that, in the majority of reported cases, the harassment did not stop when the victim objected.

- 90% reported experiencing sexual harassment.
- 88% reported that sexual harassment is a serious problem.

Merit Systems Protection Board, 1980

This study used a 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% which indicates that the data is very reliable.

- 26% of the federal workforce responding experienced sexual harassment.
- 42% of the women reported experiencing sexual harassment.
- 15% of the men reported experiencing sexual harassment.

INTRODUCTION/PREVALENCE OF SEXUAL HARASSMENT IN THE WORKPLACE - cont.

State of Minnesota Policy on Sexual Harassment

(See Appendix 1 and 2 for Administrative Procedure and State Sexual Harassment Policy)

We do not know how many incidents of sexual harassment occur, but we believe that one case is one too many.

SEXUAL HARASSMENT

CREATES STRESS

CUTS PRODUCTIVITY

VIOLATES EMPLOYEES' RIGHTS

By informing our employees about the nature and extent of sexual harassment, we aim to stop it.

PREVENTION IS THE BEST POLICY

VIOLATING THE SEXUAL HARASSMENT POLICY WILL RESULT IN SPECIFIC AND PROGRESSIVELY SEVERE DISCIPLINARY ACTION

DEFINING SEXUAL HARASSMENT

Videotape Synopsis

The following are brief summaries of the four vignettes of sexual harassment which are presented on the videotape.

1. **The Co-Workers**

Set in an advertising agency, this vignette depicts harassment between co-workers, Alice and Larry. More than once, Alice has attempted to make it clear to Larry that she doesn't appreciate his advances, but he persists. At lunch, Rod, who is a close friend of Alice's, expresses his support and concern about the extent to which her difficulties with Larry are affecting her work performance. Later, Alice finds out from her boss that an opportunity for an especially important account is hers, but only if she and Larry "become a team" on the account.

2. **The Factory**

Dramatizing a major Minnesota court case, this vignette occurs in the machine tooling section of a large plant. The main characters are Marjorie, a young black woman, and two co-workers, Hank and Weaver, who apparently have a history of harassing her both verbally and physically. They also subject her to racial slurs, illustrating the "double whammy" effect (racial/sexual) experienced by many minority women. Marjorie unsuccessfully tries to solicit her supervisor's help in dealing with the harassment.

3. **The Secretary**

Annie is a young and naive secretary who has just finished business school and was recently hired by Mr. Washburn into her first job in a large city. In a letter to a friend on her lunch break, she writes that the job is exciting and challenging. In a scene in his office, however, Mr. Washburn's behavior varies between fatherly concern for how she is adjusting and subtle sexual innuendo. In asking her to work late and have dinner with him, he reminds her of the evening work that he had mentioned in the interview. She returns to her letter, uncertain about her perceptions and unsure about how to handle the "office politics." Then, at dinner, Mr. Washburn implies that a promotion is available to Annie if she cooperates.

4. **The Awards Ceremony**

June is the first female on the sales force. Her success has resulted in an invitation to the annual sales award dinner, where in the hallway she overhears her male peers' jokes about her sales achievements. Upon receiving her award, the V.P. for Sales makes comments which single her out as different and jokes about her appearance and her marital status.

DEFINING SEXUAL HARASSMENT - cont.

Survey - "Merit Systems Protection Board Survey"

Severe

1. Letters, phone calls or materials of a sexual nature.
2. Pressure for sexual favors.
3. Touching, leaning over, cornering or pinching.

Less Severe

4. Pressure for dates.
5. Sexually suggestive looks or gestures.
6. Sexual teasing, jokes, remarks or questions.

Most men and women agreed that behaviors 1-4 constituted sexual harassment.

Men were less likely to think that "sexual looks" and "sexual comments," the more ambiguous and prevalent forms of sexual harassment on the job, were sexual harassment, particularly when perpetrated by a co-worker.

DEFINING SEXUAL HARASSMENT - cont.

Key Elements

HARASSING BEHAVIOR is:

- Regarded as unwelcome and unsolicited.
- Of a sexual nature.
- Deliberate or repeated.
- Verbal or physical.

Often Coercive: either stated or implied that there will be a negative consequence if the victim refuses to comply.

Often Aggressive: the victim experiences a loss of autonomy and control.

DEFINING SEXUAL HARASSMENT - cont.

Sex Role Conditioning in Our Culture

Work is the key element in understanding sexual harassment because it is the prize. Lin Farley in her book, Sexual Shakedown, believes that men have traditionally controlled modern work by keeping women in subordinate and economically inferior jobs. Sexual harassment has been a way of keeping women "in their place." The extent to which men have been able to do this has to do with sex-role conditioning in our culture.

Men learn to **DOMINATE**. Women learn to be **SUBMISSIVE**. Men dominate women by exercising familiarities such as touching, teasing, using familiar address, and asking for personal information. Men communicate their power by body contact, physical proximity and position, gestures, smiling, silences, and interruptions. Some typical gestures which may evoke submissive ones are staring directly at a person, pointing, and touching. Corresponding gestures of submission, all common to women, include lowering the eyes, shutting up, and cuddling to the touch. Women stand up to these male assertions of dominance with extreme difficulty. They have been socialized to powerlessness and passivity.

In Our Culture

boys learn to:

- be independent
- initiate action
- be task oriented
- be rational
- be analytical

girls learn to:

- be empathic
- be non-competitive
- be dependent
- be nurturing
- be intuitive

THE EFFECTS OF SEXUAL HARASSMENT

Chart on Economic/Psychological Effects

	Effects on the Victim	Effects on the Harasser	Effects in the Workplace
Potential Economic Effects			
Potential Psychological Effects			

LEGAL IMPLICATIONS OF SEXUAL HARASSMENT

Laws Prohibiting Sexual Harassment

SEXUAL HARASSMENT is discriminatory behavior prohibited by:

- Title VII of the Civil Rights Act of 1964
- Minnesota Human Rights Act

Federal Equal Employment Opportunity Commission Guidelines on Sexual Harassment, 1980

LEGAL DEFINITION:

SEXUAL HARASSMENT IS ". . . unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature."

SEXUAL HARASSMENT OCCURS WHEN:

1. Submitting to such conduct becomes a term or condition of employment -- **HIRING OR FIRING**

LEGAL IMPLICATIONS OF SEXUAL HARASSMENT - cont.

Federal Equal Employment Opportunity Commission Guidelines on Sexual Harassment, 1980 - cont.

2. Submitting to or rejecting such conduct becomes a basis for employment decisions -- **PROMOTION/DEMOTION/RAISE/PAYCUT**

3. Such conduct interferes with a person's work performance or creates an intimidating or hostile work environment --
PERFORMANCE SUFFERS

Minnesota Human Rights Act - Chapter 363.01, Subd. 10a

The Minnesota law says:

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 when:

1. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education or housing.

LEGAL IMPLICATIONS OF SEXUAL HARASSMENT - cont.

Minnesota Human Rights Act - cont.

2. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education or housing.

3. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive . . . environment; and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

Is It Sexual Harassment?

OCCURRENCE OF SEXUAL HARASSMENT is determined only after the situation is examined and the facts are reviewed.

LEGAL IMPLICATIONS OF SEXUAL HARASSMENT - cont.

Sexual Harassment is a violation of both federal and state law

A developing body of case law. Sexual harassment has been determined from a developing body of case law in the courts to be a form of discrimination on the basis of sex, and therefore, sexual harassment violates Title VII of the 1964 Civil Rights Act.

Here are some cases that convey the concepts of supervisory liability, burden of proof, and intolerable working conditions.

Miller vs. Bank of America Margaret Miller, female, alleged that she was discharged from the Bank of America after refusing her supervisor's demands for sexual favors. The Bank of America argued that it had an established policy prohibiting sexual harassment and an inhouse grievance mechanism, and that it was, therefore, not liable for its supervisors' actions. The Ninth Circuit Court of Appeals ruled that, regardless of administrative policies and mechanisms, Bank of America was still liable because supervisors were acting as its "agents."

Kyriazi vs. Western Electric Kyriaki Kyriazi, female, was discharged from an industrial engineering position at Western Electric for refusing to seek psychiatric care. She linked her discharge to her complaints of sexual misconduct by her male co-workers in the form of tasteless behavior, joking and innuendos. In addition, Kyriazi expanded her complaint into a class action lawsuit on behalf of nearly 2,000 other women. The U.S. District Court of New Jersey ruled in 1979 that Kyriazi was entitled to reinstatement, back pay, promotions and benefits. (Because of the class nature of the lawsuit, the total cost of the case has yet to be determined, but several million dollars have already been awarded in back pay settlements and attorneys' fees.) The key element, however, was that the co-workers who engaged in the harassment and the supervisors who were aware of the behavior were each fined \$1,500 with the stipulation that Western Electric could not pay the penalty.

Bundy vs. Jackson Sandra Bundy, female, charged that she had been subjected to numerous propositions, but she had not been denied "tangible employment benefits" as a result of her resistance to the advances of her supervisor. The U.S. Court of Appeals, District of Columbia Circuit, adopted the EEOC guidelines, holding that an employer is liable for creating "a substantially discriminating work environment" even though Ms. Bundy had not been denied any tangible employment benefits.

LEGAL IMPLICATIONS OF SEXUAL HARASSMENT - cont.

Employee Rights:

1. A work environment free of harassment.
2. Information about employee rights and responsibilities.
3. A complaint procedure.

Employee Responsibilities:

1. Tell the person that the behavior is offensive.
2. If the behavior continues, follow the complaint procedure in the Affirmative Action plan.

Employer Liability:

AN EMPLOYER IS LIABLE for sexual harassment in the workplace:

Supervisor: Even if the employer is unaware of the supervisors' conduct.

Co-Worker: If employer knows or reasonably should have known that acts of sexual harassment are taking place; and/or if employer does not take prompt, appropriate corrective action.

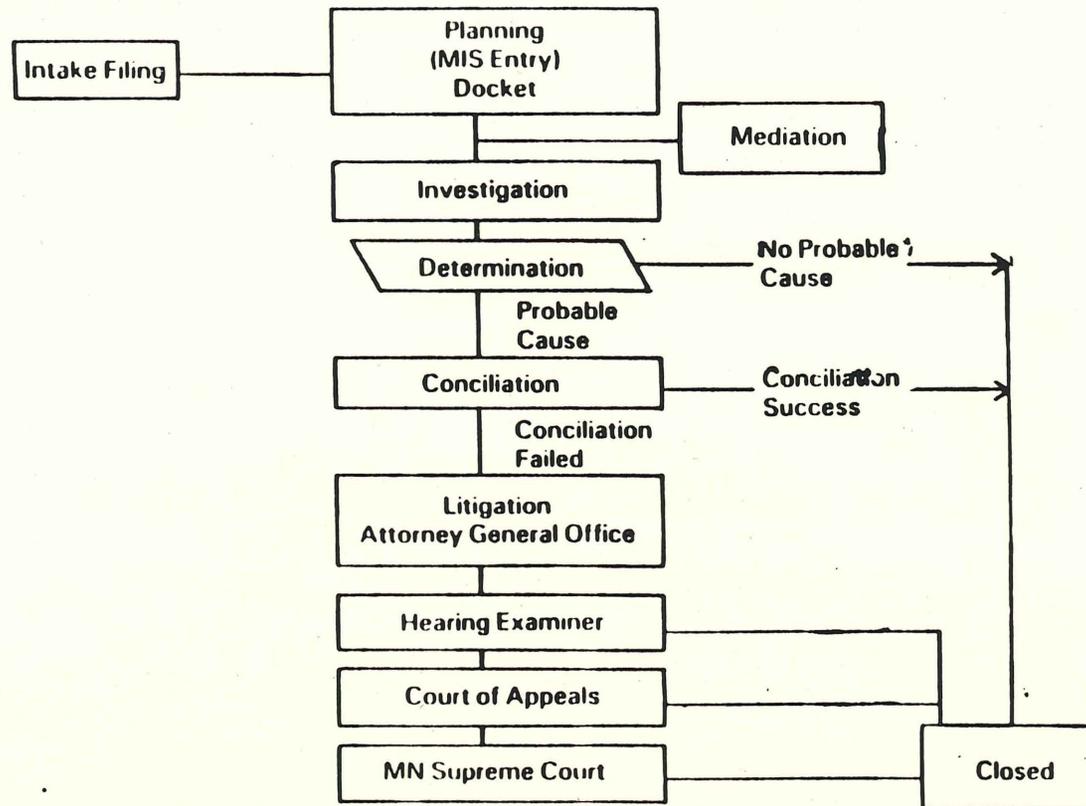
Reprisals - M.S. 363.03, Subd. 7

IT IS AGAINST THE LAW FOR AN EMPLOYER TO INTENTIONALLY ENGAGE IN ANY REPRISALS BECAUSE AN EMPLOYEE BRINGS A CHARGE OF DISCRIMINATION.

LEGAL IMPLICATIONS OF SEXUAL HARASSMENT - cont.

Employer Liability Minnesota Department of Human Rights/Case Life Cycle

Case Life Cycle



HANDLING SEXUAL HARASSMENT IN THE WORKPLACE

Implementing the Employer's Policy

The Equal Employment Opportunity Commission states that prevention is the best tool for elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as:

1. Affirmatively raising the subject.
2. Expressing strong disapproval of sexual harassment.
3. Developing appropriate sanctions against sexual harassment.
4. Informing employees of their rights under Title VII.
5. Developing methods to sensitize employees about sexual harassment in the organization.

As a supervisor or manager, your task is to implement the policy on sexual harassment and to develop a plan of action. Write a plan.

PLAN OF ACTION:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

HANDLING SEXUAL HARASSMENT IN THE WORKPLACE - cont.

Resolving Potential Sexual Harassment Situations

Situation: This is Jean's first day at the new job as a computer programmer. The division includes Bill, the supervisor, and two colleagues, Tom and John. Jean has just completed a tour of the organization with Bill when she and Bill overhear Tom make an insensitive remark about Jean to John.

Read over the entire exercise from the point of view of Jean, Bill, Tom, and John.

Then:

1. Define the problem(s).
2. Evaluate the behavior of each employee involved in the situation and decide what action(s) the supervisor should/would take.

"Jean"

This is your first day as a professional in a new job. You have studied computer programming in evening classes at the University and have received a certificate in Management Information. You are familiar with programmers because you were a data entry operator while going to school, and now you are eager to work with programmers as colleagues. Bill, your supervisor, has given you a tour of the department.

You are walking back to your desk with Bill when you overhear your two colleagues, Tom and John, talking about you. You overhear Tom say to John: "Jean's got great looking boobs. Hope she's an expert at touch typing 'cause she sure can't see the keys." You feel yourself blushing and you don't dare look at Bill.

You say nothing.

HANDLING SEXUAL HARASSMENT IN THE WORKPLACE - cont.

"Bill"

As a supervisor of the Management Information Services Division, you have hired Jean as a computer programmer. You are happy to have found a highly qualified programmer, but you are worried about the attitudes of the two other programmers, John and Tom. You are especially worried about Tom. You had to speak to him a few months ago because the division support staffperson, Phyllis, complained that he was making sexually suggestive remarks to her. Tom didn't deny the accusations and the comments stopped. But last Friday, Tom said to you: "You hired a girl programmer? You know it will never work out." You ignored the comment.

This morning, Jean's first day, you have given her a tour of the department. As you return with her to her desk, you overhear Tom speaking to John. Tom said: "Jean's got great looking boobs. Hope she's an expert at touch typing 'cause she sure can't see the keys." You know that Jean has overhead although she turns her head so you can't see her reaction. You say nothing.

"Tom"

You have worked in this division as a programmer for over a year. You would like to get another job because you do not feel that you are treated with the respect that you deserve. Bill, the supervisor, recently called you into his office and told you to stop "hassling" Phyllis, the division support staff. You couldn't believe it. And John, the other programmer, is usually unwilling to go on break with you because he says that he wants to read the paper.

Last week you learned that Bill had hired a female programmer. You just don't believe that women have enough logic to be programmers and that it will really disrupt the unit to have to put up with a girl. You don't see Bill and Jean approach your desk as you are saying to John: "Jean's got great looking boobs. Hope she's an expert at touch typing 'cause she sure can't see the keys." After they have passed, you know that they have overheard. You are worried that Bill might call you into his office again and a second time might mean real trouble.

HANDLING SEXUAL HARASSMENT IN THE WORKPLACE - cont.

"John"

You have worked in this division for two years. You like the work and get along well with your supervisor Bill, and co-workers -- Tom, a programmer, and Phyllis, the division support staff. However, you are beginning to have a real problem with Tom and his attitudes towards women. You haven't said anything to him, but you are really uncomfortable when he talks about women's bodies and how women can't do much. You used to hear him "coming on" to Phyllis. He stopped that, but privately his attacks on women have increased.

Last week you both heard that the supervisor had hired a female programmer. Tom has been talking about it for days. This morning as the new programmer and the supervisor walked by your desk, Tom was saying: "Jean's got great looking boobs. Hope she's an expert at touch typing 'cause she sure can't see the keys." You are worried that Jean and Bill think that you agree with Tom's attitudes.

HANDLING SEXUAL HARASSMENT IN THE WORKPLACE - cont.

Handling Formal Complaints: Factfinding

An investigation is a systematic, minute and thorough attempt to learn the facts about something complex or hidden. An investigation is carried out by:

- Collecting and analyzing statements from direct witnesses to the event,
- By soliciting a confession from the accused, or
- By collecting any other factual evidence which makes it more likely than not that the alleged events occurred as reported.

There are several major steps that you undertake in conducting an investigation:

- Planning the investigation.
- Gathering documentary evidence.
- Planning the interviews.
- Conducting the interviews.
- Writing a report of the investigation.
- Evaluating the results of the investigation.

HANDLING SEXUAL HARASSMENT IN THE WORKPLACE - cont.

The first consideration in preparing for the interview is to determine the individual's right to Union Representation during the interview.

- If the interview may lead to disciplinary action of the employee being interviewed, he/she has the right to have a Union Representative present during the interview.
- The particular contract involved determines the procedures used in offering the Union Representation.

Government Data Practices Act

Data gathered during the course of an investigation is subject to the provisions of the Government Data Practices Act (M.S. 13).

Complaint investigators must inform all complainants, respondents, and witnesses about the Government Data Practices Act. Any individual asked to supply private or confidential information concerning him or herself must be informed of:

- The purpose and intended use of the requested data.
- Whether s/he may refuse or is legally required to supply the requested data.
- The identity of other persons or entities authorized by state or federal law to receive the data.

APPENDIX 1

Administrative Procedure 1.2 - Statutory Reference 43A.01, Subd. 2

HARASSMENT PROHIBITED

Description and Scope

In order to provide and maintain a productive work environment consistent with merit principles, free of discriminatory practices, and in accord with M.S. § 43A.01, Subd. 2, (Precedence of Merit Principles and Nondiscrimination) it is necessary to remove and eliminate all forms of harassment. Harassment is a form of discrimination and in general is the display of behavior by one employee toward another employee which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. Of particular concern is sexual harassment which is unwelcome sexual advances by an employee toward another employee, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

An employee's submission to such conduct is made either explicitly and/or implicitly a term or condition of employment.

An employee's submission to or rejection of such conduct is used as the basis for employment decisions affecting such individual.

Objective

To provide a work environment free of verbal or physical harassment based on race, color, creed, religion, national origin, sex, sexual orientation, disability, age, marital status, status with regard to public assistance, veteran status or any belief or attribute unrelated to job performance.

APPENDIX 1 - cont.

Responsibility -

A. Appointing Authorities:

- Ensure that each employee, who makes or recommends employment and other personnel decisions, is fully aware of and complies with this policy.
- Notify all employees and orient each new employee to this policy.
- Establish a complaint procedure for timely and thorough investigation of all complaints of harassment.
- Inform each employee of the procedures for filing and investigating complaints of harassment.

B. Department of Employee Relations:

- Inform agencies of the statewide policy prohibiting harassment.
- Upon request, provide training to agencies on the content and implementation of the statewide policy prohibiting harassment.

C. Employees:

- Utilize the established affirmative action complaint procedure when subjected to harassment.

APPENDIX 1 - cont.

Other Relevant Laws, Personnel Rules, Contracts and Administrative Procedures

The following items have an impact on material contained in this procedure. Review of these items is essential for a total understanding of the subject.

- A. M.S. § 363.03, Subd. 1 - Unfair Discriminatory Employment Practices, Department of Human Rights.
- B. Section 703 of Title VII of the Civil Rights Act of 1964 as amended in 1972, 42 U.S.C. 2000e et seq., prohibiting discrimination on the basis of race, color, religion, sex, or national origin.
- C. Equal Employment Opportunity Commission Sex Discrimination Guidelines dated March, 1980, 29 CFR Part 1604.
- D. Continental Can Company, Inc. vs. State of Minnesota, 297 N.W. 2d 241 (Minn. 1980), establishing the potential liability of the employer for acts of harassment by one employee towards another.

APPENDIX 2

Statewide Policy on Sexual Harassment - 4/21/81

It is the policy of the State of Minnesota to prohibit verbal and physical harassment of its employees based on race, national origin, religion, or sex. This prohibition with respect to sexual harassment includes both serious acts as defined by EEOC and petty and annoying acts which create a negative work environment. Any employee subjected to such harassment should file a complaint with the agency's affirmative action officer/designee. Any unintentional or deliberate violation of this policy by a state employee will be cause for appropriate disciplinary action.

Each manager or agency head is responsible for the application of this policy within their department. This includes initiating and supporting programs and practices designed to develop understanding, acceptance, commitment, and compliance with the framework of this policy. All employees must be informed that harassment is unacceptable behavior, and each supervisor will be responsible for orienting his/her staff to the state's policy. Each agency's affirmative action officer will be expected to keep the organization apprised of any changes in the law or its interpretation regarding this form of discrimination. More specifically, each agency head will be responsible for:

1. Making certain that each individual in her/his department who makes or recommends employment and other personnel decisions are fully aware of and comply with this policy;
2. Notifying all employees within the department and orienting each new employee who is hired of this policy;
3. Establishing a complaint procedure to investigate all complaints promptly and carefully, the provisions of which shall be disseminated to all employees. (An already existing affirmative action complaint procedure may well serve this purpose.)

Our Equal Opportunity Division accepts the responsibility for keeping the agencies informed of new developments through your affirmative action officers/designees and are ready to assist with any questions of implementation or on the policy itself which you may have. The staff can be reached at 296-4600.

APPENDIX 3

Laws and Orders Relative to Sexual Harassment

**Federal Equal Employment Opportunity Commission Guidelines
Sexual Harassment
29 C.F.R. Chapter 14
Section 1604**

- A. Harassment on the basis of sex is a violation of Sec. 703 of Title VII.* Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- B. In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case-by-case basis.

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

APPENDIX 3 - cont.

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

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

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

APPENDIX 3 - cont.

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

G. Other related practices.

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

**Taken From "Sexual Harassment"
AFSCME**

APPENDIX 4

Summary of Recent Legal Decisions

In recent years, the courts and government agencies have made it clear that sexual harassment violates the law. Sexual harassment violates federal and state anti-discrimination laws and the United State Constitution. Sexual harassment by a supervisor constitutes just cause for his or her discharge, and can subject a harassing individual, whether supervisor or co-worker, to court liability.

A. What constitutes a violation of Title VII of the Civil Rights Act of 1964?

The Federal Equal Employment Opportunity Commission Guidelines on Sexual Harassment issued November 10, 1980 (See Section I of the Appendix) states that: "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" violate Title VII of the Civil Rights Act of 1964 forbidding employment discrimination on the basis of sex when:

1. Submission to such conduct is a term or condition of employment;
2. Submission to or rejection of such conduct affects employment decisions about the victim;
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.

APPENDIX 4 - cont.

Decisions of the federal courts have largely paralleled the EEOC guidelines, and have held that Title VII is violated by:

1. The creation, through sexual harassment, of a substantially discriminatory work environment, regardless of whether employees lose any tangible job benefits as a result.
2. Discharge for refusal of supervisors' demands for sexual favors. Miller v. Bank of America (9th Circuit 1979); Williams v. Civiletti (U.S. District Court D.C. 1980); Heelan v. Johns-Manville Corp. (U.S. District Court, Colo. 1980).
3. Forced resignation partly due to a supervisor's sexual harassment. Brown v. City of Guthrie (U.S. District Court, Oklahoma 1980).
4. Failure to hire or abolition of a victim's job because of refusal to submit to a supervisor's sexual demands. Barnes v. Costle (D.C. Circuit 1977); Rinkel v. Associated Pipeline Contractors (District Court, Alaska 1978).

APPENDIX 4 - cont.

5. The requirement for a female employee to wear a skimpy costume on the job which subjected her to sexual harassment. EEOC v. Sage Realty (U.S. District Court, New York 1980); Marentette v. Michigan Host, Inc. (U.S. District Court, Michigan, 1980).
6. Adverse employment actions against males for refusal to submit to homosexual advances. Wright v. Methodist Youth Services (U.S. District Court, Illinois 1981).

B. Is the employer legally responsible for Sexual Harassment?

Under the EEOC Guidelines, the employer is legally responsible:

1. For its agents and supervisory employees with respect to sexual harassment regardless of whether the acts complained of were authorized or forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence;
2. For fellow employees of the victim if the employer or its agents or supervisory employees knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action;
3. In some cases, depending on the employer's control of the situation, for non-employees such as clients or other customers.

APPENDIX 4 - cont.

The courts are in conflict on the extent of management responsibility, where it cannot clearly be shown that top management was aware of the harassment or where the employer has an official policy against sexual harassment that was violated. However, it appears that most courts will hold the employer responsible:

1. If the harassers are management officials, i.e., have the authority to make or participate in employment decisions affecting employees. Miller v. Bank of America (cited above); or
2. If the employer is made aware of the situation, has a chance to rectify it, and does nothing. Barnes v. Costle (cited above); Tompkins v. Public Service E&G Co. (3d Circuit, 1977); Mumford v. James T. Barnes & Co. (U.S. District Court, Michigan 1977); Kyriazi v. Western Electric Co. (U.S. District Court, N.J. 1978 [employer ignored complaints of sexual harassment by male co-workers]).

C. What kinds of Title VII cases involving the sexual harassment issue have been unsuccessful?

1. Where the sexual advances complained of are minor. Title VII does not make the employer responsible for every inconsiderate remark by co-workers. Purvine v. Boyd Coffee Co. (U.S. District Court, Oregon 1976); Smith v. Amoco Chemicals Corp. (U.S. District Court, Texas, 1979).

APPENDIX 4 - cont.

2. Where the complainant cannot directly relate the adverse employment action to sexual harassment, usually because the employer has a legitimate reason, such as poor job performance, for taking the action. Fisher v. Flynn, (1st Circuit, 1979); Neidhart v. D.H. Holmes Ltd. (U.S. District Court, Louisiana, 1979); Cordes v. County of Yavapai (U.S. District Court, Arizona 1978); Jaspers v. Alexandra, (U.S. District Court, D.C. 1977).

Taken From "Sexual Harassment"
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