

MAINE STATE LEGISLATURE

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**PREVENTING
SEXUAL HARASSMENT**

Defining Sexual Harassment

EEOC Guidelines on Sexual Harassment

Section 1604.11

Harassment on the basis of sex is a violation of Section 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 as 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.

Federal and State Legislation Concerning Sexual Harassment in Education

Federal

Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681)

No person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Case Law

See *Alexander v. Yale* 459 F, Supp. 1 (D.Conn. 1977): aff'd on other grounds, 631 F.2nd 178 (2nd Cir. 1980)

Maine State Law

Title 5. Sex. 4602

Harassment on the basis of sex shall be unlawful educational discrimination within the meaning of Title 5, Sec. 4602. This shall include unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature in the following situations:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of a student's educational benefits;
2. Submission to or rejection of such conduct by a student is used as the basis for decisions on educational benefits;
3. Such conduct has the purpose or effect of substantially interfering with an individual's academic performance or creating an intimidating, hostile or offensive educational environment.

MAINE HUMAN RIGHTS ACT

Title 5 Section 4553 Subsection 10

10. UNLAWFUL DISCRIMINATION. "Unlawful discrimination" includes:

D. Aiding, abetting, inciting, compelling or coercing another to do any of such types of unlawful discrimination; obstructing or preventing any person from complying with this Act or any order issued in this subsection; attempting to do any act of unlawful discrimination; and punishing or penalizing, or attempting to punish or penalize, any person for seeking to exercise any of the civil rights declared by this Act or for complaining of a violation of this Act or for testifying in any proceeding brought in this subsection;

Maine Human Rights Commission
State House Station 51
Augusta, ME 04333

Telephone: 289-2326

Faces of Sexual Harassment

Look/leer

Off-color Jokes

Unwanted requests
for dates

Pornographic & suggestive
materials

Whistling

Comments

Touching/pinch

Propositions

Kiss

"Friendly" pat or squeeze

Holding/blocking

Brushing against the body

Threats of harm

Power demands

Molestation

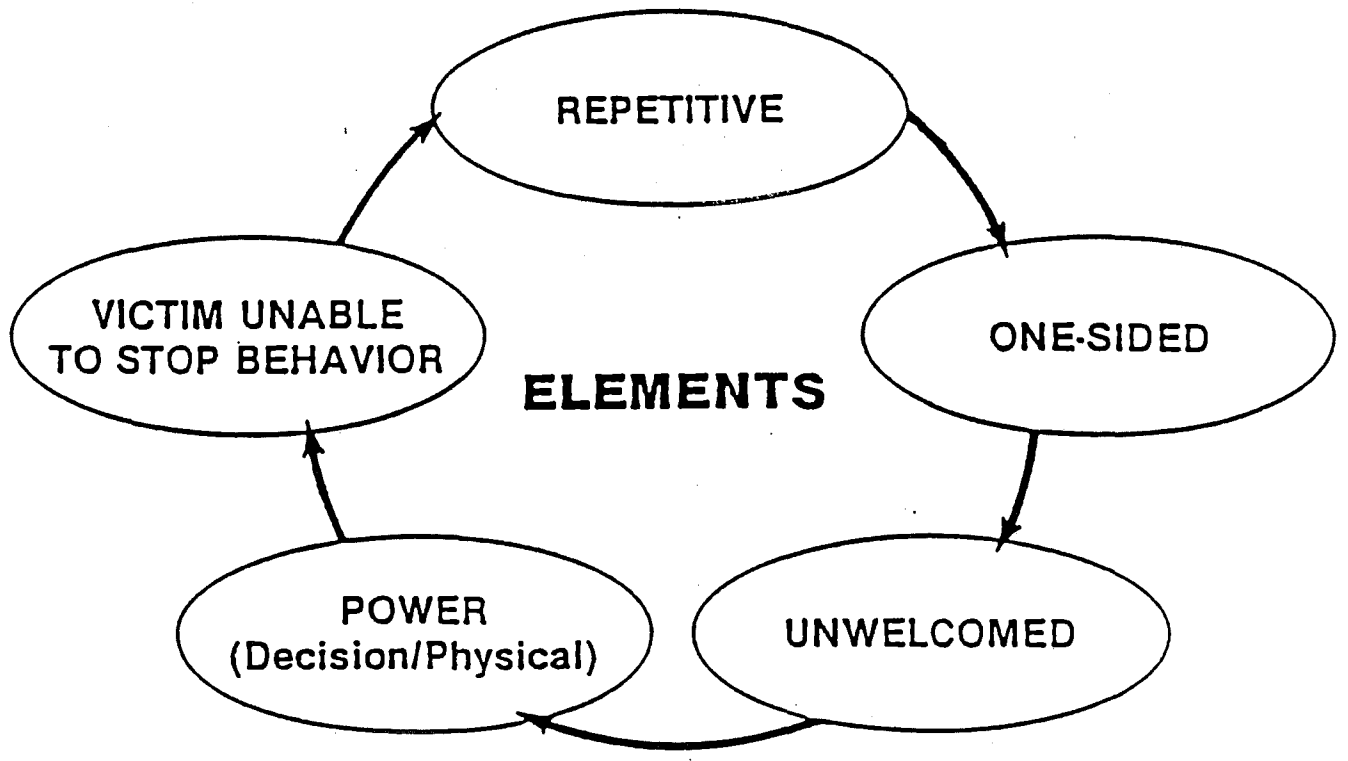


TABLE OF EEOC GUIDELINES ON SEXUAL HARASSMENT*

Worksheet 3**

Under What Condition Is The Employer Liable?	How Liable Is The Employer? When Is The Employer Liable?	What Can Be Done To Reduce Liability?
<p>The employer is liable when:</p> <p>1) submitting to the conduct is made explicitly or implicitly a term or condition of employment. E.g., "Put out or get out" "You're hired if you'll cooperate" —HIRING OR FIRING—</p> <p>2) submitting to or rejecting the conduct is used as the basis for employment decisions. E.g., "The promotion is yours if you cooperate." "You're 'bad attitude' about going out with me will show up on your next performance review" —PROMOTION/DEMOTION/RAISE/PAYCUT—</p>	<p>Because harassment under the 1st and 2nd conditions is committed by "agents" of the company (manager, supervisors, etc.), liability is:</p> <p style="text-align: center;"><i>STRICT and ABSOLUTE</i></p> <p style="text-align: center;">and</p> <p>The employer is <i>ALWAYS</i> liable for these instances of harassment.</p>	<p>"PREVENT HARASSMENT": E.g.,</p> <p>1) _____</p> <p>2) _____</p> <p>3) _____</p> <p>4) _____</p> <p>5) _____</p>
<p>3) The conduct unreasonably interferes with work performance or creates a hostile, intimidating or offensive work environment. E.g., "I just want to do my job, but she's really making it hard. She just won't leave me alone." —PERFORMANCE SUFFERS OFFENSIVE WORK CLIMATE—</p>	<p>This type of harassment is committed by co-workers, clients, customers, vendors. Therefore, liability is</p> <p style="text-align: center;"><i>LESS STRICT</i></p> <p style="text-align: center;">and</p> <p>The employer is liable only when there is "NOTICE."</p>	<p>"TAKE IMMEDIATE AND CORRECTIVE ACTION" E.g.,</p> <p>1) _____</p> <p>2) _____</p> <p>3) _____</p> <p>4) _____</p> <p>5) _____</p>

* From *Federal Register*, Nov. 10, 1980. Final Amendment to Guidelines on Discrimination Because of Sex. These Guidelines define harassment as "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature."

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TABLE OF THE DEPARTMENT OF EDUCATION
GUIDELINES ON SEXUAL HARASSMENT

WORKSHEET 3-A

UNDER WHAT CONDITION IS THE SCHOOL LIABLE?	HOW LIABLE IS THE SCHOOL? WHEN IS THE SCHOOL LIABLE?
<p>The school is liable when:</p> <p>1)submitting to the conduct is made explicitly or implicitly a term or condition of admission into a program. e.g., "Put out or get out." "You're accepted if you'll cooperate."</p> <p>2)submitting to or rejecting the conduct is used as the basis for academic decisions. e.g., "The high grades are yours if you cooperate." "You're 'bad attitude' about going out with me will show up in your grades."</p>	<p>Because harassment under the 1st and 2nd conditions is committed by "agents" of the school (teacher, department chairperson, etc.), liability is STRICT AND ABSOLUTE and the school is <u>always</u> liable for these instances of harassment.</p>
<p>3)the conduct unreasonably interferes with academic performance or creates a hostile, intimidating or offensive academic environment. e.g., "I just want to complete this program, but she's really making it hard. She just won't leave me alone."</p>	<p>This type of harassment is committed by fellow students, or clients, customers, and vendors. Harassment could also be committed by visitors either as a result of athletic events or otherwise. In this instance, liability is less strict and the school is liable only when <u>notice</u> has been given.</p>

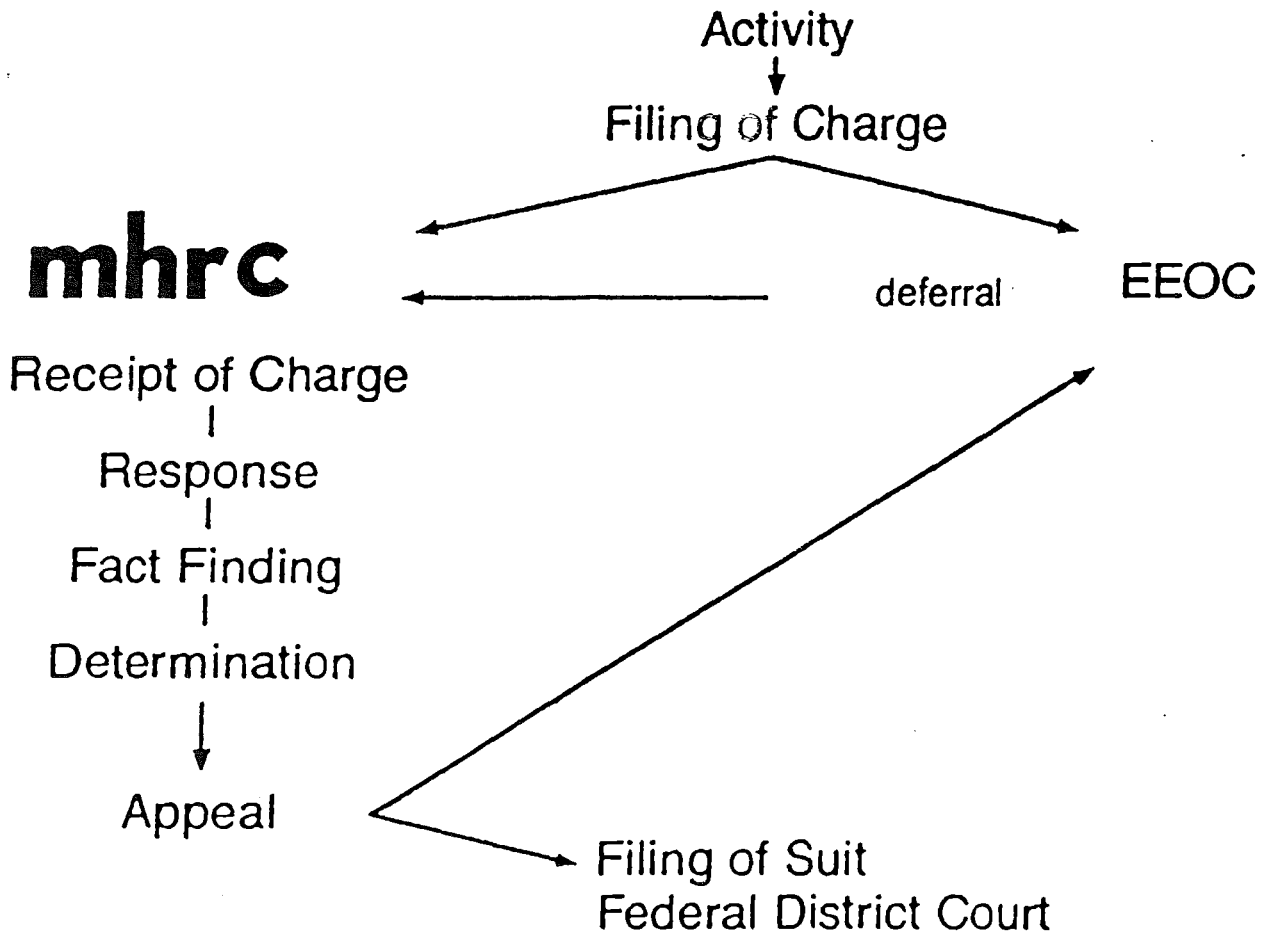
THE EFFECTS OF SEXUAL HARASSMENT

Worksheet 6*

	Effects on the Victim	Effects on the Work Unit	Effects on the Organization
Potential Psychological Effects	<p>Shame Fear Humiliation Self-Doubt Embarrassment Guilt Anger Powerlessness Stress Withdrawal Isolation Degradation</p>	<p>Morale problems Tarnished reputations Trust decreased Confusion/ bewilderment Shock</p>	<p>Lowered morale Public relations problems Loss of trust Hostile employee relations Polarization of men & women Anger towards company</p>
Potential Economic Effects (Costs)	<p>Loss of job Job search expenses Loss of seniority Loss of references Medical expenses Increased absenteeism Reduced productivity</p>	<p>Reduced productivity Increased work load Manager's performance review potentially affected Potential turnover costs for recruiting and training Safety can be jeopardized</p>	<p>Legal expenses Cash settlements Reduced productivity Increase in use of benefits — Unemployment Comp. claims — Workers Comp. claims</p>

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Discrimination Complaint Procedure



Assessing the Climate for Sexual Harassment and Sex Discrimination

Many educators have become increasingly concerned with subtle and obvious forms of sex-based discrimination. Often men & women students have very different experiences--even when they study in the same classroom. This instrument is designed to examine some aspects of the day-to-day life, perceptions and experiences concerning sexual harassment and sex discrimination.

Directions: For each of the following, please check each answer that applies to you.

1. Listed below are some behaviors that might occur between men and women students. Have you seen/heard any of the following behaviors?

	Never	A Few Times	Often	Have Observed It
a. Sexually suggestive stories, jokes or humor	___	___	___	___
b. Seductive remarks, including attempts to establish a sexual relationship despite discouragement	___	___	___	___
c. Sexual remarks, including discussion of personal or sexual matters	___	___	___	___
d. body language such as staring, leering, or sexual gestures	___	___	___	___
e. Physical (or sexual) contact	___	___	___	___
f. Sexually explicit phone calls or notes	___	___	___	___
g. Sexist or disparaging remarks about women's behavior or career interests	___	___	___	___
h. Pressure to avoid being seen as a supporter of women's issues or to avoid those who are supportive of those issues	___	___	___	___
i. Pressure to avoid appearing intellectual or participating in class	___	___	___	___
j. Verbal baiting or bullying accompanied by intimidation	___	___	___	___
k. Pushing, shoving, or other physical intimidation	___	___	___	___
l. Other _____	___	___	___	___

2. Listed below are some behaviors that might be exhibited by faculty, administrators or staff and directed at students both in and out of the classroom. Have you seen or heard of the following behaviors?

	Never	A Few Times	Often	Have Observed It
a. Sexist language, humor, or comments	___	___	___	___
b. Frequent comments on personal appearance or flattery	___	___	___	___
c. Persistent emphasis on sexuality	___	___	___	___
d. Eye contact or other body language you considered inappropriate	___	___	___	___
e. Physical contact you considered inappropriate	___	___	___	___
f. Sexual advances	___	___	___	___
g. Not taking women as seriously as men, communicated through posture, gesture, or tone of voice	___	___	___	___
h. Expecting women to behave in stereotyped ways, such as being passive and deferential, or expecting women to make traditional course and career choices	___	___	___	___
i. Expressions of derogatory beliefs about women	___	___	___	___
j. Putting down students who support efforts to improve women's status	___	___	___	___
k. Other _____	___	___	___	___

¹Adapted from instrument developed for students, staff, and faculty by the Committee on the Status of Women and the Office of Education Research at St. Olaf College (MN).



HIGHLIGHTS OF THE 1988 WORKING WOMAN SEXUAL HARASSMENT SURVEY EXECUTIVE REPORT

Klein Associates, Inc.

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- Sexual harassment costs a typical Fortune 500 Service or Manufacturing Company \$6.7 million per year - a cost of \$282.53 per employee; costs are comprised of turnover, absenteeism, reduced productivity, and using internal complaint mechanisms. Omitted are the costs of litigation, responding to charges filed with municipal/state/federal regulatory agencies, destructive behavior and sabotage. In contrast, meaningful preventive steps can be taken for \$200,000 - a cost of \$8.41 per employee. It is 34 times more expensive to ignore the problem.
- 25% of responding companies received 6 or more formal complaints of sexual harassment within the past year.
- Most formal complaints are against an individual higher up the corporate ladder: 36% are against one's immediate supervisor; 26% are against a more powerful person; while 32% are against co-workers.
- Few incidents are reported to employers: the formal complaint rate across all companies is 1.4 per thousand women employees per year.
- The highest formal complaint rates were in firms whose workforce is at least 75% men (1.9 per thousand woman employees per year) and in financial services firms (1.6 per thousand women per year).
- The lowest formal complaint rate--0.9 per thousand women employees per year-- is in corporations whose workforce is at least 75% women.
- 76% of respondents have written policies specifically prohibiting sexual harassment; an additional 16% include it in their general anti-discrimination policies.
- Commitment from the top makes a difference. When senior management is perceived as making the prevention of sexual harassment a top priority, firms are far more likely to offer training programs and to establish special mechanisms to encourage the reporting of both formal and informal complaints.



Klein Associates, Inc.

TYPES OF SEXUAL HARASSMENT COMPLAINTS

	1983		1987	1988
	<u>Harvard*</u>		<u>Federal**</u>	<u>Corporate***</u>
	Ten.	Non		
Sexual remarks, jokes, teasing, questions	17%	48%	35%	42%
Suggestive looks, gestures	12	21	28	11
Pressure for dates	6	8	15	12
Deliberate touching, leaning over, cornering	13	14	26	26
Pressure for sexual favors	12	10	9	17
Letters, phone calls, materials	0	8	12	9
Actual or attempted sexual assault	0	2	1	1

Note: Columns do not total 100% since sexual harassment complaints often involve more than one type of behavior.

* Harvard data are for tenured/non-tenured faculty women reporting experiences perpetrated only by a person in authority.

** Federal data are the results of a survey conducted by the Merit Systems Protection Board of a random sample of civilian employees across all agencies.

*** Corporate data are the results of a survey conducted by Klein Associates of sexual harassment in the Fortune 500 manufacturing and service firms. The survey was commissioned by Working Woman magazine; full results appeared in their December 1988 issue.

TEEN ATTITUDES TOWARDS SEXUAL INTERACTIONS

<u>Circumstance</u>	Agreement that it's okay to force sex when...	
	<u>% of boys</u>	<u>% of girls</u>
She's going to have sex with him & changes her mind	54	31
She has "led" him on	54	26
She gets him sexually excited	51	42
They have dated for a long time	43	32
She lets him touch her above the waist	39	28

Study conducted with 432 teens, aged 14 to 18, by Goodchild, Zellman, Johnson & Giarrusso, cited in I Never Called it Rape by Robin Warshaw; New York: Harper & Row, 1988.

SEXUAL HARASSMENT: MYTHS AND REALITIES

An elaborate series of myths supports all forms of violence against women. These myths, often based on false assumptions about men's and women's "natural" biological make-up, ensure that women who encounter violence against themselves feel guilty rather than violated. Women are therefore less likely to speak up or to take action to eliminate harassment. The following myths, reflecting current attitudes, serve in particular to perpetuate sexual harassment.

1. MYTH: Sexual harassment is not a serious social problem and it affects only a few women.
REALITY: In a 1976 survey in Redbook Magazine, 88 percent of the 9,000 respondents reported that they had experienced one or more forms of unwanted sexual advances on the job.
REALITY: Women suffer from sexual harassment regardless of their appearance, age, race, marital status, occupation, or socio-economic class.
2. MYTH: If women don't speak up about sexual harassment, then it's not happening.
REALITY: Women don't report sexual harassment because they feel isolated, guilty, scared of losing their jobs.
REALITY: We can begin to eliminate sexual harassment at the workplace only when we share and understand our experiences. If we remain silent, workplace harassment will continue to be seen as a personal problem rather than as a social issue. These two myths will operate until so many women speak up about sexual harassment that our society can no longer pretend it doesn't happen.
3. MYTH: Women invite sexual harassment by their behavior and/or dress.
REALITY: As with rape, sexual harassment is not a sexually motivated act. It is an assertion of hostility and/or power expressed in a sexual manner. Sexual harassment is not women's fault in any way.
REALITY: Often women are expected to act or dress seductively both to get and keep their jobs.
4. MYTH: Only women in certain occupations are likely to be sexually harassed.
REALITY: Waitresses, flight attendants, and secretaries are not the only victims of sexual harassment. Women who work in factories, at professional jobs - and all kinds of jobs - consistently report this problem. Students,

clients of professionals (doctors, dentists, therapists, etc.), domestic workers, and babysitters also suffer sexual harassment and abuse.

5. MYTH: Black women are exposed to sexual activity at an early age, are more sensuous and are not as upset by harassment.
MYTH: Asian women are more submissive than other women and would be less likely to be offended by sexual harassment.
REALITY: These are patently racist assumptions, and constitute another example of blaming the victim rather than the harasser.
6. MYTH: It is harmless to harass women verbally or to pinch or pat them. Women who object have no sense of humor.
REALITY: Harassment is humiliating and degrading. It undermines a woman's school or work performance - and often threatens her education or economic livelihood. Women victimized by sexual harassment suffer emotionally and physically. Women should not be prepared to endure degradation with a smile.
7. MYTH: A firm "no" is enough to discourage any man's sexual advances.
REALITY: Because people believe women say no when they really mean yes, men often dismiss women's resistance. Men's greater physical, economic, and social power enables them to override the firmest "no." It should not be women's responsibility to ensure that sexual harassment doesn't happen.
8. MYTH: Women who remain in a job where they are sexually harassed are masochistic - or are really enjoying it.
REALITY: Women's lower socio-economic position in the U.S. means that many are unable to quit their jobs or find new employment.
9. MYTH: Only bosses are in a position to harass women at the workplace.
REALITY: Co-workers and clients can also harass women at the workplace. Clients threaten to withdraw their business. Co-workers make work intolerable. Both complain to the boss - or already have the boss's support.
10. MYTH: If women can't handle the pressure of the working world, they should stay home.
REALITY: Women work out of economic necessity. Staying home is not an option for most working women. Nor - as we know from current publicity on wife abuse - is staying home a protection against sexual harassment.

11. MYTH: Women make false charges of sexual harassment.
REALITY: Women who speak out against harassment meet with negative reactions, ranging from disbelief and ridicule to loss of job. Women have little to gain from false charges.
12. MYTH: Women sleep their way to "the top" and other positions of power in the workforce.
REALITY: Very few women hold positions of power. For those isolated cases where women have tried to engage in sexual activity to gain promotions, evidence shows that it ultimately works against their advancement. This myth works against a woman who gives in to sexual pressure, because she is then mistrusted by fellow workers.
13. MYTH: Only certain men harass women at work.
REALITY: All types of men, in all occupations - whether or not they hold positions of power - have been reported as harassers.
14. MYTH: There are adequate procedures to take care of men who seriously assault or threaten women at work.
REALITY: Society continues to view sexual harassment from a double standard. While the sexual harassers are tolerated - boys will be boys - the women victims bear the brunt of the blame. Personnel managers, union representatives, human right agencies, courts, and legislators reflect these discriminatory attitudes. Women who seek assistance from these sources to stop sexual harassment are frequently placing themselves at risk of humiliating indifference, ridicule, or even further sexual insinuation and harassment. Nevertheless, it is important to use these channels where possible.

SOURCE: Alliance Against Sexual Coercion, 1979.