

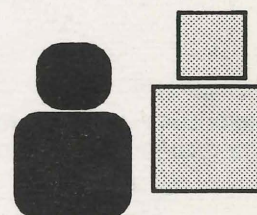
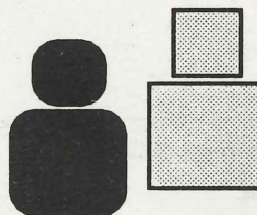
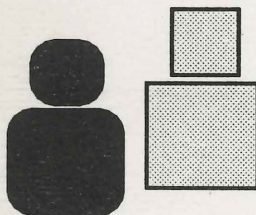


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SEXUAL HARASSMENT:

An Overview of Current Laws and Studies



December 1989

Commission on the Economic Status of Women

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Sexual Harassment: An Overview of Current Laws and Studies

DECEMBER 1989

COMMISSION ON THE ECONOMIC STATUS OF WOMEN

85 State Office Building
Saint Paul, Minnesota 55155
(612) 296-8590
1-800-652-9747

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Acknowledgement

The Commission would like to thank Devoney Looser and Patrice Tetlin for their help with the research and design of this 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 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.

**Definition from the Equal Opportunity Employment
Commission's Guidelines**

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INTRODUCTION

The comments quoted throughout this report were offered during testimony at a 1981 public hearing on sexual harassment conducted by the Council (now the Commission) on the Economic Status of Women. Testimony before the council suggested the pervasiveness of sexual harassment and its negative effects on women's economic status.

After the hearing, the council established a task force to develop recommendations for the elimination of sexual harassment in employment and education. The original version of this report was one product of the task force.

In the intervening eight years, sexual harassment has gained status as a form of sex discrimination, allowing women to sue their employers and giving specific agencies jurisdiction over formal complaints.

Institutions are becoming increasingly aware that sexual harassment

is a problem for their employees and students.

This report provides an overview of the current information regarding sexual harassment. The information presented has been updated to the extent possible.

The first section presents the results of sexual harassment studies conducted at both federal, state, and local levels; the second section discusses federal and state laws pertaining to sexual harassment in the workplace; the third discusses laws pertaining to sexual harassment in schools; and the final section provides a summary of the data.

The appendix to this report includes sample policies for employers and educational institutions, along with information to help victims of sexual harassment find help with legal remedies and support.

**" 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 joke. "**

STUDIES OF SEXUAL HARASSMENT

"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 (the harasser's) 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."

Sexual harassment began to receive widespread attention in the early 1970s. Many of the studies which have been conducted on this topic are exploratory in nature. Earlier studies were designed to provide a sense of the frequency and seriousness of the problem. More recent studies have shown that the incidence of sexual harassment may be higher than was first thought. Most studies have concluded that the problem is both frequent and serious. This section presents the results of sexual harassment studies conducted in the workplace and at schools.

HARASSMENT IN THE WORKPLACE

Studies of harassment in the workplace have been conducted nationally and in Minnesota. The national studies cited here focused on the extent and frequency of harassment incidents. The Minnesota studies focused on company policies pertaining to sexual harassment on the job.

NATIONWIDE STUDIES

Three nationwide studies have attempted to measure the extent to which sexual harassment on the job has become a problem for employees. The first study was conducted in 1976 by *Redbook Magazine*. The other two surveys were conducted in 1980 and 1988

by the Merit Systems Protection Board, a quasi-judicial federal agency that decides personnel appeals from federal employees and conducts studies of the federal civil service and merit systems.

Redbook Magazine (1976)

The first national look at sexual harassment came from a groundbreaking survey conducted in 1976 by *Redbook Magazine*. The large nationwide response to this survey brought considerable attention to the issue of sexual harassment. The respondents to the survey were self-selected instead of chosen randomly; therefore, their experience with sexual harassment may be higher than that of the general public. Even so, the high rates of sexual harassment reported indicated a nationwide problem. Of the 9,000 women who responded, 88 percent said they had experienced one or more forms of harassment. Ninety-two percent perceived sexual harassment to be a serious problem.

The study provided personal accounts of sexually harassed women, although the editors indicated that many stories were "absolutely unprintable." A significant finding was that, in the majority of the reported cases, the harassment didn't stop when the victims objected.

Merit Systems Protection Board (1980 and 1988)

Federal legislation passed in 1979 directed this board to conduct what became a landmark study of

sexual harassment in the federal workplace. That study in 1980 and its recent update in 1988 found that 42 percent of women who work for the federal government have experienced sexual harassment. The surveys documented varying levels of harassment depending upon which government agency was surveyed.

The goal of the 1981 survey was to study the nature and extent of sexual harassment in the federal workplace. The study used a confidential, scientifically-designed random sampling to question a broad cross-section of male and female employees.

One goal of the 1988 study was to examine the government's efforts to reduce sexual harassment since the first report. The new survey found that 42 percent of women and 14 percent of men employed by the federal government had experienced some form of sexual harassment. The results were almost identical to those of the 1980 survey.

However, the new survey did document that more federal employees had an understanding of what types of behavior constituted sexual harassment. Over the seven-year period, the number of harassment claims filed each year has varied widely.

MINNESOTA STUDIES

Minnesota studies of sexual harassment in the workplace have focused primarily upon company policies pertaining to harassment on the job. One study was conducted in 1988 by the Employers' Association, a management consulting firm based in Golden Valley; the other was conducted in 1981 by the Council on the Economic Status of Women (now the Commission on the Economic Status of Women).

Employers Association of Greater Minneapolis (1988)

In a 1988 survey by the Employers Association, two-thirds of companies surveyed reported having a policy on sexual harassment. The majority of the firms have had policies in effect for less than five years. Forty-four percent of these companies also had a disciplinary procedure. Under one quarter of the companies reported any sexual harassment complaints being filed within the past year.

The number of companies with policies on sexual harassment has increased significantly since the 1981 study by the Council on the Economic Status of Women, which found that only one-fourth of companies surveyed had a policy on sexual harassment.

The 1988 Employer's Association survey included the responses of 300 firms: 183 manufacturing companies and 117 non-manufacturing companies. Company size ranged from fewer than 25 employees to more than 5,000 employees. Overall, 66 percent of the firms reported having a formal policy on sexual harassment. Firms with between 201 and 500 employees were more likely than both smaller and larger 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 companies, 44 percent, had a formal disciplinary procedure for addressing complaints of sexual harassment. Just under one-fourth of all companies surveyed 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

**"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."**

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

approximately 2 charges per firm per year. Of the 155 charges reported, only 13 percent were reported to a government agency; the rest were reported to a company official.

Of all types of charges reported, 90 percent were about a man harassing a woman. Six percent were of a woman harassing a man and 3 percent were categorized as "other" -- probably same-sex harassment. Sixty-three percent of the charges referred to harassment by a co-worker, 33 percent by a supervisor, 3 percent by a customer or a client and 1 percent by "other" people.

The most frequently used method for employers to communicate their sexual harassment policies was through employee handbooks, followed by bulletin boards, orientations, "other" methods, special seminars, and employee newspapers. Most of these employers indicated that sexual harassment should be reported to the personnel or human resource manager or to the victim's immediate supervisor.

Council on the Economic Status of Women (1981)

This study included responses from 381 personnel officials (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 who did not. Eighty-three percent with a written policy were satisfied that the company's response to sexual harassment was adequate, while only 44 percent of

those without a written policy thought their process was adequate. When complaints were filed, most respondents indicated the issue was resolved when the person charged agreed to stop the harassment.

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, a definition of sexual harassment and the name of a person 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 the development of a policy and awareness about the issue of sexual harassment. Several indicated they felt awareness is growing, though a number stated that better definitions or better standards of proof are needed.

HARASSMENT IN SCHOOLS

The National Advisory Council of Women's Educational Programs has defined academic sexual harassment as "the use of authority to emphasize the sexuality or sexual identity of a student in a manner which prevents or impairs that student's full enjoyment of educational benefits, climate, or opportunities.

In 1981, when this report was first written, only a handful of schools had conducted studies to determine the extent of sexual harass-

ment on campuses. Since then, studies of sexual harassment in schools have been conducted in many states across the country, as well as in Minnesota.

The results of all these studies indicate that many female students (and some male students) have been subjected to some form of sexual harassment during their time in school. Even students in junior and senior high indicate they are being sexually harassed. The types of harassment measured vary from study to study, but overall, the patterns include both verbal harassment and unwanted or forced physical attention.

It is important to note that many of those surveyed did not recognize unwanted remarks or physical contact as "sexual harassment". The fact that more graduate students than undergraduates say they've been subjected to sexual harassment may mean either that older students get harassed more than younger ones do, or that older students tend to be a little more aware what kinds of behavior constitute harassment.

It is also important to note that few students actually report incidents of sexual harassment when they occur.

NATIONWIDE STUDIES

Several major universities throughout the nation have undertaken sexual harassment studies. Three of the studies cited here looked at sexual harassment on one university campus. Two studies combined the results of sexual harassment surveys conducted on more than one campus.

Single-School Surveys

Studies undertaken on a single campus include the University of Massachusetts, Amherst; the University of Illinois, Urbana-Champaign; and Pennsylvania State University.

University of Massachusetts, Amherst

This 1987 study conducted by the women's center at the University of Massachusetts, Amherst, campus included female graduate students, and focused only on harassment of students by a person in a position of authority. According to the survey results, most sexual harassment on this campus takes a verbal form. Nearly half the women surveyed said they had been subjected to sex-stereotyped jokes, remarks, references, or examples at least once. About 31 percent had experienced unwanted sexual remarks about female students' clothing, bodies, or sexual activities.

A smaller, but significant, percentage experienced more physical types of harassment. About 21 percent said they'd been subjected to unwanted sexually suggestive looks or gestures at least once, and 14 percent had been touched, leaned over, cornered or pinched when they didn't want it. Harassing behavior reported less often included being pressured for dates or for sex.

Of the students who had been harassed, more than three-quarters said a professor was the offender, and more than half said they'd been harassed by at least two different people.

Most of the women who indicated they had been harassed said that they did little or nothing about the incident. Almost 71 percent said they simply ignored the harassment; only about 4 percent lodged a formal complaint with school authorities. Of those who did not

"We have had reports from students in vocational school of (instructors) 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."

report the behavior, 43 percent said they "didn't know if the behavior constituted harassment," and 30 percent thought there was little hope of solving the problem.

University of Illinois, Urbana-Champaign

The 1987 study conducted on this campus showed that almost 19 percent of the graduate students, and 10 percent of the undergraduate students said they had been sexually harassed. This study defined sexual harassment as any one of four forms of unwanted behavior directed at students by faculty or staff: sexual statements, personal attention, sexual propositions, and physical or sexual advances.

Pennsylvania State University

A 1983 study at Pennsylvania State University reported that 28 percent of graduate students and 19 percent of undergraduate students interviewed reported one or more incidents of sexual harassment. Students reported that sexual harassment took the form of suggestive behavior, unwelcome dates, physical harassment, and requests or demands for sex.

Multiple-School Studies

Two studies have looked at sexual harassment on more than one campus. One of these studies compared patterns of harassment at three East Coast Universities: Fairleigh Dickinson University, Alfred University, and Hamilton College. The other compared harassment at two schools: Kent State University and the University of California at Santa Barbara.

Fairleigh Dickinson University, Alfred University, and Hamilton College

A study of harassment by peers and instructors conducted by re-

searchers at Fairleigh Dickinson University, Alfred University, and Hamilton College indicated that, in addition to students who are harassed and those who harass others, a third group of students exists consisting of those who are both victims *and* harassers.

This 1987 study reported that around 22 percent of students surveyed had been sexually harassed, 20 percent had carried out harassment, and 18 percent were "victim-harassers" (this category was an additional, unduplicated group of students; it did not include students who indicated that they were harassers only or victims only).

An overwhelming majority of victims were women (93 percent); harassers were most likely male (81 percent). The victim-harassers were fairly evenly divided between females and males.

This study noted that victim-harassers had been subjected themselves to more types of harassment than had other victims. The researchers offer several interpretations of "victim-harasser" behavior: these students may be retaliating for their own experiences, they may be identifying with the aggressor, or they may be misperceiving their own experience as victims as a way of rationalizing their harassment of others.

Kent State University and the University of California at Santa Barbara

A 1988 study conducted by researchers at Kent State University and at the University of California at Santa Barbara measured "sexist remarks and behavior, inappropriate and offensive sexual advances, solicitation of sexual activity by promise of rewards, coercion of sexual activity by threat of punishment, and gross sexual imposition or assault." This study

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

showed that although women indicate that these behaviors are unwanted when they occur, many don't recognize the behaviors as "sexual harassment."

Results varied somewhat between the two campuses and between undergraduate and graduate women, but show a clear pattern of harassment. Most harassment, they indicated, was verbal. Between 35 and 45 percent of the women had been subjected to suggestive stories or offensive jokes; 22 to 32 percent had experienced "crudely sexual remarks"; 15 to 21 percent indicated that sexist or pornographic teaching materials were used in their classrooms; and 30 to 50 percent heard sexist remarks about career options.

Physical harassment was evident as well. Fifteen to 30 percent of the women said they had been subjected to "unwelcome seductive behavior" and around the same number said they had received unwanted sexual attention. Five to 14 percent of the female students said they'd been propositioned; six to 19 percent said they had experienced "unwanted discussion of personal or sexual matters"; eight to 14 percent had been subjected to unwanted stroking or fondling; and between two and four percent said those attempts had been forceful.

Overall, more than half of the women surveyed said they had experienced at least one of the listed behaviors at least once. But, despite the fact that so many of the female students reported harassing behavior by professors, few responded affirmatively to a question that asked explicitly if they had ever been sexually harassed.

Two to three times more graduate women indicated that they had experienced harassment: only around 4 percent of the undergraduate women reported "sexual

harassment," compared with 8 to 16 percent of graduate women.

MINNESOTA STUDIES

Several formal studies of sexual harassment in education have been conducted in Minnesota, including studies at Winona State University and the University of Minnesota. In addition, a sexual harassment study was conducted at the junior and senior high school level in 13 Minnesota school districts.

Winona State University

A 1987 Winona State University survey of staff, faculty, undergraduates and graduates indicated that sexual harassment is a problem on that campus. Over one-third of the surveys were returned for a total of 433 responses. Results varied, depending upon whether respondents were undergraduates or graduate students. The university found that 7 to 22 percent of the women and 5 to 10 percent of the men experienced sexual harassment. The study also concluded that women have a lower tolerance for sexual harassment than men do.

University of Minnesota

The University of Minnesota did its own study on sexual harassment in the fall of 1988. From 1984 to 1988, the University had 24 formal complaints of sexual harassment, 47 informal complaints and 159 inquiries for further information or advice.

Minnesota Junior and Senior High Schools

Fewer studies have been conducted at junior and senior high schools. One study, conducted at the Minnesota State Sex Equity Student Leadership Conference in May 1986, suggested that sexual harassment in educational institutions may be more severe in high schools than in colleges. The results of this study appeared in the March 1988 issue of the NASSP Bulletin (see bibliography).

Staff and student leaders from 13 Minnesota school districts attended the conference. Eighty percent of the respondents indicated that sexual harassment was prevalent at their schools. Three-fourths of the respondents reported student-to-student harassment; in addition, 50 percent said harassment took place between staff and students. (The overlap in these two figures comes from students who reported both kinds of harassment).

Twenty-six percent of the respondents said that sexual harassment goes on "all the time" at their schools. Half said "it happens to a fair number of people." Sixteen percent thought that sexual harassment happened only "to a few people," and 6 percent didn't see it happening at all. Two percent didn't know how often sexual harassment occurred.

A related study of high school juniors and seniors was conducted in a "predominantly white middle class secondary vocational center" in Minnesota. Depending on the grade level of the respondents, the incidence of sexual harassment of female students by male students ranged from 33 to 60 percent. All groups studied indicated about the same rate--30 percent--of staff to student harassment.

The Minnesota Department of Education has published a curriculum on the identification and prevention of sexual harassment for junior and senior high school students. The curriculum, "Sexual Harassment To Teenagers--It's Not Fun, It's Illegal" includes three lesson plans school districts can use to create curriculum.

SUMMARY AND CONCLUSIONS

These employment and education studies, along with other studies of sexual harassment, show that sexual harassment is a common problem. Reliable estimates are that between 33 and 60 percent of high school girls, between 35 and 40 percent of female college students, and between 50 and 75 percent of female employees experience sexual harassment.

The studies also indicate that sexual harassment is a function of unequal power relationships rather than sexual attraction. It is rarely initiated by a subordinate. Although awareness appears to have grown among victims, employers and the general public, sexual harassment remains a criti-

cal issue in the workplace and the classroom.

The most obvious effect of sexual harassment is the victim's job loss. About half of the 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 when they report the harassment. Still others are fired when the harassment results in deteriorating work performance or attendance.

Job loss means the immediate loss of income. It 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 creates economic barriers for women. Whether female students are seeking college degrees, vocational preparation, or education opportunities to advance in existing jobs, 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? The studies show that harassment is

very likely to continue. These victims often suffer from the loss of self-esteem and self-confidence needed to obtain recognition and advancement. They frequently experience severe emotional stress and stress-related illnesses and injuries. As a result, these women may eventually lose jobs, leave schools, receive negative performance reviews or get poor grades. All of these factors limit future opportunities.

The economic cost of sexual harassment is also high for women who haven't personally experienced sexual harassment. As they witness or hear about sexual harassment, women may begin to see the workplace as a hostile environment. Their reactions may include fear of seeking recognition or advancement, fear of pursuing non-traditional careers which are male-dominated, avoidance of any activities in which they feel vulnerable, and tendencies to lower their expectations.

The employers, who face workforce turnover and reduced productivity, must also endure economic losses as a result of sexual harassment. Employers suffer the costs of recruiting and training new employees as well as the less obvious costs of low employee morale. Increasingly, employers must cover the expense of legal action initiated by victims.

LEGAL STATUS OF SEXUAL HARASSMENT IN EMPLOYMENT

The legal status of sexual harassment on the job has been affected both by legislation and by court cases.

LEGISLATION

Legislation pertaining to sexual harassment has been enacted on both the federal and state levels.

FEDERAL LAWS

Federal laws regarding harassment on the job include Title VII of the Civil Rights Act and guidelines issued by the federal Equal Employment Opportunity Commission (EEOC).

Title VII of the Civil Rights Act

The development of laws pertaining to sexual harassment, like the development of formal studies in this area, is only several decades old. However, considerable legal precedent has been established in that short time.

Sexual harassment is now considered a violation of Title VII of the Civil Rights Act of 1964, which is the principal federal law protecting workers from discrimination in employment. The act makes it unlawful to discriminate on the basis of sex, race, color, religion, or national origin. Sexual harassment, therefore, is now seen as a form of sex discrimination.

To prove a violation of Title VII of the federal Civil Rights Act of 1964, it has traditionally been necessary to demonstrate:

- 1) that submission to sexual harassment was a term and condition of employment,
- 2) that refusal to submit substantially and adversely affected the victim's employment, and
- 3) that employees of the other sex were not affected in the same way.

In the last few years, however, this definition has changed in some courts.

Older cases in which the courts said that sexual harassment may constitute sex discrimination in employment if the three factors above were proven include:

Tompkins v. Public Service Electric and Gas Company (3rd Circuit 1977),

Barnes v. Costle (D.C. Circuit 1977),

Miller v. Bank of America (9th Circuit 1979),

Heelan v. Johns-Mansville Corporation (District Court, Colorado 1978) and

Kyriazi v. Western Electric (District Court, New Jersey 1978).

The requirement to show a direct adverse consequence of employment, such as being fired or demoted, began to change in 1980.

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

"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."

Equal Opportunity Employment Commission

When the federal Equal Employment Opportunity Commission (EEOC) published its "Final Amendment to Guidelines on Discrimination Because of Sex" in November 1980, the legal interpretation of sexual harassment began to change. The guidelines now interpret Title VII to include sexual harassment as a form of sex discrimination in employment.

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."

These guidelines place the responsibility on the employer to eliminate sexual harassment.

Employers' liability varies depending on the position the harasser holds. Several subsections within Section 1604.11 of the EEOC guidelines further explain employer responsibilities:

Subsection B says that each case of sexual harassment will be judged separately to determine the legality of the charges. Such factors as the nature of the offense

and the context in which it occurs will be considered.

Subsection C discusses the employer's liability for acts of supervisors and of agents. Employers are liable if they knew or should have known of the harassment.

Subsection D covers non-supervisory employees. The employer remains liable for harassment unless the employer lacks knowledge and couldn't have known of the harassment.

Subsection E deals with harassment from individuals outside the organization. The employer's liability stems from whether or not immediate corrective action was taken.

LAWS IN MINNESOTA

In 1982, sexual harassment became a prohibited form of sex discrimination in Minnesota. The following definition was incorporated as an amendment to Minnesota Statutes 363 in the state Human Rights Act:

"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;
- 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 accommoda-

tions or public services, education, or housing; or

- 3) [subjection to] 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 employment, public accommodations, public services, educational or housing 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."

In addition to discrimination claims, Minnesota law also recognizes that sexual harassment on the job is "good cause" for leaving a job. Women who can prove they were sexually harassed may be eligible for unemployment compensation, just as they would be if they were laid off or fired without good cause.

LAWS IN OTHER STATES

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

By 1985, 18 states had enacted laws that specifically prohibit sexual harassment, although these statutes vary in degrees of protection. At least 28 other states' laws prohibit sex discrimination. These laws could be interpreted to prohibit sexual harassment as well.

COURT CASES

While it remains difficult to prove sexual harassment, many courts have broadened their definitions of what constitutes sexual harassment as a result of EEOC guidelines and landmark cases. Both the U.S. Supreme Court and the Minnesota Supreme Court have handed down rulings regarding sexual harassment in the workplace.

U.S. SUPREME COURT

One case, *Vinson v. Meritor Savings Bank* (U.S. Supreme Court 1986), upheld a claim that sexual harassment resulting in a hostile work environment constitutes discrimination under Title VII.

In its ruling, the Supreme Court overturned a lower court's decision that Vinson needed to suffer economic effects for sexual harassment to be claimed.

A second point the case clarified was "voluntary" participation in sexual harassment. The court stated that the correct inquiry on the issue of sexual harassment was whether the sexual advances were welcome, not whether the employee's participation in them was voluntary.

Also, the Supreme Court reaffirmed that mere existence of a grievance procedure and a policy against discrimination, coupled with an employee's failure to use the procedure, doesn't protect the employer from liability.

Courts have struggled with drawing a line between flirtation and joking and sexual harassment. While the Supreme Court has made considerable headway in

"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."

broadening the definition of sexual harassment, few hard and fast legal rules apply today.

MINNESOTA SUPREME COURT

The Minnesota Supreme Court issued a landmark ruling in the 1980 case of *Continental Can, Inc. vs. State of Minnesota*. The Court found that sex discrimination prohibited under the Minnesota Human Rights Act included sexual harassment directed at an employee by fellow employees

when the employer knew or should have known of the conduct and failed to take timely and appropriate action. The Court included verbal actions as well as sexually derogatory statements in its definition of sexual harassment and found the duty to be on the employer to take prompt and appropriate action when it knew or should have known of employee acts of sexual harassment.

In 1984, the Minnesota Court of Appeals found, in *McNabb vs. Cub Foods*, that an employer can avoid liability for sexual harass-

ment by its employees by taking timely, appropriate, remedial action. That action may include the dissemination of an anti-harassment policy, transfer of the offending employee, or disciplinary action.

The position was reasserted in *Clark vs K-Mart Store*, 1985, where the Court of Appeals found that an employer was liable for the acts of sexual harassment by a manager and that the employer should have taken timely, appropriate, remedial action.

THE LEGAL STATUS OF SEXUAL HARASSMENT IN EDUCATION

Legislation pertaining to the sexual harassment of students in educational institutions has been passed at both the federal and state level.

is the lead enforcement agency for colleges. Ultimately, a school found to be in violation of Title IX could lose all federal financial assistance.

FEDERAL LAW

Title IX of the federal Education Amendments of 1972 prohibits sex-based discrimination against students in educational institutions. Institutions are also required to maintain sexual harassment grievance procedures as part of Title IX.

According to the Minnesota Department of Education, about one-third of Minnesota's elementary and secondary schools had grievance policies in place as of summer 1988.

Unlike Title VII of the Civil Rights Act, Title IX of the Education Amendments 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

MINNESOTA LAW

The Minnesota Human Rights Act prohibits sexual discrimination in education as well as in employment. When sexual harassment was added as a form of sex discrimination, the prohibition of sexual harassment in education was included as well.

Legislation passed in 1989 requires educational institutions to develop policies regarding sexual harassment and sexual violence. Schools covered by the law include: each local school district, the Minnesota State High School League, each public post-secondary institution, each public post-secondary system (community colleges, state universities, technical colleges, and University of Minnesota campuses), and each private post-secondary school whose students receive financial aid. These laws are found in Minnesota Statutes 1989 Supplement, Chapters 127, 129, and 135A.

"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 myths like 'Women ask for it,' 'It's not serious,' 'It doesn't happen,' and 'It only happens to certain kinds of women.'"

Appendices

Appendix 1: Resources and Organizations

This resource list provides information about the federal and state level government agencies enforcing sex discrimination laws in Minnesota, and about other organizations for victims of discrimination.

FEDERAL

Equal Employment Opportunity Commission
110 South 4th Street Room 178
Minneapolis, MN 55402
612 / 348-1730.

The EEOC is a federal government agency which enforces Title VII of the Civil Rights Act of 1964 (employment only).

STATE

Minnesota Department of Human Rights
Bremer Tower
St. Paul, MN 55101
612 / 296-5663 or toll-free 1-800 / 652-9747.

This state government agency enforces the Minnesota Human Rights Act. The state law covers sex discrimination in education and other areas as well as employment.

LOCAL ORGANIZATIONS

Local Human Rights Commissions.

City or county governments may operate their own human rights commissions or agencies, which enforce local ordinances relating to sex discrimination. These local agencies may also provide services under the state's Department of Human Rights. Check government listings in local telephone directories.

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. The coordinator serves as a contact for all issues related to discrimination in education.

Sex Equity Coordinator, State Board of Vocational Technical Education

Students and workers in the state's technical colleges may contact (in addition to the Title IX coordinator):

Shirlee Walker, Sex Equity Specialist
1st Floor Capitol Square Building
550 Cedar St., St. Paul, MN 55101
612 / 296-0669

OTHER RESOURCES

Several private, social service agencies can offer information about sexual harassment and services such as advocacy, counseling, support groups, and referral.

Chrysalis Center for Women
2104 Stevens Avenue South
Minneapolis, MN 55404
612 / 871-2603

Minnesota Women's Center
University of Minnesota
5 Eddy Hall, 192 Pillsbury Drive SE
Minneapolis, MN 55455
612 / 625-2874

Sexual Offense Services
1619 Dayton Avenue
St. Paul, MN 55104
612 / 298-5898

Sexual Violence Center
1222 West 31st Street
Minneapolis, MN 55408
612 / 824-5555

Walk-In Counseling Center
2421 Chicago Avenue South
Minneapolis, MN 55404 612 / 870-0566

Programs for Victims of Sexual Assault.

Many programs exist throughout the state. Consult a local telephone directory or call:

Minnesota Program for Victims of Sexual Assault
300 Bigelow Building
450 N. Syndicate
St. Paul, MN 55104 612 / 642-0256

For general advice on sexual harassment:

9-to-5 toll free hotline, Cleveland, Ohio
1 to 5 p.m., Monday through Friday.
1-800 / 245-9865

Appendix 2: Sample Policy for Employers

Company policy statements on sexual harassment should state a commitment to preventing and eliminating sexual harassment and include a reference to other company documents for information on grievance procedures. Regardless of where this information is located, the following should be included:

- 1) a definition of sexual harassment;
- 2) the procedure for reporting the harassment;
- 3) information about how the investigation will be conducted, including assurance of confidentiality and protection from reprisal against persons reporting harassment;
- 4) specific penalties that may be imposed on any 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 several 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.

The following policy is intended as a guide. Naturally, employers will want a policy geared to the specific needs of the organization.

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 directed toward the person who makes the complaint.

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;
- informing employees of the company's policy regarding sexual harassment, including providing training and posting of this policy; and
- 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 take legal recourse for any actions which violate criminal statutes.

IV. INTERNAL COMPLAINT SYSTEM AND DISCIPLINE PROCEDURES

(The following section is taken from the sample policies recommended by the Employer's Association, Inc. of the Twin Cities in its February 1988 document on sexual harassment.)

Any employee who believes that she/he is harassed by a supervisor or co-worker should promptly take the following steps:

- a) Discuss the situation directly with the person(s) doing the harassing. State how you feel about his or her actions. Politely request the person cease harassing you because you feel intimidated, offended, or uncomfortable.
- b) If the harassment continues, or you believe some employment consequences may result from your discussion, go to a higher level of supervision: the manager of Employee Relations or an authorized representative of the Personnel Department. Both orally and in writing, state specific details of the harassing behavior.
- c) If after what you consider to be a reasonable length of time, you believe inadequate action is being taken to resolve your complaint, then contact the Vice President of Personnel with your complaint. It is the policy of this organization to listen to any reasonable complaint and take appropriate action to correct the complaint.

All complaints will be handled in a confidential manner and allegations will be investigated promptly and objectively. There will be no adverse action directed toward the complaining employee as a result of making the complaint, no matter what the outcome of the internal investigation.

The following will serve as a guide in taking disciplinary action:

1) Verbal harassment

- A. Without a threat to any conditions of employment, a memo from the personnel manager will be given to the offending employee. This will serve as a written warning.
- B. With a threat to any conditions of employment: 1) memo and 2) suspension without pay, 3-15 working days.

2) Physical contact

- A. Memo, and
- B. Suspension without pay, 15-30 working days.

3) Physical assault

- A. Memo, and
- B. A suspension without pay for 30 working days to termination of employment.

V. 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;
- Providing counseling or support services to victims, or providing reimbursement for such services provided outside the company; and
- Contracting with independent consultants to evaluate sexual harassment policies, procedures, and allegations and to suggest additional prevention methods or provide additional training if needed.

Appendix 3: Sample Contract Language for Employers

The following is taken 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, DC 20036:

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 his or her witness 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.

Appendix 4:

Sample Policy for Educational Institutions

The following is taken from "Sexual Harassment," Office of Equal Opportunity and Affirmative Action, 419 Morrill Hall, 100 Church Street S.E., University of Minnesota, Minneapolis, MN 55455 (612) 624-9547:

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 incident;
- 5) recognize the inherently suspect nature of any sexual relationship between students and educational 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.

UNIVERSITY POLICIES AND PROCEDURES

The following is the policy statement on sexual harassment from the University of Minnesota:

In some cases, union contracts modify the policies and procedures printed below. For additional information about these situations, consult the appropriate office.

POLICY STATEMENT ON SEXUAL HARASSMENT

Sexual harassment in any situation is reprehensible. It subverts the mission of the University, and threatens the careers of students, faculty, and staff. It is viewed as a violation of Title VII of the 1964 Civil Rights Act. Sexual harassment will not be tolerated in this University. For purposes of this policy, sexual harassment is defined as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

- 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement;
- 2) submission to or rejection of such conduct by an individual is used as the basis of employment decisions or academic decisions affecting such individual; or
- 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment.

As defined above, sexual harassment is a specific form of discrimination in which power inherent in a faculty member's or supervisor's relationship to his or her students or subordinates is unfairly

exploited. While sexual harassment most often takes place in a situation of power differential between persons involved, this policy recognizes also that sexual harassment may occur between persons of the same University status, i.e. student-student, faculty-faculty, staff-staff.

It is the responsibility of the administration of this University to uphold the requirements of Title VII, and with regard to sexual harassment specifically, to insure that this University's working environment be kept free of it. For that purpose, these procedures and guidelines are promulgated to avoid misunderstandings by faculty, students, and staff on

- 1) the definitions of sexual harassment, and
- 2) procedures specifically defined to file and resolve complaints of sexual harassment.

Justice requires that the rights and concerns of both complainant and respondent be fully assured. The University shall make every effort to assure and protect these rights, and shall undertake no action that threatens or compromises them.

In determining whether alleged conduct constitutes sexual harassment, those entrusted with carrying out this policy 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 suitability of a particular action will be made from the facts, on a case-by-case basis.

The information includes extensive policies on complaints, appeals and sanctions. It lists appropriate contacts by position and office. The Sexual Harassment Board sees that the University policy is applied properly and fairly by other offices. The board, which also hears case appeals, consists of five faculty members, one civil service employee, one academic administrator and two students, all of whom are appointed by the president.

Finally, the University policy explains the institution's views about consensual relationships. Consenting romantic and sexual relationships between faculty and student or supervisor and employee aren't forbidden, but they are "deemed very unwise." When a sexual harassment charge is brought in front of the administration or the Sexual Harassment Board, the policy states that a defense based on consent will be viewed unsympathetically if the case involves a power differential (i.e. faculty or staff/student or supervisor/employee).

Appendix 5:

Title VII of the Civil Rights Act of 1964

The following is from "A Working Woman's Guide to Her Job Rights," U.S. Department of Labor, Office of the Secretary, Women's Bureau, January 1984, Leaflet 55, page 7:

Title VII of the Civil Rights Act of 1964 is the principal law that protects workers from discrimination in employment. The act makes it unlawful to discriminate on the basis of sex, race, color, religion, or national origin in hiring or firing; wages; fringe benefits; classifying; referring, assigning, or promoting employees; extending or assigning facilities; training; retraining; or apprenticeships; or any other terms, conditions, or privileges of employment.

For example, it is unlawful for an employer to refuse to let certain persons file application forms, but to accept others; for a union or an employment agency to refuse to refer some applicants for job openings; for a union to refuse membership or for an apprenticeship or other training program to refuse admission to an applicant, when the reason for the action is the individual's sex, race, color, religion or national origin.

As amended in 1972, Title VII covers most employers of 15 or more employees, public and private employment agencies, labor unions with 15 or more members, and joint labor-management committees for apprenticeship and training. Indian tribes are exempt as employers. Religious institutions are exempt with respect to employing persons of a particular religion, but are covered with respect to discrimination based on sex, race, color, or national origin.

The text of Title VII of the Civil Rights Act of 1964 reads, in part:

Sec. 703. (a) It shall be an unlawful employment practice for an employer:

- 1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or
- 2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex or national origin.

Appendix 6: Selected Bibliography

- American Federation of State, County and Municipal Employees, *Stopping Sexual Harassment: An AFSCME Guide*, 1988. AFSCME, 1625 L Street N.W., Washington, DC 20036 (202) 429-5097.
- Commission (formerly Council) on the Economic Status of Women, *Sexual Harassment Survey--Twin Cities Personnel Officials*, 1981. CESW, 85 State Office Building, St. Paul, MN 55155 (612) 296-8590 or 1-800-652-9747.
- Connolly, W., and Marshall, A. "Sexual Harassment of University or College Students by Faculty Members," *Journal of College and University Law*, v. 15, n. 4, Spring 1989, pp. 381-403.
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- MacKinnon, Catharine A. *Sexual Harassment of Working Women*. New Haven and London: Yale University Press, 1979.
- Merit Systems Protection Board. *Summary of Preliminary Findings on Sexual Harassment in the Federal Workplace*, before Subcommittee on Investigations, Committee on Post Office and Civil Service, U.S. House of Representatives, September 25, 1980.
- Merit Systems Protection Board. *Sexual Harassment in the Federal Government: An Update*. A report to the President and Congress of the United States, updating the sexual harassment survey first completed in 1980.
- Minnesota Department of Education, *Sexual Harassment to Teenagers: It's Not Fun. It's Illegal*, 1988. This booklet is available free to Minnesota school districts. It contains a model curriculum for staff and students of junior high and high schools. Free training is included. Contact Education Specialist, Sex Desegregation, Minnesota Department of Education, 979 Capitol Square Building, 550 Cedar St., St. Paul, MN 55101 (612) 296-7430.
- Project on the Status and Education of Women. *Sexual Harassment Packet, In Case of Sexual Harassment: A Guide for Women Students*, and *Peer Harassment: Hassles for Women on Campus* are available for small fees. Write to the PSEW for a publications list. Include a self-addressed stamped envelope. PSEW, Association of American Colleges, 1818 R St. NW, Washington, DC 20009 (202) 387-1300.

Saltzman, Amy. "Hands Off at the Office," *U.S. News and World Report*, August 1, 1988, p. 56-58.

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Sexual Violence Center. *Sexual Harassment: A Matter of Power and It's Never O.K.: Sexual Exploitation by Counselors and Therapists*. 1222 W. 31st St. Minneapolis, MN 55408 (612) 824-5555.

Sigal, J., Gibbs, M., Belford, S., Ronan J., and Gervasio, A., *Sexual Harassment on Three College Campuses*, paper presented at the Annual Convention of the American Psychological Association, New York City, August 29, 1987.

Strauss, Susan. "Sexual Harassment in the School: Legal Implications for Principals," *NASSP Bulletin*, March 1988, p. 93-97. Strauss is a health educator in Chaska. For a fee, she does training in the area of sexual harassment and education. (612) 448-5787.

ABOUT THE COMMISSION

The **Commission on the Economic Status of Women** is a legislative advisory commission established by the Minnesota Legislature in 1976. Commission members include state senators and representatives. The Commission studies all matters relating to the economic status of women in Minnesota and publishes reports and recommendations to the legislature and to the Governor.

Commission members are:

Senator Linda Berglin
Senator Gary DeCramer
Senator Pat Piper, chair
Senator James Ramstad
Senator Ember Reichgott
Representative Karen Clark
Representative Connie Morrison
Representative Katy Olson, vice chair
Representative Howard Orenstein
Representative Gloria Segal

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