

*Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims  
under Federal Employment Law<sup>12</sup>*

*By William R. Tamayo, Regional Attorney,<sup>3</sup>U.S. Equal Employment Opportunity Commission<sup>4</sup>*

---

<sup>1</sup> "This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women."

<sup>2</sup> In this Manual, the term "victim" has been chosen over the term "survivor" because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term "victim" allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act's (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim's gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use "he" in this Manual to refer to the perpetrator and "she" is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – "actual or perceived gender-related characteristics." On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (*United States v. Windsor*, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child's immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse's gender.

<sup>3</sup> Regional Attorney, EEOC San Francisco District Office (1995 – present). (Jurisdiction: Northern California, Northern Nevada, Oregon, Washington, Alaska, Idaho and Montana)

Prior to his appointment as Regional Attorney, Mr. Tamayo was a staff attorney and Managing Attorney for the Asian Law Caucus (1979-95), a public interest organization in San Francisco where he practiced immigration and nationality law, employment discrimination law and other civil rights laws. He represented dozens of battered women before the Immigration and Naturalization Service and was part of the legal team that developed the "self-petitioning" provisions for immigrant women under the Violence Against Women Act. Member, National Advisory Board, National Network to End Violence Against Immigrant Women. J.D. University of California, Davis, School of Law.

Contact: U.S. EEOC, 350 The Embarcadero, Suite 500, San Francisco, CA 94105-1260; (415) 625-5645; (415) 625-5657 fax; email: [william.tamayo@eoc.gov](mailto:william.tamayo@eoc.gov). Materials in this outline include documents available at EEOC's website: [www.eoc.gov](http://www.eoc.gov). This document, however, is not an official EEOC publication.

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

Introduction

- I. Overview of the Law
- II. Proving Harassment
- III. Retaliation
- IV. EEOC's Charge Processing and Litigation
- V. Private Lawsuits
- VI. Remedies Available to Victims
- VII. The Role of the Medical Professional

Introduction

Sexual harassment demeans its victims and destroys their lives. It is unlawful. Sexual harassment can include but is not limited to sexual assaults (e.g., rape), *quid pro quo* harassment (conditioning employment opportunities upon the grant of sexual favors) and a hostile work environment that can also include sexual overtures, touching, grabbing, fondling, propositions, pictures, pornography, etc. *Attorneys, advocates, and health care providers working with victims of sexual assault should be informed about the various remedies available so that they can properly advise their clients and patients.* Healthcare providers may also be the critical witnesses in ensuring that a victim receives relief, including compensation.

The U.S. Equal Employment Opportunity Commission (EEOC) is the federal government agency responsible for investigating charges of discrimination and, if necessary, litigating these cases in court. The EEOC has recovered millions of dollars for victims of sexual harassment including sexual assaults. Many of these cases have involved *immigrant women and teenagers*.<sup>5</sup>

I. Overview

**Statistics:** In Fiscal Year 2006, the EEOC received 12,025 charges of sexual harassment accounting for 15.9% of all charges filed with the EEOC.<sup>6</sup> This is a marked increase from when the sexual harassment cases were only 12% of the charges just three years earlier. The “power disparity” between employers or supervisors and employees (especially immigrant and low wage workers) creates conditions ripe for harassment and sexual assault in the workplace. The EEOC resolved 11,936 sexual harassment charges and recovered \$48.8 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation). For statistics in previous years, see [www.eeoc.gov](http://www.eeoc.gov).

**Title VII of the Civil Rights Act of 1964**, 42 U.S.C. Sec. 2000e et seq., prohibits discrimination on the basis of race, color, sex, national origin and religion in all terms and conditions of employment including, but not limited to, hiring, firing, promotions, references, and job conditions. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government. Prior to the enactment of Title VII on July 1, 1965, discrimination in the private sector was perfectly legal under federal law. Thus, an employer could very well have sexually harassed an employee and fired her in retaliation for rejecting sexual advances without violating any federal law. Thus, Title VII provides a very important protection and remedy for workers.

---

<sup>4</sup> The EEOC enforces Title VII of the Civil Rights Act of 1964 (race, color, sex, national origin and religion), the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act and portions of the Civil Rights Act of 1991. The agency has 51 field offices. A list of EEOC offices and contact names is listed at [www.eeoc.gov](http://www.eeoc.gov).

<sup>5</sup> For a partial list of EEOC cases involving sexual assault see Appendix A.

<sup>6</sup> Of this number, 15.4% of those charges were filed by males.

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

**Sexual harassment is a form of sex discrimination** that violates [Title VII of the Civil Rights Act of 1964](#). Under the law, employers have a **duty to provide a safe work environment** and to take **prompt and corrective action** once the employer is on notice that harassment may have occurred.<sup>7</sup>

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. The behavior must be **severe or pervasive enough to alter an employee's working conditions**.<sup>8</sup>

Sexual harassment can occur in a variety of circumstances, including, but not limited to the following:

The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.

The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.

The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

Unlawful sexual harassment may occur without economic injury to or discharge of the victim.

**Notice to the Employer:** There must generally be notice to the employer of the harassment before it can be found liable. The victim should inform the harasser directly that the conduct is unwelcome and must stop ("opposition"). The victim should complain to her supervisor (unless he is the harasser) or any other superior, and use any employer complaint mechanism or grievance system available. Verbal or written notice is sufficient, and a third party can also put the employer on notice that there is a complaint or existence of harassment. These third parties can include, but are not limited to, a union, family member, a victim advocate, victim's attorney,<sup>9</sup> co-workers, customers or providers. Again, notice to an employer of possible harassment requires an employer to promptly investigate and take necessary corrective action to stop and deter harassment. Corrective action may require discipline of the harasser and his supervisors up to and including termination.

This includes:

- When investigating allegations of sexual harassment, the EEOC makes a determination on the allegations from the facts on a case-by-case basis;
- EEOC looks at the whole record, particularly the circumstances;
- the nature of the sexual advances;
- the context in which the alleged incidents occurred;
- how the employer was put on notice, and the response of the employer once it knew or should have known about the harassment.

**Harassment by a Supervisor:** An employer is generally liable for harassment by a **supervisor**. However notice to the employer of the harassment is critical. An employer can escape liability and/or reduce the damages if it can establish that:

- 1) the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior  
AND

---

<sup>7</sup> *Fuller v. City of Oakland*, 47 F.3d 1522, 1528 (9<sup>th</sup> Cir. 1995)

<sup>8</sup> *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986).

<sup>9</sup> This can include the victim's attorney representing her in other matters, including immigration, family, or protection order proceedings. Attorneys and advocates working with immigrant victims of sexual assault and sexual harassment are encouraged to offer victims assistance as third parties making and documenting complaints to employers.

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

2) the victim employee unreasonably failed to take advantage of any preventive or corrective opportunities provided or to otherwise avoid harm.<sup>10</sup>

If the harassment by the supervisor results in a “**tangible employment action**”, the employer has no defense and will be found liable. A tangible employment action includes, but is not limited to: termination, retaliation, suspension, failure to hire, demotion, or reduction in hours. It is important to note that under some state anti-discrimination laws,<sup>11</sup> an employer is *strictly liable* for harassment by a supervisor. There is no defense available to the employer. However, the employee’s failure to report the harassment or otherwise take steps to avoid the harassment could reduce the monetary relief awarded to her.

If the harasser is the President, CEO, Chairman, or otherwise very top official in the company, the company could be *strictly liable*, and there is no need for notice to any higher authority.

**Harassment by a Co-Worker or Third Party:** An employer is liable for **co-worker or third party** harassment if it knew or should have known that harassment occurred. *Fuller v. City of Oakland*, 47 F.3d 1522 (9<sup>th</sup> Cir. 1995). Again, notice to the employer either directly or indirectly is a key factor.

## II. Proving Harassment

Harassment is proven in a variety of ways. Even when there is no “third party, eye witness” of the assault, harassment can be proven.

**Charging Party:** The Charging Party can provide the most important testimony since she is a witness to the harassment. Her testimony should include her description of the harassment (its frequency, any physical contact or assault, verbal harassment, etc.) and any other discrimination she suffered, including threats by harasser or managers, or other forms of retaliation. Other factors include her reaction to the harassment and/or to describing the harassment. Was she crying? Emotionally upset? **The charging party’s credibility is the key element.** Employers will generally deny that the harassment occurred and thus, the credibility of the parties involved, the company’s response to the complaint of harassment, and the testimony of witnesses will be critical in determining whether harassment occurred. (See questions for the Charging Party in Sec. VIII.)

**Corroboration through Witnesses:** Testimony from other witnesses are also key to establishing the charging party’s credibility, the facts of the case, and past and present practices of an employer in response to sexual harassment. These witnesses may include co-workers, supervisors, counselors, parents, teachers, doctors, psychologists, actual eyewitnesses, etc. Witnesses might describe:

- changes in the charging parties’ behavior;
- how she looked before and after the assault;
- whether other workers have been assaulted or otherwise harassed in the workplace;
- the response of the employer to prior reports of harassment;
- acts of retaliation against persons who complain about harassment or testify on behalf of victims (see discussion below on the role of advocates, counselors and medical professionals); or
- may provide other important evidence that supports the victim’s case.

**The Employer’s Actions:** Ultimately, the key issue is whether the employer, once put on notice of the harassment, adequately protected the victim from harassment and/or assault and, if she was harassed or assaulted, whether the company took prompt and corrective action. The existence of a policy against harassment and retaliation, and how the policy is disseminated to the workforce will be at issue. Important issues will include:

- Was the policy distributed in a language that the workforce can understand?

---

<sup>10</sup> *Burlington Industries v. Ellerth*, 118 S. Ct. 2257, 2270 (1998); *Faragher v. City of Boca Raton*, 118 S. Ct. 2275, 2292 (1998).

<sup>11</sup> California and Hawaii

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

- How are workers trained about the policy?

The testimony and actions of company officials including human resources and company investigators will be critical factors. Other key factors will include:

- the past practices of the company in responding to complaints;
- the discipline of harassers or lack thereof;
- its actions in responding to the instant complaint;
- the qualifications of the company investigator to conduct the investigation; and
- the adequacy of the company investigation.

**The Harasser's Actions:** Ultimately, in sexual harassment cases, the accused harasser can either claim that the sexual harassment did not occur or that the harassment was consensual, that the charging party welcomed the sexual harassment. The accused harasser might portray the victim as the aggressor and harasser, or that she otherwise engaged in the same sexual behavior. The accused harasser may try to deny that harassment occurred by contending that he was nowhere near the alleged harassment, and his co-workers may support his version of the facts. Like the charging party, the accused harasser's credibility is a critical factor for the fact finder in determining "who is telling the truth".

**Law Enforcement:** The existence, or lack thereof, of a filed police report is not determinative of whether harassment occurred. Less than 10% of sexual assault crimes are reported. When the victim of sexual assault or sexual harassment is an immigrant, the likelihood of police reporting is lower, and the barriers to reporting are even higher.<sup>12</sup> The standard of proof that applies in sexual harassment cases is whether the sexual harassment or sexual assault is proven by a preponderance of the evidence (51%), rather than upon proof beyond a reasonable doubt, the standard that is required for criminal sexual assault prosecutions.

**Some Hurdles in Proving Harassment:**

The Charging Party:

- May be afraid to tell parents or friends;
- Must deal with stigma, shame, peer pressure, or community pressure;
- Fears that friends, family members, co-workers, or her cultural community will tease her or reject her;
- May be concerned that they will believe that she is having an affair with a co-worker or supervisor;
- Needs the job to support family, pay for basic living expenses, and fears retaliation;
- Is afraid that her parents and family will not believe her and/or will punish her;
- Is afraid that her cultural community will reject or abandon her;
- Fears that her husband or boyfriend will not believe her and will harm her or others;

---

<sup>12</sup> Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass, and Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L.J. 1 (2003).

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

- Fears deportation and its consequences (poverty, persecution, cultural stigma, isolation, rejection of family and/or community in her homeland);
- Might not have known about her rights and did not object;
- May have been so traumatized by the assault that she has difficulty remembering details, or copes with the trauma by burying any memories.

Other witnesses may be fearful about stepping forward because of potential retaliation including bodily harm, termination, suspension, etc.

**CAVEAT: Just because the Charging Party did not tell someone right away about the harassment does not mean she is lying!! There is no “normally expected” response for victims of severe harassment or assault.**

### III. Retaliation

In Fiscal Year 2006, the EEOC received 22,555 charges of retaliation discrimination based on all statutes enforced by the EEOC.

Title VII of the Civil Rights Act of 1964 also protects employees from retaliation. An employer may not fire, demote, harass or otherwise "retaliate" against an individual for:

- filing a charge of discrimination;
- testifying;
- participating in a discrimination proceeding, investigation or litigation; or
- otherwise opposing discrimination.

The same laws that prohibit discrimination based on race, color, sex, religion, national origin, age, and disability, as well as wage differences between men and women performing substantially equal work, also prohibits retaliation against individuals who oppose unlawful discrimination or participate in any related proceeding. Participation in a proceeding is defined as including, but is not limited to:

- an investigation of the discrimination charge;
- testifying in court; or
- testifying in depositions.

Retaliation occurs when an employer, employment agency, or labor organization takes an **adverse action** against a **covered individual** because he or she engaged in protected **activity**.

#### A. Adverse Action

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

An adverse action is an action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. Examples of adverse actions include:

- Employment actions such as termination, refusal to hire, and denial of promotion;
- Other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance; and
- Any other action such as an assault or unfounded civil or criminal charges that are *likely to deter reasonable people* from pursuing their rights.<sup>13</sup>

**NOTE: If, during the course of an EEOC investigation, a charging party is being threatened with termination, further harassment, or other adverse actions that may consequently impede the investigation, EEOC can go to federal court immediately to obtain a temporary restraining order or preliminary injunction to stop the adverse action.**<sup>14</sup>

**If you are aware of these threats, you should immediately contact the EEOC Regional Attorney in your jurisdiction.** A list of the Regional Attorneys is available at [www.eeoc.gov](http://www.eeoc.gov).<sup>15</sup>

Adverse actions generally do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history. Adverse actions for retaliation, however, can also include *further harassment*.<sup>16</sup>

Even if the prior protected activity alleged wrongdoing by a **different employer**, retaliatory adverse actions are unlawful. For example, it is unlawful for a worker's current employer to retaliate against her for pursuing an EEO charge against a former employer. Similarly, it is unlawful for a former employer against whom a complaint was made to retaliate against the charging party in other jobs by giving a negative reference, informing the prospective employer that the charging party made a complaint of discrimination or harassment, or otherwise taking actions which serve to deter the charging party from pursuing her complaint.

## **B. Covered Individuals**

Covered individuals are people who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, or disability. Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals. For example, it is illegal to terminate an employee because his/her spouse participated in employment discrimination litigation.

Individuals who have brought attention to violations of law other than employment discrimination are NOT covered individuals for purposes of the employment discrimination retaliation laws. For example, "whistleblowers" who raise ethical, financial, or other concerns unrelated to employment discrimination (race, color, sex, national origin, religion, age and disability under federal law) are not protected. However, they may be covered under anti-retaliation provisions of other federal or state laws.

---

<sup>13</sup> See *Burlington Northern Santa Fe Ry Co. v. White*, 126 S. Ct. 2405 (2006); *Ray v. Henderson*, 217 F.3d 1234 (9<sup>th</sup> Cir. 2000).

<sup>14</sup> 42 U.S.C. Sec. 2000e-5(f)(2). (See *EEOC v. Iowa AG, LLC and DeCoster Farms of Iowa*, discussed in "Partial List of Sexual Assault Cases Litigated by EEOC" below.) It is important to note that the victims in this case were immigrant victims of sexual assault. De Coster Farms victims received some of the first U-Visa interim reliefs awarded.

<sup>15</sup> There is a Regional Attorney in each of the 15 EEOC District Offices in Atlanta, Birmingham, Charlotte, Chicago, Dallas, Houston, Indianapolis, Los Angeles, Miami, Memphis New York City, Philadelphia, Phoenix, San Francisco and St. Louis. Each Regional Attorney has jurisdiction over a broad geographic area including multiple states.

<sup>16</sup> *Ray*, 217 F.3d at 1245-1246.

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

**C. Protected Activity**

**Protected activity includes:**

- **Opposition to a practice believed to be unlawful discrimination.** This would include informing an employer that you believe that he/she is engaging in prohibited discrimination. Opposition is protected from retaliation as long as it is based on a reasonable, good-faith belief that the complained of practice violates anti-discrimination laws and the manner of the opposition is reasonable.

Complaining to anyone about alleged discrimination against oneself or others;

- Threatening to file a charge of discrimination;
- Picketing in opposition to discrimination; or
- Refusing to obey an order reasonably believed to be discriminatory.
- **Participation in an employment discrimination proceeding.** Participation is protected activity even if the proceeding involved claims that ultimately were found to be invalid. Examples of participation include:
  - Filing a charge of employment discrimination;
  - Cooperating with an internal investigation of alleged discriminatory practices; or
  - Serving as a witness in a discrimination investigation or lawsuit.
- A protected activity can also include requesting a reasonable accommodation based on religion or disability.

Examples of activities that are NOT protected opposition include:

- Actions that interfere with job performance so as to render the employee ineffective; or
- Unlawful activities such as acts or threats of violence.

## IV. EEOC's Charge Processing Procedures

### A. Who Can File A Charge?

A charge filed with the EEOC authorizes the EEOC to investigate alleged discrimination at a company or other covered entity. The federal laws apply to all employees of employers in the United States and its possessions and territories (e.g. U.S. Virgin Islands, Guam, Commonwealth of the Northern Mariana Islands, American Samoa, Commonwealth of Puerto Rico) that have 15 or more employees (for at least 20 weeks in the calendar year or preceding calendar year of the charge filing).<sup>17</sup>

**Exhaustion of Administrative Remedies:** Under Title VII, a charge must be filed with the EEOC or a state or local fair employment practices agency before the charging party can file suit in federal court.

---

<sup>17</sup> For technical assistance regarding violations by employers with less than 15 employees, contact NIWAP for individual technical assistance.

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

**Immigrant workers:** The federal laws against discrimination make no distinction on the basis of immigration status for employees working in the U.S. or its territories. Consequently, *undocumented workers*<sup>18</sup> and *other non-U.S. citizens are covered*.<sup>19</sup> During its investigation, the EEOC will not ask the immigration status of any charging party since it is irrelevant to a finding of discrimination.<sup>20</sup> In the course of litigation, the EEOC has sought and obtained court orders barring a company's lawyer from inquiring into a charging party or any witness' immigration status.<sup>21</sup> Courts have concluded that allowing questioning about immigration status has a "chilling effect" on complainants and undercuts the civil rights laws.<sup>22</sup>

**U.S. citizens** working for U.S. companies abroad are covered by federal laws.<sup>23</sup> However, non-U.S. citizens working abroad for U.S. companies are not covered.

**Third Parties:** Charges can also be filed by a third party on behalf of an aggrieved individual. Third parties might include a friend, relative, co-worker, union, church member, advocate, or attorney. Advocates, healthcare providers, shelter workers, and attorneys offering civil legal assistance, immigration assistance, or prosecuting a criminal case on behalf of immigrant victims of sexual assault or sexual harassment are encouraged to assist victims, particularly those with limited English proficiency and who lack familiarity with the U.S. justice system. This approach provides an alternate or additional method for holding sexual harassment and sexual assault perpetrators accountable. This is particularly important due to strict filing deadlines, as will be discussed below (see Timelines).

**Commissioner's Charge:** Additionally, an EEOC Commissioner (one of five commissioners) can initiate an investigation on his/her own based on information that is obtained by the Commissioner's office.

**Directed Charge:** Under the Age Discrimination in Employment Act, an EEOC District Director can initiate a "director's charge" to launch an investigation into a company.

## B. Timeliness

A charge must be filed within **180 days** of the discriminatory act. In harassment cases involving a pattern of harassment, at least one act must occur within the last 180 days.<sup>24</sup> Note: In states that have similar anti-discrimination statutes and that have a work-sharing agreement with the EEOC, the charge must be filed within **300 days** of the discriminatory act.<sup>25</sup> In discharge cases, the date of NOTICE of termination (not the last day of work necessarily) starts the clock.<sup>26</sup> A charging party cannot proceed to court unless it has "exhausted its administrative

---

<sup>18</sup> The term "undocumented workers" refers to non-citizens working in the United States without having received employment authorization from the Department of Homeland Security. This terminology is used in this chapter instead of pejorative terminology often used, including "illegal aliens", "unauthorized workers", and "illegal immigrants". It is important to note that VAWA self-petitioners, VAWA cancellation applicants and U-Visa interim relief recipients are undocumented until they receive their lawful permanent residency under VAWA, or until they are awarded a U-Visa, but are eligible for and can receive legal employment authorization and are thus not undocumented workers.

<sup>19</sup> See *EEOC v. Tortilleria "La Mejor"*, 758 F. Supp. 585, 589 (E.D. Cal. 1991); see also, *Rivera v. NIBCO, Inc.* 364 F.3d 1057, 1064 (9<sup>th</sup> Cir. 2004). Immigration status might affect the remedies available. In *Hoffman Plastics Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) the Supreme Court held (5-4) that under the National Labor Relations Act the NLRB has no authority to interpret immigration law and that where an unfair labor practice occurs (termination), the NLRB may not order back pay or reinstatement for an undocumented worker. While some employers argue that Hoffman Plastics applies to Title VII, no federal court has adopted that view. (see footnote 14 and 15 for examples). Title VII claims are adjudicated in federal court, and federal judges have wider discretion than the NLRB. (See *Rivera v. NIBCO* above). In reality, the back pay may be minimal and real remedy lies in recovering compensatory and /or punitive damages. Courts have also held that where neither back pay nor reinstatement is sought, Hoffman Plastics clearly does not apply (*EEOC v. The Rest. Co.*, 448 F. Supp. 2d 1085, 1088, order affirmed, 2007 WL 424323 (D. Minn.) *EEOC v. Bice of Chicago*, 229 FRD 581, 583 (N.D. Ill. 2005)).

<sup>20</sup> If there is any question about the immigration status of the charging party, she should be referred to competent immigration lawyers for consultation and advice.

<sup>21</sup> See, e.g. *EEOC v. The Rest.Co.*, 448 F. Supp. 2d at 1087, order affirmed, 2007 WL 424323 (D. Minn.) *Bice of Chicago*, 229 FRD at 583; *EEOC v. First Wireless Group, Inc.* 225 FRD 404, 406 (E.D.N.Y. 2004).

<sup>22</sup> *Rivera*, 364 F.3d at 1064.

<sup>23</sup> 42 U.S.C. 2000e (f).

<sup>24</sup> *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002).

<sup>25</sup> 42 U.S.C. Sec. 2000e-5(e).

<sup>26</sup> *Del. St. Col. v. Ricks*, 449 U.S. 250, 259 (1980).

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

remedies” without first filing with the EEOC or a state or local agency authorized to receive the charges. *Practice Point: A lawsuit under Title VII or the Americans with Disabilities Act (ADA) cannot be filed unless a charge is timely filed with the EEOC or corresponding state agency.*

### C. What Happens after a Charge of Employment Discrimination is Filed with EEOC?

Ten days after a charge is filed with the EEOC, the employer is notified that the charge has been filed and is given an opportunity to respond to the charge. There are a number of ways a charge may be handled:

#### Investigation

A charge may be assigned for priority investigation if the initial facts appear to support a violation of law. When the evidence is less strong at the outset, the charge may be assigned for follow up investigation to determine whether it is likely that a violation has occurred.

EEOC can seek to settle a charge at any stage of the investigation if the charging party and the employer express an interest in doing so. If settlement efforts are not successful, the investigation continues.

In investigating a charge, EEOC may make written requests for information, interview people, review documents, and, as needed, visit the facility where the alleged discrimination occurred and other related sites.

The EEOC can also seek information on other potential victims of discrimination or harassment, including names, lists of employees, other witnesses, etc. The EEOC can also obtain relief for these “class members” even if they do not file a charge.

When the investigation is complete, EEOC will discuss the evidence with the charging party or employer, as appropriate. The employer is required by law to cooperate with the EEOC’s requests for information. A failure to provide the information can result in the EEOC issuing an administrative subpoena for the information. If the company does not comply with the subpoena, the EEOC can file a complaint in federal court to enforce the subpoena. The existence of a federal investigation then becomes public.

Note: The charge may be selected for EEOC’s *mediation* program if both the charging party and the employer express an interest in this option. Mediation is offered as an alternative to a lengthy investigation. Participation in the mediation program is confidential, voluntary, and requires consent from both charging party and employer. If mediation is unsuccessful, the charge is returned for investigation.

### D. Resolving Charges

**Dismissal:** A charge may be dismissed at any point if, in the agency’s best judgment, further investigation will not establish a violation of the law. If the evidence obtained during an investigation does not establish that discrimination occurred, this will be explained to the charging party. A required notice is then issued, closing the case and giving the charging party 90 days (from the date of receipt of the Notice of Right to Sue) in which to file a lawsuit on his or her own behalf in federal court. Different laws may apply to the comparable state claims.<sup>27</sup>

**Letter of Determination:** If the evidence establishes that discrimination has occurred, the employer and the charging party will be informed of this in a letter of determination that explains the finding. The EEOC will then attempt conciliation with the employer to develop a remedy for the discrimination.

---

<sup>27</sup> See discussion below on an individual filing a lawsuit.

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

**Conciliation:** Conciliation is an opportunity for the employer, employee and the EEOC to seek a confidential settlement.<sup>28</sup> This may include various remedies including back pay, reinstatement, monetary damages, injunctive relief (training, discipline, etc.) and other remedies.

## V. Litigation by EEOC

If the EEOC is unable to successfully conciliate the case, the agency will decide whether to file a lawsuit in federal court. Lawsuits by the EEOC are brought by the Office of General Counsel (OGC). The Regional Attorney is the OGC's representative in the field and can authorize lawsuits.<sup>29</sup> The lawsuit is essentially between the United States government (EEOC) (on behalf of the charging party) and the employer. In the lawsuit, the EEOC can obtain relief for the charging party and the class of similarly situated workers even if the other workers did not file individual charges.<sup>30</sup> A press release is issued when an EEOC lawsuit is filed so that witnesses and potential class members are aware of the case.

**Intervention:** If the EEOC files suit, the charging party can intervene in the lawsuit and sue on the federal claims as well as any other related state or federal claims. This can play an important role in the case since federal employment anti-discrimination laws have caps on damages up to \$300,000. Some state law claims have no caps on damages or may have different caps from federal law. Attorneys seeking to represent charging parties who will intervene into the EEOC's lawsuit, should contact the respective EEOC Regional Attorney as soon as possible to communicate and coordinate intervention in the case.<sup>31</sup> Early communication can result in the best case coordination, improving outcomes for victims. Note that the Charging Party cannot intervene in an Age Discrimination in Employment Act suit filed by the EEOC.

**Notice of Right to Sue:** If the EEOC decides not to file a lawsuit, it will issue a notice closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf. A Charging Party can request a Notice of Right to Sue at anytime after a charge is filed. However, the EEOC District Director can decide not to issue the Notice of Right to Sue within the first 180 days of the charge being filed.

**Settlements:** Generally, EEOC lawsuits that are settled are resolved through a Consent Decree signed by the federal judge and filed with the court. It is a matter of public record.

## VI. Private Lawsuit by the Charging Party

Generally, the EEOC's earlier determination that the evidence did not establish a violation of law does not prevent a Charging Party from filing a private lawsuit. These lawsuits are trials *de novo*, i.e., the Charging Party has the opportunity and the burden to show that a violation occurred, notwithstanding the EEOC's findings. Similarly, a court is not bound by the EEOC's determination that discrimination occurred. The Charging Party must still prove discrimination and the defendant employer can present its own witnesses to establish that no violation occurred.

The EEOC can intervene in a private lawsuit if it is in the public interest to do so. The EEOC may choose to intervene even when it had decided not file the original lawsuit.

---

<sup>28</sup> Until the EEOC files an action in federal court, the existence of the charge and any information gathered during the investigation remains confidential and cannot be disclosed by the EEOC under federal law.

<sup>29</sup> The charging party's attorney or advocate should communicate with the Regional Attorney and provide any necessary information that may help determine whether a lawsuit should be filed.

<sup>30</sup> *Gen. Tel. Co. v. EEOC*, 446 U.S. 318, 324 (1980).

<sup>31</sup> For a list of regional attorneys and their contact information, see [www.eeoc.gov](http://www.eeoc.gov). There is a Regional Attorney in each of the 15 EEOC District Offices in Atlanta, Birmingham, Charlotte, Chicago, Dallas, Houston, Indianapolis, Los Angeles, Miami, Memphis New York City, Philadelphia, Phoenix, San Francisco and St. Louis. Each Regional Attorney has jurisdiction over a broad geographic area including multiple states.

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

**Required Timelines:**

- **Federal Court cases**
  - A charging party may file a lawsuit within 90 days in federal court after receiving a notice of a "right to sue" from EEOC, as stated above.<sup>32</sup>
  - Under [Title VII](#) of the Civil Rights Act of 1964 and the Americans with Disabilities Act a charging party also can request a notice of "right to sue" from EEOC 180 days after the charge was first filed with the Commission, and may then bring suit within 90 days after receiving this notice.
  - Under the Age Discrimination in Employment Act, a suit may be filed at any time 60 days after filing a charge with EEOC, but not later than 90 days after EEOC gives notice that it has completed action on the charge.
  - Under the Equal Pay Act, a lawsuit must be filed within two years (three years for willful violations) of the discriminatory act, which in most cases is payment of a discriminatory lower wage.
- There may be different deadlines for claims brought under state law and to be filed in state court.<sup>33</sup>

## VII. Remedies Available to Victims of Harrassment or Retaliation

The "relief" or remedies available for employment discrimination may include:

**Back pay** (salary and benefits covering the period from termination until resolution), or

**Front pay** (money for pay that would have been earned if charging party was reinstated but reinstatement is not a good option under the circumstances),

- **Compensatory Damages:** Under Title VII and the Americans with Disabilities Act, compensatory damages can be awarded to compensate a victim for actual monetary losses, for future monetary losses, and for mental anguish, pain and suffering, etc.
- **Punitive Damages:** Punitive damages also may be available to punish an employer if it acted with malice or reckless indifference. Punitive damages are not available against the federal, state or local governments under federal employment discrimination laws.
- **Title VII Caps on Compensatory and Punitive Damages:** There are, however, caps on compensatory and punitive damages, ranging from \$50,000 to \$300,000, per charging party or class member, depending on the size of the employer.<sup>34</sup> These caps are not applicable to discrimination claims brought under 42 U.S.C. Sec. 1981 generally covering race/national origin claims. They are also not applicable to claims of discrimination under state law.
- **Other costs and fees:** The court could order the defendant to pay the plaintiff's attorney fees (if the plaintiff wins), witness fees and court costs. However, it is important to be aware that the plaintiff could

---

<sup>32</sup> The EEOC can also intervene in individual suits if there is a public interest that can be served by joining the lawsuit.

<sup>33</sup> See *EEOC v. Farmer Bros. Co.*, 31 F.3d 891, 902 (9<sup>th</sup> Cir. 1994)

<sup>34</sup> 42 U.S.C. 1981a (b). The caps on damages are as follows: Respondents (employers) with 15-100 employees (\$50,000); respondents with 101-200 employees (\$100,000); respondents with 201-500 employees (200,000), and respondents with more than 500 employees (\$300,000). The caps on damages do not apply to back pay or front pay.

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

be ordered to pay for the defendant's attorney's fees and costs if the court finds that the lawsuit was "frivolous".<sup>35</sup>

**Injunctive Relief:** The court could also order that the employee be hired, reinstated, promoted, or otherwise made whole, e.g., in the condition s/he would have been but for the discrimination. An employer may be required to post notices in applicable languages to all employees addressing the violations of a specific charge and advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

The employer also may be required to take corrective or preventive actions to cure the source of the identified discrimination and minimize the chance of its recurrence, as well as discontinue the specific discriminatory practices involved in the case. This may include training for all staff, tying managers' or supervisors' performance reviews to compliance with federal anti-discrimination laws, or termination and/or not rehiring any harassing individual. The Consent Decree or other court orders could also specifically bar retaliation against the charging party. If the employer retaliates, the employer could be found in contempt of court and be subject to fines as well as additional damages.

## VIII. The Role of the Attorney, Advocate, Counselor or Medical Professional

**A. Establishing Credibility:** The medical doctor, counselor, therapist, social worker, advocate, or other professional who treats or assists the charging party plays a critical role. He or she may be the first person who hears about the acts that occurred, how they occurred, who did it, and what suffering the charging party may have undergone. All this information may help to buttress the charging party's credibility – a crucial factor in "he said, she said" disputes or, the more likely case, where sexual assault occurs behind closed doors.

**Corroboration of assault:** physical injuries, mental state, etc. may help to confirm that the charging party has undergone some traumatic experience; but "stoic" behavior, apparent indifference, and a limited description of the events, do not necessarily confirm that the assault did not occur.

**Law Enforcement:** Do not assume that law enforcement was called in when the assault was reported to the company or ever. Similarly, don't assume that the police know how to assess credibility *in civil cases* involving a private company. Police do not enforce and generally are not trained in federal employment discrimination law. More often than not, women do not report sexual assault crimes to law enforcement, and companies do not always report assault in the workplace when the company could face liability for the acts committed by an supervisor, a co-worker or even a third party. In criminal proceedings, the standard for finding guilt is "beyond a reasonable doubt" whereas the standard for finding an employer liable of harassment is "by a preponderance of the evidence, which is 51%".

### Some Tips/Questions at the Initial Interview:<sup>36</sup>

- 1) Ask first about the most recent assault: i.e. parties involved; location; and what occurred.
- 2) How did the charging party respond to the assault? Fight it off? Fearful? Protest?
- 3) Did the harasser threaten the charging party with retaliation? Bodily harm? Harm to others? Deportation?
- 4) Did she complain internally to the company? To a supervisor? What happened? Treatment offered?

<sup>35</sup> See Federal Rules of Civil Procedure, Rule 11; see also *Christianburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978)

<sup>36</sup> While these questions can be asked by health care providers and counselors, they are also suggested questions for the attorney assessing Charging Party's credibility and gathering the general facts to support the claim.

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

- 5) **Did the company or supervisor retaliate?** What was the retaliation? Demotion? Termination? Reduced Hours? Threatened Termination? Did the company try to discourage her from pursuing her complaint? Deportation?
- 6) Were there prior incidences of harassment? When? How often? Who was involved?
- 7) Why didn't she complain sooner to the company? Were other victims deterred from complaining? Supporting Facts? Witnesses?
- 8) Are there other victims who suffered harassment as well?

Remember, the attorney contemplating filing suit must be convinced that the charging party is credible and that there is evidence to support that conclusion.

**B. Compensatory Damages:** Compensatory damages are damages awarded for pain and suffering and emotional distress. In cases where there is no significant back pay involved (i.e. failure to hire, demotion, termination), compensatory damages may be the most critical remedy for the charging party. Generally, the treating physician's or therapist's notes and records will be involved in establishing pain and suffering, but might not be necessary when seeking damages such as injunctive relief (hiring, reinstatement, promotion) or back pay. Family members and friends could also testify to explain changes in the charging party's behavior after the assault.

**Some Areas to Explore:**

- 1) How did the charging party react after the assault? Cry? Break down? Was she withdrawn?
- 2) What changes have there been in her relations with others? Spouse? Boyfriends? Children? Siblings? Diminished sexual relations? Inability to hold conversations with anyone? Less social? Not able to fulfill family obligations?
- 3) How does she feel when she sees the harasser?
- 4) How did she react after she was retaliated against?
- 5) Does she have any physical injuries? What? Marks? Bruises? Cuts? Were these reported to anyone? Who? What was her response when she was injured?
- 6) Did the sexual harassment or sexual assault(s) lead to harm to her mental health (e.g., Post-Traumatic Stress Disorder, depression, anxiety, sleeplessness)?

**Lessons from *EEOC v. Footaction, USA*:** In a case involving the harassment of an 18-year-old sales associate, the assistant manager had threatened to ring the charging party's neck on two occasions, and on the second threat, actually had his hands around her neck. Earlier complaints of harassment to the store manager (who had been dating the harasser's mother) were unheeded. The teen did not report the harassment to her mother. *The mother first learned of the harassment when she found the teen curled up in a fetal position on the couch after the second "break your neck" threat.* She convinced the teen to file a charge with the EEOC, and her testimony about how the harassment impacted her daughter greatly affected the daughter's recovery for compensatory damages.

**Rule 35 Medical Examination:** Under Rule 35 of the Federal Rules of Civil Procedure, the defendant company can ask the judge to order a physical and mental examination of the charging party when her physical or mental condition is at issue, as in the case that the party raises her physical or medical condition in support of her position, the party intends to offer expert testimony in support of the claim for emotional distress, and there is good cause. A party's emotional distress is at issue when it is unusually severe, requires an expert to explain or is described in medical terms.<sup>37</sup> Less serious emotional distress, such as grief, anxiety, anger, and frustration that

---

<sup>37</sup> *Ricks v. Abbott Labs*, 198 FRD 647, 649 (D.Md. 2001).

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

people experience when bad things happen is not sufficiently “in controversy”.<sup>38</sup> Often the case and the amount of compensatory damages can turn on “dueling” doctor’s testimony.

**The Examiner:** The examination must be conducted by a certified or licensed professional, normally a physician or a psychologist.<sup>39</sup> Other examiners may “include a licensed clinical psychologist and other certified or licensed professionals such as dentists, social workers, or occupational therapists, who are not physicians or clinical psychologists, but who may be well-qualified to give valuable testimony about the physical or mental condition that is the subject of dispute.”<sup>40</sup>

**Other Stressors:** In the Rule 35 examination, other stressors in the victim’s life may come out. These stressors may include: domestic violence, divorce, history of victimization, or other pressures that undercut or muddy her claim for compensatory damages. The defendant will argue that the “pain and suffering” the victim is experiencing was not caused by the assault alone but by other stressors, and therefore the amount of monetary damages should be minimal.

**Conflicting Medical Opinions:** When a Rule 35 medical examination is ordered the decision in the sexual harassment cases and the amount of compensatory damages can turn on “dueling doctors” respective evaluations of the charging party’s physical and mental condition. When the charging party’s own health care professionals testify as experts about her physical and mental condition and the impact the sexual harassment or sexual assault had on her and the Rule 35 medical examiner presents different results in his evaluation, the court will have to resolve this conflict between the doctors as a part of the court’s decision in the case.

**C. Cultural and Linguistic Competencies:** Cultural and linguistic competencies are critical particularly in working with immigrant women or young workers. Attorneys and treating professionals should be aware of the following factors and exercise great patience when working with victims.

**Language:** Studies show that victims are better able to describe embarrassing acts and emotional harm if they speak in their first language. Thus, it is critical for the treating professional to be linguistically competent or have a qualified interpreter. The interpreter must also understand and be sensitive to the fact that the victim will describe acts which may be embarrassing to her.

**Factors of vulnerability:** Awareness of the factors of vulnerability is critical. These factors may include:

- minority and/or immigrant status;
- limited or non-English speaking ability;
- retaliation;
- the charging party desperately needing the job;
- economic condition of the charging party;
- lack of employment alternatives, harsh historical working conditions and employment practices in an industry; or
- other factors.

These factors commonly exist in higher levels in industries where employees are less likely to complain. Examples include: service, agriculture, businesses in rural communities, and small companies.

---

<sup>38</sup> Michael C. Smith, O’CONNOR’S FEDERAL RULES: CIVIL TRIALS 2007 (Jason E. Wilson ed., Jones McClure Publishing 2006).

<sup>39</sup> *Id.*

<sup>40</sup> Federal Civil Judicial Procedures and Rules (2006 Revised Ed.).

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

**Teenagers:** Young workers pose an exceptional challenge in sexual assault cases as they might first believe that “it was not a big deal”, “they can handle it” on one hand, or be extremely reluctant to talk about it because they fear that their parents or boyfriend may punish them. Peer pressure “not to complain” is strong, particular in areas where jobs are few. Their relative youth, first time experience in work, and general unawareness of their rights or knowledge of what is permissible or prohibited behavior, may make it difficult to get the complete story in the initial interviews.

Moreover, this is by no means an exhaustive list of the cultural and linguistic competencies that may be brought to bear in sexual harassment and assault cases and attorneys, advocates, counselors and medical professionals should be aware of other factors.<sup>41</sup>

## CONCLUSION

Sexual harassment and assault in the workplace is a continuing problem, but laws exist to protect victims. This outline is intended to be a basic document to inform advocates, counselors and attorneys offering civil and immigration legal assistance to victims about their roles in helping victims of sexual harassment and assault in the workplace obtain remedies, including monetary relief. If you would like training or materials and/or have questions, feel free to contact the EEOC.

## APPENDIX A

### RESOURCES:

[www.eeoc.gov](http://www.eeoc.gov): Lists all EEOC offices, District Directors and Regional Attorneys, guidelines on discrimination claims, EEOC programs, etc.

[www.youth.eeoc.gov](http://www.youth.eeoc.gov): Highlights work behind “Youth at Work” initiative which targets young workers.

### PARTIAL LIST OF SEXUAL ASSAULT CASES LITIGATED AND RESOLVED BY EEOC

**EEOC v. Tanimura & Antle** (N.D. Cal.) (EEOC San Francisco)

EEOC alleged that Blanca Alfaro and a class of Latina farm workers were sexually harassed and/or retaliated against for protesting harassment by supervisory officials of Tanimura & Antle, the largest lettuce grower in the world (Salinas, California). The harassment included, among others, “quid pro quo” demands, i.e., employment to work in the fields was conditioned on having sexual relations with the hiring official.

Resolution: Consent Decree; settlement; \$1.855 million, the largest sexual harassment award in the agricultural industry. Lead harasser was fired (for other reasons unrelated to the harassment charge) but will not be rehired; co-harasser suspended, and mandatory training for all employees. (1999)

**EEOC v. Rivera Vineyards, Inc.** (C.D. Cal.) (EEOC Los Angeles)

---

<sup>41</sup> See chapter on Dynamics of sexual assault experienced by immigrant victims for more information

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

EEOC alleged that Latina farm workers were subjected to sex discrimination (segregation) and sexual harassment, including rape (Coachella, California)  
Resolution: Consent Decree; settlement; \$1.1 million (June 2005)

**EEOC v. Technicolor Videocassette, Inc.** (C.D. Cal.) (EEOC Los Angeles)

EEOC alleged that class of Latina video production workers were subjected to egregious sexual harassment and retaliation by male co-workers and supervisors. Retaliation included demotion, loss of wages, further harassment, disciplinary action and discharge. (Camarillo, California)  
Resolution: Consent Decree; settlement \$875,000 (2002)

**EEOC v. DJ International dba Moods & Music** (D.N.M.I.) (EEOC San Francisco)

EEOC alleged that seven Filipina waitresses, some of whom were teenagers, were sexually harassed as a condition of employment (allow customers to fondle them and/or have sex with them) and retaliated against them for opposing harassment. (Saipan, Commonwealth of the Northern Mariana Islands)  
Resolution: Judgment: \$350,000 (1999)

**EEOC v. Mid-America Hotels, dba Burger King** (D. Mo.) (EEOC St. Louis)

EEOC alleged that seven women including 6 high school students were subjected to weeks of groping, vulgar sexual comments and demands for sex by the manager (Peerless Park, Missouri) Resolution: Consent Decree: settlement \$400,000 (2004)

**EEOC v. Footaction, USA** (N.D. Cal.) (EEOC San Francisco)

EEOC alleged that an 18-year old female sales associated was constantly sexually harassed by her assistant manager, co-workers and customers, including propositions for sex. Assistant manager twice threatened to break the charging party's neck if she complained and put his hands around her neck while making the threat. (San Jose, CA)  
Resolution: Consent Decree: settlement \$111,000 (2001)

**EEOC v. Star Concrete dba Sandman** (N.D. Cal.) (EEOC San Francisco)

EEOC alleged that young female in office was harassed (physical grabbing, propositions for sex, comments about body, etc.) by owner's son in plain view of managers for two years.  
Resolution: Consent Decree; settlement \$250,000 (2001)

**EEOC v. Iowa AG, LLC and DeCoster Farms of Iowa** (N.D. Iowa) (EEOC Milwaukee)

EEOC alleged that Mexican female employees at poultry and egg processing plants were raped by their supervisors and so intimidated and threatened with retaliation (including further rape) that they were afraid to cooperate with EEOC's investigation. EEOC filed Motion for Preliminary Injunction to enjoin retaliation while EEOC investigated. Consent order granted. Lawsuit on harassment and retaliation filed.  
Resolution: Consent Decree; settlement \$1.525 million (2002)

**EEOC v. Safeway** (D. Hawaii) (EEOC San Francisco)

EEOC alleged that male store employee was subjected to "same sex" sexual harassment (grabbing of genitals and buttocks, touching, propositions for sex, simulated sex, etc.) by supervisor on a regular basis. (Honolulu, HI)  
Resolution: Consent Decree, settlement \$250,000 for federal claims (undisclosed amounts for state claims) (2001)

**EEOC v. Harris Farms** (E.D. Cal.) (EEOC San Francisco) (see attached *Ms. Magazine* article)

EEOC alleged that Mexican farm worker employed by large agricultural company was egregiously sexual harassed by her supervisor and co-workers (three rapes, constant requests for sex, threats to physical safety, assault) and then retaliated against, resulting in her constructive discharge (Coalinga, California)  
Resolution: Jury verdict \$994,000 (January 2005)

**EEOC v. Roy's Poipu Bar & Grill** (D. Hawaii) (EEOC San Francisco)

EEOC alleged that three female restaurant employees were subjected to sexual harassment (verbal and physical, including propositions for sex and a harasser placing a waitress on the bar and putting his head between her legs).  
Resolution: Consent Decree; settlement \$245,000 (2002)

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

**EEOC v. Carmike Cinemas** (D.N.C.) (EEOC Charlotte)

EEOC alleged that 14 young men had been harassed by a male supervisor, a convicted sex offender, at a theater (sexual touching, egregious comments, sexual advances, demands for sex, etc.) (Raleigh, NC)

Resolution: Consent Decree; settlement \$765,000 (2005)

**EEOC v. Quality Art LLC and Palestra Capital** (D. Arizona) (EEOC Phoenix)

EEOC alleged that the company subjected 27 Latina females to widespread sexual harassment and national origin discrimination, and that the company retaliated against employees who complained about discrimination by firing them or forcing them to resign, as well as by reporting undocumented workers to the INS. (Gilbert, Arizona)

Resolution: Judgment \$3.5 million (2001)

**EEOC v. Rent-A-Center** (N.D. Missouri) (EEOC St. Louis)

EEOC alleged that thousands of women were denied job opportunities and promotions on the basis of sex and were sexually harassed

Resolution: Consent decree; settlement \$47 million (2003)

**EEOC v. Mitsubishi** (N.D. Illinois) (EEOC Chicago)

EEOC alleged that hundreds of women were subjected to sexual harassment on the factory line. Harassment included touching, groping, fondling and constant propositions for sex by supervisors and co-workers.

Resolution: Consent Decree; settlement \$34 million (1998)

**EEOC v. Sizzler** (N.D. Cal.) (EEOC San Francisco)

EEOC alleged that Mexican female employee was subjected to egregious sexual harassment in the restaurant which included grabbing, constant propositions for sex by a co-worker, a failure of management to address the problem, and threats to kill female employee by harasser; Consent Decree; settlement \$300,000 (2008)

Sexual Harassment and Assault in the Workplace:  
A Basic Guide for Attorneys in Obtaining Relief for Victims under Federal Employment Law

**National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)**  
**American University, Washington College of Law**  
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016  
(o) 202.274.4457 · (f) 202.274.4226 · [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu) · [wcl.american.edu/niwap](http://wcl.american.edu/niwap)