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ABSTRACT

Sexual harassment, once an issue only among women, is becoming a serious issue among men. The number of law suits brought by men alleging sexual harassment is increasing and will likely continue to increase as more women attain supervisory and management positions. The Equal Employment Opportunity Commission (EEOC) defines harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature." Harassment is further constituted when submission to such conduct is made a condition of employment, submission to or rejection of such conduct is used as a basis for employment decisions, or when such conduct has the effect of interfering with an individual's work performance or of creating an intimidating, hostile, or offensive working environment. The harasser need not be the victim's supervisor though often is, and the victim is not necessarily a member of the opposite sex of the harasser. Victims are encouraged to: (1) document their performance following a case of exploitation; (2) attempt to gather evidence (witnesses or tape recordings); (3) utilize an internal grievance procedure; (4) encourage the development of an explicit code of conduct; and (5) become familiar with legal provisions under Title VII of the Civil Rights Act of 1964. A 29-item bibliography is included. (JB)

SEXUAL HARASSMENT:

What's Good for the Goose Is Good for the Gander

by

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April 12, 1989

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Sexual harassment is a prevalent and complex problem --one that is difficult to define, yet one that American men and women will face during their lifetimes. Often, sexual harassment is simply a case of one person's word against another's and it usually occurs in situations where unequal power relationships exist. Frequently, one of the persons involved is a manager, a superior in the work place who has the ability to give bad performance evaluations or to make reports that cast doubt on the employee's reason for bringing the suit. Walsh (1986) refers to the situation as "an incredible catch-22." Although the topic itself is not an unfamiliar one, it now includes new objects of the harassment other than women: men have begun to take legal action as victims of sexual harassment. This writer believes the reversal is significant, if rare. Furthermore, it is difficult to confine the topic to one specific work condition such as education, business, or industry. Therefore, this writer will consider the topic within the context of work settings where the cases originate. Thus, the purposes of this paper are to (1) define sexual harassment as reported by the Equal Opportunity Commission (EEOC) and other writers; (2) to briefly discuss the origin of Title VII of the Civil Rights Act of 1964; (3) to describe leading cases relative to sexual harassment as a form of sex discrimination and particularly where the male is discriminated against; and (4) to provide preventive measures in the fight against sexual harassment.

Evidence exists that sexual harassers are often not aware they are actually harassing. In 1980, the Equal Employment Opportunity Commission (EEOC) issued its guidelines on sexual harassment (29 C.F.R. 1604.11). These defined harassment as "unwelcome sexual

advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature." Harassment is further constituted when:

(1) Submission to such conduct is made either explicitly or implicitly, (i.e.), a term or condition of an individual's employment;

(2) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individuals;

(3) Such conduct has the purpose or effort of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." (Lindgren, Oto, Zirkel, and Gieson 1974, p. 29).

Recognized as a form of sex discrimination by the Bureau of National Affairs, Inc., harassment may appear on the bases of sex, race, religion, national origin, and age.

The University of Minnesota newspaper, Minnesota Daily, recently reported a case (January, 1989) and suggested that sex discrimination suits filed on behalf of men are no longer a rarity. According to the article, Gary French, an employee at the University of Minnesota was discriminated against through treatment different from that granted female co-workers and through gender-related remarks made to him. Steven Cooper, State Human Rights Commissioner, revealed evidence that suggested that French had in fact been discriminated against based on sex. The following incidents were reported as evidence: the university delayed granting leave to French for three months after his initial request while female employees were routinely granted leave; French was denied overtime while women regularly received overtime; while female employees were permitted to type school papers and study for classes without being reprimanded, French was reprimanded for such activity during work hours. Cooper reported that his agency

found evidence to substantiate the complaints of Gary French. The State Human Rights Department has the authority to investigate complaints of human rights violations. It's findings are part of an administrative process that requires an accused agency to respond. The department then tries to resolve the matter through conciliation. If settlement fails, the case could be forwarded to the state attorney general's office for prosecution.

Sexual harassment may appear in a variety of circumstances. EEOC's view of sexual harassment include the following considerations (1) A man as well as a woman may be the harasser; (2) The harasser is not necessarily the victim's supervisor. He or she may also be an agent of the employer, a supervisory employee who does not supervise the victim, a non-supervisory employee (co-worker), or, in some circumstances, even a non-employee; (3) The victim is not necessarily a member of the opposite sex from the harasser. Since harassment is a form of sex discrimination, the crucial inquiry is whether the harasser treats a member or members of one sex differently from members of the other sex.

According to Farley (1978), "sexual harassment is best described as unsolicited nonreciprocal male behavior that asserts a woman's sex role over her function as a worker" (p. 79). This behavior may include verbal abuse; sexist remarks regarding a woman's clothing or body; patting, pinching, or brushing against a woman's body; leering or ogling; demands for sexual favors in return for hiring, promotion, and tenure; physical assault or rape. In the extreme, sexual harassment involves rape. But even without that violence, harassment is parallel to rape in many ways because while rape involves

physical force and fear, harassmet involves economic force and fear. Like rape, harassment has been considered a joke or has been blamed on the victim. Unlike many other types of sex discrimination, sexual harassment in the work place remains an emotional issue for women. Most are afraid to speak out for fear of losing their positions, promotions, or raises.

The fundamental feature of most sexual harassment lawsuits is sex discrimination in violation of Title VII of the Civil Rights Act of 1964. Often referred to as the Equal Employment Opportunity Act, this act has had significant impact upon women since it applies to discrimination in all terms of conditions of employment. According to Jongeward and Scott (1973), when the act was originally introduced to Congress in 1964, the term "sex" with reference to gender was not included. Pepper and Kennedy (1981) suggest that Title VII was the first Congressional Act prohibiting discrimination against minorities in private employment. As further reported:

> "gender as a basis for discrimination was offered as a floor amendment to Title VII in the House, without any prior legislative hearings or debate by a Southern Congressman who was opposed to the entire act, who eventually voted against it and whose strategy was apparently to provide another area of opposition so that it would not pass at all. Consequently, the passage of the amendment and its enactment into law occurred without even a minimum of investigation or discussion. The implications of this legislation are only beginning to fully emerge in the American consciousness" (p. 18).

As a result of Title VII, Americans are being forced to recognize that, despite cultural and biological differences which exist between men and women, many of these differences have been used to deny employment to one gender or another. Furthermore, this has been done in violation of the law.

According to Pepper and Kennedy, Title VII of the Civil Rights Act of 1964, went into effect on July 2, 1964 and was amended by the Equal Opportunity Act of 1972. The Act contains a wide range of provisions prohibiting discrimination based upon a person's gender. Title VII prohibits discrimination against women with regard to hiring, compensation, and privileges of employment. As employees continue to better understand the provisions of Title VII, the more cognizant they will become of the issue of discrimination.

In 1986, the United States Supreme Court heard its first sexual harassment case, Meritor Savings Bank v. Vinson. In a unanimous decision, the Supreme Court agreed with the EEOC's interpretation that sexual harassment is a form of sex discrimination in violation of Title VII of the Civil Rights Act. In that particular case, Mechele Vinson, a bank employee claimed that her supervisor harassed her by making sexual demands and threats until, in order to avoid the advances, she felt compelled to take a leave of absence. She was eventually fired. According to Walsh (1986), the ruling in this case further suggested that "businessess may be held liable for sexual harassment by supervisors even when the company has not been informed of the conduct." The ruling also indicated that to prove discrimination under Title VII, the victim need not show that the conduct had a tangible economic impact such as a job promotion to bring a sexual harassment claim, but instead could show that it created a hostile environment. While an employer is not automatically liable for the actions of its employees, the employer may be held responsible for harassment by supervisors, co-workers, and even non-employees if it is believed that the employer knew or should have known of the harassment. Mechele Vinson sued what was then the

District Capital City Federal Savings and Loan (renamed prior to this case Meritor Savings Bank). She reported that she had been harassed constantly by her supervisor. As further reported, although the court did not set specific standards for determining employer liability, legal opinions indicated that companies need to act to protect themselves. Simmons (1987) suggests that "although the Vinson decision leaves open certain questions about proving sexual harassment, it does acknowledge clearly that demanding or threatening behavior toward women at work is no longer acceptible" (p. 70).

Historically, many law suits alleging sexual harassment have been made by women. However, the number of cases by men alleging sexual harassment are drastically increasing. Havemann (1988) reports that in a 1985 survey, the most recent figures available, the EEOC reported receiving only 436 official complaints of sexual harassment from the government 2.1 million workers. The report further indicated that, although women are most likely to be the recipients of unwanted sexual attention, "14 percent of men reported sexual harassment. The most likely male victims were 20 to 44 years old, divorced or separated, held office/clerical or trainee positions, worked in a predominantly female work group or had a female supervisor" (p. 26). The next case illuminates Havemann's conclusions. Due to the rarity of the case, note that it is quoted in detail.

According to Wehrwein (1982), a federal court jury in Madison, Wisconsin awarded $204,500 in what was believed to be the first case of sexual harassment brought by a man against a woman to reach the judgement level. As reported:

> "A five-woman, one-man jury in U. S. District Court on July 16 found Jacqueline Rader, 37, an Assistant

Director in the wisconsin bureau of Social Security Disability Insurance, guilty of sexually harassing Davis E. Huebschen 33, a former case supervisor in the Department. (Huebschen v. Department of Health and Social Services, 81-C-1004).

Mr. Huebschen claimed that he was demoted in December 1979 from his position after he rejected sexual advances by Ms. Rader. According to the testimony, Mr. Huebschen and Ms. Rader, both married, went to a Madison Motel. On September 27, 1979, following an office party, and for six hours, there was a lot of body rubbing, but no sex occurred.

Several weeks later, Mr. Huebschen was demoted to "disability specialist," a position that paid about $8,000 less than his previous job. He said the action came after he jilted Ms. Rader that November by telling her, "I enjoyed the relationship, but the sex stuff has to stop;" and that the woman soon after sent a poor evaluation of his work to her supervisor.

Mr. Huebschen testified that Ms. Rader only three months earlier had praised his job performance. In her defense, Ms. Rader told the jury that it was she who had been harassed, noting that on a number of occasions Mr. Huebschen had pressed her with invitations for after-work drinks and to accompany him home. In addition, she, as well as former employees in the department, testified that Mr. Huebschen was a "poor supervisor."

After a four-day trial, however, the jury decided that sexual harassment was a motivating factor for the demotion, and U. S. District Judge John C. Shabag ordered the six member panel to award damages. Mr. Huebschen had asked for $150,000 but on July 20, the jury assessed $144,600 in damages against Ms. Rader, $81,900 against Bernard Stumbras, Ms. Rader's supervisor who approved the demotion, and $8,000 in back pay. Mr Huebschen's lawyer, Michael Fox of Madison, said he would ask up to $45,000 in attorney fees."

E. Richard Larson (1979), National Staff Counsel of the American Civil Liberties Union in New York and an expert in discrimination law, reported that this is the first case of its kind that has reached a judgement. The state attorney general's office which is representing Ms. Rader plans to appeal the verdict, but also noted that Mr. Huebschen will be restored to a position equivalent to his supervisory job.

Although this appears to be the first sexual harassment case won by a male, it is important to recognize this case as a landmark in that it will serve as a precedent from which future judgements of similar cases will be made. According to Ann Schneider (1985), the Women's Rights Law Reporter contains a section of sexual harassment cases which represent allegations from a variety of work-related circumstances. Within this section Schneider recognizes other cases alleging sexual harassment by male or female supervisors. Although they are not of the magnitude as discussed in the case of David Huebschen, they do however, futher confirm that men are not immune from being objects of sexual harassment in the work place. Two of the other relevant cases cited are:

(1) Joyner v. A.A.A. Cooper Transportation, 36 Fair Employment Practice Case (BNA) 1644 (M.D. Alabama (1983). Laid-off male employee established a prima facie case showing that his employer wrongfully refused to recall him in retaliation for his refusal of terminal manager's homosexual advance.

(2) Wright v. Methodist Youth Services, 511 F. Supp. 307, 25 Fair Employment Practice Case (BNA) 563 (ND. Illinois 1981). Plaintiff, A black male, was terminated from defendent social services agency because of his resistence to homosexual advances from his supervisor. Courts denied defendant's motion to dismiss, holding that sexual harassment by a supervisor of the same sex was actionable under Title VII.

According to Levin and Brossman (1980), "EEOC Guidelines stress that an employer is responsible for sexual harassment by it agents and supervisory employer regardless of whether the specific acts were forbidden by the employer or whether the employee even knew of their occurence.

With respect to other employees, the employer is responsible if it knows or should have known of the conduct. An employer, however,

is permitted to rebut liability by showing that it took immediate and appropriate corrective action" (p. 26).

EEOC's guidelines on sexual harassment report that "prev ntic:." is the best tool for elementary sexual harassment. According to the EEOC, several ways in which an employer may prevent sexual harassment from occuring are to: (1) affirmatively promote the subject; (2) express strong disapproval of; (3) develop appropriate sanctions against sexual harassment; (4) inform employers of their rights to raise sexual harassment issues.

Somers and Clementson-Mahr (1979) recommended other ways to handle situations relative to sexual harassment. The authors encourage victims to:

(1) Document their performance following a case of exploitation, in case it is later questioned;

(2) Attempt to capture evidence by way of witnesses, tape recordings, or verbal harassment;

(3) Utilize an internal grievance procedure;

(4) Utilize the development of a clear explicit code of conduct; and

(5) Become familiar with legal provisions under Title VII and Title IX (p. 28).

The Women's Legal Defense reports that while most claims of sexual harassment are brought under Title VII, claims may also be made under state and local anti-discrimination laws or based on tort, contract, negligence, criminal or constitutional theories. The defense further recommends that when considering options consult an attorney. Under Title VII, the procedure for bringing a sexual harassment

claim begins with EEOC or a similar agency. These charges should be filed within 180 days of the alleged discrimination. After all remedies have been exhausted, file a lawsuit.

CONCLUSION

The topic of sexual harassment has been discussed here in a very general sense. The primary objective has been to suggest that men are not exempt from being the objects of sexual harassment. Although the literature regarding harassment is the same for men and women, men need to be aware of steps to follow when there is appropriate evidence to suggest such discrimination.

The issue of affirmative action has had a significant impact among minorities, and on women in particular. To meet certain quotas within organizational settings, women are presently being promoted to supervisory and management positions with increased frequency, making the concern of harassment of men even greater. The elevated status of women in supervisory roles is not only limited to business and industry, but is even now prevalent in higher education. According to Tinsley and Kaplan (1984), women have been slowly, yet, steadily achieving leadership positions in higher education. Since 1972, there have been a significant number of studies concerning the number of women in management positions created in co-educational colleges and universities.

What was once an issue among women only, is also becoming a serious issue among men. Research in this area indicates minimal numbers of this type of court case. Traditionally, men have not only allegedly been the perpetrators of sexual harassment against women, but historically, they have also actually been adjudged to have incurred the harassment. As the American society becomes more liberated and

receptive to the changing life styles and roles of people, this writer believes that the judicial system will see more cases wherein men are alleging sexual harassment by women.

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