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SEXUAL HARASSMENT—AN UPDATE

Sexual harassment is unwanted sexual attention, ranging from touching, innuendoes, jokes and leering to physical force or threats. Overt forms, such as rape or requests for sexual favors are easily identified. However, since most harassment is subtle and socially common, often the victims do not realize they are being sexually harassed. Instead, they are left feeling uncomfortable and as though they cannot challenge certain attentions: a ride home from work, comments about one's appearance, brushing against one's body, leaning too closely, jokes and questions about sex. The key is that such attention is unwanted, and because of social or economic relationships, the victim feels unable to change the situation. Women at work are especially powerless because the harasser often has the authority to affect the quality of their work, fire them, or otherwise threaten their employment security and thus their economic livelihood for a long time thereafter. The following an interview with Karen Haney, member of Women Organized Against Sexual Harassment (WOASH), who has counseled and advised victims of sexual harassment, trained advocates, and educated the public about the issue. A list of resources on the subject is available from the Labor Center, 2521 Channing Way, Berkeley CA 94720.

LCR: Since the courts declared that sexual harassment is illegal because it is a form of sex discrimination and therefore a violation of Title VII, there have been many court cases and grievances. What has changed and what should still be done?

Haney: *The rulings have made a big difference; the issue is taken more seriously now. The lower courts have ruled that sexual harassment is a crime in and of itself. Victims of sexual harassment are entitled to unemployment compensation and workers' compensation. However, there is still a lot to be done.*

A discrimination claim cannot be filed in court; instead one must file under "assault and battery" or "emotional distress." There should be a discrimination claim so that a sexual harassment charge can be filed directly. Also, victims are usually not believed; their word does not constitute evidence. The cases most likely to be believed are those with witnesses, and people don't usually harass when there are witnesses. Even multiple complaints (class action suits) are not effective anymore, since the courts claim that proof that another person was harassed does not mean that the alleged victim was. A victim's word needs to have more weight as evidence.

LCR: What should victims of sexual harassment do?

Haney: *First, talk with other women to get validation and to find out if others are being harassed. Don't stay silent—it is important to express your feelings. Second, explore what you want and what you're capable of dealing with. For instance, if you pursue a legal case, find out if you have the evidence and emotional support you'll need. Third, document everything: cases are much stronger with written evidence. When an incident occurs, type it up, date it, and send copies to organizations such as WOASH. Later, these organizations can testify for you. Fourth, create witnesses. Tell people what is happening when it happens and ask them to write affidavits about the incident. Or, stand in a hallway and in a loud voice dare the harasser to repeat what he said. There are formal and informal options with pros and cons for each. The formal methods include:*

(1) *Grievance procedures: Using these depends on whether the procedure is strong, whether there is support from other workers, and whether there is a clause in the contract stating that this procedure must be used first. For example, federal workers may have to use the grievance procedure first.*

(2) *Agencies: I recommend filing a complaint with the Fair Employment and Housing Agency (FEH) instead of with the Equal Employment Opportunity Commission (EEOC). The FEH covers employers with only five or more employees, and it is required to investigate the case. The EEOC, however, need not investigate. You can file for damages under the FEH. Under EEOC you cannot file for damages, and your employer must have fifteen or more employees. However, if you are sexually harassed by a*

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customer (e.g., waitresses), you can only file with EEOC—the FEH won't take the case. Both EEOC and FEH have a major flaw—they enforce anti-discrimination which has been interpreted as “differential” treatment. It is not considered sex discrimination—the therefore sexual harassment—if someone harasses both men and women, since both sexes are treated similarly.

(3) Courts: In a criminal procedure, you file a charge of assault and battery. I normally do not recommend this approach, since legally you are not representing yourself as a victim; instead, you are claiming that the state or employer has been injured and you as the victim are representing the state or employer. In civil cases (torts), you can represent yourself as the victim, filing your case under “breach of contract” or “emotional distress.” Court cases are expensive and may take two to three years. If you decide to file, hire a lawyer on a contingency basis. Courts also have strict rules for evidence; if you do not have much evidence or support, I recommend using informal methods.

LCR: What informal methods do you recommend, especially where there is not a lot of support and evidence?

Haney: Most grievances are settled informally, because of the lack of evidence or the victim's unwillingness to endure the financial or emotional hardships of formal procedures. The method chosen varies according to the victim's needs and the particular circumstances of the case. You should contact a women's organization for more detailed advice on each method and on choosing the one that is best for you. Whichever method you choose, be sure to keep your options open, so that you can file a formal case if you wish to do so later.

Informal methods include: (1) Planned confrontations—a group of women decide where and when to confront the harasser and what to say to him. (2) Writing a letter to the harasser, stating that you do not like the behavior and want it stopped. This is especially effective for more subtle forms of harassment or if the victim wants to avoid direct confrontation. (3) Have friends pose as customers, witness the harassment and complain—since a customer's complaint will often be more effective. (4) Have men talk with the harasser.

LCR: What can others do to help?

Haney: Friends and co-workers can intervene and confront the harasser, pose as customers and complain, or write affidavits. Men need to take responsibility, since their interests are at stake too. They have to see how detrimental sexual harassment is to co-workers, to themselves, and to worker unity. They can organize in workgroups and discuss the issue and be conscious about women's fears. They have to believe women, listen to women, and learn from them.

Finally, labor can raise the issue in bargaining, by making sexual harassment grievable, having the company issue policy statements, providing educational workshops, strengthening the grievance procedure for incidents of sexual harassment (separate from sex discrimination), publishing materials on the subject, and training shop stewards in the proper handling of harassment complaints.

--Marlene Kim

NOTE: A sexual harassment clinic, sponsored by WOASH and the International Lawyer's Guild, will open in March 1984, providing counseling, advocacy, therapy, and legal advice. Anyone familiar with union grievance procedures, counseling, law, or organizing who would like to help with the clinic should call Karen Haney at 415/642-7310. And of course, everyone is welcome to use the services.

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