

Sexual Violence in the Workplace: Immigrant Survivors in Rural Communities


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Title VII of the Civil Rights Act of 1964


- ▶ Bars discrimination on the basis of race, color, sex, national origin, religion; also prohibits retaliation against those who complain
- ▶ Value its historical significance and breakthrough for workers' rights
- ▶ Pre-Title VII: can discriminate or retaliate legally
- ▶ “12 Years a Slave”; “The Butler”
- ▶ Creates EEOC to investigate and litigate (50th Anniversary)



Title VII of the Civil Rights Act of 1964

- ▶ EEOC can investigate charges of discrimination; employers must cooperate; EEOC gets access to records, interview witnesses; can also see if there are other victims
 - ▶ EEOC makes findings of discrimination and tries to reach informal settlement through conciliation
 - ▶ If conciliation fails, then EEOC can file lawsuit in federal court on behalf of Maria and **similarly situated victims**
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Title VII of the Civil Rights Act of 1964: Remedies include \$\$

- ▶ **Backpay:** for lost wages due to unlawful termination, failure to hire, demotion, loss of promotion
 - ▶ **Frontpay:** if terminated and reinstatement to the job is not wise or safe
 - ▶ **Compensatory damages:** for pain and suffering, emotional distress
 - ▶ **Punitive damages:** to punish the employer for its reckless disregard or malice
 - ▶ **All money goes to the victim**
 - ▶ **Private attorney can get attorney's fees**
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The U.S. Agricultural Industry

- ▶ The backbone of the U.S. economy; *rooted in slavery* (“12 Years a Slave”)
- ▶ Colonies used slave labor from the British slave trade to pick cotton and tobacco for shipment to England
- ▶ Indentured servants and share croppers (black and non-black), southern plantations wanted to maintain that economic system



The U.S. Agricultural Industry

- ▶ Japanese & Filipino in Hawaii; Filipino and Mexican in the West
- ▶ 1935: exemption from the National Labor Relations Act; exemptions from Fair Labor Standards Act: why?
- ▶ 1942 – 1964 *Bracero* program; no rights, no wage protection, multiple abuses
- ▶ No state has a labor relations law for farm workers except California




U.S. Agricultural Industry (cont)

- ▶ Constant need for cheap, docile labor
- ▶ U.S. agricultural industry continues to be part of the global economy; **major producers grow for the international market** – Asia, Africa, Middle East, Europe, Latin America
- ▶ 2.5 – 3.0 million farmworkers in U.S.
- ▶ 1 million California; 300,000 Pacific Northwest
- ▶ Growing population of indigenous farmworkers from Mexico (Trique, Mixteco, etc.)
- ▶ Increasing population in South and Atlantic coast



U.S. Agricultural Industry (cont)

- ▶ *Thomas Jefferson's time v. laws against sexual harassment*
 - ▶ *Making sure Maria never accesses the law*
 - ▶ *The power of retaliation*
 - ▶ But who enforces the law??
 - ▶ Government plays a key role: EEOC
 - ▶ Public Health community including OSHA, health community, etc.
 - ▶ Still needed: criminal law enforcement – police and prosecutors
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The Problem

- ▶ ***EEOC v. Tanimura & Antle*** (\$1 billion in business; largest lettuce grower in world)
 - farm worker forced to have sex (twice) with hiring official so that she could put food on the table for her 3 year old daughter;
- ▶ Fired after refusing later demands for sex
- ▶ – \$1.855 million settlement (1999) (Salinas, CA)
- ▶ She first complained about being fired, and then...



The Problem

- ▶ *EEOC v. Iowa Ag Processors dba DeCoster Farms*
- ▶ Rapes and terminations of farm workers
- ▶ Threats to terminate, deport and further harass workers if they cooperate with EEOC
- ▶ EEOC forced to seek Temporary Restraining Order to stop threats
- ▶ \$1.515 million settlement for 5 women raped and 5 others harassed (2002; Iowa)




The Problem

- ▶ *EEOC v. American Building Maintenance* (E.D. Cal.)
- ▶ 20+ Latina janitors (some isolated in office buildings) subjected to sexual harassment including: groping, fondling, constant propositions for sex, and one woman raped by supervisors
- ▶ \$5.8 million settlement (2010)
- ▶ Bakersfield, California; Central Valley, agricultural area



The Problem

- ▶ *EEOC v. Harris Farms*
 - ▶ 3 rapes at gunpoint of farm worker, mother of five; threats to kill husband if she reported rapes; constant threats to employee; retaliation; orders to leave her husband; intimidation of witnesses; “flashing the silver-blue gun”
 - ▶ Harasser allowed to retire without punishment despite record of harassment of other women
 - ▶ No criminal investigation or prosecution despite deputy sheriff being contacted
 - ▶ Nearly \$1 million unanimous jury verdict; plus \$500,000 in attorney’s fees (2005; Fresno, California)
 - ▶ What it took to persuade her family to support her
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The Problem

- ▶ *EEOC v Wilcox Farms* (Oregon): sexual assault of farm worker; supervisor sticks hands inside front of her panties; demands for sex; fired in retaliation; \$260,000 (2009)
- ▶ *EEOC v. National Food Corp* (E.D. WA): egg farm worker was forced to perform oral sex on supervisor (in the barn) weekly for years, and subsequently fired 4 employees who complained to Manager about harassment were fired; \$650,000 (May 2013)
- ▶ EEOC filed 41 cases in federal courts nationwide alleging sexual harassment of farm workers; tens of millions of \$\$\$ recovered for victims
- ▶ **BUT NO CRIMINAL ARRESTS NOR PROSECUTIONS IN THESE CASES**



Compensatory Damages and Substantial Harm

- ▶ **Compensatory damages:** claimant shows that she suffered emotional distress, physical injuries, pain and suffering, etc. When EEOC seeks \$\$, EEOC has determined that Maria deserves compensatory damages. Jury or judge can also award damages in lawsuit.



Compensatory Damages and Substantial Harm

- ▶ Emotional distress can come from actual harassment, termination, suspension, retaliation, threats, etc.
- ▶ **Point for USCIS:** unless there is a “based in fact” credible basis to undercut EEOC’s, a judge’s, or a jury’s finding that Maria is credible and has experienced pain and suffering, trauma, and/or emotional distress, etc., this should serve as a finding of “substantial harm”; EEOC, judge, or jury has seen, interviewed, and heard Maria testify.

(Government does not have the discretion to discredit a witness unless it can point to credible evidence that the witness is lying; cannot ask for evidence not reasonably available.)




Retaliation and Substantial Harm

- ▶ Additionally, retaliatory suspension or termination (loss of wages) could create “substantial harm.” See *Burlington Northern v. White* (U.S. Supreme Ct. 2006):

“Neither do we find convincing any claim of insufficient evidence. White did receive backpay. But White and her family had to live for 37 days without income. They did not know during that time whether or when White could return to work. Many reasonable employees would find a month without a paycheck to be a serious hardship. *And White described to the jury the physical and emotional hardship that 37 days of having “no income, no money” in fact caused.*”



Retaliation and Substantial Harm

- ▶ (“ ‘That was the worst Christmas I had out of my life. No income, no money, and that made all of us feel bad. ... I got very depressed’ ”).
 - ▶ Indeed, she obtained medical treatment for her emotional distress. A reasonable employee facing the choice between retaining her job (and paycheck) and filing a discrimination complaint might well choose the former. That is to say, an indefinite suspension without pay could well act as a deterrent, even if the suspended employee eventually received backpay.” *Burlington Northern v. White (2006)*
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How Does This Happen??

- ▶ “A weak command structure and a climate of fear among female personnel *created the conditions* that led to widespread instances of sexual assault of Air Force recruits by their instructors at Lackland Air Force Base in Texas, senior Air Force commanders said yesterday.”
- ▶ *New York Times*, Jan 24, 2013, “Air Force Leaders Testify on Culture That Led to Sexual Assaults of Recruits”



How Does This Happen?

- ▶ “With witnesses rare, sex-crime cases inevitably become ‘he said, she said’ credibility contests, further stacking the deck against subordinate victims, since higher-ranking troops are considered inherently more credible.”
- ▶ *Rolling Stone*, Feb 14, 2013: “The Rape of Petty Officer Blumer”



How Can We Change This?

- ▶ Law Enforcement?
- ▶ Prosecution?
- ▶ Advocacy?
- ▶ Others?



It's All About Power and the Weapons in His Arsenal

- ▶ Sexual assault and harassment illustrate the disparity of power – and predators know this
- ▶ Employee v. Supervisor (she depends on him)
- ▶ Employee v. Company
- ▶ Employee: needs job, limited English, limited education, fear of retaliation
- ▶ Company: has money, connections, holds the livelihood card, may employ victim's family, controls the conditions of work, can fire her and siblings, etc.



Her Hurdles

Are Weapons in His Arsenal

- May be afraid to tell parents, spouse, relatives, friends, co-workers
- Stigma; shame; peer pressure; fear that co-workers will tease
- Emotionally and physically damaged from the harassment
- Actual threats of physical harm
- Immigration status; fear of deportation for her and family



Other Hurdles in Alleging and Proving Harassment

- ▶ Afraid to go to police; Note: less than 10% of sexual assault crimes are reported
- ▶ *EEOC v. Willamette Tree (protective order barring inquiry into why she didn't tell police)*
- ▶ Afraid that spouse or boyfriend may not believe her and may harm her or others
- ▶ Hurdles and weapons enable the predator
- ▶ *Just because she doesn't tell someone right away doesn't mean she's lying; threats of retaliation, including death or actual retaliation, may chill her out*



Strategies for increased reporting?



RETALIATION

- ▶ 41% of all charges in FY2013 (30% increase over FY2008); 44% in California
- ▶ Nearly 100% of sexual harassment lawsuits also have retaliation claim
- ▶ Issue: does the adverse action, e.g. termination, demotion, threats to harm or other activity discourage a reasonable employee to file a claim??



RETALIATION, TIMELINESS AND EQUITABLE TOLLING

- ▶ Farm worker raped with shears to throat at first and repeatedly raped in the fields; told that she if she told anyone about the rapes that she, co-employee relatives and family in Mexico would be killed; failed to file EEOC charge within 300 days; missed deadline by 62 days (*EEOC v. Willamette Tree Wholesale*) (Oregon)
- ▶ Can she still pursue claims after deadline?
- ▶ Court grants equitable tolling citing *Stoll v. Runyon* (9th Cir. 1999) (can't reward employer for having traumatized employee so much that she can't complain on time)



Why Do Victims Delay Reporting?



U Visa

- ▶ Has no statute of limitations
- ▶ Can seek a U visa many years after the criminal activities occurred
- ▶ No restrictions on how soon a victim may come forward and offer helpfulness



Her Hurdles, His Weapons: Credibility & Sexism

- ▶ “Jose sexually assaulted me in the back of the shed”
- ▶ “Are you sure Maria? Jose’s a family man. No one has ever complained about him. No one ever saw him attack you or say those things about you. But, weren’t you late for work yesterday? Jose would never do such a thing. He’s been with us since he was a teenager. He hired you (and he can fire you) and your sister.”

(You’re a liar, Maria)



Credibility & Sexism

- ▶ “Help! Help! Jose’s got a gun, and he just shot someone in the back of the warehouse! There’s blood everywhere!”
- ▶ “Are you sure Maria? Jose’s a family man. No one has ever complained about him. No one ever saw him attack you. But, weren’t you late for work yesterday? Jose would never do such a thing. He’s been with us since he was a teenager. He hired you (and he can fire you)”
- ▶ (*You’re a liar, Maria*)




Credibility & Sexism

- ▶ “Help! Help! Jose’s got a gun, and he just shot someone in the back of the warehouse! There’s blood everywhere!”
- ▶ “Omigosh! Are you okay, Maria??? Who else is working there? Is anyone else hurt? Get everybody to safety!!! Hurry up!! Somebody, call the police!! Get an ambulance!!”
- ▶ **WHY IS THE RESPONSE SO DIFFERENT?**



Common Threads in Management When Sexual Assault Occurs

- ▶ “Out of sight, out of mind” (I don’t care, and don’t tell me)
 - ▶ “Policies, policies?? We don’t have any policies. These are just farm workers.....I mean we’re just a family farm.”
 - ▶ “We have state of the art production and marketing (but ineffective human resources)
 - ▶ “Oh yeah, we train them about OSHA. Sexual harassment? We just tell them not to do it.”
(Doesn’t sexual assault threaten health and safety??)
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Common Threads

- ▶ Owners and office staff don't speak Spanish; workers don't speak English
- ▶ The Farm Manager is given virtually unchecked power; not told that retaliation is unlawful and could lead to termination; long time employee
- ▶ Supervisors and managers don't know the laws against sexual harassment; don't know how to handle a complaint; discourage complaints; make threats
- ▶ If there's a policy, no one knows what it is and what it means; no accountability; no training; no consequences; **ENABLES THE PREDATOR**



Common Threads

- ▶ If there's one worker who complains, there are likely more who have been harassed
- ▶ Use of weapons and threats to kill or do other physical harm; threats to terminate, demote
- ▶ A strong culture of fear; lack of trust that management will protect them
- ▶ Indifference by management at best; retaliatory actions at worst



The Health & Safety Angle and Criminal Prosecution: Putting More Eyes

- ▶ Set safety standards with penalties in addition to civil rights laws that create remedies
- ▶ Reframing sexual violence as a health and safety issue draws in other players: HHS, CDC, DOJ, DOL, related state agencies; becomes a public concern, not just the individual's
- ▶ Reframing egregious sexual harassment as crimes that warrant arrests and prosecutions



Taking This Home

Share ideas for how you can use what you learned here to benefit immigrant survivors in your community



Questions and/or Comments?

