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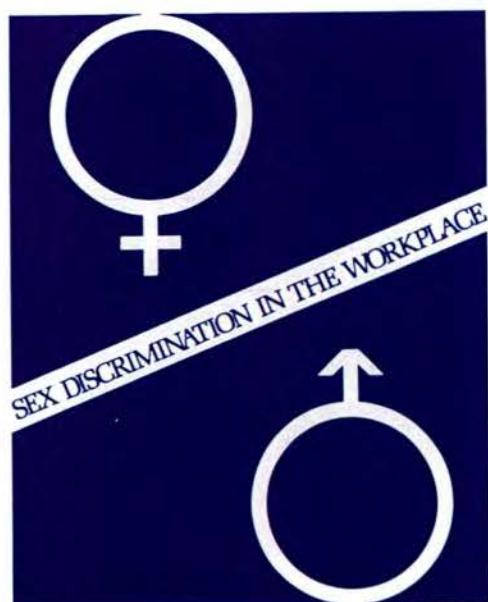
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Sex Discrimination in the Workplace

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SEX DISCRIMINATION IN THE WORKPLACE





U.S. Public Health Service • Office of Equal Employment Opportunity • Federal Women's Program

PHOTOCOPY
PRESERVATION



PUBLIC HEALTH SERVICE

POLICY STATEMENT ON EQUAL EMPLOYMENT OPPORTUNITY

The Public Health Service has a proud heritage of protecting and advancing the health of the American people. As you know, the Secretary has stated her commitment to fairness and diversity. I am in complete agreement with her that the respect and dignity with which we treat each other here in PHS is indeed crucial to the success of our mission.

PHS must reflect an environment that is free of discrimination and harassment of any kind--for our workers and for those we serve throughout our programs. The talents and strengths of each and every one of us must be fully utilized. A diverse PHS is better able to meet the demands of our times. Diversity means inclusion -- hiring, developing, promoting and retaining all employees, without regard to race, color, national origin, sex, age, religion, sexual orientation, or that an individual may have a disability.

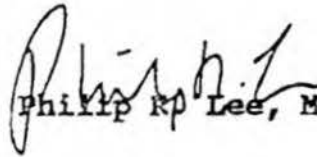
Each PHS manager and supervisor is responsible for assuring that the work environment encourages the best that every employee has to give. This means we must provide all employees with the opportunities, tools, and support systems they need to develop to their fullest potential and to contribute productively to the mission of the Public Health Service. My experience has proven that this is facilitated by helping employees balance work and family needs and providing appropriate accommodations and support systems for individuals with disabilities.

Discrimination and harassment of any kind will not be tolerated in the PHS. They are violations of law and of DHHS policies as well as being disruptive to the operations and the public perception of the organization. Employees or applicants for employment who feel they have been victims of discrimination or harassment may always exercise their legal rights by contacting the EEO office, local union representative or personnel office.

Although managers and supervisors must lead the way in ensuring complete support of diversity, every single employee can get involved and participate by exploring, understanding and valuing

the differences and cultures of others as well as their own. Only in this way can diversity become an integral feature of our organization, benefiting not only the individual but also the Public Health Service.

I know that I can count on you to join me in making the Public Health Service a leader in the area of work force diversity and support for the variety of the populations we serve.


Philip R. Lee, M.D.

NOT FOR WOMEN ONLY

A Guide toward an
Environment Free of Sexual
Harassment



U.S. Department of Health and Human Services
Public Health Service
Office of Equal Employment and Opportunity
Federal Women's Program
(Revised July 1992)

"NOT FOR WOMEN ONLY"

A Guide toward an Environment Free of Sexual Harassment

U.S. Department of Health and Human Services
Public Health Service
Office of Equal Employment Opportunity
Federal Women's Program
(Revised July 1992)

INTRODUCTION

Sexual harassment in the Federal Government is not simply inappropriate behavior, it is against the law. This brochure is designed to help you understand sexual harassment. It will inform you of your rights and responsibilities as an employee, manager, or supervisor in preventing and eliminating sexual harassment in HHS. It is important for all employees to be equipped to deal effectively with this issue. All employees should assist in Creating a productive, professional work environment in which everyone can work without sexual harassment.

SOME FREQUENTLY ASKED QUESTIONS

HOW IS SEXUAL HARASSMENT DEFINED?

Guidelines published by the Equal Employment Opportunity Commission (EEOC) state:

"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."

WHAT ARE SOME BEHAVIORS THAT MAY CONSTITUTE SEXUAL HARASSMENT IN THE WORKPLACE?

- * Unwelcome letters, telephone calls, or materials of a sexual nature
- * Unwelcome and deliberate touching, leaning over, cornering, or pinching
- * Unwelcome sexually suggestive looks or gestures
- * Unwelcome pressure for dates

- * Unwelcome sexual teasing, jokes, remarks, or questions
- * Exhibiting the behaviors mentioned above in exchange for favors pertaining to employment
- * Threatening to deny or limit employment opportunities if sexual advances are rejected

WHEN DOES SEXUAL FAVORITISM VIOLATE TITLE VII?

Sexual favoritism in the workplace is unfair as it adversely affects the employment opportunities of other employees — men and women. It is not, however, always a violation of Title VII. It is the EEOC's position that Title VII does not protect against isolated instances of preferential treatment based upon consensual romantic relationships. Instances of favoritism toward a "paramour (or a spouse, or a friend) is unfair, but may not be a violation of Title VII. Instances of individual preference, however, may violate other laws such as the anti-nepotism statute, and they are not proper regardless of whether Title VII is violated.

WHO ARE VICTIMS OF SEXUAL HARASSMENT?

Even though both women and men can be victims of sexual harassment, women are far more likely than men to be victims.

WHAT ARE OTHER CONSIDERATIONS REGARDING SEXUAL HARASSMENT?

- * The harasser does not have to be the victim's supervisor.
- * The harasser may be an agent of the employer, a supervisor who does not supervise the victim, a non-supervisory employee, or even a non-employee.
- * Depending on the circumstances, anyone may be considered a perpetrator or a victim of sexual harassment.

HOW DOES SEXUAL HARASSMENT DETRACT FROM THE WORK ENVIRONMENT?

EEOC stresses that sexual harassment creates an intimidating, hostile, and offensive working environment. The work environment should be pleasant and employees are entitled to safe working conditions. A wholesome environment promotes productivity. An environment where sexual harassment exists causes stress and discord among employees. It erodes employee morale and impedes productivity. It detracts from accomplishing the mission of the Department. Therefore, we must all strive to prevent and eliminate it.

WHO HAS RESPONSIBILITY TO PREVENT AND ELIMINATE SEXUAL HARASSMENT?

Everyone in HHS has the responsibility to prevent and eliminate sexual harassment.

- * The Department is responsible for acts of sexual harassment by its agents and its managerial/supervisory employees, regardless of whether the specific acts were unauthorized or even forbidden.
- * The Department is also responsible for its employees' acts of sexual harassment when its agents or its managerial/ supervisory employees knew or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.
- * The Department may be responsible for acts of sexual harassment by non-employees (e.g., contractors, workers, messengers, etc.) where its officials (or its managerial/ supervisory employees) knew or should have known of the conduct and failed to take immediate and appropriate corrective action.

WHAT IS EXPECTED OF A MANAGER/SUPERVISOR?

- * Take the initiative to maintain high standards of integrity in all official functions either on or off the worksite.

- * Ensure that your conduct as well as the conduct of your staff does not harass any employee, applicant, or individual in the workplace.
- * Inform employees that sexual harassment is prohibited conduct that will not be tolerated. Discuss the issue periodically at your staff meetings. Advise employees of their rights and responsibilities and the sanctions imposed for engaging in sexual harassment.
- * Inform employees of their rights to file a complaint or grievance.
- * Cooperate with investigators and others involved in resolving complaints or grievances, whether formal or informal.
- * Be supportive of a victim and refer the employee to the Employee Assistance Program when appropriate.
- * Provide sexual harassment prevention training for your staff.
- * Take appropriate action when sexual harassment occurs. Appropriate action will depend upon the circumstances, but may range from reprimands, to reassignments, suspensions, demotions, or removal from employment.

WHAT ARE YOUR RESPONSIBILITIES AS AN HHS EMPLOYEE?

- * Ensure that your conduct does not sexually harass any employee, applicant for employment, or any individual in the workplace.
- * Cooperate with investigators and others involved in resolving complaints or grievances, whether formal or informal.

WHAT SHOULD I DO IF I FEEL THAT I HAVE BEEN HARASSED?

- * Express strong disapproval to the harasser and inform the appropriate supervisor or manager of the incidents of unwelcome sexual advances.

- * Document incidents of sexual harassment if you are a victim and if you are aware at the time that it is occurring.
- * Seek counseling, as appropriate, from the HHS Employee Assistance Program, Equal Employment Opportunity counselors, union representatives, or from outside sources.
- * Talk with your friends and family.
- * Remember that you have avenues that you can take for redress if sexual harassment occurs. Included below are some actions that you can take:
 - file a complaint of discrimination through your Equal Employment Opportunity (EEO) office,
 - file a grievance through the negotiated grievance procedure (limited to bargaining unit employees represented by a labor organization),
 - report the matter to the Office of the Inspector General, and/or
 - file a complaint with the Special Counsel to the Merit Systems Protection Board.

The procedures above do not apply in every situation involving sexual harassment. Each of these procedures usually has definite administrative requirements and time limits. If an employee chooses one procedure, it may preclude the use of another procedure. Inquiries about procedures should be directed to your EEO manager, EEO counselor, union representative, or employee relations specialist.

WHERE IN THE LAW CAN I FIND THE AUTHORITY WHICH PROHIBITS SEXUAL HARASSMENT IN THE WORKPLACE?

The following laws, regulations, and executive orders address sexual harassment:

- * Title VII of the Civil Rights Act of 1964, 42 USC Sub-section 2000e,

- * Executive Order No. 11478, 34 CFR 12985 as amended by Executive Order No. 12106, 44 CFR 1053,
- * EEOC Procedural Regulations on Equal Employment Opportunity in the Federal Government, 29 CFR 1613,
- * EEOC Guidelines on Discrimination because of Sex, 29 CFR 1604,
- * Regulations governing proceedings before the Office of the Special Counsel to MSPB, 5 CFR 1250,
- * Code of Ethics for Federal Employees, Public Law 96-303, July 3, 1980, and
- * Health and Human Services Standards of Conduct, 45 CFR 73.

The following materials provide additional information on sexual harassment:

- * Sexual Harassment in the Federal Government: An Update, June 1988, A Report to the Congress of the United States by the U.S. Merit Systems Protection Board, and
- * EEOC Notice No. N-915-048, January 1990 and Notice No. N-915-050, March 1 990.

For further information contact the PHS Federal Women's Program Manager on 301-443-2810 (Voice/TDD).

IS THIS SEXUAL HARASSMENT?

CASE ONE:

A new position is created in the Office of Excellence. The Director of the office who is male, suggests to a female employee that she apply for the position. The employee is among the final candidates. During the interview the Director tells the employee that the job is hers if she agrees to have a sexual relationship with him.

Submission to or rejection of sexual advances cannot be a basis for employment decisions. Yes, this is an instance of sexual harassment.

CASE TWO:

Employee A has a calendar with sexually explicit language and drawings displayed in the office. Employee B finds the calendar offensive and complains to the Director of the office. The Director asks Employee A to remove the calendar.

An employer is responsible for acts of sexual harassment in the workplace. Therefore, the Director must ask employee A to remove the calendar. Notice that we do not know the sex of the individuals involved. The sex of the individuals is not relevant. While most of the victims of sexual harassment are women, men are also victims. The employee offended by the calendar could be a man or a woman. The employee displaying the calendar also could be a man or a woman.

CASE THREE:

A frequent visitor to the office is in the habit of telling "dirty" jokes to the women in the office. Some of the visits are purely social, but once in a while the visitor conducts business with the employees in the office. Several women complained to the director about the jokes. Some women specified that they are offended by the jokes because they feel that the visitor is a relative stranger. The office director talks to the visitor and requests that visits be limited to business and that no offensive jokes or languages be used during the visit. The visitor claims that the jokes were not offensive and that he was trying to be friendly with the women in the unit.

Employers can be held responsible for the acts of non-employees if they know of the acts and fail to take preventive or corrective action. While the visitor claims the jokes were not offensive, the fact that an employee found them to be so creates a hostile working environment. This behavior is not acceptable.

CASE FOUR:

Peter, a supervisor in the Office of Management, asked one of the female analysts to dinner a few months ago and she accepted. The analyst is not under Peter's direct supervision. They continued dating and are now engaged. The analyst has received some of the best assignments in her unit. Two other analysts have complained that the only reason she was given the assignments was because the supervisor is Peter's friend and he is doing a favor for his buddy.

While granting of special assignments because of friendships and relationships may be improper for other reasons, this behavior does not necessarily violate Title VII. Both men and women not given the assignments would be adversely affected.

CASE FIVE:

Mary started working three months ago in the Audit Department as the chief auditor. Joe is a junior auditor in the department. Mary is attracted to Joe. She always sits next to him in meetings and touches him at every opportunity. Mary has invited Joe to dinner at her apartment on several occasions. Joe has refused the invitations. Last Monday Joe complained to Mary's supervisor that he was made uncomfortable by her behavior and asked for her reassignment. Mary's supervisor ridiculed Joe and called him a fool for not accepting Mary's advances.

Every employee, male or female, has the right to a workplace free of sexual harassment. Repeated, unwelcome invitations constitute sexual harassment, as does unwelcome touching. Mary's supervisor has the responsibility for assuring a workplace free of sexual harassment. The supervisor cannot ignore the complaint, much less ridicule it.

CASE SIX:

Bob and Jane are clerks in the receiving department. Frequently, they joined each other during coffee or lunch

breaks. On one occasion they went to the movies together after work. One Friday six months ago, Jane found a note from Bob in her locker. In the note Bob declared his love for Jane and described fantasies he had about Jane. On the following Monday, Jane asked Bob to join her for coffee. Jane told Bob that she was not interested in the type of relationship that Bob described in his note. Jane asked that no more notes be sent. Jane mentioned that she was no longer comfortable with Bob and would prefer to limit their contacts to those of a purely business nature. Bob explained that he thought his advances would be welcome and promised not to send any other notes. He agreed to limit contact with Jane. Bob has kept his word.

It is possible for employees to resolve conflicts among themselves. If Bob does not keep his word, Jane should inform management of Bob's behavior. Management must take action to prevent the recurrence of the harassment.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Definition

SEXUAL HARASSMENT IS:

- "1. Explicit or implicit promise of career advancement in return for sexual favors (e.g., promotion, training, awards, details, lax time-keeping, lower standards of performance".
2. Explicit or implicit threats that the victim's career will be adversely affected if the sexual demands are rejected (e.g., non-promotion, poor performance appraisal, reassignment to a less desirable position/location.
3. Deliberate, repeated, unsolicited verbal comments, gestures, or physical actions of a sexual nature (e.g., touching, pinching, or patting another person.)."

Prohibition

SEXUAL HARASSMENT IS PROHIBITED UNDER HHS POLICY STATEMENT WHEN:

"Sexual harassment is an infringement of an employee's right to work in an environment free from sexual pressure of any kind."

AND UNDER THE DEPARTMENT'S STANDARDS OF CONDUCT WHEN:

Supervisors and managers take or refrain from taking personnel actions based on, or in exchange for, sexual favors or the refusal to engage in sexual conduct from an employee or applicant for employment.

Any employee takes or fails to take or recommend action on a grant or contract based on, or in exchange for sexual favors or the refusal to engage in sexual conduct from an employee or principal of a grantee or contractor.

An employee takes, or refrains from taking, any action in support of, or in opposition to, any individual who seeks to benefit from a relationship to the Dept. based on, or in exchange for, sexual favors or the individual's refusal to engage in sexual conduct."

FEDERAL AGENCIES DEFINITIONS/PROHIBITIONS

OFFICE OF PERSONNEL MANAGEMENT

Definition

SEXUAL HARASSMENT IS:

"Deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome".

Prohibition

SEXUAL HARASSMENT IS A PROHIBITED PERSONNEL PRACTICE WHEN:

"It results in discrimination for or against an employee on the basis of conduct not related to performance such as the taking or refusal to take a personnel action, including promotion of employees who submit to sexual advances or refusal to promote employees who resist or protest sexual overtures".

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Definition

SEXUAL HARASSMENT IS:

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment..."

Prohibition

HARASSMENT ON THE BASIS OF SEX IS A VIOLATION OF SEC/703 OF TITLE VII WHEN:

- "1. Submission to such conduct is made either explicit or implicitly a term or condition of an individual's conduct,
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."

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
29 CFR CHAPTER XIV
PART 1604 - GUIDELINES
DISCRIMINATION BECAUSE OF SEX

Sexual Harassment

- (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 incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.
- (c) Applying general Title VII principles, an employer, employment agency, 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 (or 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 (or 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.

- (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 employers sexual advances or request 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.

10 November 1980

PERSONAL BEHAVIOR CHECK LIST

Maintaining a work environment free from behavior which is simply sex role static, but which creates discomfort for member of the work group, is important for maximum productivity, team work, and high morale.

Examine personal behavior using the following check list:

1. Does this behavior contribute to work output and/or mission accomplishment?
2. Could this behavior offend or hurt other members of the work group subjected to it?
3. Could this behavior be misinterpreted as intentionally harmful or harassing?
4. Could this behavior be sending out signals that invite harassing behavior on the part of others?

THE RULE OF THUMB IS -- WHEN IN DOUBT -- DON'T

Circumstances where jokes or kidding around are inadvisable:

- * There is a power difference by rank/position.
- * There is a numerical imbalance between you and your group (by gender, race, age, etc.) and another individual involved.

CUES IN THE WORK ENVIRONMENT

INAPPROPRIATE SOCIAL BEHAVIOR	INAPPROPRIATE DRESS	SEXIST OR OBSCENE COMMUNICATIONS	MONITORING PERSONAL SPACE
Extensive discussion of personal life or problems	Clothes that are:	Constant suggestive comments	We have an individual bubble of space around us
Expecting to resolve your social life through work	- too tight	Frequent use of sexist language	Touching can express power and position over another person
Expecting or giving personal favors based on gender related issues	- Too revealing	Gender-related jokes	Standing too close crosses into personal space--it may be intimidating
Sexual overtures or flirting	- Too dressy for work	Language which targets or puts down any group including women	
	- too informal for work	Posters, girlie magazines, cartoons, etc.	
COMMENTS:			
We have gender at work. Sex is for your off-duty hours.	Inappropriate dress detracts from an individual's professional image. It may invite sexual attentions.	Men as well as women often find such language offensive. It is just as offensive to refer to "BROADS," "BINNOS," or "DYKES," as to refer to "WOPS," "SPICKS," "NIGGERS," or "KIKES."	You always have the right to ask not to be touched. It is a matter of personal choice which should be respected.

PRIMA FACIE CASE FOR

SEXUAL HARASSMENT

1. Employee belongs to a protected group.
2. Employee was subject to unwelcomed harassment.
3. The harassment complained of was based upon sex.
4. The harassment complained of affected a "term, condition, or privilege of employment" (psychological well-being is a term of employment).
5. Employer knew or should have known of harassment.

YOUR RESPONSIBILITIES AS A SUPERVISOR/MANAGER

Supervisors and Managers:

- have a multiple set of obligations for providing a psychologically comfortable, non-threatening work environment free from sexual harassment;
- should be knowledgeable about the regulations covering sexual harassment and able to advise employees about prohibitions against sexual harassment;
- should personally set an example for employees in their own behavior towards subordinates and peers;
- are responsible and held accountable for the action of subordinates
- should circulate any written statements of organization policy on the prevention of sexual harassment to all members of their units, discussing implications, as needed;
- advise employees that if any are found guilty of harassment by a court, they can be fined personally;
- should listen to the employee who complains of sexual harassment and try to determine what issue(s) the employee is seeking to resolve. For example, the employee may desire only to inform his/her supervisor about the problem, to obtain information about employees rights, or seek intercession;
- should consider taking the following specific steps to help resolve the problem:
 - * speak to the alleged offender privately about the organization's code of ethics and behavior, if appropriate, or about the discomfort and loss of productivity the offending behavior is causing;
 - * or call a meeting between the alleged harasser and the person who feels harassed to discuss and attempt to resolve the issue;
 - * or arrange for communications skills training for the employee or others who would profit from such training, with the intent of equipping those persons with skills to address more effectively sexually harassing behavior;
- should inquire of the employee who is subjected to behavior which may be considered sexually harassing if he/she considers the behavior to be harassing. The employee may need to be told he or she does not have to tolerate this kind of behavior;

YOUR RESPONSIBILITIES AS A SUPERVISOR/MANAGER CON'T.

- should be able to inform an employee who comes with a possible sexual harassment claim that there are several routes open which he/she can take in pursuit of that claim;
- should direct employees who may wish to file a complaint of sexual harassment to seek the advice and assistance of an EEO Counselor.



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

DEC 6 1993

A Special Message For All HHS Employees

The Department of Health and Human Services has, at the very core of our mission, responsibility for promoting the well-being of all Americans. The respect and dignity with which we treat each other here in the Department is crucial to the successful completion of this mission.

To foster an atmosphere of continuous improvement in our products and services, we must create an environment that fully utilizes the talents and capabilities of each and every one of us, from all backgrounds and at all organizational levels. And to do this, we must strengthen our commitment to a workplace that is free of discrimination or harassment of any kind -- a workplace where no one is denied the opportunity to contribute fully because of race, color, religion, gender, national origin, age, disability, or sexual orientation.

My personal commitment to diversity and equality is longstanding and non-negotiable. Quite simply, diversity and inclusion are prerequisites to excellence. I am determined that this Department will always be viewed as a model workplace, where everyone has an equal opportunity to serve.

Let me be clear, both discrimination and harassment are violations of the law as well as the policies of this Department. If you feel you have been the victim of discrimination or harassment, contact your local equal employment opportunity office, local union representative, or servicing personnel office. In addition, your local employee assistance program can help resolve workplace differences and counsel employees who feel they are being treated unfairly.

However, our commitment must go far beyond compliance with anti-discrimination laws. I am asking for the support of all managers, not just in their hiring and promotion decisions, but also in welcoming responsibility for nurturing and capitalizing on the very best that every employee has to give. And I am asking all employees to understand that a culturally diverse workplace is critical to our mission to serve all Americans.

Celebrating cultural diversity will help us better understand each other and our customers. And with better understanding comes a greater capacity to serve. That is our real goal, and it is one that I know we can achieve.

Donna E. Shalala

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SEX DISCRIMINATION

PUBLIC HEALTH SERVICE (PHS) EQUAL EMPLOYMENT OPPORTUNITY (EEO)

TRAINING COURSE

Purpose

This course is designed for PHS employees. The purpose of the training is to help you understand sex discrimination and sexual harassment (which is a form of sex discrimination) and your responsibilities as an employee in helping to eliminate sex discrimination in PHS.

The problems of sexual harassment in the work environment has received national media attention and been the subject of Congressional Hearings in 1979 and 1980. The Merit Systems Protection Board surveyed 23,000 Federal employees in 1980 and 13,000 in 1987. On both surveys over 40% of the women and 15% of the men responding reported having personally experienced sexual harassment during the twenty-four months prior to the survey. As a result of the 1979 hearings on the subject of sexual harassment, the Congress requested the Office of Personnel Management, the Equal Employment Opportunity Commission, and the Merit Systems Protection Board to take appropriate steps to deal with this particular form of sex discrimination. Those agencies, in turn, directed the Executive Agencies to take action. Sexual harassment is detrimental to productivity and is against the law. The Department of Health and Human Services (DHHS) issued a policy statement and directed that training be provided to supervisors/managers and other staff.

You will learn about DHHS's policy on sex discrimination and sexual harassment and the legal and regulatory bases prohibiting such conduct. You will see how action already available to you as an employee relate to identifying and dealing with situations of sex discrimination and sexual harassment. You will learn how to support and implement the DHHS and PHS policy.

All available data indicates that very likely some person with whom you work has been the victim of sex discrimination and sexual harassment. Even if you have never had a problem personally, it is important that all employees be able to deal effectively with the issue and assist in creating a productive, professional work environment where everyone is proud to work.

RELEVANT CONSTITUTIONAL AMENDMENTS

Amendment XIV (1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment XV (1870)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XIX (1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Equal Pay Act of 1963 which amended
The Fair Labor Standards Act of 1938

Minimum Wages

Sec. 6. (a) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise in commerce or in the production of goods for commerce, wages at the following rates:

(1) not less than \$2.65 an hour during the year beginning Jan. 1, 1978, not less than \$2.90 an hour during the year beginning Jan. 1, 1979, not less than \$3.10 an hour during the year beginning Jan. 1, 1980, and not less than \$3.35 an hour after December 31, 1980, except as otherwise provided in this section;

(d) (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex; Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

Title VII of Civil Rights Act of 1964

as Amended

Title VII prohibits generally a wide variety of discriminatory employment practices, including discrimination based on sex. Employers covered by Title VII are those with 15 or more employees who are not specially exempted by the statute. The statute prohibits not only those acts which are motivated by a discriminatory intent, but also those which, regardless of motive, have the effect of inhibiting the employment opportunities of a protected class, unless the employer demonstrates a business necessity for utilizing the complained of practices. Title VII is enforced by the Equal Employment Opportunity Commission, through administrative processes of voluntary charge resolution and through lawsuits. The Commission acts both on charges alleging individual instances of employment discrimination, as well as those which encompass class-wide systemic practices. The latter types of cases can be generated by the Commission.

The only express exception which Title VII allows for discriminatory employment practices is where sex (or religion or national origin) is a bona fide occupational qualification (bfoq) for the job in question. The legislative history of the Act and the EEOC guidelines make clear that this exception is to be interpreted narrowly and allows discrimination only where necessary for authenticity or genuineness. Courts, however, have been confronted with a variety of situations in which employers alleged that sex was a bfoq, though not necessary for authenticity or genuineness. The response fashioned by the courts has confirmed the EEOC's position that the exemption is to be interpreted very narrowly.

Here are some examples of discrimination at work. Read each one and identify specifically the discrimination involved.

1. The division chief addresses all his male branch leaders by "M." or their last name. Two of his five branch chiefs are women; he calls each by her first name.

Discrimination:

2. At a security activity in one section using classified documents on a routine basis, there are five men and four women who are the action officials. At close of business daily, the security officer must sign in all documents, lock safes, and hand carry the report two blocks to headquarters. Invariably the person is delayed departing work. Only the men rotate close-up security duties.

Discrimination:

3. In a budget shop there are five budget analysts: three men and two women. Each is responsible for preparing specific portions of the budget. Whenever a briefing is held for the comptroller, the supervisor allows only the males to accompany him.

Discrimination:

4. An organization requires that its employees go on frequent temporary duty involving travel. The executive officer tries to send only men on the trips to less desirable activities because he feels women need more comfortable accommodations.

Discrimination:

5. A group superintendent has developed a job interview format of all his foremen to use in interviewing job applicants for skilled craft positions. Since some shift work is involved, the interview sheet asks questions about marital status and number of children. An additional question for women requests information on child care arrangements.

Discrimination:

1978 AMENDMENTS TO CIVIL RIGHTS ACT OF 1964

Ban on Pregnancy Discrimination

The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: provided, that nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

EEOC: REGULATIONS AND GUIDELINES

PREGNANCY AND CHILDBIRTH

160.10 EMPLOYMENT POLICIES RELATING TO PREGNANCY AND CHILDBIRTH

- (a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of Title VII.
- (b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such any health or temporary disability insurance or sick leave plan policies in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.
- (c) Where the termination policy of an employee who is temporary disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

Diaz v. Pan American World Airways, 442 F.2d 385, 3 FEP Cases 337 (5th Cir.), cert. denied, 404 U.S. 950 (1971).

Challenge to Pan Am's policy of refusing to hire men for flight attendant positions. Company asserted that female sex was a BFOQ because (1) Pan Am's prior history of hiring male and female flight attendants proved that women were better suited for the job, in large part because of (2) genuine customer preference for female flight attendants. Further (3) the company presented expert psychiatric testimony to show that the psychological needs of air passengers are better met by female attendants, because of women's "nurturing" traits. The Circuit Court rejected all of these arguments holding that the test enunciated in Weeks v. Southern Bell Telephone & Telegraph Co., supra, that an employer cannot rely on a BFOQ defense unless he shows that he has reasonable cause to believe that all or substantially all of the members of the excluded class are unable to perform the job in question, had not been satisfied. The court explicitly affirmed EEOC guidelines which state that customer preference in and of itself is never a BFOQ. Finally, the court stressed sex can never be a BFOQ unless such a policy is necessary for the essence of an employer's business operations.

Dothard v. Rawlinson, 433 U.S. 321, 15 FEP Cases 11 (1977).

Challenge to Alabama (State) Board of Corrections' regulations which (1) excluded from the positions of correctional counselor all persons under 5'2" tall and less than 120 pounds; and (2) excluded from

stress firmly that the Court considered only the situation existing in Alabama state prisons and whether that situation justified the BFOQ. The Court found, for example, that the conditions in Alabama male maximum security were inhumane and barbaric; that all of the offenders were considered dangerous; that there was no effort to segregate prisoners according to the nature and seriousness of their offenses; and that, as a result, sex offenders, who constituted 20% of the prison population, were scattered throughout the units. The Court found because of this situation in Alabama prisons, women guards would be constantly subject to attack from sex offenders within the system, as well as other prisoners. The very "womanhood" of female correctional counselors made them inherently more vulnerable. Because the Court went to great lengths to explain why the peculiar situation prevailing in Alabama maximum security prisons rendered women unfit for the job of correctional counselor within these institutions, it is apparent that the ruling is limited to that particular factual situation. Indeed, the Court states:

There was substantial testimony from experts on both sides of this litigation that the use of women as guards in "contact" positions under the existing conditions in Alabama maximum security male penitentiaries would pose a substantial security problem, directly linked to the sex of the prison guard. On the basis of that evidence, we conclude that the District Court was in error in ruling that being male is not a bona fide occupational qualification for the job of correctional counselor in a "contact" position in an Alabama male maximum security penitentiary.

before a final decision is made. An Administration working group on equal pension benefits, chaired by Ryan, has identified three possible options for implementing an equal benefits requirement. The first approach would require "topping up" any future benefit payments to the level received by the favored sex. A Labor Department study of the short-term cost of this option, Ryan notes, found that it would cost approximately \$1.7 billion annually. The second option would be to substitute a sex-neutral approach for "topping up," under which future payments would have to be equalized, but an intermediate benefit level could be set. The third approach would require equalization only for benefits accruing in the future, through the use of sex-neutral tables, and would affect only future retirees' payments. Both latter approaches are relatively inexpensive when compared with the first option, Ryan says, pointing out that the annual costs of equalizing benefits for future retirees by using sex-neutral tables would be only 20 percent of the cost of topping up benefits for future retirees only.

Equal Pay Under Title VII

Two female language school directors who received lower pay than male directors can sue under Title VII, even though the employer's practice did not constitute a violation of the Equal Pay Act, the U.S. Court of Appeals at San Francisco decides.

The two female directors filed sex discrimination charges with EEOC, claiming that men performing substantially equal work to theirs were paid more and that the salary disparities violated Title VII. A federal district court ruled that the women could not bring equal pay claims under Title VII based on a comparison with male employees who worked in other schools. The court stressed that the women failed to show that the employer discriminated in the payment of wages to employees within a single establishment, a requirement for establishing an Equal Pay Act violation.

Reversing the lower court, the appeals court cites the U.S. Supreme Court's 1981 ruling in *County of Washington v. Gunther* (421:616), in which the Court held that sex discrimination claims could be brought under Title VII for unequal compensation without having to satisfy the EPA's equal work standard. The point of the *Gunther* decision, the court says, is that Title VII "covers claims of sex-based wage discrimination, whether or not those claims also fall under the Equal Pay Act." Emphasizing that Title VII is "much broader" in its coverage of sex discrimination than the EPA, the court concludes that evidence of the men's salaries at other schools may be used to support the complainants' charges of sex discrimination under Title VII, even though it would not support an EPA

claim. (*Dartelt and Melsen v. Berlitz School of Languages*, CA 9, 1983, 30 FEP Cases 1706)

Courting the Co-Worker

The inability of some male managers to take their female counterparts seriously or accept them as equals can lead to workplace communication problems, asserts Lynn Renee Cohen, an assistant professor of management at Fordham University. In the past, Cohen notes, both men and women condoned and even encouraged flirting on the job as a form of communication designed to lead to social interactions. However, with both sexes now occupying managerial roles, Cohen stresses, men and women must view each other as equal co-workers rather than as potential mates. While acknowledging that it is not easy to change the way people have been socialized, Cohen maintains that the workplace changes in role and status for women must be accompanied by changes in the verbal and nonverbal communication patterns that men and women use on the job.

In the "old days," when women were secretaries and men were managers, Cohen says, sex role-related nonverbal cues were used to reinforce the corporate hierarchy and the protective relationship between the superior male and subordinate female. While the cues "had survival value" for the old culture, Cohen notes, they are less useful as greater numbers of men and women function as equals. When women of equal or greater power and status than their male co-workers send traditional sex role-related cues, Cohen concludes, they are undermining the "new balance of power."

The communication patterns that most need change, according to Cohen, are the "courting" and "quasi-courting cues" employed by men and women, that often are referred to as "flirting." The exchange of courting and quasi-courting cues "is so habitual" as to be almost automatic between men and women, Cohen says. However, a problem arises, Cohen observes, when women in managerial situations give cues which can "undermine their business image" and trigger negative responses from male colleagues. By changing or minimizing their use of cues, Cohen maintains, women can gain better control over difficult situations at work and reduce the level of sexual harassment. (*Business Horizons*, Vol. 26, No. 1, Graduate School of Business, Indiana University, Bloomington, Indiana 47405)

Doctor's Day In Court

A Hispanic doctor whose proposal to manage a hospital's emergency room was rejected has the right to bring a Title VII suit even though he was not

(Continued on page 5)

("FEP Cases" references are to BNA's weekly Fair Employment Practices Cases)

BFOQ and Business Necessity Case

The Tri-State Fishing Corporation operates a fleet of 32 fishing vessels which travel from the coast of the northeast to the Outer Banks of North Carolina fishing for salt water catch which are later processed for retail sale. The vessels are large with ice-holding capacity sufficient to allow the ship to remain at sea for the entire nine day trip from departure point at one end of the coast to arrival at the other end of the coast.

Alice Toklas and Amy McPherson applied for jobs as deck hands on the Tri-State fleet. Tri-State rejected them on the basis of their sex, alleging both that sex was a BFOQ and that maintaining an all male crew was a business necessity. In support of their position, Tri-State offers the following:

1. The position of deck hand requires lifting up to a 300 pound fish with a grappling hook from the water to a position some 4 feet above the deck, then lowering the fish into the hold without bruising it.
2. 55% of the crew on Tri-State fleet have been convicted of a crime involving physical violence or disorderliness and it is unsafe for women to be cooped up with them on the sea.
3. Each ship contains only one rest room and bathing facility. The bathroom has three urinals, one commode and an open shower.
4. All hands except officers sleep in one room below deck in bunks.

QUID PRO QUO

- ▲ **Supervisor - Employee**

HOSTILE ENVIRONMENT

- ▲ **Supervisor - Employee**
- ▲ **Employee - Employee**
- ▲ **Non-Employee - Employee**