

# **CWEALF Publications:**

## **Sexual Harassment In The Workplace**

### **Introduction**

Sexual harassment on the job is a form of sex discrimination. Although it is illegal and costly to both the employer and the employee, it persists as a problem for American workers. Women workers, in particular, may lose jobs, promotions and opportunities because of sexual harassment.

In this booklet, we define sexual harassment, explain the law, and suggest ways that managers, supervisors, and victims can rid the workplace of discriminatory harassment. We offer strategies that can prevent sexual harassment problems, from informal conflict resolution to formal grievance procedures and lawsuits. All cases of sexual harassment are serious and illegal. Like federal and state laws, the information in this booklet is gender neutral and applies equally to men and women.

### **What Is Sexual Harassment?**

Sexual harassment is a form of sex discrimination. It is unwanted sexual conduct that affects employment decisions such as whether to hire, fire or promote a worker, or the determination of wages and other work conditions. Sexual harassment can take the form of outright sexual demands in exchange for work benefits or the form of more subtle behavior that creates a sexually hostile environment.

Sexual harassment can include but is not limited to: sexual propositions or threats; lewd comments or jokes; unwanted or inappropriate touching such as patting, pinching or hugging; sexual gestures; use or display of pornographic materials (i.e., calendars and pictures); obscene noises or leering.

Sexual harassment is an abuse of power that is expressed sexually. It can occur between a supervisor and a subordinate, between co-workers, and between an employee and a customer or client. It is not an act of friendliness or flirtation. On the contrary, it is often used intentionally to embarrass, intimidate or humiliate the victim, sometimes for the purpose of forcing her or him out of a particular job or field of work. Often, sexual harassment is an expression of sexist stereotypes about, or hostility toward, women.

### **Some Facts About Sexual Harassment**

Because sexual harassment discrimination may be disguised as sexual flirtation, it is often difficult to identify and can be confusing for the victim. However, the consequences of sexual harassment, such as job loss or loss of productivity, as well as emotional and physical stress, are very real.

How widespread is sexual harassment?

A 1992 study by the National Organization for Women (NOW) showed that:

- Over 50% of American Women will experience some form of sexual harassment in school or their workplace.
- Women are 3 to 4 times more likely than men to be the victims of sexual harassment.
- A 1991 CWEALF study entitled For Ourselves And Our Daughters found that:
- 66% of Connecticut women victims were harassed by their supervisor or a manager in the company.
- The percentage of employment discrimination cases alleging sexual harassment is on the rise.
- In 1996, sexual harassment complaint filings with the Connecticut Commission on Human Rights and Opportunities (CHRO) represented 5.7% of all employment discrimination charges. In 1997, sexual harassment complaints represented 6.6% of all employment complaint allegations. In 1998, the number rose to 7% of all employment discrimination charges.

A 1997 Equal Employment Opportunity Commission study showed that females filed 88.4% of sexual harassment claims compared to 11.6% filed by males.

### **What does harassment cost the worker?**

A 1994 report by the national Council for Research on Women states that women are nine times more likely than men to quit a job because of sexual harassment.

The American Psychiatric Association recognizes sexual harassment as a severe stressor that may cause post traumatic stress disorder. The New York Governor's Task Force reports that one out of every two women will be sexually harassed sometime in her life.

The NOW study found that:

- 40% of the victims of sexual harassment left their jobs; and,
- 90% of the victims of sexual harassment were unwilling to take action against their harassers for fear of retaliation and loss of privacy.

The CWEALF study found that:

- 36% of women victims in Connecticut lost their jobs; 21% quit; 19% were fired or laid off; and 30% had to take sick leave.

### **What does sexual harassment cost the employer?**

Sexual harassment can be very expensive for the employer. In 1994, 44% of women surveyed in the federal workplace said that they had experienced some form of unwanted sexual attention during the preceding two years. That harassment cost the U.S. government about \$327 million in productivity losses, missed workdays and staff turnover, an increase of \$60 million since 1987.

As a result of sexual harassment charges resolved by the U.S. EEOC in 1993 the number of people and the awards received has increased. In 1992, 1,340 people won \$12.7 million. However, in 1993, 1,546 people won \$25.2 million in monetary benefits from their employers including back pay, remedial relief, damages, promotions and reinstatements. While the total number of individual beneficiaries had increased 15.4%, total monetary awards were up 98.3% in one year. In addition, in 1993, 8,164 people won non-monetary benefits from their employers, such as policy changes, training programs and other corrective steps to stop discrimination.

At one time, the Commission on Human Rights and Opportunities (CHRO) was able to award attorneys fees and damages for pain and suffering to successful complainants. However, in 1995 the Connecticut Supreme Court held that hearing officers did not have the authority to award attorney's fees or damages for emotional distress to successful complainants. *Bridgeport Hospital v. Commission on Human Rights and Opportunities*, 232 Conn. 91, 653 A.2d 782 (1995). At the time of this writing, there are proposals in the General Assembly to change the law and restore the power to CHRO hearing officers to award these remedies, but at present these remedies are not available.

### **Myths About Sexual Harassment**

Many myths place the blame for sexual harassment and the responsibility for ending it on the victim instead of on the harasser. Such beliefs may be held by both men and women. Sometimes, these myths make it more difficult for a person who is being sexually harassed to talk about it.

The following are illustrations of common misconceptions:

#### *Myth*

Some people ask for it. They invite sexual harassment by their behavior or dress.

#### *Fact*

This myth clearly places the blame on the victim, as though the harasser had no choice but to harass her or him. If a worker, male or female, dresses or behaves inappropriately in the workplace, standard methods of supervision and discipline can correct the problem. Sexual harassment is never justified.

Sexual harassment is an abuse of power and not a sexually motivated act. Women have reported that even when they intentionally dress in an unattractive manner they are still harassed. To complicate the issue, women in certain positions such as cocktail waitresses, are sometimes required to dress seductively in order to look nice for clients or customers. And although harassment is still illegal, they are blamed if they complain about it.

*Myth*

Some people have no sense of humor. They misinterpret behavior that is meant as a harmless joke.

*Fact*

There is nothing funny in being embarrassed or intimidated, especially in front of co-workers. There is a dramatic difference between a friendly workplace and one where workers are uncomfortable because of sexual innuendoes, pressure or touching. Sexual harassment undermines a person's ability to work. It is a frustrating and degrading experience.

*Myth*

A firm "no" is enough to stop a harasser.

*Fact*

Sometimes this is true. Some use their position to ignore a "no." In addition, some people still believe the outdated notion that when a person says "no" they really mean "yes."

*Myth*

Some people will make a false charge of sexual harassment to get even or get ahead.

*Fact*

Filing a sexual harassment complaint can be a time-consuming and embarrassing process that is sometimes met with hostility and disbelief. While false charges are possible, they are rare. The standard protections afforded an accused individual under the laws prohibiting employment discrimination should protect people against false or frivolous claims.

*Myth*

People who remain on the job after being sexually harassed have no right to complain. Maybe they really enjoy it.

*Fact*

There is no joy in being the victim of sexual harassment. People remain at work because they need to work, want to work, and lack opportunities, which might make it easier for them to switch jobs. No one should have to give up her or his job because of harassment.

*Myth*

Women should leave the workforce if they can't stand the pressure.

*Fact*

There is no reason to tolerate sexual pressure that creates a discriminatory workplace. Today, women account for nearly half of the American workforce. This indicates both that women workers are important to our economic system and that they can withstand job pressures.

*Myth*

Men cannot be sexually harassed.

*Fact*

Although women make up the majority of victims of sexual harassment, it is possible for men to be harassed as well. However, men are less likely to report incidents of harassment. All these myths incorrectly place the blame for sexual harassment on the victim. People sometimes remain silent rather than report their experiences because myths such as these make them feel guilty, ashamed, embarrassed, or responsible for the harassment.

## **Laws Prohibiting Sexual Harassment**

## **Connecticut Law**

Connecticut and federal laws consider sexual harassment in the workplace to be illegal sex discrimination.

### Connecticut Human Rights and Opportunities Act

Connecticut law, C.G.S./46a-60(8), prohibits sex-based employment discrimination and specifically forbids employers and those acting for employers to sexually harass employees at work. This law applies to all public employers, labor organizations, employment agencies, and private employers with 3 or more employees. It prohibits discrimination in hiring, firing, or in the terms or conditions of employment, such as compensation, training, promotions, fringe benefits and seniority, and membership in labor unions. Under Connecticut law, illegal workplace sexual harassment is any unwelcome sexual advance or request for sexual favors, or any conduct of a sexual nature when:

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

In addition, C.G.S./46a-54(15)(A) requires an employer having 3 or more employees to post in a prominent and accessible location information concerning the illegality of sexual harassment and the remedies available to victims of sexual harassment.

The same law also requires employers with 50 or more employees to provide to all supervisory employees two hours of training and education on the state and federal laws pertaining to sexual harassment, including the remedies available to victims. CWEALF can provide this training at your workplace.

Sexual harassment can constitute assault, battery, or intentional infliction of emotional distress, depending on the behavior and the damage this behavior causes the victim. A victim should consider whether these claims should be brought along with an anti-discrimination claim under Connecticut and federal law.

## **Federal Law**

### Title VII of the Civil Rights Act of 1964 (Title VII)

A federal law, Title VII of the 1964 Civil Rights Act [42 U.S.C./2000e-2(a)(1)], also prohibits sex-based employment discrimination in the workplace. The word *sex* has been interpreted to include sexual harassment. This law applies to public and private employers, including employment agencies, with 15 or more employees, and labor unions with 15 or more members.

### Civil Rights Act of 1991

In 1991, Title VII was amended. The Civil Rights Act of 1991, [42 U.S.C./1981a] expanded certain rights of employees who are subjected to discrimination, including sexual harassment, in the workplace. One of the most significant provisions of the law is that it allows an employee, who proves that she/he is the victim of workplace discrimination, to recover compensatory damages (i.e., additional damages for pain and suffering) and punitive damages (i.e., damages to punish a non-governmental employer, if the employee proves that the employer acted with malice or reckless indifference), in addition to backpay, reinstatement and attorneys fees.

The law did place caps on the amount of compensatory or punitive damages that an employee who proves discrimination may recover. This maximum amount varies depending upon the size of the business with a maximum amount of \$50,000 for the smallest businesses and up to of \$300,000 for the largest. To determine the number of employees that a company has, the court looks at 20 or more calendar weeks in the current or preceding calendar year. The person bringing suit also has the right to ask for a jury in any case where compensatory or punitive damages are being sought. However, the jury cannot be told the maximum amount of damages that are available.

## Equal Employment Opportunities Commission Guidelines

In 1980, the Equal Employment Opportunity Commission (EEOC), the federal agency responsible for investigating Title VII violations, issued Guidelines to help interpret the laws against discrimination, 29 C.F.R./1604.11(c)(d). Like the Connecticut law, these Guidelines provide that unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature are illegal sexual harassment when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of such conduct by an individual is used as the basis for an employment decision affecting such individual; or
- conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment, 29 C.F.R./1604.11(a).

The EEOC has also issued Guidelines interpreting other aspects of Title VII. Although the EEOC Guidelines are not law, courts often look to them for guidance, and these Guidelines have been cited by the United States Supreme Court in a number of sexual harassment cases. Further explanation can be found in the Policy Guidance issued by the EEOC in 1990, which addresses a wide range of issues involving sexual harassment.

### **Time Limitations**

In order to bring a complaint in state or federal court, both state and federal law requires that a complaint must be filed first with the administrative agency responsible for addressing these complaints.

(NOTE: There is presently a dispute among Connecticut's lower courts regarding whether a person seeking damages for pain and suffering must first file with the state agency, the Connecticut Commission on Human Rights & Opportunities, since that agency cannot award those damages. However, the law on this issue is still developing. To fully protect your rights you should file with the CHRO regardless of the damages you are seeking. Additionally, both the state and federal laws contain strict and detailed time limitations for filing a complaint. If you fail to comply with these time limitations, you may lose your right to sue your employer. A general discussion of the time limitations for filing a complaint of discrimination can be found on pages 21-23 of this publication.)

### **How The Courts Apply Sexual Harassment Laws**

State and federal laws make sexual harassment illegal but do not outline many details which we need to know about the issue of sexual harassment. For example, how is sexual harassment defined? When is an employer responsible for workplace sexual harassment? Court cases provide some answers to these and other questions.

### **Definition of Sexual Harassment**

Sexual harassment can take many forms. It can include sexual demands or comments accompanied by threats to your job, verbal remarks or suggestions, obscene jokes, pinching, patting, squeezing, hugging, kissing, distributing or displaying pornographic materials, and leering. Not every instance of sexual harassment will amount to a violation of the law. Sexual harassment, as defined by law must:

- be of a sexual nature;
- be unwelcome by the victim;
- affect the victim's pay, benefits or work conditions, or work environment; and,
- in some circumstances, must be severe or pervasive.

There are two types of illegal sexual harassment:

#### *Quid Pro Quo Harassment*

The first type of harassment is referred to as quid pro quo (meaning this for that) harassment. This is harassment in which a job or job benefit is directly linked to acceptance of a sexual behavior or demand. In other words, this is the type of harassment in which a worker is fired or denied a raise or promotion because she or he refuses a sexual demand or objects to a sexual behavior. Quid pro quo sexual harassment is most

often perpetrated by the victim's supervisor or a higher level employee. Supervisors typically have the power to give poor work assignments and job evaluations, deny promotions and raises, threaten demotions and transfers and ultimately fire the worker. In a case of quid pro quo harassment, the employer is strictly liable for the harassment. Under Connecticut law, the supervisor may also be held personally liable for his or her conduct; this is not the case under federal law where only the employer is held liable.

#### *Hostile Environment Harassment*

The second type of sexual harassment is called hostile environment harassment. This is when unwanted sexual conduct creates an offensive, uncomfortable or discriminatory work environment. It is not necessary to show a direct and tangible job or economic loss, such as a denial of a promotion or a raise. Instead, a pattern of behaviors such as: derogatory jokes or comments, unwelcome touching, or unfulfilled threats about a job/promotion made in connection with requests for sexual favors or sexual comments, could constitute illegal sexual harassment. However, a worker must always show that the unwelcome sexual conduct was severe or pervasive enough to alter her or his working conditions and/or create an abusive working environment. See *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 64 (1986).

#### **What is unwelcome hostile environment harassment?**

Sometimes, it is obvious, such as when a person indicates that the conduct is offensive or refuses to participate. Other times it is not so obvious, such as when an offended employee engages in such conduct such as sexist jokes or appears to participate, but in fact is doing so only to be accepted by her or his co-workers. Sometimes an employee who tolerates such conduct eventually finds it offensive, but has been unwilling or unable to express her or his true feelings about the conduct.

#### **What makes sexual harassment severe or pervasive?**

Evaluating whether the conduct is severe or pervasive enough to alter an employee's working conditions and/or create an abusive working environment is usually determined on a case-by-case basis. However, case law has provided substantial guidance. For example, courts have held that a single act of rape or attempted rape is severe and creates a hostile environment. In determining whether the conduct is pervasive courts look at all the circumstances: the frequency of discriminatory conduct; the extensiveness of the conduct; its severity; whether it is physically threatening or humiliating or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.

Further, in 1993, the United States Supreme Court set out an objective and subjective standard to evaluate whether an environment is hostile. Courts must now look to whether a reasonable person would find the environment offensive and whether the victim did in fact find it offensive. See, *Harris v. Forklift Systems, Inc.* 510 U.S. 17, 114 S. Ct. 367 (1993). Also an employee need not prove as part of a hostile environment claim that the conduct seriously affected (her) psychological well-being or that it led her to suffer injury. *Id.*

Since 1993, other courts have clarified the test further and are moving towards a reasonable woman standard. The Second Circuit Court of Appeals (which interprets and applies federal law in Connecticut) has reinforced the importance of considering the totality of the circumstances, including the subjective sensibilities of the victim, and whether a reasonable woman would find her working conditions altered by her supervisor's sexist conduct and inappropriate circumstances. The Second Circuit also includes taking the victim's ethnicity and culture into consideration in determining whether the environment was offensive and hostile to the victim. See, *Torres v. Pisano*, 116 F. 3d 625 (2nd Cir. 1997) and *Reed v. Lawrence*, 95 F. 2d 1180 (2nd Cir. 1996).

Further, the Supreme Court recently expanded the definition of sexual harassment by holding that same-sex sexual harassment is actionable. See, *Oncale v. Sundowner Offshore Services, Inc.*, 66 U.S.L.W. 4172 (1998).

The requirements for proving a claim of sexual harassment vary somewhat among the courts. In general, to state a claim of sexual harassment, you must show:

- that you belong to a group that is specially protected by the law;
- that you were subjected to unwelcome sexual conduct, i.e., unwelcome sexual advances or remarks;

- that the harassment was based on sex (and not, for example, on a poor job performance or attendance record) or was of a sexual nature;
- that the harassment affected a term, condition or privilege of your employment;
- in a quid pro quo case that, in at least one instance, the granting or withholding of a job benefit depended on acceptance of unwelcome sexual conduct;
- in a hostile environment case, that the harassment was so severe or pervasive that it altered the work conditions;
- that the employer is legally responsible for the harassment.

### **Employers Legal Responsibility**

Employers are responsible for an employee s/supervisor s action when the employee/supervisor is acting on behalf of, or as an agent for, the employer. However, in cases of sexual harassment, a distinction between quid pro quo cases and hostile environment cases is made when considering whether the employer should be legally liable for the conduct of its employees. In quid pro quo cases where a victim's actual job benefits are affected, the employer is strictly liable for the actions of his or her employees, which means that an employer is responsible for the harassment whether or not the employer knew of the harassment. In hostile environment cases, an employer's liability is assessed differently. The United States Supreme Court recently issued two decisions, *Burlington Industries, Inc. v. Ellerth*, no.97-569, 1998 WL 336326 (U.S., June 26, 1998) and *Faragher v. City of Boca Raton*, no. 97-282, 1998 WL 336322 (U.S., June 26, 1998), clarifying the standards for holding an employer liable for hostile environment sexual harassment. An employer can be held strictly liable for a hostile environment perpetrated by a supervisor if the victim has suffered a tangible employment action which is significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing significant change in benefits.

Where an employee has experienced a hostile environment but has not suffered a tangible employment action as described above, an employer can still be held liable for the harassment. However, in such a situation, the employer can avoid liability by showing that,

- it used reasonable care to prevent and correct the harassment; and
- the victim unreasonably failed to take advantage of any preventive opportunities provided by the employer.

Therefore, when the employee has not suffered a tangible employment action, the employer will avoid responsibility for the harassment only if it proves that it used reasonable care to prevent and correct the harassment and the victim was unreasonable by not using its preventive opportunities. Remember, where the victim has suffered a tangible employment action, the employer is strictly liable for the supervisor's conduct.

The *Burlington Industries* case is a good example of what the court meant by all these terms. In that case, the victim alleged that a mid-level supervisor was harassing her and threatening her job. The supervisor made repeated comments about her clothing and her body, even expressing concerns about her chances for a promotion because she was not loose enough and did not wear short enough skirts. Despite these comments, the supervisor did not carry out his threats; the victim still received the promotion. The Court held that even in cases where an employee suffers sexual harassment but does not suffer a tangible employment action, such as this one, the employer can still be held liable for the supervisor's actions. However, the Court also held that the employer could protect itself from this liability if it could prove that it had taken reasonable steps to prevent the harassment and the victim had unreasonably failed to protect herself from the harm.

In *Faragher*, the victim was one of a group of women working as life guards for the City of Boca Raton who were continuously harassed by two supervisors over a period of years. The victim did not file a formal complaint but argued that the harassment was so pervasive that the City knew or should have known about it. During this time, the City had created a sexual harassment policy, however that policy was never distributed to the beach employees.

The Court accepted the lower court's determination that the harassment was pervasive and held that the City was liable for the actions of the supervisors even though the victim had not filed a complaint. The Court also determined that by not having a clear policy or ensuring that it had been given to everyone, the City had not acted reasonably and, therefore, it could not raise the affirmative defense that the Court had created.

Since the Burlington and Faragher decisions are very new as of this writing, their full impact and practical effect are not yet known. This may mean that if you prove a claim of hostile environment sexual harassment against a supervisor, your employer can be held liable for that harassment. However, if you cannot show that you have suffered a tangible employment action, your employer may not be liable for the supervisor's conduct, if it can show that:

- it exercised reasonable care in preventing harassment; and
- your failure to complain or take other action was unreasonable.

As before, an effective, user-friendly, widely disseminated complaint procedure and the employee's ability to use it are important factors in whether an employer will be liable for sexual harassment.

If your complaint of sexual harassment is against a co-worker, the court will likely apply a knew or should have known standard. What this means is that, in a hostile environment sexual harassment case, an employer can be held liable for sexual harassment engaged in by a co-worker, if the employer knew or should have known about the harassment and failed to take prompt action to remedy or prevent such conduct. The courts look to the EEOC Policy Guidance in determining a proper complaint procedure. However, if you fail to use such a procedure, and your employer fails to learn about the harassment by some other means, your employer may avoid being legally responsible for your co-worker's actions. Consequently, it is very important to be familiar with your employer's complaint procedure. If you choose not to use that procedure, your employer may be able to argue that it cannot be held liable for your claim. It is up to your employer, however, to show that your decision not to use the procedure was unreasonable. Complaints against persons who are not agents of the employer, such as a customer in a restaurant who harasses a waitperson, can be pursued against the customer as an individual under various laws. However, your employer might be held liable for that conduct if she/he knew or reasonably should have known of the harassment caused by the customer and refused to take reasonable action to protect the employee. Note that there may be limitations on what the employer actually can do, since the customer or client is not in his employ.

### **Employer Protections and Precautions**

The best way for an employer to stop sexual harassment is to prevent it. By instituting written policies, the employer can protect employees from the emotional anguish associated with sexual harassment and save the organization costly and time-consuming legal problems. Additionally, since an effective grievance procedure may now shield an employer from liability entirely, employers have more incentive to adopt such procedures and employees have more reason to use them.

An effective sexual harassment policy should clearly state that sexual harassment is illegal and will not be tolerated, and specify sanctions for violators. The policy should also establish effective complaint procedures that specifically address sexual harassment and are directed at expeditiously resolving both hostile environment and quid pro quo sexual harassment. Such a policy, coupled with education and awareness programs, can foster a work atmosphere free from sexual harassment.

The following are steps an employer should take:

1. Create a grievance procedure to quickly and effectively resolve sexual harassment complaints;
2. Tailor this grievance procedure to the specific workplace. The employer should not adopt a cookie-cutter procedure, but should adopt one that will truly work in the specific workplace;
3. Include in the grievance procedure multiple entry points for the complainant that is, identify a number of different people to whom employees can complain, a clear time table, and adequate due process protections for all parties.
4. Publish and regularly distribute a written policy against sexual harassment that includes:
  - a clear definition of sexual harassment including both hostile environment and quid pro quo sexual harassment, and some examples of what the definitions encompass;

- provisions barring sexual harassment by management, supervisors, co-workers and non-employees over whom the employer exercises control;
  - an explanation of the grievance procedure; and,
  - the possible sanctions that may result for violation of the policy.
5. Provide training and information to all levels of management, and if possible, all employees, about preventing and stopping sexual harassment (CWEALF can provide you with training programs);
  6. Provide training and information to all employees about the grievance procedure;
  7. Have well-trained people administer the complaint procedure and conduct the investigations;
  8. Investigate sexual harassment complaints promptly and thoroughly;
  9. Take swift corrective action on sexual harassment complaints as soon as they are investigated;
  10. Document all sexual harassment claims, investigations and corrective actions;
  11. Have a very specific policy that retaliation for having filed a complaint will not be tolerated.

## Help For the Victim

### What To Do If You Are Sexually Harassed At Work

First of all, remember that you are not alone. It is often helpful to discuss what your options are in confronting sexual harassment. You can contact CWEALF for support, to discuss your rights, to locate other organizations that offer support, and to get referrals to attorneys. You can also contact the Permanent Commission on the Status of Women (PCSW), a commission of the state legislature. (See Resources.)

#### *Informal and Internal Measures*

First, consider the informal options you have that do not require legal actions.

- Try to get the harassment to stop.
- If you can, attempt to confront the harasser. Let him/her know that his/her actions are unwelcome and will not be tolerated. It is best if this can be done at the time of harassment. If it is necessary to confront him/her after the incident, do not do it alone. Have someone with you for support and to act as a witness. Be firm, and make it clear that you expect the harassment to end.
- Document everything.
- You should note when and where the harassment occurred, who harassed you, what happened, your response, and if there were any witnesses. Such documentation is extremely useful should you later decide to file a complaint.
- Talk to other employees in your work area.
- If one person is being harassed, chances are others are also being harassed. By talking to others, you can gain additional information as well as support. A complaint becomes stronger with numbers.
- Write a letter to the harasser.
- Sometimes face-to-face confrontation does not work or is not possible. The letter should be straightforward and consist of two specific parts:
  - A detailed description of the facts, including what happened, with dates. This section can sometimes be very long.
  - A description of what you would like to have happen next (e.g. I would like our relationship to be purely professional from now on.) I would like you to withdraw my last evaluation and work out a way to evaluate me fairly.)

The letter should be delivered or mailed to the harasser personally. If it seems necessary, bring a witness or a supporter with you. Keep a copy of the letter. If the harassment does not stop, you have documentation of what you believe has been happening and proof that you tried to resolve the situation with the harasser.

If the harassment continues, do whatever you can to complain within your company.

With the Supreme Court's new interpretation of sexual harassment, this is crucial. Here are some tips:

- Examine your company's personnel policy to see what rights you have and what kind of grievance procedure exists.

- Put your complaint in writing and send copies to the appropriate person or people in your company. **KEEP A COPY FOR YOURSELF.** Be specific in your complaint and request a written reply.
- Review your personnel file and job evaluations. (This is a good work practice anyway.)
- Get copies of anything that concerns your work performance. Connecticut law guarantees your right to see and receive copies, at reasonable cost, of anything in your personnel file.
- Note if there were any witnesses to the harassment. If someone agrees to speak on your behalf, try to get that agreement in writing.
- If you get an unsatisfactory response from the supervisors, complain to the Personnel Department. Put your complaint in writing, keep a copy, and request a written reply. Once informed of the harassment, your company is legally responsible to end it.  
Try to remain at your job. It provides leverage for resolution of your complaint, and you do not want unlawful conduct to drive you out of the workplace.
- If you are a union member:
- Check your union contract. Sexual harassment may also be a contract violation, in addition to being a violation of state and federal law. Look for anti-discrimination and/or unfair treatment clauses, and see what kind of grievance procedure exists.
  - Go to the shop steward (delegate) and ask that she/he have a talk with the foreman/woman or co-worker involved, off the record.
  - If that doesn't help, the shop steward should go to management and inform them of the sexual harassment and remind them of its illegality under state and federal law. Consider a group grievance if other people are involved.
  - If your union steward is not sympathetic, try your union's civil rights committee, or other union officials. If you are not satisfied, check your union constitution and bylaws for an internal appeals procedure. As a last resort, and only with support from co-workers, consider a complaint against your union based on duty of fair representation, or under discrimination law.

### **Formal Legal Measures**

If you are employed by a company with fewer than 15 employees but that has at least 3 employees, your legal recourse is governed solely by Connecticut state law. If your company has 15 or more employees, you are protected by both state and federal laws. Under both federal and state law, discrimination victims have a right to sue employers in court. As explained earlier, you must first file with the Connecticut Commission on Human Rights and Opportunities (CHRO), the state agency responsible for enforcing state anti-discrimination laws, and the Equal Employment Opportunity Commission (EEOC), the federal agency responsible for enforcing federal anti-discrimination laws.

### **What remedies are available to victims of sexual harassment?**

If you bring a sexual harassment complaint and are successful, you may be awarded back pay, reinstatement, promotion, seniority, hiring, pension or other benefits that you were illegally denied. You may also receive damages for pain and suffering and punitive damages under the Civil Rights Act of 1991. However, as discussed earlier, the CHRO cannot award damages for pain and suffering or attorneys fees. Only a court can. Whether or not you are entitled to these damages under either or both statutes will be determined on a case-by-case basis.

## **Filing Complaints With the CHRO and EEOC**

### **Deadlines**

Federal and state complaints, including affidavits, must be filed with the CHRO within 180 days of the discriminatory act, C.G.S. /46a-82(e). Courts have taken different views on when an act of discrimination occurs and thus when the 180-day period begins. In general, the date on which you knew or should have known that you were the victim of discrimination starts this time period. For example, suppose your supervisor tells you on January 1 that you will be fired on February 1. If you believe on January 1 that the decision to fire you is because you refused his unwelcome sexual proposition, the 180 days begins to run on January 1. Thus, you will have 180 days from January 1 to file your complaint with the CHRO.

If you do not file your state and federal complaints with the CHRO, and 180 days have passed since the act of sex discrimination, and your employer has 15 or more employees, then you can still file a complaint. However you must now file it with the EEOC within 240 days of the discriminatory act. If you do not file within this time period, you will lose your opportunity to sue your employer in federal court. Because the time limitations for filing a complaint of discrimination are strictly adhered to, if you believe that you have been the victim of sexual harassment, you (or your attorney) should promptly file a complaint with the CHRO, according to the following procedure. Remember that the deadlines for filing at CHRO, which are discussed below, do not stop even if you have filed an internal complaint or a union grievance. So, if the internal procedure is taking too long, you may have to file with CHRO in order not to miss the CHRO deadline.

During the 1998 session of the legislature, the Connecticut General Assembly passed a bill revising the present CHRO procedure and amending many of the time requirements. The new legislation became effective July 1, 1998 and applies to cases filed after that date. For cases filed prior to that date, the deadlines are slightly different. You should contact the CHRO if you have any questions.

### **No Retaliation**

The law forbids retaliation against you by your employer. Retaliation means that your employer penalizes you or further discriminates against you because you have filed a complaint or otherwise opposed a discriminatory employment practice.

For example, an employer cannot retaliate against you by changing your work assignment or hours, suddenly giving you a poor work evaluation for no apparent reason, or firing you. If this happens, contact the CHRO and add this to your complaint or file a new complaint.

### **The Filing Process**

- Make your CHRO appointment for a date before the 180-day period as described above.
- Remember that 180 days is not six months.
- When you go to the CHRO office, a complaint officer will interview you. If the complaint officer determines that a state or federal law against discrimination applies in your case, your complaint will be recorded in an affidavit. You must swear to the accuracy of the affidavit and sign it.
- The CHRO is required to provide notice to your employer within 20 days after you file your complaint of discrimination, or after you file an amended complaint. This means that a copy of your complaint will be delivered to your employer to notify it that you have contacted the CHRO, filed a complaint, and that the CHRO process has begun.
- After receiving notice, your employer will have 30 days in which to file an answer to your complaint. Your employer can request one 15-day extension of time in which to provide its answer, and the CHRO can grant this request if your employer demonstrates good cause for the extension. If your employer does not answer your complaint after receiving notice, the CHRO can issue a default judgment against it. This means that a judgment will be issued against your employer because of their failure to respond to your complaint, P.A. 98-245/2(a). Otherwise, while it is seeking a response from the employer, the CHRO may also send your employer a series of written questions and requests for information, known as Schedule A's (which do not require sworn answers) for your employer to answer.
- After your employer has submitted an answer, you will have an opportunity to provide comments on that answer as well as any additional information. If you do provide comments, you must submit them within 15 days of receiving your employer's answer, Conn. Regs. /46a-54-67(b).
- Within 90 days of the filing of your employer's answer to the complaint, the CHRO will review your file. Your file should include: the complaint, your employer's answer and responses to the commission's requests for information, if any, and your comments to the answer. This process is called merit assessment.
- Your case will be dismissed at merit assessment if the CHRO determines that it fails to state a claim for relief, is frivolous on its face, or there is no reasonable possibility that an investigation will result in a finding of reasonable cause. If your complaint is dismissed at this stage, you can submit a request for

reconsideration, but you must do so within 15 days of notification of the dismissal. Within 90 days of the dismissal, the CHRO will reject or grant reconsideration, P.A. 98-245/2 (b) & (e).

Under the new law, if your case is rejected at this stage, and you request reconsideration, which is also rejected, you are not able to obtain a release and bring your case into court. Your only remedy is to appeal the CHRO decision in Superior Court, under the procedure set out in C.G.S. §4-183. However, if your case is dismissed at this stage, and you do not request reconsideration, you can obtain a release and, within 90 days, you can file your claim in court. P.A. 98-245/3.

### **The Investigation**

If your complaint passes merit assessment, it will be assigned to an investigator. The investigator may gather information in a variety of ways. The most common method is for the investigator to conduct a fact finding conference. At the fact finding conference, the investigator will interview you, your witnesses, your employer's representatives and other people at your workplace that the investigator determines are relevant to your complaint, including your supervisor and any other witness to the alleged discrimination. The investigator may also request that you and/or your employer bring certain documents to the conference.

Additionally, the investigator can require that your employer answer written questions known as interrogatories that must be answered under oath. The investigator can issue a subpoena, which is a written order that requires people to testify or submit documents requested by the CHRO. An employer is required to provide information requested in interrogatories and to respond to subpoenas. A default judgment can be issued against it if it fails to comply with these requests.

During this stage of the investigation, the investigator will also conduct a mandatory mediation session with you and your employer in an attempt to settle the case. If you fail to attend a mandatory mediation without good cause, your complaint could be dismissed. Additionally, your complaint could be dismissed if your employer has eliminated the discriminatory practice, taken steps to prevent the occurrence of such a practice in the future and offered you full relief, such as reinstatement and repayment of your lost wages, even if you refuse that relief.

At the conclusion of the investigation stage, the investigator reaches a finding of either reasonable cause or no reasonable cause. The legislature has defined reasonable cause as a bona fide belief that the material issues of fact are such that a person of ordinary caution, prudence, and judgment could believe the facts alleged in the complaint. P.A. no. 98-245/2(c).

Before the investigator issues a final decision, both you and your employer will have an opportunity to provide oral or written comments on the investigator's proposed finding. The investigator will consider these comments in making the final decision. The investigator's finding must be in writing and must be issued no later than 190 days from the date that merit assessment was completed. (An investigator can request up to two three-month extensions for good cause.) P.A. no. 98-245/2(d).

### **A Finding of no Reasonable Cause**

A finding of no reasonable cause means that the investigator did not find enough evidence to support your complaint. If the investigator makes a finding of no reasonable cause, she/he must identify, in writing, the facts that the decision is based on. A finding of no reasonable cause means that the CHRO has dismissed your complaint. However, you can request reconsideration of the investigator's decision. You must make your request no later than 15 days from the issuance of the decision. The CHRO should make a decision within 90 days of your request. P.A. 98-245/2(e).

After the commission issues a finding of no reasonable cause or rejects a request for reconsideration, you can appeal that determination to Connecticut Superior Court. You must file an appeal within 45 days and follow the procedure outlined in C.G.S. §4-183.

The legislature's recent changes to the CHRO law also revised the procedures for bringing a claim in state court, if you have not yet received a decision by the CHRO. Under the new law, at any time within 210

days from the date of the filing of your complaint, you and your employer can agree to request a release which allows you to bring your case in court. Additionally, the law provides that, after your case has been pending with the CHRO for 210 days, you, but not your employer, can request a release. (See the section on filing in court.) If you choose to request a release and file your claim in court, you will probably need the assistance of an attorney. CWEALF can refer you to an attorney.

#### **A Finding of Reasonable Cause**

If the investigator finds reasonable cause, you must decide whether to proceed with a hearing at the CHRO or file an action in court. If you decide to stay at the CHRO, the investigator must try to resolve your complaint and eliminate the discriminatory practice. They must do so within 50 days of issuing the reasonable cause finding. P.A. 98-245/2(f). This process is called conciliation. Some of the remedies discussed may include returning you to your job, awarding you back pay or advancing you to a new position. If the investigator cannot resolve your complaint by conciliation, the CHRO will proceed with a public hearing.

Under the new law, if your complaint is still pending at the CHRO more than two years after the date that you filed it, and the investigator has not issued a finding of reasonable cause or no reasonable cause, you or your employer can petition the Superior Court for an order that would require the CHRO to issue a decision within a certain time period. P.A. 98-245/8 (d)(1).

#### **The Public Hearing Process**

If the investigator is unable to resolve the complaint within 50 days of the finding of reasonable cause, he/she must, within 10 days, certify the complaint and the results of the investigation. P.A. 98-245/4 (a). Your case will now proceed to a public hearing.

A hearing conference must be held within 45 days of the certification of the complaint. P.A. 98-245/4(b). The CHRO will choose a hearing officer and will hold a court-like proceeding. Your employer will be required to submit a new answer to the complaint, and can be defaulted for failure to file such an answer. P.A. 98-245/4(f).

The hearing will be a de novo review of the evidence, which means that the hearing officer will review all of the evidence and you will have to prove your case again. Since the CHRO has determined that there is cause for your complaint, your case will be presented by an attorney from the CHRO.

You do not need to hire an attorney for a public hearing. If you wish to have a private attorney to advise you, you will have to hire your own attorney. Again, CWEALF can refer you to an attorney. The hearing officer will review the evidence and issue a written decision containing findings of fact, conclusions of law and an appropriate order. If the hearing officer finds that the evidence does not support your complaint of discrimination, then he or she will order a dismissal of your complaint. If the hearing officer finds that the evidence supports your complaint, he or she will order your employer to end the discriminatory practices. The order may include an award of appropriate relief, such as reinstatement and back pay. However, Connecticut law presently does not allow for awards of attorneys fees or damages for emotional distress. See *Bridgeport Hosp. v. Commission on Human Rights and Opportunities*, 232 Conn. 91, 653 A.2d 782 (1995).

If you are dissatisfied with the final decision of the hearing officer, you may appeal the decision in Superior Court in accordance with C.G.S./4-183. You will need to consult an attorney in order to bring an appeal. Again, CWEALF can refer you to an attorney.

#### **Equal Employment Opportunity Commission (EEOC)**

The EEOC will not usually review a complaint until the CHRO completes its work. If the CHRO has not completed its review of your complaint within 60 days, you may ask the EEOC to begin the federal investigation. If your complaint is not covered under state law, the EEOC has jurisdiction. Please be aware that the EEOC can take years to investigate these complaints.

## **The Process**

The process followed by the EEOC is similar to the process followed by the CHRO. In general, the steps are:

- **Intake:** You file your charge of discrimination. Once the complaint is filed, notice must be served upon your employer within 10 days. (20 CFR/1601.13)
- **Investigation:** The commission has 120 days from the time the charge is filed to complete its investigation. During the investigation, the EEOC can interview co-workers, use subpoenas and inspect the workplace.
- **Reasonable Cause Determination:** The EEOC will then decide, based upon its investigation, whether or not there was a reasonable cause to believe that the discrimination has occurred. If the EEOC issues a finding of no reasonable cause, the employee can appeal. (29 CFR/1601.18-1601.19)
- **Conciliation:** If a reasonable cause finding is issued, the EEOC will meet with the employee and employer. An attempt is then made to reach an agreement and bring an end to the discriminatory practice. If an agreement is reached, the case is closed and neither side may re-open the case. (29 CFR/1601.24)
- **Notice of Right to Sue:** Under federal law, you may bring a private lawsuit against your employer with your own attorney in federal court. You must receive a right to sue letter from the EEOC in order to bring the federal suit. You must file your federal lawsuit within 90 days of receiving the right to sue letter. If the EEOC dismisses your claim, you will automatically receive a right to sue letter. Therefore, if your case has not been dismissed and 180 days have passed since you filed with the EEOC, you may request a right to sue letter. Once you have received your right to sue letter, you have 90 days in which to file a lawsuit. (29 CFR/1601.28)
- **Court Action:** The EEOC can file suit in court on the complainant's behalf if an acceptable settlement cannot be reached in within 30 days of the reasonable cause finding. The EEOC can decide not to bring suit, in which case the individual can get her or his own right to sue letter and must bring suit within 90 days.

## **Filing In Connecticut Superior Court**

To sue your employer in state court, the following conditions must be adhered to:

- Your complaint must have been timely filed with the CHRO;
- Your complaint must have been pending with the CHRO more than 210 days, or within the 210 days, you and your employer must have both agreed to a request for a release;
- You must request a release of your complaint from the CHRO for the purpose of filing a court action (which the CHRO must grant except in limited circumstances);
- You must file your court action within two years of the date of filing your complaint (with certain limited exceptions); and,
- You must file your court action within 90 days after receipt of the release from the CHRO.
- In such a court action, the remedies available to a victim of discrimination include reinstatement, back pay, restoration of job-related benefits, attorney's fees and other damages.

If your employer has more than 15 employees, you may also sue in federal court.

## **Filing In Federal Court**

Under federal law, you may bring a private lawsuit against your employer, with your own attorney, in federal court. To do so, you must:

- Wait 180 days after filing with the EEOC and must receive a right to sue letter from the EEOC. See 42 U.S.C. /2000e(5)(f)(1);
- If the EEOC dismisses your claim you will automatically receive a right to sue letter;
- If your case has not been dismissed and 180 days have passed since you filed with the EEOC, you may request a right to sue letter; and;
- File your federal lawsuit within 90 days of receiving the right to sue letter.
- You have the right to file a private lawsuit whether or not the EEOC finds in your favor, is suing your employer, or is still investigating your claim.

Although you are legally entitled to pursue such a suit without an attorney, it is extremely difficult and rarely done. If you are considering a lawsuit, it is best to consult an attorney as promptly as possible. If you bring suit in federal court, you may seek reinstatement, back pay, restoration of job-related benefits, attorney's fees, compensatory and punitive damages and other remedies. Also, you have the right to request a jury trial if you are seeking compensatory or punitive damages. If you do have a jury, they will decide all of the issues in the trial, not just compensatory or punitive damages. If you are not requesting punitive or compensatory damages, you will not get a jury. Remember, you cannot get punitive damages from the government.

### **Federal Employees**

If you are a federal employee, you are protected under federal laws, but the procedure for filing a complaint is somewhat different than outlined above. You are not covered by state laws or enforcement procedures. See 42 U.S.C./2000e-16.

*Informal Resolution:* If you are a federal employee and you believe that you have been discriminated against, you must first contact an Equal Employment Opportunity (EEO) Counselor within 45 days of the discriminatory act or, if you are complaining about a personnel action, within 45 days of the effective date of the action. The 45-day limitation can be extended in certain circumstances. Once you have complained to the Counselor, the Counselor has 30 days to resolve the problem. If the Counselor is not able to resolve the problem, then he or she must notify you of your right to file a complaint of discrimination. You have 15 days from when you receive notice from the Counselor to file.

*Formal Resolution:* If you decide to file a discrimination complaint, the EEO Counselor is required to investigate your complaint within 180 days, although this time period can be extended if both sides agree to it, 29 C.F.R./1614.106(d)(2). As part of the investigation, the investigator can issue interrogatories and conduct fact-finding conferences. 29 C.F.R./1614.108. After the investigation has been completed, you have the option of requesting a hearing before an administrative law judge or a final decision from the agency that you filed the complaint with. If you want a hearing, you must request it within 30 days of receiving notice that the investigation has been completed. 29 C.F.R./1614.108(f).

The filing deadlines for federal employees are short and strict. The time limits may be extended if the government fails to notify you of filing deadlines or for other equitable reasons. 29 C.F.R./1614.604(c). It is best to consult the statutes and regulations for the process and deadlines. You also have the right to bring suit in federal court, the same as a civilian employee. In order to do this, you must obtain a right to sue letter. However, as a federal employee, there are fewer remedies available to you.

note: These procedures may in fact change again, because in February of 1998, the EEOC issued proposed revisions to the federal sector complaint process. However, the public comment period for these revisions has only recently ended and it does not appear that they have been adopted yet.

### **Private Attorneys**

As previously discussed, anyone can file a discrimination complaint with the CHRO and EEOC. You do not need an attorney and it does not cost money. Even though you do not need a private attorney for most of the procedures described above, you may choose to hire one to assist and advise you. An attorney will be able to advise you on whether a private lawsuit, an appeal or a negotiation of a settlement is worth the time and effort. An attorney can help you make strategy decisions about how to pursue your case. Also, an attorney will be able to advise you about important filing deadlines.

In general, attorneys are paid a fee but may be willing to negotiate a payment plan with you. Only you can decide whether you can and should pay for an attorney's legal advice. Certain Connecticut agencies, including CWEALF and the Permanent Commission on the Status of Women, may be able to help you. CWEALF and the Connecticut Bar Association have attorney referral lists.

### **Other Benefits Available To Workers**

Under Connecticut law, even a person who quits a job voluntarily because she/he has been sexually harassed may be eligible to collect unemployment compensation. To determine that an individual voluntarily left work for good cause attributable to the workplace, the Administrator must find, that:

- The person was subjected to conduct that a reasonable person would consider repeated physical or verbal abuse by a fellow employee, supervisor or authorized representative of the employer; or,
- The person was subjected to a pattern of repeated physical or verbal abuse or unfair treatment, which a reasonable person would find offensive, by a fellow employee, supervisor or authorized representative of the employer.

### **Unemployment Compensation**

Proposed regulation Sec. 31-236-22(a)(1)(G)(H). A case of demonstrated sexual harassment, which caused an individual to leave a job, could fall under good cause attributable to the employer. Although generally a person is expected to remedy an uncomfortable situation in the workplace with the supervisor, in cases of sexual harassment the person is not strictly required to seek remedy through the supervisor.

In a willful misconduct case, you must be ready to dispute a claim that you were fired for willful misconduct. Below are some tips to prepare you for either type of case.

- When applying for unemployment benefits, designate sexual harassment as the reason you left your job.
- If benefits are denied, you may file an appeal. C.G.S./31-241. An employer also has the right to appeal a decision allowing benefits. C.G.S./31-241.
- If you appeal the denial of benefits, or your employer appeals allowance of benefits, there will be a hearing before a referee. Be prepared to respond to your employer's version of the story at the hearing.
- Prepare everything in writing. This will help organize your presentation. Present any relevant documentation, including statements from witnesses.
- You have the right to have someone with you during all hearings. This can be a friend, union representative, or attorney.
- If an appeal is necessary, it is advisable to obtain an attorney to ensure that procedures are followed. CWEALF can refer you to an attorney.

Applying for and receiving a determination of eligibility for unemployment compensation could take up to six months, depending on whether appeals are filed. On the other hand, it could also go smoothly and be resolved in a few weeks.

### **Workers Compensation**

Under Connecticut law, a worker may also be entitled to Workers Compensation benefits for wages lost due to an injury or illness caused on the job. A victim of sexual harassment who suffers stress is not eligible for workers compensation unless the stress arises from a physical injury or personnel action related to the sexual harassment, (e.g., a sexual assault or adverse employment action due to rejection of a supervisor's sexual demands). C.G.S./31-275(16)(B). (The statute states that a person is eligible for workers compensation for a mental or emotional injury such as stress, under C.G.S./31-275 (16)(B) if the mental injury arises from a physical injury or occupational disease or as a result of a personnel action.) For more information, call the Division of Worker Education (1-800-223-WORK), contact your local office of the Workers Compensation Commission, or consult an attorney.

## **Conclusion**

### **Working To Stop Sexual Harassment**

The law is only one way to fight sexual harassment. Sexual harassment is costly and affects many people, but employers and employees can work together to end it. Remember these important guidelines:

- Create a company policy that prohibits workplace sexual harassment;
- Prominently post guidelines prohibiting sexual harassment in every work area;
- Establish and publicize a confidential grievance procedure;
- Include sexual harassment discussions in orientation and employee training programs (CWEALF can provide you with training programs);
- Stress the financial and legal ramifications of sexual harassment;

- Survey your workplace to determine the extent and awareness of sexual harassment; and,
- Work together to create a workplace filled with dignity and respect for everyone.

**Where to File a Complaint**

Commission on Human Rights and Opportunities (CHRO)

Capital Region

1229 Albany Avenue

Hartford, CT 06112

Voice: (860) 566-7710

Fax: (860) 566-1997

TDD: (860) 566-7710

Southwest Region

1057 Broad Street

Bridgeport, CT 06604

Voice: (203) 579-6246

Fax: (203) 579-6950

TDD: (203) 579-6246

West Central Region

50 Linden Street

Waterbury, CT 06702

Voice: (203) 596-4237

Fax: (203) 596-4241

TDD: (203) 596-4240

Eastern Region

Room 210 100 Broadway

norwich, CT 06702

Voice: (860) 886-5703

Fax: (860) 886-2550

TDD: (860) 886-5707

CHRO Administrative Office

21 Grand Street

Hartford, CT 06106

Voice: (860) 886-5703

Fax: (860) 246-5419

TDD: (860) 541-3459