United States General Accounting Office

GAO

Report to GAO Management and Employees

July 1991

Sexual Harassment: Women's Advisory Council Survey Results

GAO/WAC

GAO
United States
General Accounting Office
Washington, D.C. 20548

July 3, 1991

Dear GAO Employee:

This report presents the results of the sexual harassment survey conducted by the GAO Fiscal Year 1990 Women's Advisory Council (WAC). With GAO management's support, the Council conducted the survey to determine the nature and extent of sexual harassment in GAO.

This report demonstrates that sexual harassment is a problem in GAO. It discusses what employees and GAO management have done in response to the problem and includes recommendations for additional actions.

The women and men who made this report possible are to be thanked for their dedication to this project. All of the major contributors, listed in appendix VII, gave considerable personal time and energy to this report. In particular, a great deal of credit goes to Judy Pagano, Senior Operations Research Analyst (RCED), who was instrumental in providing the technical expertise required to make this an authoritative document.

If you have any questions or comments about the report, please contact me at (703) 557-1482.

Sincerely,

Kathleen Hancock

Kathleen J. Hancock, President
Fiscal Year 1990
Women's Advisory Council

Executive Summary

Purpose

The Women's Advisory Council (WAC), with the support of GAO senior management, conducted a survey to obtain employees' views and experiences related to sexual harassment and to determine what actions should be taken to prevent any such harassment.

Background

The term "sexual harassment" is defined differently by different people. Whether a particular action or behavior is sexual harassment depends on the facts and circumstances of each matter including the perceptions and sensibilities of the individual(s) affected by the behavior.

The sexual harassment survey used to collect the data presented in this report was based on a questionnaire developed by the Merit Systems Protection Board (MSPB) to obtain similar data on federal government employees. WAC slightly adjusted the survey to account for circumstances particular to GAO.

GAO's policy on sexual harassment and procedures for filing complaints are defined in GAO orders 2713.1 and 2713.2. GAO's Training Institute offers a course in "Preventing Sexual Harassment." According to the Training Institute Director, only senior level and management level evaluators, senior executives, and other employees with supervisory skills are scheduled to take the course. However, some regional office managers have offered the training to all staff.

Results in Brief

In analyzing the questionnaire responses, we found the following:

- Employees frequently disagree on the definition of sexual harassment.
- Despite GAO's efforts, sexual harassment is a problem in the agency, particularly for women but also for men.
- Although the majority of employees are aware of formal actions one can take in response to harassment, junior employees are less informed than senior employees and have less confidence in the effectiveness of the actions.
- Victims of sexual harassment rarely took formal actions to stop the harassment and frequently disagreed on the effectiveness of various actions.
- Many employees are unaware of the actions GAO has taken to reduce sexual harassment that may have occurred in the workplace.

WAC's Analysis[1]

Employees do not agree on what behaviors constitute sexual harassment, and women are more likely than men to consider various behaviors sexual harassment, even if committed by a co-worker. For example, women are much more likely than men to view a co-worker's "pressure for dates" as harassment. This difference in perception may lead to misunderstandings in which a woman feels harassed and the accused harasser feels she is overreacting. Some of the survey respondents commented on these potential misunderstandings: for example, "women overreact when you compliment their clothing or the way they smell" or "I wish my supervisor wouldn't always put his arm around me when he talks to me."[2]

Sexual harassment is a problem at GAO: 41 and 12 percent of the female and male respondents, respectively, reported they had experienced some form of sexual harassment in the last 2 years. This data is comparable with other federal agencies as reported by the MSPB. Further, according to the data, the harassment was not a one-time-only or isolated incident. Although the most frequently reported behaviors, such as sexual teasing, might not be considered serious forms of harassment, the large number of employees who have felt harassed demonstrates the need for remedial action at GAO.

According to those who reported being sexually harassed, co-workers were most apt to be the harassers. This was especially true for male victims. However, when the categories "immediate supervisor" and "other higher supervisor" are combined, supervisors are the most frequent harassers of women.

Although the majority of employees were aware of the formal actions one could take in response to harassment, junior employees were less knowledgeable than senior employees. This difference in knowledge is particularly striking when comparing employees in "Band III and above" with those in grades "GS-1 through GS-8." Further, many respondents—especially women, junior employees, and those who had been sexually harassed—did not consider these formal actions effective.

Victims of sexual harassment rarely take formal actions to stop the harassment, primarily because they see no reason to report it or think it will make the work situation unpleasant. According to GAO's Civil Rights

[1]We analyzed the data by female and male respondents because we found that the genders frequently answered the questions differently.

[2]All survey participants' comments in this report have been paraphrased to protect the employee.

Office, from fiscal year 1989 to the present, six employees have made claims of sexual harassment; only one resulted in a formal complaint.

Victims frequently disagree on the effectiveness of actions, which suggests that there is not one "best way" to handle harassment. Females are more apt than males to indicate that various actions do not make things better. Similarly, a much lower percentage of female than male respondents agreed or strongly agreed with the statement: "GAO makes reasonable efforts to stop sexual harassment." This suggests that women are not getting adequate support from the agency when they do take action.

Many employees were unaware of the actions GAO had taken to reduce sexual harassment that might have occurred in the workplace. Over two-thirds of female and male respondents did not know if GAO (1) provided swift and thorough investigations of complaints, (2) enforced penalties against harassers and managers who allowed sexual harassment to continue, or (3) provided counseling for victims. According to the Office of the Assistant Comptroller General for Operations, GAO has taken these actions, although there have been few formal complaints.

Women and men agree that the most effective actions GAO management could take would be to (1) provide awareness training for employees, (2) provide awareness training for managers and Equal Employment Opportunity (EEO) officials, (3) establish policies prohibiting sexual harassment, and (4) publicize the availability of formal complaint channels.

Recommendations

GAO has shown concern about sexual harassment in the agency by supporting the WAC survey and offering a course in prevention. However, given the high percentage of employees who reported experiencing sexual harassment at GAO, we recommend that management take the following actions:

(1) Revise the current sexual harassment course by expanding on ways of dealing with sexual harassment and require all employees to take this course. Given the differences in the way women and men perceive various behaviors, the training should include a discussion about perceptions and how employees can keep misunderstandings from escalating into major problems. GAO may want to consider giving a two-part class. The first part could cover sexual harassment awareness (answering the questions, what is sexual harassment and what can employees do when they are sexually harassed?). The second could be

the current course, which is primarily focused on legal liabilities and management's role in addressing sexual harassment.

(2) Better publicize actions employees can take in response to sexual harassment. For example, the Management News could occasionally include articles on available actions, both formal and informal. Also, WAC began revising a GAO Federal Women's Program brochure that summarizes court actions on sexual harassment and procedures available at GAO for dealing with such harassment. GAO management could support the completion of this project and distribute the brochure.

(3) Aggressively enforce penalties against sexual harassers and managers who allow sexual harassment to continue and publicize the actions that GAO takes in these cases. For example, the GAO Civil Rights Office (CRO) could periodically publish how many complaints have been filed with CRO, how many have been handled by the divisions and regions, and how these cases were resolved. We believe, however, that the names and possibly the units of the persons involved should not be publicized.

(4) Continue to monitor the nature and extent of sexual harassment at GAO. GAO can accomplish this by talking with unit managers and by taking periodic surveys.

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Abbreviations

CRO	GAO Civil Rights Office
EEOC	Equal Employment Opportunity Commission
MSPB	Merit System Protection Board
PAB	Personnel Appeals Board
WAC	Women's Advisory Council

Introduction

The term "sexual harassment" is defined differently by different people. Whether a particular action or behavior is sexual harassment depends on the facts and circumstances of the situation as well as on the perceptions and sensibilities of the individual(s) affected by the behavior.

On November 10, 1980, the Equal Employment Opportunity Commission (EEOC) issued guidelines declaring that sexual harassment was an unlawful employment practice, establishing criteria for determining when unwelcome conduct constitutes sexual harassment, defining the circumstances under which an employer may be held liable, and suggesting affirmative steps an employer should take to prevent sexual harassment.[1] Since 1980, a number of court decisions have clarified the concept of sexual harassment. On March 19, 1990, the EEOC issued "Policy Guidance on Sexual Harassment" in light of the developing case law after the landmark U.S. Supreme Court decision in Meritor Savings Bank v. Vinson (1986).[2] Appendix I and II contain the 1980 guidelines and 1990 guidance. (While the 1980 guidelines are codified regulations which have the force of law, the 1990 guidance is not codified and reflects current EEOC interpretation of the guidelines in view of developing case law after the Vinson case.)

The EEOC guidelines define two types of sexual harassment: quid pro quo and hostile environment. "Quid pro quo" sexual harassment is when an individual's submission to or rejection of unwelcome sexual conduct is used as the basis for employment decisions affecting that person. "Hostile environment" harassment is unwelcome sexual conduct that "unreasonably interfer[es]" with an individual's job performance, or creates an intimidating, hostile, or offensive working environment, "even if it leads to no tangible or economic job consequences."[3]

[1] Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex, 29 C.F.R. 1604. The EEOC is the agency entrusted with the administration of Title VII of the Civil Rights Act of 1964.

[2] The EEOC's 1980 guidance was extensively cited with approval by the U.S. Supreme Court in Vinson.

[3] The quotes are from "EEOC: Policy Guidance on Sexual Harassment", March 19, 1990.

At the request of a congressional subcommittee,[4] the U.S. Merit System Protection Board (MSPB)[5] conducted a thorough and authoritative study of sexual harassment in the federal workplace. In 1981, MSPB issued its results in "Sexual Harassment in the Federal Workplace: Is It a Problem?" In 1987, on its own initiative, the Board conducted a follow-up study. "Sexual Harassment in the Federal Government: An Update," June 1988, reports the results of that study. According to the report, "sexual harassment remains a widespread problem in the Federal workplace."

GAO's Policy and Programs

Sexual harassment policies and programs are described in two orders: (1) Equal Employment Opportunity in the General Accounting Office (Order 2713.1, Oct. 8, 1986) and (2) Discrimination Complaint Processing in the United States General Accounting Office (Order 2713.2, Aug. 12, 1981). GAO Order 2713.1 outlines the EEOC guidelines and suggests that individuals who believe they are being sexually harassed should seek informal counseling before filing a complaint. Both of these procedures are outlined in Order 2713.2 and summarized in appendix III.

In addition to the procedures outlined in Order 2713.2, GAO's Civil Rights Office (CRO) provides mediators to assist in resolving conflicts before they become formal complaints. This process, according to the Director of CRO, "may be used to facilitate the resolution of a sexual harassment claim in an immediate, appropriate, and discreet manner." Individuals interested in mediation should contact the CRO directly or indirectly through their human resource manager, civil rights counselor, or designated mediator within their unit.

If the case cannot be resolved informally, the individual may file a formal complaint. If a formal complaint is filed, the Comptroller General or designee will look at the record as a whole and at the circumstances, such as the nature of the behavior and the context in which the alleged incidents occurred. As stated in the EEOC guidelines, the determination will be made from the facts on a case-by-case basis.

[4]The Subcommittee on Investigations, House Committee on Post Office and Civil Service.

[5]The U.S. Merit System Protection Board is an independent, quasi-judicial agency that decides appeals from personnel actions taken against federal employees and conducts studies of the civil service and other merit systems.

From fiscal year 1989 to the present, according to CRO, of six claims of sexual harassment, one has resulted in a formal complaint. The investigation showed that the claim had no merit. In another case, the alleged harasser was removed from supervisory duties and warned he could be demoted; an informal settlement is pending. None of the other four alleged victims chose to file a formal complaint, although management took some action against the alleged harasser in two cases and conducted unit-wide training in a third case. The fourth case was resolved through mediation.

As part of GAO management's effort to prevent sexual harassment, the Training Institute offers a course entitled "Preventing Sexual Harassment." According to the Training Institute Director, only senior level and management level evaluators, senior executives, and other employees with supervisory responsibilities are scheduled to take the course.[6] The Institute has greatly expanded the number of offerings of this workshop, with the goal of ensuring that all of GAO's supervisors/managers/executives complete the new workshop within the next 2 years.

The course provides an overview of GAO's policy on sexual harassment in the workplace and includes topics such as identifying conduct associated with and situations defined as sexual harassment, clarifying agency liability for sexual harassment, and establishing the manager's responsibility in preventing and responding to sexual harassment. Instructors discuss steps one can take to prevent and respond to acts of sexual harassment in the workplace. The class currently lasts one-half day.

The Training Institute is also incorporating new information on preventing and dealing with sexual harassment into other parts of the curriculum. For example, "Working Relations and Communications," a course under development, will contain relevant material for Band I evaluators.

Objectives, Scope, and Methodology

To elicit employees' views and experiences related to sexual harassment, WAC administered a confidential survey to all GAO employees. The survey was conducted with the support of GAO senior management. WAC used the same survey instrument that the MSPB administered to employees in the 22 largest federal departments and agencies in 1987.

[6]Some regional office managers have offered the training to all staff.

WAC made some minor adjustments to the instrument to account for differences in GAO institutions such as banding and Washington/regional work sites. See appendix IV for a copy of the WAC survey.

WAC sent the survey to the 5,270 GAO employees who were listed in GAO's personnel system as of February 1990. This included all employment types except consultants and summer hires.[7] The original (mailed in May 1990) and one follow-up (mailed in July 1990) package consisted of a cover letter, survey, and a numbered postcard. The survey packages were mailed to the employees' home addresses. The numbered postcard provided a link between employees and a control list maintained by WAC; the surveys contained no identification link to specific employees.

WAC received 66 percent of the postcards and 71 percent of the surveys. Appendix V contains the return rates by unit. We reported the survey results as percentages of responses to survey questions and have noted in the report the few exceptions. Of the 3,716 surveys returned, 25 percent included comments. Appendix VI contains WAC's content analysis of these comments.

To learn more about GAO's policies and preventing sexual harassment, Fiscal Year 1990 WAC representatives took GAO's course "Preventing Sexual Harassment."

We conducted our work from February 1990 to March 1991 in accordance with generally accepted government auditing standards. We obtained comments from GAO senior management and incorporated them as appropriate.

[7]WAC did not use a random sample because GAO management requested a unit-by-unit analysis. WAC provided the Assistant Comptroller General for Operations a supplement containing unit-by-unit analysis. As noted in appendix V, the smaller units in Washington were collapsed into one "Combined Office" unit. None of these smaller units were analyzed individually.

The Nature and Extent of Sexual Harassment

Employees Do Not Always Agree on the Definition of Sexual Harassment

The first section of the survey asked GAO employees how they viewed certain types of interactions among people who work together. Respondents were asked to indicate on a range from "definitely not" to "definitely yes" which of certain behaviors they considered to be sexual harassment, first when exhibited by a supervisor and then by a coworker. The listed actions were

(1) Uninvited letters, telephone calls, or materials of a sexual nature;

(2) Uninvited and deliberate touching, leaning over, cornering, or pinching;

(3) Uninvited sexually suggestive looks or gestures;

(4) Uninvited pressure for sexual favors;

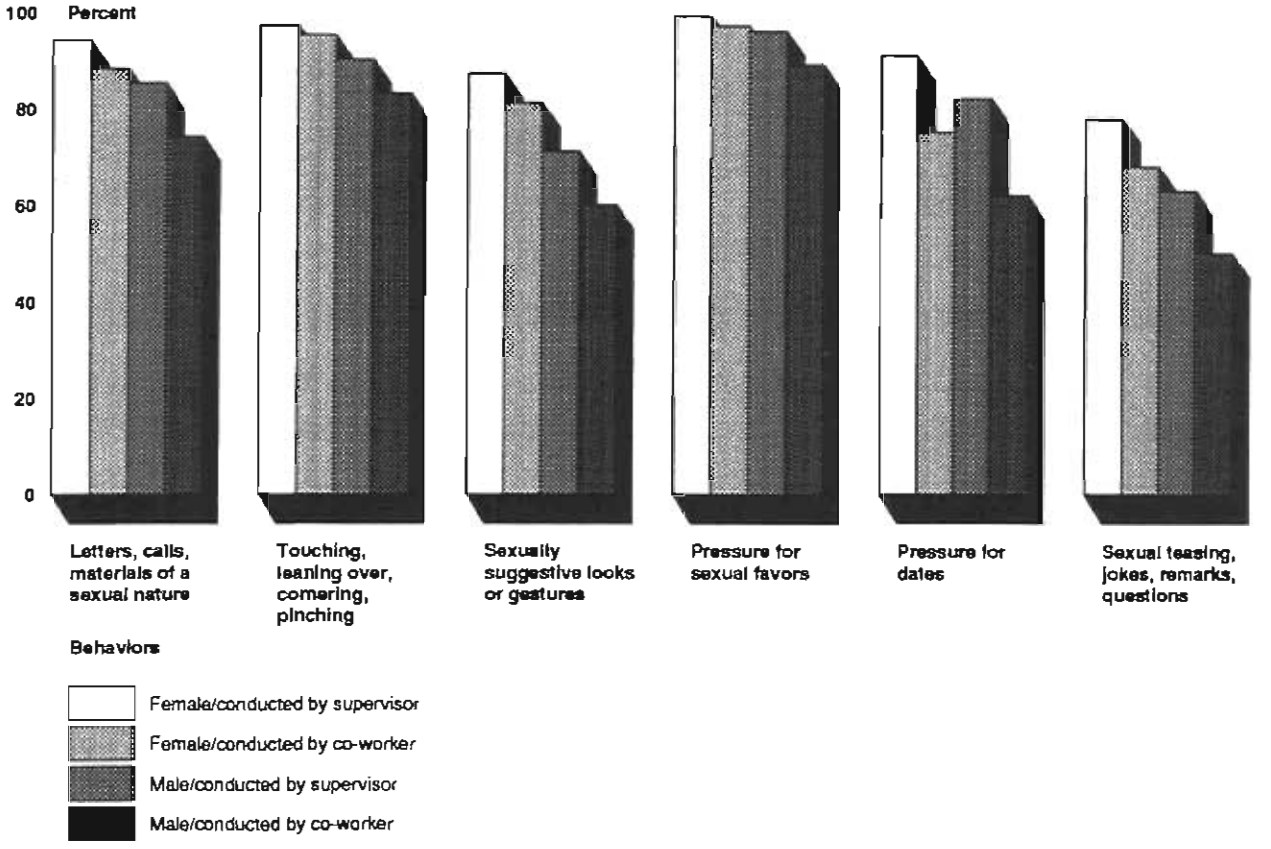
(5) Uninvited pressure for dates; and

(6) Uninvited sexual teasing, jokes, remarks, or questions.

For each of these categories, a majority of the respondents indicated that such behavior constitutes sexual harassment. However, there was relatively less agreement about whether three of the behaviors—uninvited sexually suggestive looks or gestures, uninvited pressure for dates, and uninvited sexual teasing, jokes, remarks, or questions—constitute sexual harassment.

Male and female respondents defined sexual harassment differently. In general, a higher percentage of female than male respondents considered each of the behaviors sexual harassment. For example, 87 percent of female and 71 percent of male respondents indicated that uninvited sexually suggestive looks or gestures by a supervisor "definitely" or "probably" constitutes harassment. Similarly, 78 percent of female and 63 percent of male respondents indicated that uninvited sexual teasing, jokes, remarks or questions by a supervisor "definitely" or "probably" constitutes harassment.

Figure 2.1: Respondents Who Considered the Indicated Behavior to Be Sexual Harassment



Notes:
(1) Combined responses of "probably yes" and "definitely yes."

(2) This figure shows responses for females and males when the indicated behavior is done by (a) a supervisor and (b) a co-worker

Employees Hold Supervisors to a Higher Standard

A higher percentage of respondents viewed behavior as sexual harassment if a supervisor, rather than a co-worker, commits the act. For example, 91 percent of female and 82 percent of male respondents considered uninvited pressure for dates "definitely" or "probably" sexual harassment if a supervisor took such action. In contrast, 75 percent of female and 62 percent of male respondents indicated that if a co-worker took such action it would "definitely" or "probably" be sexual harassment. (See fig. 2.1 above for more detail.)

Sexual Harassment at GAO

The survey asked GAO employees how often they had received uninvited and unwanted sexual attention during the last 24 months from someone in GAO. The survey allowed responses from "never" to "once a week or more" and listed the following actions

(1) Actual or attempted rape or assault;

(2) Unwanted pressure for sexual favors;

(3) Unwanted deliberate touching, leaning over, cornering, or pinching;

(4) Unwanted sexual looks or gestures;

(5) Unwanted letters, telephone calls, or materials of a sexual nature;

(6) Uninvited pressure for dates; and

(7) Uninvited sexual teasing, jokes, remarks, or questions.

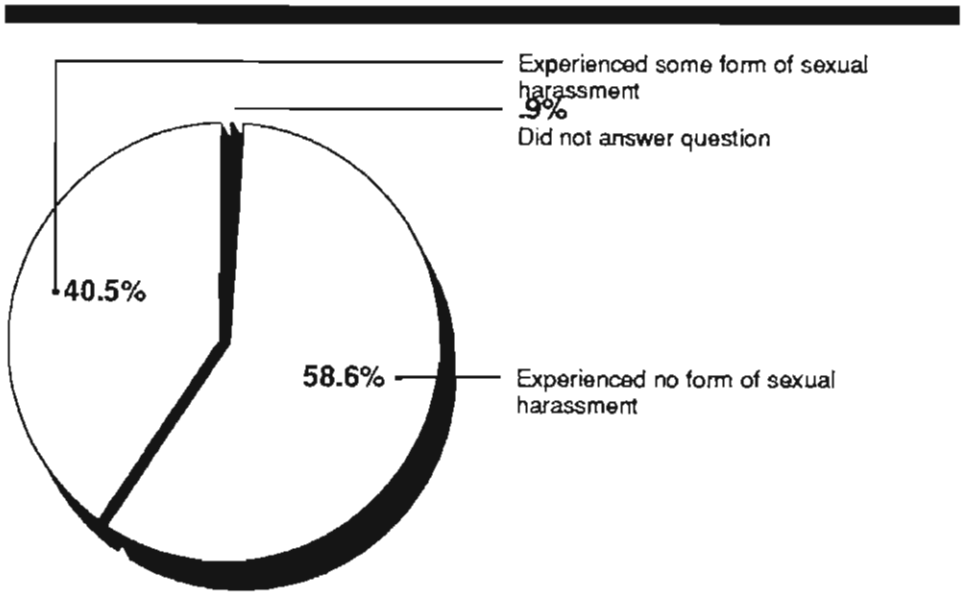
As shown in figure 2.2, 41 percent of female and 12 percent of male respondents reported that they had experienced some type of sexual harassment at GAO at least once.[1] As shown in table 2.1, the percentages varied between individual units.[2] Further, three female and eight male respondents (0.3 percent combined) reported they had experienced the most severe form of sexual harassment—actual or attempted rape or assault.[3]

[1]Two percent of all respondents (1.6 percent of male and 0.9 percent of female respondents) did not answer this question.

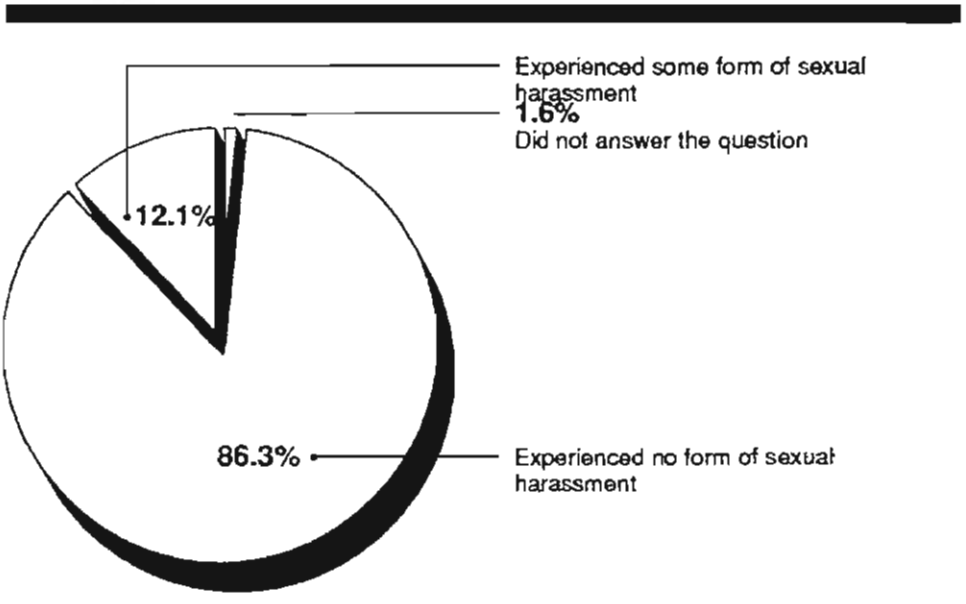
[2]The survey data indicate that GAO is comparable with other federal agencies, as reported by the MSPB. According to the 1988 MSPB report, 42 percent of the female and 14 percent of the male respondents experienced some form of sexual harassment. However, the MSPB report shows considerable variation among agencies. For female respondents, the incidence rate for 1987 ranged from 29 percent (Health and Human Services) to 52 percent (State Department, including the Agency for International Development and the U.S. Information Agency). For male respondents, the range was from 10 percent (NASA and the Department of Commerce) to 21 percent (Veterans Administration).

[3]Four of the eight male respondents reported experiencing this behavior at least two to four times a month. Because such events are highly unlikely, these may not be serious responses.

Figure 2.2: Respondents Reporting Experiencing Sexual Harassment



Female



Male

Table 2.1: Percent of Respondents Reporting Experiencing Sexual Harassment

	Female		Male	
	Low	High	Low	High
Washington divisions/offices	27	53	6	17
Regional/overseas offices	22	59	3	29
Unit not specified[a]		58		27

[a]197 surveys were returned with no response to either of the survey questions concerning location.

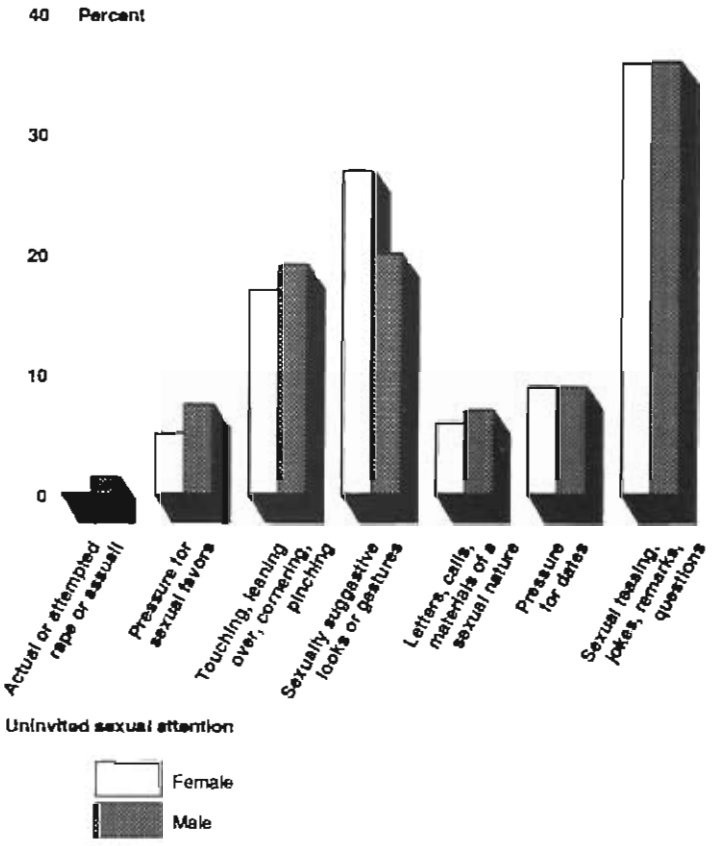
The most frequently reported types of sexual harassment were

(1) uninvited sexual teasing, jokes, remarks, or questions;

(2) uninvited sexual looks or gestures; and

(3) unwelcome touching, leaning over, cornering, and pinching.

Figure 2.3: Types of Behavior Reported by Victims



Notes:
(1) The survey question identified these actions as uninvited and unwanted.

(2) Since respondents could mark more than one behavior, all percentages are of responses—not surveys—for 636 female and 253 male respondents.

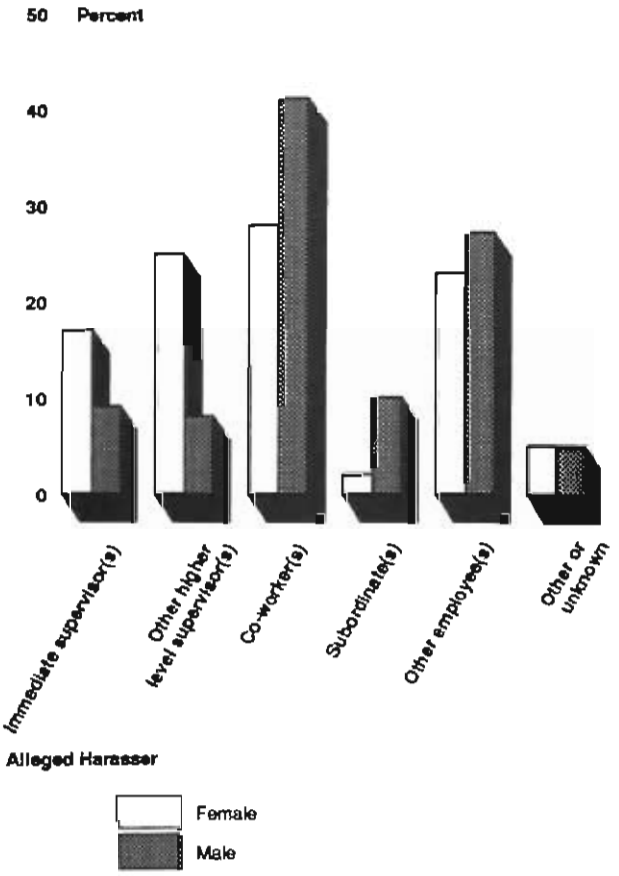
Victims Are Most Often Harassed by Coworkers

Both female and male victims reported they were most often harassed by co-workers.[4] Individuals who reported experiencing sexual harassment at least once were asked who was harassing them and could mark more than one of six possible categories. Twenty-eight percent of female and 41 percent of the male responses indicated the harasser was a co-worker. For females, the next two most frequent sources of harassment were other higher-level supervisor(s) and other employee(s). For males, the next two groups were other employee(s) and subordinate(s).

[4]Since respondents could mark more than one source of harassment, all percentages are of responses—not surveys—for 551 female and 209 male respondents.

Although we analyzed each category separately, note that when the categories "other higher-level supervisor(s)" and "immediate supervisor(s)" are combined, then supervisors are the most frequent harassers of females.

Figure 2.4: Source of Sexual Harassment



Note: The data reflect responses from those who indicated they were sexually harassed at least once

All Employees Are Potential Victims of Sexual Harassment

Victims of sexual harassment can be found in all levels and occupations within GAO. Although both females and males are sexually harassed, females are far more likely to be victims. In GAO, females are three times as likely as males to be victims of sexual harassment. The profiles of those harassed in GAO generally match the employee profiles of the

survey respondents, suggesting that anyone can be a victim of sexual harassment, regardless of gender, age, or marital status.

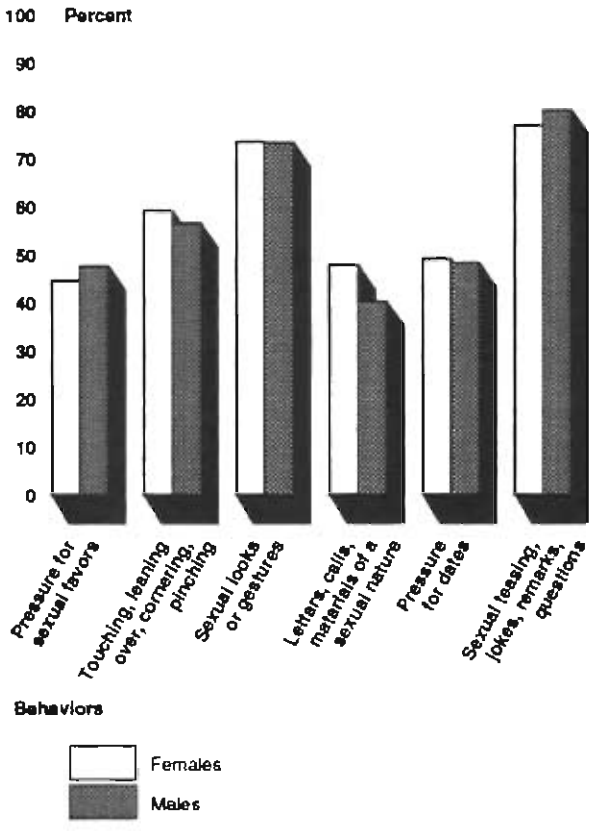
Though not pronounced, there were some trends. Those harassed, in comparison to the general survey population, showed a slight tendency to have fewer years of GAO service; work with more men than women; are in Band I; are subordinates, not supervisors; are younger; and are single, divorced, or separated.

Sexual Harassment Occurs Repeatedly

Both female and male respondents reported that harassment was not a one-time-only or isolated incident. Employees were asked how often they experienced sexual harassment, with possible responses ranging from "never" to "once a week or more." Females and males reported that the behaviors most likely to be repeated were unwanted sexual teasing, jokes, remarks, or questions, and unwanted sexual looks or gestures.[5]

[5]This excludes actual or attempted rape or assault. See note 3.

Figure 2.5: How Often Victims Experienced the Indicated Behavior



Employee Responses to Sexual Harassment

Most Employees Are Aware of Formal Actions, but Junior Employees Are Less Informed

To measure employees' knowledge of formal actions available at GAO to those who have been sexually harassed, the survey asked all respondents which of the following actions were available at GAO:

(1) Requesting an investigation by my agency;

(2) Requesting an investigation by an outside entity [i.e., Personnel Appeals Board (PAB)];

(3) Filing a grievance or adverse action appeal;

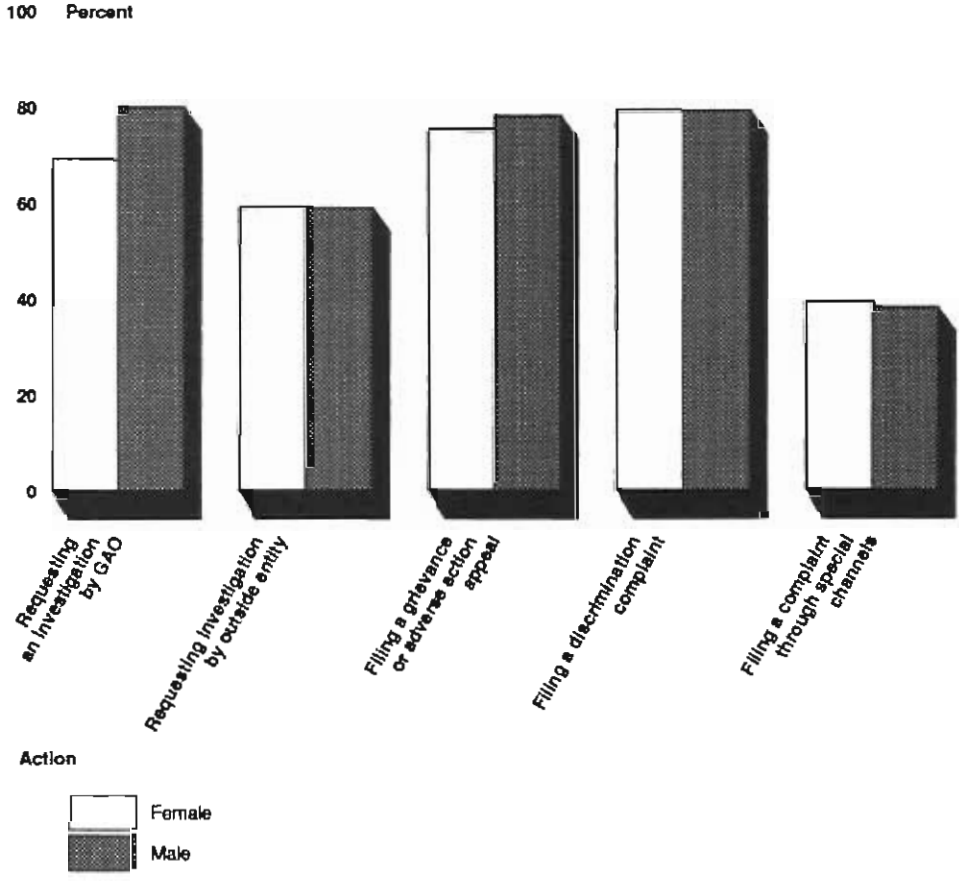
(4) Filing a discrimination complaint; and

(5) Filing a complaint through special channels set up for sexual harassment complaints.

For three of the four actions available at GAO, at least 69 percent of female and 78 percent of male respondents indicated they were aware of the availability of these actions. For the fourth action—requesting an investigation by an outside entity—only 59 percent of both female and male respondents indicated they were aware of its availability at GAO. Although GAO does not have a special system for sexual harassment complaints, 38 percent of all respondents answered "yes," this action is available at GAO.

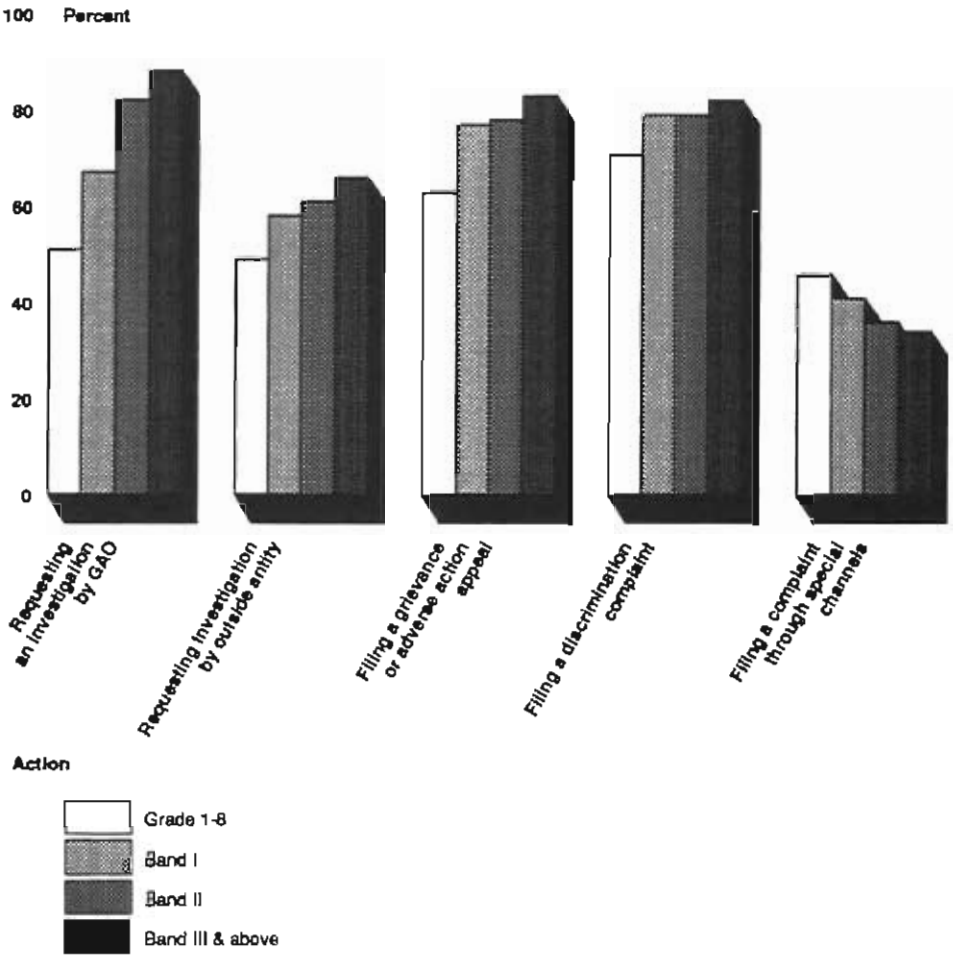
Male and female respondents generally had the same level of awareness for each response. The one major exception was in requesting an investigation by GAO: 69 percent of female and 80 percent of male respondents indicated they were aware of the availability of this action.

Figure 3.1: Respondents Who Believe the Indicated Action Is Available at GAO



The data indicate that a lower percentage of junior employees than senior employees are aware of formal actions available at GAO. For example, while 88 percent of the "Band III and above" respondents indicated they were aware one could request an investigation by GAO, only 51 percent of the respondents in grades GS-1 through GS-8 indicated similarly. Similarly, while 66 percent of the "Band III and above" respondents knew one could request an investigation by an outside entity, only 49 percent of those in grades 1 through 8 were aware one could make this request.

Figure 3.2: Respondents Who Believe the Indicated Action Is Available at GAO

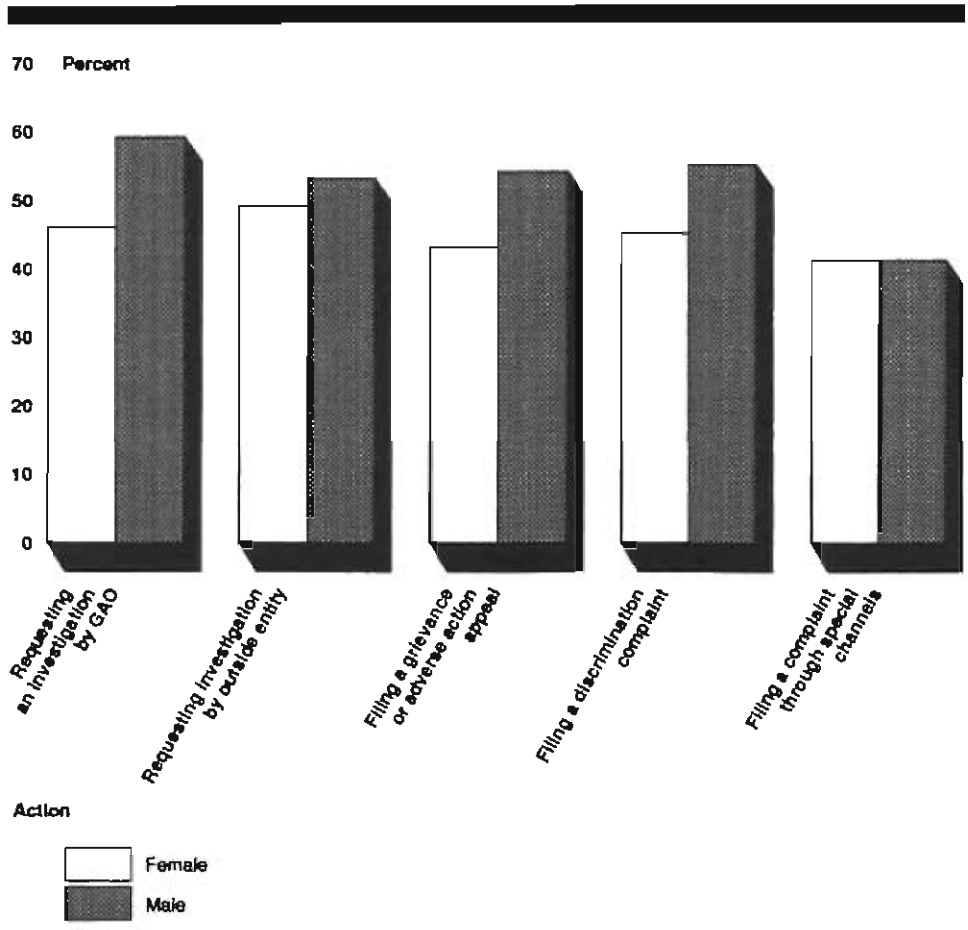


Many Do Not Believe Formal Actions Are Effective

Survey participants were asked to indicate the effectiveness of the formal actions, ranging from "very effective" to "not at all effective" and including a "do not know" category.[1] The survey results indicate that women have less confidence in the effectiveness of each formal action than men. Between 43 and 49 percent of the women rated the actions somewhat or very effective. On the other hand, between 53 and 59 percent of the men rated the actions at least somewhat effective.

[1] WAC did not analyze the responses on the effectiveness of special channels since this action is not available at GAO.

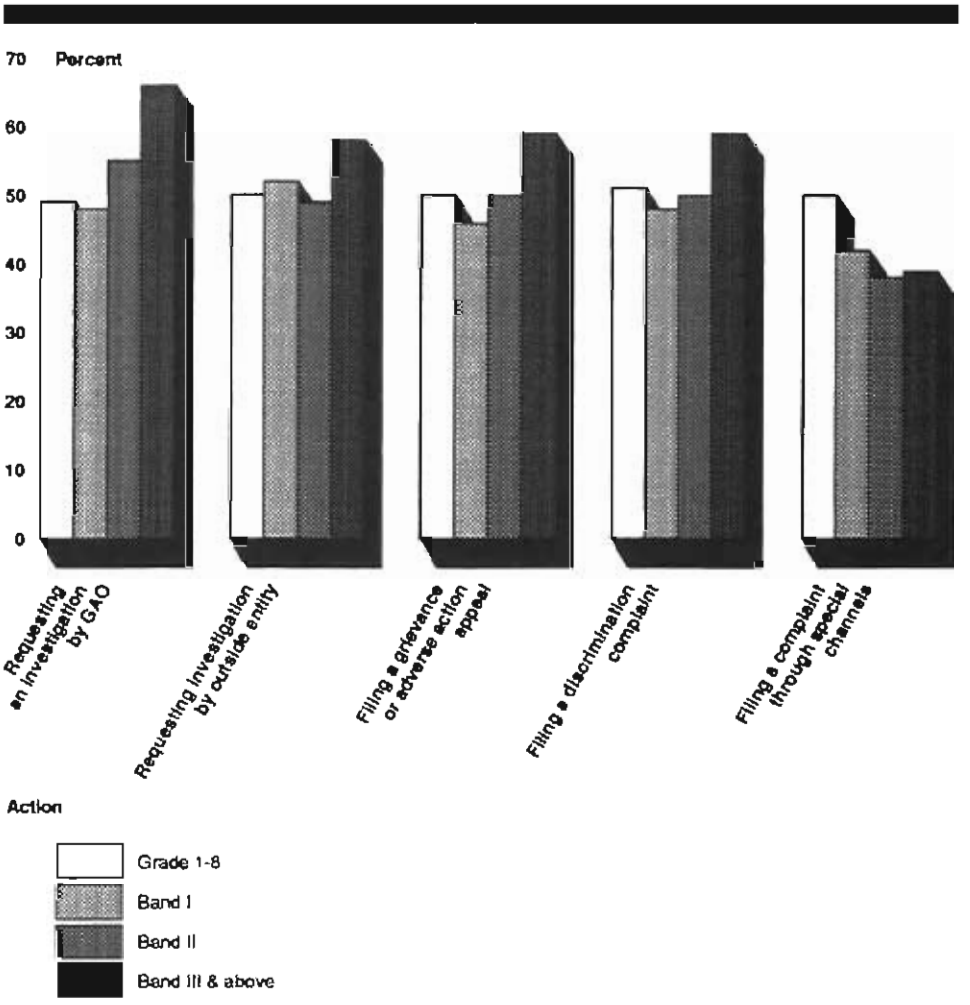
Figure 3.3: Respondents Who Consider the Indicated Action Effective, by Gender



Note Combined responses of "very effective" and "somewhat effective"

Of all grade and band levels, "Band III and above" employees indicated the greatest confidence in each of the available formal actions. For actions that are at least somewhat effective, their responses ranged from 58 percent for requesting an investigation by an outside entity to 66 percent for requesting an investigation by GAO. Ratings by all other grade and band levels ranged from a low of 46 percent of Band I respondents who considered filing a grievance to be at least "somewhat effective" to a high of 55 percent of all Band II respondents who considered a GAO investigation at least "somewhat effective."

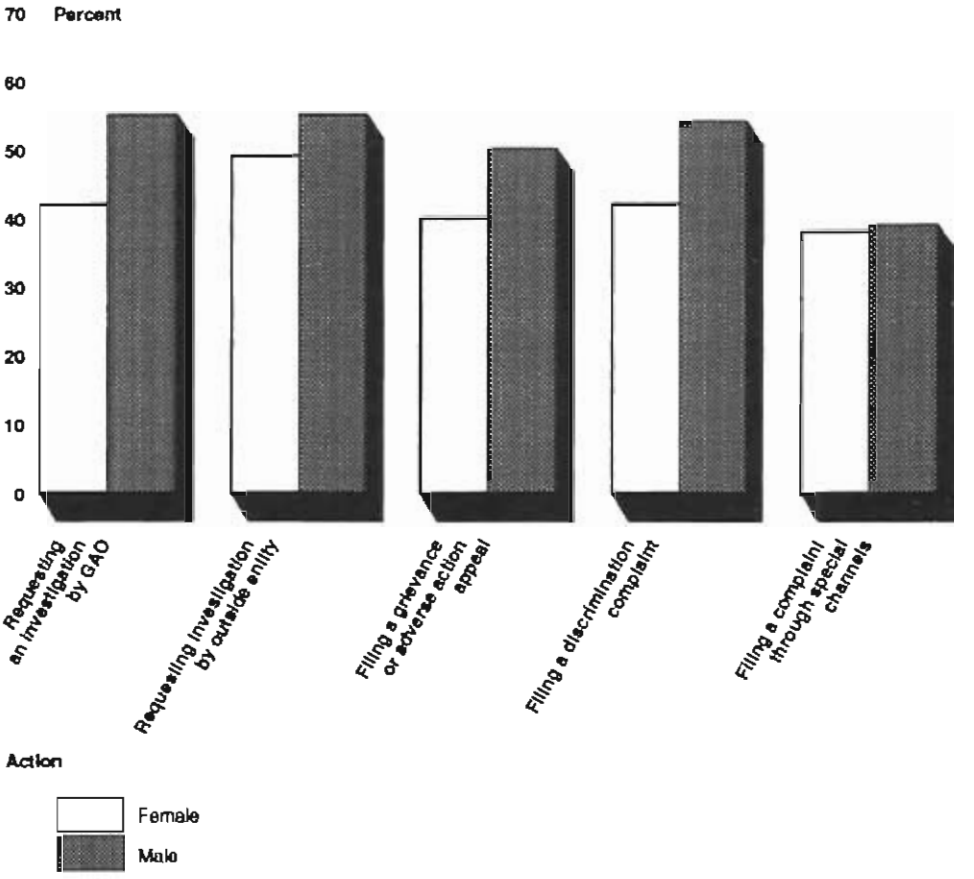
Figure 3.4: Respondents Who Consider the Indicated Action Effective, by Band/Grade



Note: Combined responses of "very effective" and "somewhat effective"

Those who indicated they had been sexually harassed were less confident in the effectiveness of formal actions than the overall population of respondents. For example, 53 percent of all respondents indicated a GAO investigation is somewhat or very effective, whereas only 46 percent of those identifying themselves as victims of harassment indicated similarly. As in the general population of respondents, female victims showed less confidence than male victims in the formal actions.

Figure 3.5: Victims Who Consider the Indicated Action Effective



Note: Combined responses of "very effective" and "somewhat effective."

Women Are Less Apt Than Men to Agree That GAO Makes Reasonable Efforts to Stop Sexual Harassment

To obtain employees' opinions on GAO efforts to stop sexual harassment, survey respondents were asked if they agreed that "GAO makes reasonable efforts to stop sexual harassment." A much lower percentage of female (44 percent) than male (64 percent) respondents agreed or strongly agreed with this statement. Respondents who experienced sexual harassment were less likely to agree with the statement than the overall population of respondents.

Figure 3.6: Respondents' Views on Whether GAO Makes Reasonable Efforts to Stop Sexual Harassment

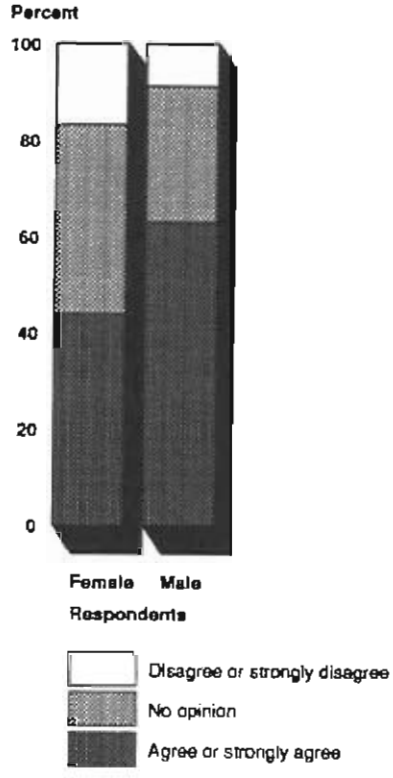
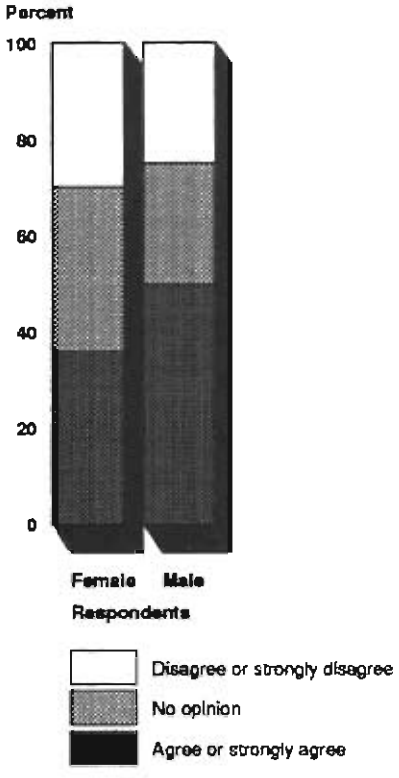


Figure 3.7: Victims' Views on Whether GAO Makes Reasonable Efforts to Stop Sexual Harassment



Respondents Believe the Most Effective Way to Stop Harassment Is to Take Direct Action

All survey respondents were asked which of the following actions they believed to be most effective for employees to take against those sexually harassing them:

(1) Ignoring the behavior;

(2) Avoiding the person(s);

(3) Asking or telling the person to stop;

(4) Threatening to tell or telling other workers;

(5) Reporting the behavior to the supervisor or other officials;

(6) Filing a formal complaint;

(7) There is very little one can do to stop others from bothering them sexually; and

(8) None of the above.

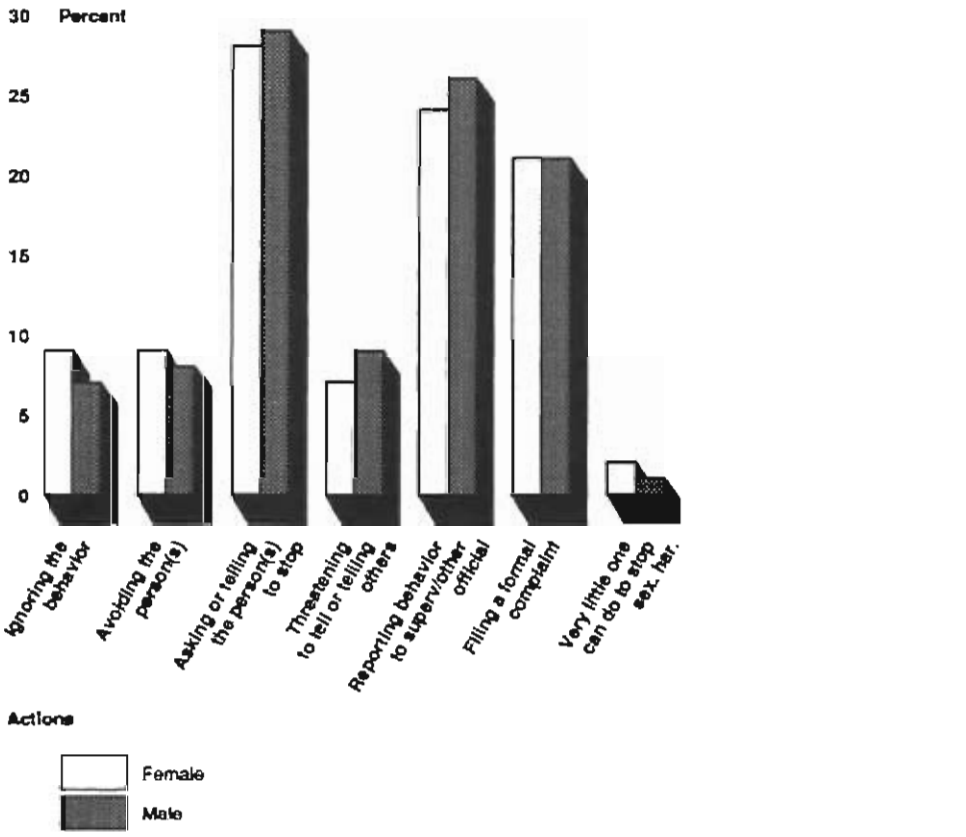
Respondents could mark more than one action.[2] Both females and males most frequently cited the following three actions as effective:

- asking or telling the person(s) to stop,
- reporting the behavior to the supervisor or other officials, and
- filing a formal complaint.

Respondents did not select the passive actions (ignoring the behavior, avoiding the person, and threatening to tell others). Only 2 percent of the female responses and 1 percent of the male responses cited "there is very little that employees can do to make others stop bothering them sexually."

[2]Since any respondent could mark more than one action, all percentages are of responses—not surveys—and are drawn from 1,562 female and 2,081 male respondents. The female and male responses were analyzed as separate groups.

Figure 3.8: Respondents' Views on Actions' Effectiveness in Stopping Sexual Harassment



Note: The category "none of the above" is not shown, since it constituted only 0.3 percent of the female and male responses.

Victims of Sexual Harassment Rarely Take Formal Actions

Respondents who reported experiencing some form of sexual harassment at least once were asked to mark the action(s) they took in response to that harassment. Respondents could mark more than one action.[3] The listed actions were

(1) I ignored the behavior or did nothing;

(2) I avoided the person(s);

(3) I asked or told the person(s) to stop;

[3]Since any respondent who had experienced some form of sexual harassment at least once could mark more than one action, all percentages are of responses—not surveys—and are drawn from 550 female and 211 male responses. Female and male responses were analyzed separately.

(4) I threatened to tell or told others;

(5) I reported the behavior to the supervisor or other officials;

(6) I made a joke of the behavior;

(7) I went along with the behavior;

(8) I transferred, disciplined, or gave a poor performance rating to the person;

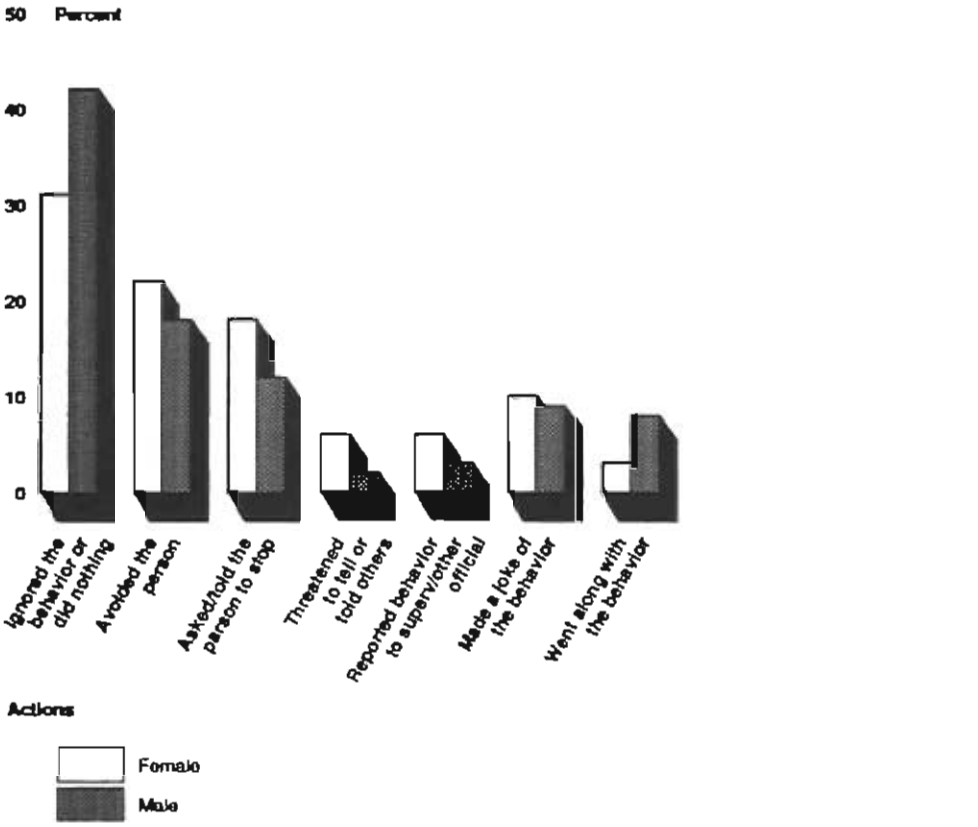
(9) I did something other than the actions listed above.

Both females and males most frequently reported taking the following actions:[4]

- ignored the behavior or did nothing,
- avoided the person(s), and
- asked or told the person(s) to stop.

[4]We did not include our analysis for the last two listed actions. In reviewing the written comments on the last pages of the survey, we found that some respondents had misinterpreted action #8. The written comments did not reveal enough information to analyze action #9. In addition, few persons selected these actions.

Figure 3.9: Actions Victims Took in Response to Sexual Harassment



Only 17 individuals who identified themselves as victims of sexual harassment reported taking formal actions. Thirteen of these individuals provided more information on the formal actions taken. On the survey, these people were asked how GAO management responded to those actions.[5] The survey results showed the following:

- seven responses (35 percent) indicated GAO management was hostile or acted against the victim,
- five responses (25 percent) were that GAO did nothing,
- three responses (15 percent) were that GAO acted against the harasser,
- two responses (10 percent) were that GAO found the charge to be true,

[5]Since more than one GAO response could be marked, all percentages reported are of responses—not surveys. The responses are from 13 individuals who marked a total of 20 GAO management responses.

- two responses (10 percent) were that the victim did not know whether management did anything, and
- one response (5 percent) was that the action was still being processed.

Victims were asked to cite their reasons for not taking formal actions.[6] Both female and male respondents most frequently cited the same two reasons for not taking formal actions:

- saw no need to report it (25 percent of female and 38 percent of male responses), and
- thought it would make "my work situation unpleasant" (22 percent of female and 15 percent of male responses).

Female respondents also indicated that they were concerned reporting harassment would be held against them (14 percent of responses) and that they did not think anything would be done (14 percent of responses). Male respondents also reported that they did not want to hurt the person who bothered them (13 percent of responses) and did not think anything would be done (11 percent of responses).

Victims Often Disagreed on the Effectiveness of Various Actions

Those who identified themselves as victims of sexual harassment were asked to rate the effectiveness of the actions they took to stop the harassment. Victims often disagreed on which actions made the situation better, worse, or made no difference. Overall, female victims were more apt than male victims to indicate that the actions made things worse or made no difference.

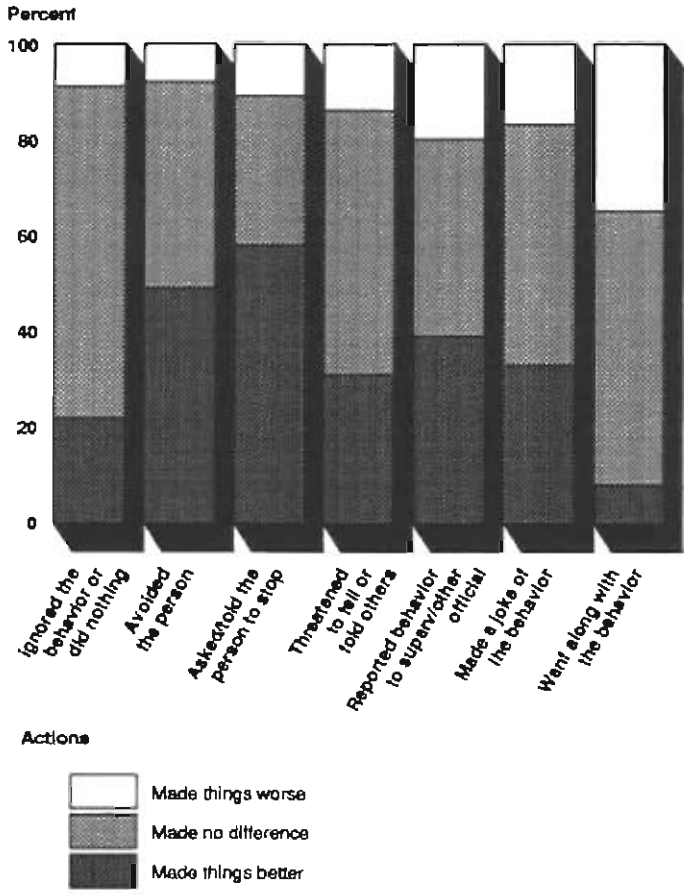
The actions on which female and male victims differed the most were (1) reported behavior to supervisor or other official and (2) went along with the behavior. Male victims indicated that reporting the behavior rarely made things better, whereas 39 percent of the female responses indicated this action improved the situation.[7] Conversely, 31 percent of the male victims' responses indicated that going along with the behavior made things better, whereas only 8 percent of female responses indicated this action improved the situation.

[6]Since any respondent could mark more than one reason, all percentages are of responses—not surveys—and are drawn from 628 female and 204 male respondents. Female and male responses were analyzed as separate groups.

[7]While the percentages are substantially different for female and male responses, note that there were only 10 male responses for this action.

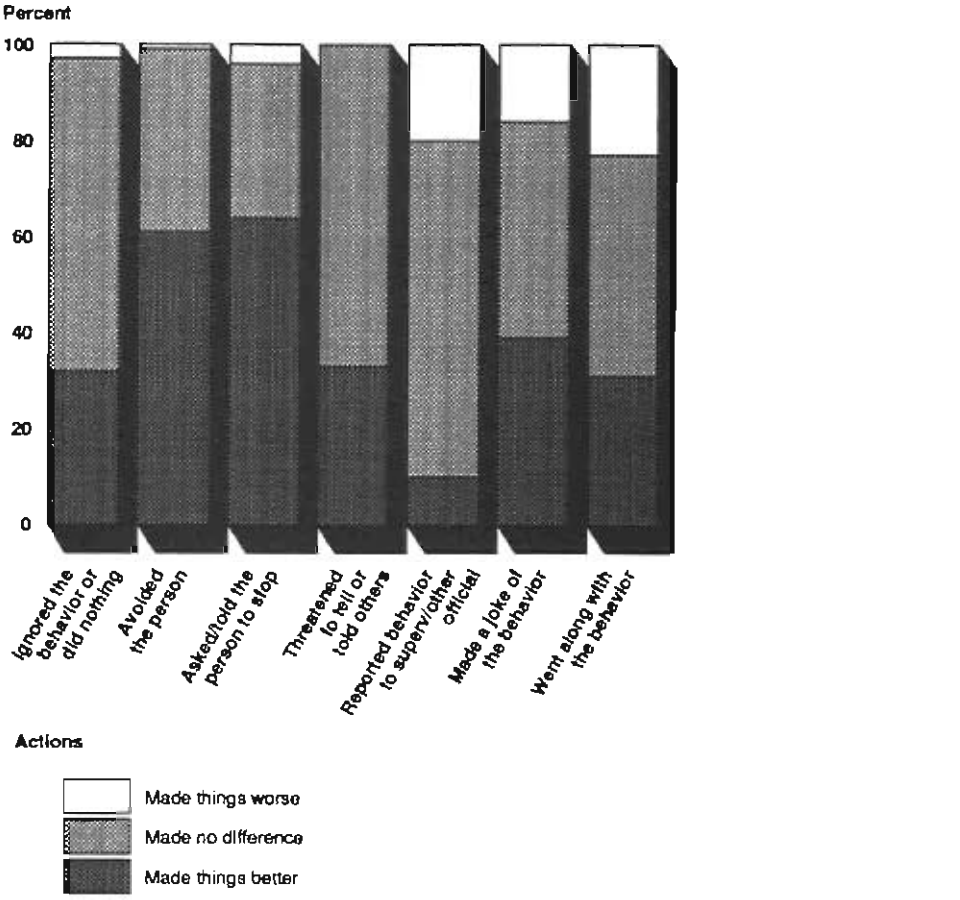
Female and male responses indicate the actions most likely to improve the situation are (1) asking or telling the person to stop and (2) avoiding the person.

Figure 3.10: Female Victims' Views on the Effectiveness of Actions They Took to Stop Sexual Harassment



Note: Following are the number of responses for each action, from left to right on the figure: 347, 247, 192, 64, 70, 112, and 37

Figure 3.11: Male Victims' Views on the Effectiveness of Actions They Took to Stop Sexual Harassment



Note. Following are the number of responses for each action, from left to right on the figure: 145, 61, 44, 6, 10, 31, and 26.

Many Are Unaware of Actions GAO Has Taken

Survey respondents were asked which of the following actions they believed GAO had taken to reduce sexual harassment that might have occurred in the workplace:

(1) Establishing policies prohibiting sexual harassment;

(2) Providing swift and thorough investigations of complaints;

(3) Enforcing penalties against managers who allow that behavior to continue;

(4) Enforcing penalties against sexual harassers;

(5) Publicizing availability of formal complaint channels;

(6) Providing counseling services for victims of sexual harassment;

(7) Providing awareness training for employees;

(8) Providing awareness training for managers and EEO officials; and

(9) Other.

A large percentage of respondents—over 67 percent of female and male respondents—did not know if GAO had taken the following four actions:

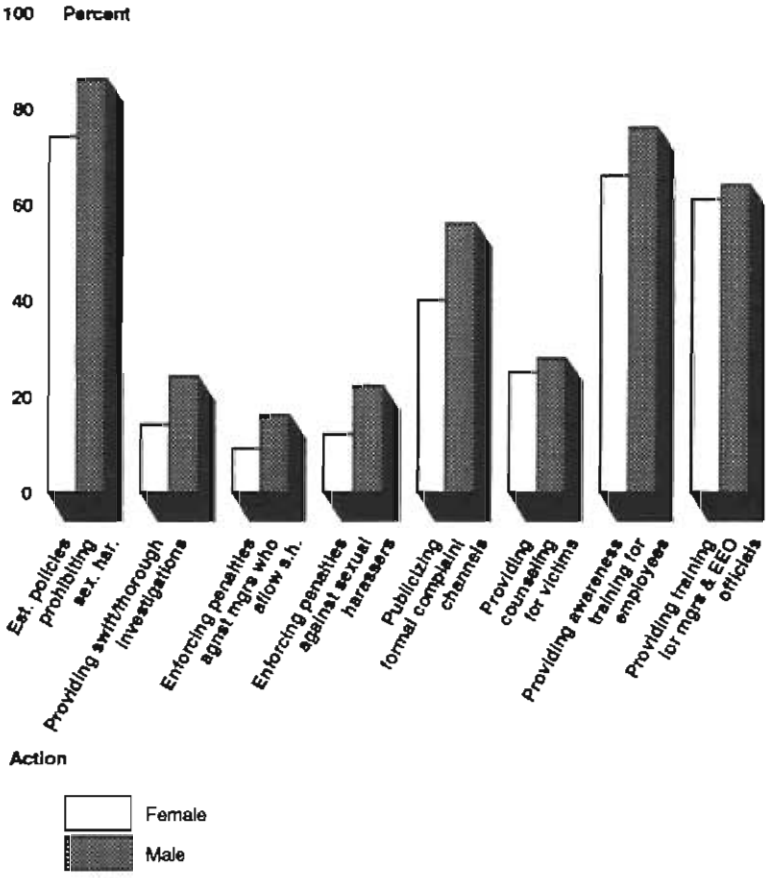
- providing swift and thorough investigations of complaints,
- enforcing penalties against managers who allowed that behavior to continue,
- enforcing penalties against sexual harassers, and
- providing counseling services for victims.

For each of the remaining four actions,[8] a lower percentage of female than male respondents indicated they believed GAO had taken the action:

- establishing policies prohibiting sexual harassment,
- providing awareness training for employees,
- providing awareness training for managers and EEO officials, and
- publicizing availability of formal complaint channels.

[8]We did not analyze answers for the last action ("other") because 45 percent of the 3,716 surveys returned did not include a response to this item.

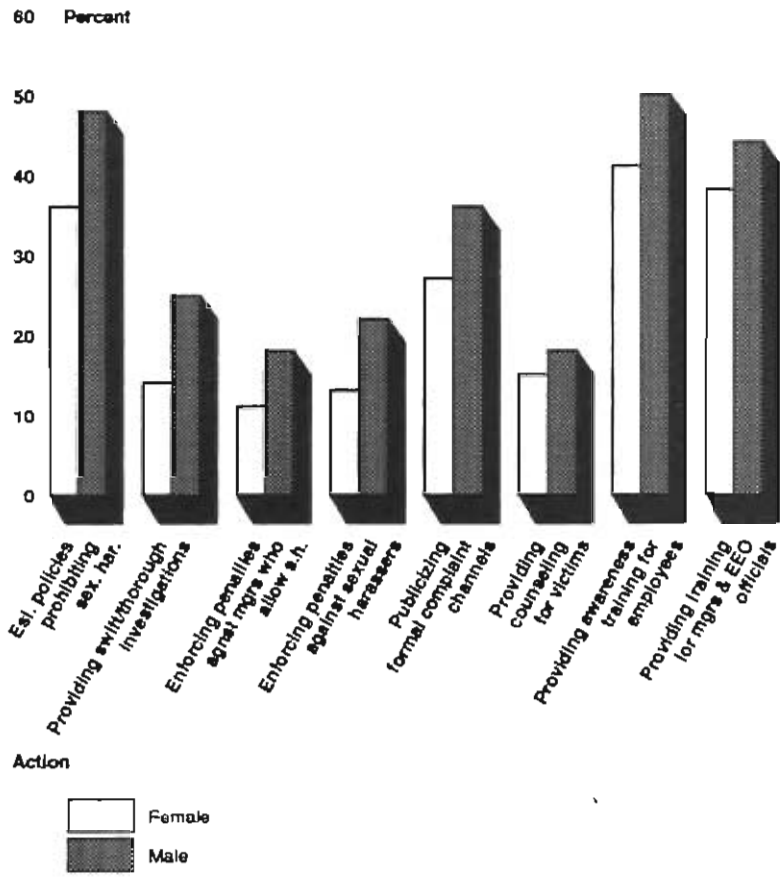
Figure 3.12: Respondents Who Believe GAO Has Taken the Indicated Action



Respondents were also asked to rate the effectiveness of the actions on a scale ranging from "very effective" to "not at all effective" and including "do not know" and "not applicable." Understandably, for those four actions of which few respondents were aware, a high percentage of respondents indicated they did not know the effectiveness of the actions. Of the remaining four actions, a lower percentage of female than male respondents rated the following actions at least somewhat effective:

- providing awareness training for employees,
- providing awareness training for managers and EEO officials,
- establishing policies prohibiting sexual harassment, and
- publicizing availability of formal complaint channels.

Figure 3.13: Percent of Respondents Who Rated the Indicated Action Effective.



Note. Combined responses of "very effective" and "somewhat effective."

Few Victims Experienced Reduced Productivity

Those who reported experiencing sexual harassment were asked through a number of questions to indicate (1) how the harassment affected their job performance; (2) if they had received medical attention or emotional counseling; and (3) if they had used any sick leave, annual leave, or leave without pay as a result of the harassment.

Of those answering the question, 16 percent (126 respondents) reported that their productivity was reduced at least slightly. Further, 3 percent (24 respondents) indicated they received medical assistance, emotional counseling, or both; 7 percent (51 respondents) took some sick leave; 7

percent (51 respondents) took some annual leave; and less than 1 percent (3 respondents) took leave without pay.[9]

[9]Of the 900 respondents who indicated they had experienced sexual harassment, 16 percent (on each question) did not answer the questions on reduced productivity and on medical assistance and emotional counseling; 17 percent (on each question) did not answer the questions on sick leave, annual leave, and leave without pay.

1980 EEOC Guidelines on Sexual Harassment[1]

(a) 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 a term or condition of an individual's employment,

(2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

[1]This Information Is Taken Directly From the EEOC Guidelines, Under Title VII of the Civil Rights Act. 42 U.S.C. 2000e et seq. (45 Fed.Reg. 74676. November 10, 1980) See 29 CFR Part 1604 -Guidelines on Discrimination Because of Sex, 1604.11 Sexual Harassment.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agency or supervisory employees) knows or should have known of the conduct, and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their rights to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

1990 EEOC Policy Guidance on Sexual Harassment

No. 645 405:6681

EEOC: Policy Guidance on Sexual Harassment

Following is the text of a March 19, 1990, policy guide issued to EEOC field office personnel that defines sexual harassment and establishes employer liability in light of recent court decisions. This policy statement replaces one issued October 17, 1988.

EEOC POLICY GUIDANCE

Subject Matter

This document provides guidance on defining sexual harassment and establishing employer liability in light of recent cases.

Section 703(a)(1) of Title VII, 42 U.S.C. §2000e-2(a) provides:

> It shall be an unlawful employment practice for an employer —
>
> . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin[.]

In 1980 the Commission issued guidelines declaring sexual harassment a violation of Section 703 of Title VII, establishing criteria for determining when unwelcome conduct of a sexual nature constitutes sexual harassment, defining the circumstances under which an employer may be held liable, and suggesting affirmative steps an employer should take to prevent sexual harassment. *See* Section 1604.11 of the Guidelines on Discrimination Because of Sex, 29 C.F.R. §1604.11 ("Guidelines") [403:213]. The Commission has applied the Guidelines in its enforcement litigation, and many lower courts have relied on the Guidelines.

The issue of whether sexual harassment violates Title VII reached the Supreme Court in 1986 in *Meritor Savings Bank v. Vinson*, 106 S.Ct. 2399, 40 EPD ¶36,159 [40 FEP Cases 1822] (1986). The Court affirmed the basic premises of the Guidelines as well as the Commission's definition. The purpose of this document is to provide guidance on the following issues in light of the developing law after *Vinson*:

- determining whether sexual conduct is "unwelcome;"
- evaluating evidence of harassment;
- determining whether a work environment is sexually "hostile;"
- holding employers liable for sexual harassment by supervisors; and
- evaluating preventive and remedial action taken in response to claims of sexual harassment.

BACKGROUND

A. Definition

Title VII does not proscribe all conduct of a sexual nature in the workplace. Thus it is crucial to clearly define sexual harassment: only unwelcome sexual conduct that is a term or condition of employment constitutes a violation. 29 C.F.R. §1604.11(a). The EEOC's Guidelines define two types of sexual harassment: "quid pro quo" and "hostile environment." The Guidelines provide that "unwelcome" sexual conduct constitutes sexual harassment when "submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment," 29 C.F.R. §1604.11(a)(1). "Quid pro quo harassment" occurs when "submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual," 29 C.F.R. §1604.11(a)(2).[1] The EEOC's

[1] *See, e.g., Miller v. Bank of America*, 600 F.2d 211, 20 EPD ¶30,086 [20 FEP Cases 462] (9th Cir. 1979) (plaintiff discharged when she refused to cooperate with her supervisor's sexual advances); *Barnes v. Costle*, 561 F.2d 983, 14 EPD ¶7755 [15 FEP Cases 345] (D.C. Cir. 1977) (plaintiff's job abolished after

Guidelines also recognize that unwelcome sexual conduct that "unreasonably interfer[es] with an individual's job performance" or creates an "intimidating, hostile, or offensive working environment" can constitute sex discrimination, even if it leads to no tangible or economic job consequences. 29 C.F.R. §1604.11 (a)(3).[2] The Supreme Court's decision in *Vinson* established that both types of sexual harassment are actionable under section 703 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a), as forms of sex discrimination.

Although "quid pro quo" and "hostile environment" harassment are theoretically distinct claims, the line between the two is not always clear and the two forms of harassment often occur together. For example, an employee's tangible job conditions are affected when a sexually hostile work environment results in her constructive discharge.[3] Similarly, a supervisor who makes sexual advances toward a subordinate employee may communicate an implicit threat to adversely affect her job status if she does not comply. "Hostile environment" harassment may acquire characteristics of "quid pro quo" harassment if the offending supervisor abuses his authority over employment decisions to force the victim to endure or participate in the sexual conduct. Sexual harassment may culminate in a retaliatory discharge if a victim tells the harasser or her employer she will no longer submit to the harassment, and is then fired in retaliation for this protest. Under these circumstances it would be appropriate to conclude that both harassment and retaliation in violation of section 704(a) of Title VII have occurred.

Distinguishing between the two types of harassment is necessary when determining the employer's liability (*see infra* Section D). But while categorizing sexual harassment as "quid pro quo," "hostile environment," or both is useful analytically these distinctions should not limit the Commission's investigations,[4] which generally should consider all available evidence and testimony under all possibly applicable theories.[5]

she refused to submit to her supervisor's sexual advances); *Williams v. Saxbe*, 413 F.Supp. 665, 11 EPD 10,840 [12 FEP Cases 1093] (D.D.C. 1976), *rev'd and remanded on other grounds sub nom. Williams v. Bell*, 587 F.2d 1240, 17 EPD ¶8605 [17 FEP Cases 1662] (D.C. Cir. 1978), *on remand sub nom. Williams v. Civiletti*, 487 F.Supp. 1387, 23 EPD ¶30,916 [22 FEP Cases 1311] (D.D.C. 1980) (plaintiff reprimanded and eventually terminated for refusing to submit to her supervisor's sexual demands).

[2]*See, e.g., Katz v. Dole*, 709 F.2d 251, 32 EPD ¶33,639 [31 FEP Cases 1521] (4th Cir. 1983) (plaintiff's workplace pervaded with sexual slur, insult, and innuendo and plaintiff subjected to verbal sexual harassment consisting of extremely vulgar and offensive sexually related epithets); *Henson v. City of Dundee*, 682 F.2d 897, 29 EPD ¶32,993 [29 FEP Cases 787] (11th Cir. 1982) (plaintiff's supervisor subjected her to numerous harangues of demeaning sexual inquiries and vulgarities and repeated requests that she have sexual relations with him); *Bundy v. Jackson*, 641 F.2d 934, 24 EPD ¶31,439 [24 FEP Cases 1155] (D.C. Cir. 1981) (plaintiff subjected to sexual propositions by supervisors, and sexual intimidation was "standard operating procedure" in workplace).

[3]To avoid cumbersome use of both masculine and feminine pronouns, this document will refer to harassers as males and victims as females. The Commission recognizes, however, that men may also be victims and women may also be harassers.

[4]For a description of the respective roles of the Commission and other federal agencies in investigating complaints of discrimination in the federal sector, see 29 C.F.R. §1613.216. [403:632]

[5]In a subsection entitled "Other related practices," the Guidelines also provide that where an employment opportunity or benefit is granted because of an individual's "submission to the employer's sexual advances or requests for sexual favors," the employer may be liable for unlawful sex discrimination against others who were qualified for but were denied the opportunity or benefit. 29 C.F.R. §1604.11(g). The law is unsettled as to when a Title VII violation can be established in these circumstances. *See DeCintio v. Westchester County Medical Center*, 807 F.2d 304, 42 EPD ¶36,785 [42 FEP Cases 921] (2d Cir. 1986), *cert. denied*, 108 S.Ct. 89, 44 EPD ¶37,425 (1987); *King v. Palmer*, 778 F.2d 878, 39 EPD ¶35,808 [39 FEP Cases 877] (D.C. Cir. 1985), *decision on remand*, 641 F.Supp. 186, 40 EPD ¶36,245 (D.D.C. 1986); *Broderick v. Ruder*, 46 EPD ¶37,963 [48 FEP Cases 232] (D.D.C 1988); *Miller v. Aluminum Co. of America*, 679 F.Supp. 495, 500-01 [45 FEP Cases 1775] (W.D. Pa.), *aff'd mem.*, No. 88-3099 (3d Cir. 1988). However, the Commission recently analyzed the is-

B. Supreme Court's Decision in Vinson

Meritor Saving Bank v. Vinson posed three questions for the Supreme Court:

(1) Does unwelcome sexual behavior that creates a hostile working environment constitute employment discrimination on the basis of sex;

(2) Can a Title VII violation be shown when the district court found that any sexual relationship that existed between the plaintiff and her supervisor was a "voluntary one"; and

(3) Is an employer strictly liable for an offensive working environment created by a supervisor's sexual advances when the employer does not know of, and could not reasonably have known of, the supervisor's misconduct.

1) Facts — The plaintiff had alleged that her supervisor constantly subjected her to sexual harassment both during and after business hours, on and off the employer's premises; she alleged that he forced her to have sexual intercourse with him on numerous occasions, fondled her in front of other employees, followed her into the women's restroom and exposed himself to her, and even raped her on several occasions. She alleged that she submitted for fear of jeopardizing her employment. She testified, however, that this conduct had ceased almost a year before she first complained in any way, by filing a Title VII suit; her EEOC charge was filed later (*see infra* at n.34). The supervisor and the employer denied all of her allegations and claimed they were fabricated in response to a work dispute.

2) Lower Courts' Decisions — After trial, the district court found the plaintiff was not the victim of sexual harassment and was not required to grant sexual favors as a condition of employment or promotion. *Vinson v. Taylor*, 22 EPD ¶30,708 [23 FEP Cases 37] (D.D.C. 1980). Without resolving the conflicting testimony, the district court found that if a sexual relationship had existed between plaintiff and her supervisor, it was "a voluntary one ... having nothing to do with her continued employment." The district court nonetheless went on to hold that the employer was not liable for its supervisor's actions because it had no notice of the alleged sexual harassment; although the employer had a policy against discrimination and an internal grievance procedure, the plaintiff had never lodged a complaint.

The court of appeals reversed and remanded, holding the lower court should have considered whether the evidence established a violation under the "hostile environment" theory. *Vinson v. Taylor*, 753 F.2d 141, 36 EPD ¶34,949, [36 FEP Cases 1423] *denial of rehearing en banc*, 760 F.2d 1330, 37 EPD ¶35,232 [37 FEP Cases 1266] (D.C. Cir. 1985). The court ruled that a victim's "voluntary" submission to sexual advances has "no materiality whatsoever" to the proper inquiry: whether "toleration of sexual harassment [was] a condition of her employment." The court further held that an employer is absolutely liable for sexual harassment committed by a supervisory employee, regardless of whether the employer actually knew or reasonably could have known of the misconduct, or would have disapproved of and stopped the misconduct if aware of it.

3) Supreme Court's Opinion — The Supreme Court agreed that the case should be remanded for consideration under the "hostile environment" theory and held that the proper inquiry focuses on the "unwelcomeness" of the conduct rather than the "voluntariness" of the victim's participation. But the Court held that the court of appeals erred in concluding that employers are always automatically liable for sexual harassment by their supervisory employees.

sues in its "Policy Guidance on Employer Liability Under Title VII for Sexual Favoritism" dated January 1990.

a) "Hostile Environment" Violates Title VII — The Court rejected the employer's contention that Title VII prohibits only discrimination that causes "economic" or "tangible" injury. "Title VII affords employees the right to work in an environment free from discriminatory intimidation, ridicule, and insult" whether based on sex, race, religion, or national origin. 106 S.Ct. at 2405. Relying on the EEOC's Guidelines' definition of harassment,[6] the Court held that a plaintiff may establish a violation of Title VII "by proving that discrimination based on sex has created a hostile or abusive work environment." *Id.* The Court quoted the Eleventh Circuit's decision in *Henson v. City of Dundee*, 682 F.2d 897 902 29 EPD ¶32,993 [29 FEP Cases 787] (11th Cir. 1982):

> Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets.

106 S.Ct. at 2406. The Court further held that for harassment to violate Title VII, it must be "sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.'" *Id.* (quoting *Henson*, 682 F.2d at 904).

b) Conduct Must Be "Unwelcome" — Citing the EEOC's Guidelines, the Court said the gravamen of a sexual harassment claim is that the alleged sexual advances were "unwelcome." 106 S.Ct. at 2406. Therefore, "the fact that sex-related conduct was 'voluntary,' in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII .... The correct inquiry is whether [the victim] by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary." *Id.* Evidence of a complainant's sexually provocative speech or dress may be relevant in determining whether she found particular advances unwelcome, but should be admitted with caution in light of the potential for unfair prejudice, the Court held.

c) Employer Liability Established Under Agency Principles — On the question of employer liability in "hostile environment" cases, the Court agreed with EEOC's position that agency principles should be used for guidance. While declining to issue a "definitive rule on employer liability," the Court did reject both the court of appeals' rule of automatic liability for the actions of supervisors and the employer's position that notice is always required. 106 S.Ct. at 2408-09.

The following sections of this document provide guidance on the issues addressed in *Vinson* and subsequent cases.

GUIDANCE

A. Determining Whether Sexual Conduct Is Unwelcome

Sexual harassment is "unwelcome ... verbal or physical conduct of a sexual nature...." 29 C.F.R. §1604.11(a). Because sexual attraction may often play a role in the day-to-day social exchange between employees, "the distinction between invited, uninvited-but-welcome, offensive-but-tolerated, and flatly rejected" sexual advances may well be difficult to discern. *Barnes v. Costle*, 561 F.2d 983, 999, 14 EPD ¶7755 [15 FEP Cases 345] (D.C. Cir. 1977) (MacKinnon J., con-

[6] The Court stated that the guidelines, "while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Vinson*, 106 S.Ct. at 2405 (quoting *General Electric Co. v. Gilbert*, 429 U.S. 125, 141-42, 12 EPD ¶11,240 [13 FEP Cases 1657] (1976), quoting in turn *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)).

curring). But this distinction is essential because sexual conduct becomes unlawful only when it is unwelcome. The Eleventh Circuit provided a general definition of "unwelcome conduct" in *Henson v. City of Dundee*, 682 F.2d at 903: the challenged conduct must be unwelcome "in the sense that the employee did not solicit or incite it, and in the sense that the employee regarded the conduct as undesirable or offensive."

When confronted with conflicting evidence as to welcomeness, the Commission looks "at the record as a whole and at the totality of circumstances. . . ." 29 C.F.R. §1604.11(b), evaluating each situation on a case-by-case basis. When there is some indication of welcomeness or when the credibility of the parties is at issue, the charging party's claim will be considerably strengthened if she made a contemporaneous complaint or protest.[7] Particularly when the alleged harasser may have some reason (e.g., a prior consensual relationship) to believe that the advances will be welcomed, it is important for the victim to communicate that the conduct is unwelcome. Generally, victims are well-advised to assert their right to a workplace free from sexual harassment. This may stop the harassment before it becomes more serious. A contemporaneous complaint or protest may also provide persuasive evidence that the sexual harassment in fact occurred as alleged (*see infra* Section B). Thus, in investigating sexual harassment charges, it is important to develop detailed evidence of the circumstances and nature of any such complaints or protests, whether to the alleged harasser, higher management, co-workers or others.[8]

While a complaint or protest is helpful to a charging party's case, it is not a necessary element of the claim. Indeed, the Commission recognizes that victims may fear repercussions from complaining about the harassment and that such fear may explain a delay in opposing the conduct. If the victim failed to complain or delayed in complaining, the investigation must ascertain why. The relevance of whether the victim has complained varies depending upon "the nature of the sexual advances and the context in which the alleged incidents occurred." 29 C.F.R. §1604.11(b).[9]

> **Example** — Charging Party (CP) alleges that her supervisor subjected her to unwelcome sexual advances that created a hostile work environment. The investigation into her charge discloses that her supervisor began making intermittent sexual advances to her in June, 1987, but she did not complain to management about the harassment. After the harassment continued and worsened, she filed a charge with EEOC in June, 1988. There is no evidence CP welcomed the advances. CP states that she

[7]For a complaint to be "contemporaneous," it should be made while the harassment is ongoing or shortly after it has ceased. For example, a victim of "hostile environment" harassment who resigns her job because working conditions have become intolerable would be considered to have made a contemporaneous complaint if she notified the employer of the harassment at the time of her departure or shortly thereafter. The employer has a duty to investigate and, if it finds the allegations true, to take remedial action including offering reinstatement (*see infra* Section E).

[8]Even when unwelcomeness is not at issue, the investigation should develop this evidence in order to aid in making credibility determinations (*see infra* p. 12).

[9]A victim of harassment need not always confront her harasser directly so long as her conduct demonstrates the harasser's behavior is unwelcome. *See, e.g., Lipsett v. University of Puerto Rico*, 864 F.2d 881, 898, 48 EPD ¶38,393 (1st Cir. 1988) ("In some instances a woman may have the responsibility for telling the man directly that his comments or conduct is unwelcome. In other instances, however, a woman's consistent failure to respond to suggestive comments or gestures may be sufficient to communicate that the man's conduct is unwelcome"); Commission Decision No. 84-1, CCH EEOC Decisions ¶6839 (although charging parties did not confront their supervisor directly about his sexual remarks and gestures for fear of losing their jobs, evidence showing that they demonstrated through comments and actions that his conduct was unwelcome was sufficient to support a finding of harassment).

feared that complaining about the harassment would cause her to lose her job. She also states that she initially believed she could resolve the situation herself, but as the harassment became more frequent and severe, she said she realized that intervention by EEOC was necessary. The investigator determines CP is credible and concludes that the delay in complaining does not undercut CP's claim.

When welcomeness is at issue, the investigation should determine whether the victim's conduct is consistent, or inconsistent, with her assertion that the sexual conduct is unwelcome.[10]

In *Vinson*, the Supreme Court made clear that voluntary submission to sexual conduct will not necessarily defeat a claim of sexual harassment. The correct inquiry "is whether [the employee] *by her conduct* indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary." 106 S.Ct. at 2406 (emphasis added). *See also* Commission Decision No. 84-1 ("acquiescence in sexual conduct at the workplace may not mean that the conduct is welcome to the individual").

In some cases the courts and the Commission have considered whether the complainant welcomed the sexual conduct by acting in a sexually aggressive manner, using sexually-oriented language, or soliciting the sexual conduct. Thus, in *Gan v. Kepro Circuit Systems*, 27 EPD ¶32,379 [28 FEP Cases 639] (E.D. Mo. 1982), the plaintiff regularly used vulgar language, initiated sexually-oriented conversations with her co-workers, asked male employees about their marital sex lives and whether they engaged in extramarital affairs, and discussed her own sexual encounters. In rejecting the plaintiff's claim of "hostile environment" harassment, the court found that any propositions or sexual remarks by co-workers were "prompted by her own sexual aggressiveness and her own sexually-explicit conversations." *Id.* at 23,648.[11] And in *Vinson*, the Supreme Court held that testimony about the plaintiff's provocative dress and publicly expressed sexual fantasies is not *per se* inadmissible but the trial court should carefully weigh its relevance against the potential for unfair prejudice. 106 S.Ct. at 2407.

Conversely, occasional use of sexually explicit language does not necessarily negate a claim that sexual conduct was unwelcome. Although a charging party's use of sexual terms or off-color jokes may suggest that sexual comments by others in that situation were not unwelcome, more extreme and abusive or persistent comments or a physical assault

[10]Investigators and triers of fact rely on objective evidence, rather than subjective, uncommunicated feelings. For example, in *Ukariah v. Magnesium Electron*, 33 EPD ¶34,087 [33 FEP Cases 1315] (D.N.J. 1983), the court rejected the plaintiff's claim that she was sexually harassed by her co-worker's language and gestures, although she indicated to her personal diary that she did not welcome the banter, she made no objection and indeed appeared to join in "as one of the boys." *Id.* at 32,118. In *Sardigal v. St. Louis National Stockyards Co.*, 41 EPD ¶36,613 [42 FEP Cases 87] (S.D. Ill. 1986), the plaintiff's allegation was found not credible because she visited her alleged harasser at the hospital and at his brother's home, and allowed him to come into her home alone at night after the alleged harassment occurred. Similarly, in the *Vinson* case, the district court noted the plaintiff had twice refused transfers to other offices located away from the alleged harasser. (In a particular charge, the significance of a charging party's refusing an offer to transfer will depend upon her reasons for doing so.)

[11]*See also Ferguson v. E.I. DuPont deNemours and Co.*, 560 F.Supp. 1172, 33 EPD ¶34,131 [31 FEP Cases 795] (D. Del. 1983) ("sexually aggressive conduct and explicit conversation on the part of the plaintiff may bar a cause of action for [hostile environment] sexual harassment"); *Reichman v. Bureau of Affirmative Action*, 536 F.Supp. 1149, 1172, 30 FEP Cases 1644 (M.D. Pa. 1982) (where plaintiff behaved "in a very flirtatious and provocative manner" around the alleged harasser, asked him to have dinner at her house on several occasions despite his repeated refusals, and continued to conduct herself in a similar manner after the alleged harassment, she could not claim the alleged harassment was unwelcome).

will not be excused, nor would "quid pro quo" harrassment be allowed.

Any past conduct of the charging party that is offered to show "welcomeness" must relate to the alleged harasser. In *Swentek v. USAir, Inc.*, 830 F.2d 552, 557, 44 EPD ¶37,457 [44 FEP Cases 1808] (4th Cir. 1987), the Fourth Circuit held the district court wrongly concluded that the plaintiff's own past conduct and use of foul language showed that "she was the kind of person who could not be offended by such comments and therefore welcomed them generally," even though she had told the harasser to leave her alone. Emphasizing that the proper inquiry is "whether plaintiff welcomed the particular conduct in question from the alleged harasser," the court of appeals held that "Plaintiff's use of foul language or sexual innuendo in a consensual setting does not waive 'her legal protections against unwelcome harassment.' " 830 F.2d at 557 (quoting *Katz v. Dole*, 709 F.2d 251, 254 n.3, 32 EPD ¶33,639 [31 FEP Cases 1521] (4th Cir. 1983)). Thus, evidence concerning a charging party's general character and past behavior toward others has limited, if any, probative value and does not substitute for a careful examination of her behavior toward the alleged harasser.

A more difficult situation occurs when an employee first willingly participates in conduct of a sexual nature but then ceases to participate and claims that any continued sexual conduct has created a hostile work environment. Here the employee has the burden of showing that any further sexual conduct is unwelcome, work-related harassment. The employee must clearly notify the alleged harasser that his conduct is no longer welcome.[12] If the conduct still continues, her failure to bring the matter to the attention of higher management or the EEOC is evidence, though not dispositive, that any continued conduct is, in fact, welcome or unrelated to work.[13] In any case, however, her refusal to submit to the sexual conduct cannot be the basis for denying her an employment benefit or opportunity; that would constitute a "quid pro quo" violation.

B. Evaluating Evidence of Harassment

The Commission recognizes that sexual conduct may be private and unacknowledged, with no eyewitnesses. Even sexual conduct that occurs openly in the workplace may appear to be consensual. Thus the resolution of a sexual harassment claim often depends on the credibility of the parties. The investigator should question the charging party and the alleged harasser in detail. The Commission's investigation also should search thoroughly for corroborative evidence of any nature.[14] Supervisory and managerial employees, as well as coworkers, should be asked about their knowledge of the alleged harassment.

[12]In Commission Decision No. 84-1, CCH Employment Practices Guide ¶6839, the Commission found that active participation in sexual conduct at the workplace, e.g., by "using dirty remarks and telling dirty jokes," may indicate that the sexual advances complained of were not unwelcome. Thus, the Commission found that no harassment occurred with respect to an employee who had joined in the telling of bawdy jokes and the use of vulgar language during her first two months on the job, and failed to provide subsequent notice that the conduct was no longer welcome. By actively participating in the conduct, the charging party had created the impression among her co-workers that she welcomed the sort of sexually oriented banter that she later asserted was objectionable. Simply ceasing to participate was insufficient to show the continuing activity was no longer welcome to her. *See also Loftin-Boggs v. City of Meridian*, 633 F.Supp. 1323, 41 FEP Cases 522 (S.D. Miss. 1986) (plaintiff initially participated in and initiated some of the crude language that was prevalent on the job; if she later found such conduct offensive, she should have conveyed this by her own conduct and her reaction to her co-workers' conduct).

[13]However, if the harassing supervisor engages in conduct that is sufficiently pervasive and work-related, it may place the employer on notice that the conduct constitutes harassment.

[14]As the court said in *Henson v. City of Dundee*, 682 F.2d at 912 n.25, "In a case of alleged sexual harassment which involves close questions of credibility and subjective interpretation, the existence of corroborative evidence or the lack thereof is likely to be crucial."

In appropriate cases, the Commission may make a finding of harassment based solely on the credibility of the victim's allegation. As with any other charge of discrimination, a victim's account must be sufficiently detailed and internally consistent so as to be plausible, and lack of corroborative evidence where such evidence logically should exist would undermine the allegation.[15] By the same token, a general denial by the alleged harasser will carry little weight when it is contradicted by other evidence.[16]

Of course, the Commission recognizes that a charging party may not be able to identify witnesses to the alleged conduct itself. But testimony may be obtained from persons who observed the charging party's demeanor immediately after an alleged incident of harassment. Persons with whom she discussed the incident — such as co-workers, a doctor or a counselor — should be interviewed. Other employees should be asked if they noticed changes in charging party's behavior at work or in the alleged harasser's treatment of charging party. As stated earlier, a contemporaneous complaint by the victim would be persuasive evidence both that the conduct occurred and that it was unwelcome (*see supra* Section A). So too is evidence that other employees were sexually harassed by the same person.

The investigator should determine whether the employer was aware of any other instances of harassment and if so what was the response. Where appropriate the Commission will expand the case to include class claims.[17]

> **Example** — Charging Party (CP) alleges that her supervisor made unwelcome sexual advances toward her on frequent occasions while they were alone in his office. The supervisor denies this allegation. No one witnessed the alleged advances. CP's inability to produce eyewitnesses to the harassment does *not* defeat her claim. The resolution will depend on the credibility of her allegations versus that of her supervisor's. Corroborating, credible evidence will establish her claim. For example, three co-workers state that CP looked distraught on several occasions after leaving the supervisor's office, and that she informed them on those occasions that he had sexually propositioned and touched her. In addition, the evidence shows that CP had complained to the general manager of the office about the incidents soon after they occurred. The corroborating witness testimony and her complaint to higher management would be sufficient to establish her claim. Her allegations would be further buttressed if other employees testified that the supervisor propositioned them as well.

If the investigation exhausts all possibilities for obtaining corroborative evi-

[15] In *Sardigal v. St. Louis National Stockyards Co.*, 41 EPD ¶36,613 at 44,694 (42 FEP Cases 497) (S.D. Ill. 1986), the plaintiff, a waitress, alleged she was harassed over a period of nine months in a restaurant at noontime, when there was a "constant flow of waitresses or customers" around the area where the offenses allegedly took place. Her allegations were not credited by the district court because no individuals came forward with testimony to support her.

It is important to explore all avenues for obtaining corroborative evidence because courts may reject harassment claims due to lack of corroborative evidence. *See Hall v. F.O. Thacker Co.*, 24 FEP Cases 1499, 1503 (N.D. Ga. 1980) (district judge did not credit plaintiff's testimony about sexual advances because it was "virtually uncorroborated"); *Needham v. D.H. Holmes Co.*, 21 FEP Cases 452, 457 (E.D. La. 1979), *aff'd mem.*, 624 F.2d 1097 (5th Cir. 1980) (plaintiff's account of sexual harassment rejected because "there is not a scintilla of credible evidence to corroborate [plaintiff's version]").

[16] *See* Commission Decision No. 83-17, CCH EEOC Decisions (1983) ¶6757 (violation of Title VII found where charging party alleged that her supervisor made repeated sexual advances toward her, although the supervisor denied the allegations, statements of other employees supported them).

[17] Class complaints in the federal sector are governed by the requirements of 29 C.F.R. §1613 Subpart F.

dence, but finds none, the Commission may make a cause finding based solely on a reasoned decision to credit the charging party's testimony.[18]

In a "quid pro quo" case, a finding that the employer's asserted reasons for its adverse action against the charging party are pretextual will usually establish a violation.[19] The investigation should determine the validity of the employer's reasons for the charging party's termination. If they are pretextual and if the sexual harassment occurred, then it should be inferred that the charging party was terminated for rejecting the employer's sexual advances, as she claims. Moreover, if the termination occurred because the victim complained, it would be appropriate to find, in addition, a violation of section 704(a).

C. Determining Whether a Work Environment Is "Hostile"

The Supreme Court said in *Vinson* that for sexual harassment to violate Title VII, it must be "sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.' " 106 S.Ct. at 2406 (quoting *Henson v. City of Dundee*, 682 F.2d at 904. Since "hostile environment" harassment takes a variety of forms, many factors may affect this determination, including: (1) whether the conduct was verbal or physical, or both; (2) how frequently it was repeated; (3) whether the conduct was hostile and patently offensive; (4) whether the alleged harasser was a co-worker or a supervisor; (5) whether others joined in perpetrating the harassment; and (6) whether the harassment was directed at more than one individual.

In determining whether unwelcome sexual conduct rises to the level of a "hostile environment" in violation of Title VII, the central inquiry is whether the conduct "unreasonably interfer[es] with an individual's work performance" or creates "an intimidating, hostile, or offensive working environment." 29 C.F.R. §1604.11(a)(3). Thus, sexual flirtation or innuendo, even vulgar language that is trivial or merely annoying, would probably not establish a hostile environment.

1) Standard for Evaluating Harassment — In determining whether harassment is sufficiently severe or pervasive to create a hostile environment, the harasser's conduct should be evaluated from the objective standpoint of a "reasonable person." Title VII does not serve "as a vehicle for vindicating the petty slights suffered by the hypersensitive." *Zabkowicz v. West Bend Co.*, 589 F.Supp. 780, 784, 35 EPD ¶34,766 [35 FEP Cases 610] (E.D. Wis. 1984). *See also Ross v. Comsat*, 34 FEP Cases 260, 265 (D. Md. 1984), *rev'd on other grounds*, 759 F.2d 355 (4th Cir. 1985). Thus, if the challenged conduct would not substantially affect the work environment of a reasonable person, no violation should be found.

> **Example** — Charging Party alleges that her co-worker made repeated unwelcome sexual advances toward her. An investigation discloses that the alleged "advances" consisted of invitations to join a group of employees who regularly socialized at dinner after work. The co-worker's invitations, viewed in that context and from the perspective of a reasonable person, would not have created a hostile environment and therefore did not constitute sexual harassment.

A "reasonable person" standard also should be applied to the more basic determination of whether challenged con-

[18] In Commission Decision No. 82-13, CCH EEOC Decisions (1983) ¶6832, the Commission stated that a "bare assertion" of sexual harassment "cannot stand without some factual support." To the extent this decision suggests a charging party can never prevail based solely on the credibility of her own testimony, that decision is overruled.

[19] *See, e.g., Bundy v. Jackson*, 641 F.2d 934, 953, 24 EPD ¶31,439 (24 FEP Cases 1155) (D.C. Cir. 1981).

duct is of a sexual nature. Thus, in the above example, a reasonable person would not consider the co-worker's invitations sexual in nature, and on that basis as well no violation would be found.

This objective standard should not be applied in a vacuum, however. Consideration should be given to the context in which the alleged harassment took place. As the Sixth Circuit has stated, the trier of fact must "adopt the perspective of a reasonable person's reaction to a similar environment under similar or like circumstances." *Highlander v. K.F.C. National Management Co.*, 805 F.2d 644, 650, 41 EPD ¶36,675 [42 FEP Cases 654] (6th Cir. 1986).[20]

The reasonable person standard should consider the victim's perspective and not stereotyped notions of acceptable behavior. For example, the Commission believes that a workplace in which sexual slurs, displays of "girlie" pictures, and other offensive conduct abound can constitute a hostile work environment even if many people deem it to be harmless or insignificant. *Cf. Rabidue v. Osceola Refining Co.*, 805 F.2d 611, 626, 41 EPD ¶36,643 [42 FEP Cases 631] (6th Cir. 1986) (Keith, C.J., dissenting), *cert. denied*, 107 S.Ct. 1983, 42 EPD ¶36,984 (1987). *Lipsett v. University of Puerto Rico*, 864 F.2d 881, 898 48 EPD ¶38,393 (1st Cir. 1988).

2) Isolated Instances of Harassment — Unless the conduct is quite severe, a single incident or isolated incidents of offensive sexual conduct or remarks generally do not create an abusive environment. As the Court noted in *Vinson*, "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee would not affect the conditions of employment to a sufficiently significant degree to violate Title VII." 106 S.Ct. at 2406 (quoting *Rogers v. EEOC*, 454 F.2d 234, 4 EPD ¶7597 [4 FEP Cases 92] (5th Cir. 1971), *cert. denied*, 406 U.S. 957, 4 EPD ¶7838 (1972)). A "hostile environment" claim generally requires a showing of a pattern of offensive conduct.[21] In contrast, in "quid pro quo" cases a single sexual advance may constitute harassment if it is linked to the granting or denial of employment benefits.[22]

But a single, unusually severe incident of harassment may be sufficient to constitute a Title VII violation; the more severe the harassment, the less need to show a repetitive series of incidents. This is particularly true when the harassment

[20] In *Highlander* and also in *Rabidue v. Osceola Refining Co.*, 805 F.2d 611, 41 EPD ¶36,643 [42 FEP Cases 631] (6th Cir. 1986), *cert. denied*, 107 S.Ct. 1983, 42 EPD ¶36,984 (1987), the Sixth Circuit required an additional showing that the plaintiff suffered some degree of psychological injury. *Highlander*, 805 F.2d at 650, *Rabidue*, 805 F.2d at 620. However, it is the Commission's position that it is sufficient for the charging party to show that the harassment was unwelcome and that it would have substantially affected the work environment of a reasonable person

[21] *See, e.g., Scott v. Sears, Roebuck and Co.*, 796 F.2d 230, 234, 41 EPD ¶36,439 [41 FEP Cases 805] (7th Cir. 1986) (offensive comments and conduct of co-workers were "too isolated and lacking the repetitive and debilitating effect necessary to maintain a hostile environment claim"); *Moylan v. Maries County*, 792 F.2d 746, 749, 40 EPD ¶36,228 [40 FEP Cases 1788] (8th Cir. 1986) (single incident or isolated incidents of harassment will not be sufficient to establish a violation; the harassment must be sustained and nontrivial); *Downes v. Federal Aviation Administration*, 775 F.2d 288, 293, 38 EPD ¶35,550 [39 FEP Cases 70] (D.C. Cir. 1985) (Title VII does not create a claim of sexual harassment "for each and every crude joke or sexually explicit remark on the job. . . . [A] pattern of offensive conduct must be proved. . . ."); *Sapp v. City of Warner-Robins*, 655 F.Supp. 1043, 43 FEP Cases 486 (M.D. Ga. 1987) (co-worker's single effort to get the plaintiff to go out with him did not create an abusive working environment); *Freedman v. American Standard*, 41 FEP Cases 471 (D.N.J. 1986) (plaintiff did not suffer a hostile environment from the receipt of an obscene message from her coworkers and a sexual solicitation from one co-worker); *Hollis v. Fleetguard, Inc.*, 44 FEP Cases 1527 (M.D. Tenn. 1987) (plaintiff's co-worker's requests, on four occasions over a four-month period, that she have a sexual affair with him, followed by his coolness toward her and avoidance of her did not constitute a hostile environment; there was no evidence he coerced, pressured, or abused the plaintiff after she rejected his advances).

[22] *See Neville v. Taft Broadcasting Co.*, 42 FEP Cases 1314 (W.D.N.Y. 1987) (one sexual advance, rebuffed by plaintiff, may establish a prima facie case of "quid pro quo" harassment but is not severe enough to create a hostile environment).

is physical.[23] Thus, in *Barrett v. Omaha National Bank*, 584 F.Supp. 22, 35 FEP Cases 585 (D. Neb. 1983), *aff'd*, 726 F.2d 424, 33 EPD ¶34,122 (8th Cir. 1984), one incident constituted actionable sexual harassment. The harasser talked to the plaintiff about sexual activities and touched her in an offensive manner while they were inside a vehicle from which she could not escape.[24]

The Commission will presume that the unwelcome, intentional touching of a charging party's intimate body areas is sufficiently offensive to alter the conditions of her working environment and constitute a violation of Title VII. More so than in the case of verbal advances or remarks, a single unwelcome physical advance can seriously poison the victim's working environment. If an employee's supervisor sexually touches that employee, the Commission normally would find a violation. In such situations, it is the employer's burden to demonstrate that the unwelcome conduct was not sufficiently severe to create a hostile work environment.

When the victim is the target of both verbal and non-intimate physical conduct, the hostility of the environment is exacerbated and a violation is more likely to be found. Similarly, incidents of sexual harassment directed at other employees in addition to the charging party are relevant to a showing of hostile work environment. *Hall v. Gus Construction Co.*, 842 F.2d 1010, 46 EPD ¶37,905 [46 FEP Cases 578] (8th Cir. 1988); *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 44 EPD ¶37,542 [45 FEP Cases 608] (10th Cir. 1987); *Jones v. Flagship International*, 793 F.2d 714, 721 n.7, 40 EPD ¶36,392 [41 FEP Cases 358] (5th Cir. 1986), *cert. denied*, 107 S.Ct. 952, 41 EPD ¶36,708 (1987).

3) Non-physical Harassment — When the alleged harassment consists of verbal conduct, the investigation should ascertain the nature, frequency, context, and intended target of the remarks. Questions to be explored might include:

— Did the alleged harasser single out the charging party?

— Did the charging party participate?

— What was the relationship between the charging party and the alleged harasser(s)?

— Were the remarks hostile and derogatory?

No one factor alone determines whether particular conduct violates Title VII. As the Guidelines emphasize, the Commission will evaluate the totality of the circumstances. In general, a woman does not forfeit her right to be free from sexual harassment by choosing to work in an atmosphere that has traditionally included vulgar, anti-female language. However, in *Rabidue v. Osceola Refining Co.*, 805 F.2d 611, 41 EPD ¶36,643 [42 FEP Cases 631] (6th Cir. 1986), *cert. denied*, 107 S.Ct. 1983, 42 EPD ¶36,984 (1987), the Sixth Circuit rejected the plaintiff's claim of harassment in such a situation.[25] One of the factors the court found

[23]The principles for establishing employer liability, set forth in Section D below, are to be applied to cases involving physical contact in the same manner that they are applied in other cases.

[24]*See also Gilardi v. Schroeder*, 672 F.Supp. 1043, 45 FEP Cases 283 (N.D. Ill. 1986) (plaintiff who was drugged by employer's owner and raped while unconscious, and then was terminated at insistence of owner's wife, was awarded $113,000 in damages for harassment and intentional infliction of emotional distress); Commission Decision No. 83-1, CCH EEOC Decisions (1983) ¶6834 (violation found where the harasser forcibly grabbed and kissed charging party while they were alone in a storeroom); Commission Decision No. 84-3, CCH Employment Practices Guide ¶6841 (violation found where the harasser slid his hand under the charging party's skirt and squeezed her buttocks).

[25]The alleged harasser, a supervisor of another department who did not supervise plaintiff but worked with her regularly, "was an extremely vulgar and crude individual who customarily made obscene comments about women generally, and, on occasion, directed such obscenities to the plaintiff." 805 F.2d at 615. The plaintiff and other female employees were exposed daily to displays of nude or partially clad women in posters in male employees' offices. 805 F.2d at 623-24 (Keith, J., dissenting in part and concurring in part). Although the employees told manage-

relevant was "the lexicon of obscenity that pervaded the environment of the workplace both before and after the plaintiff's introduction into its environs, coupled with the reasonable expectations of the plaintiff upon voluntarily entering that environment." 805 F.2d at 620. Quoting the district court, the majority noted that in some work environments, " 'humor and language are rough hewn and vulgar. Sexual jokes, sexual conversations, and girlie magazines may abound. Title VII was not meant to — or can — change this.' " *Id.* at 620-21. The court also considered the sexual remarks and poster at issue to have a "de minimis effect on the plaintiff's work environment when considered in the context of a society that condones and publicly features and commercially exploits open displays of written and pictorial erotica at the newsstands, on prime-time television, at the cinema, and in other public places." *Id.* at 622.

The Commission believes these factors rarely will be relevant and agrees with the dissent in *Rabidue* that a woman does not assume the risk of harassment by voluntarily entering an abusive, anti-female environment. "Title VII's precise purpose is to prevent such behavior and attitudes from poisoning the work environment of classes protected under the Act." 805 F.2d at 626 (Keith, J., dissenting in part and concurring in part). Thus, in a decision disagreeing with *Rabidue*, a district court found that a hostile environment was established by the presence of pornographic magazines in the workplace and vulgar employee comments concerning them; offensive sexual comments made to and about plaintiff and other female employees by her supervisor; sexually oriented pictures in a company-sponsored movie and slide presentation; sexually oriented pictures and calendars in the workplace; and offensive touching of plaintiff by a co-worker. *Barbetta v. Chemlawn Services Corp.*, 669 F.Supp. 569, 45 EPD ¶37,568 [44 FEP Cases 1563] (W.D.N.Y. 1987). The court held that the proliferation of pornography and demeaning comments, if sufficiently continuous and pervasive, "may be found to create an atmosphere in which women are viewed as men's sexual playthings rather than as their equal coworkers." *Barbetta*, 669 F.Supp. at 573. The Commission agrees that, depending on the totality of circumstances, such an atmosphere may violate Title VII. *See also Waltman v. International Paper Co.*, 875 F.2d 468, 50 EPD ¶39,106 Commission's position in its amicus brief that evidence of ongoing sexual graffiti in the workplace, not all of which was directed at the plaintiff, was relevant to her claim of harassment. *Bennett v. Corroon & Black Corp.*, 845 F.2d 104, 46 EPD ¶37,955 (5th Cir. 1988) (the posting of obscene cartoons in an office men's room bearing the plaintiff's name and depicting her engaged in crude and deviant sexual activities could create a hostile work environment).

f) Sex-based Harassment — Although the Guidelines specifically address conduct that is sexual in nature, the Commission notes that sex-based harassment — that is, harassment not involving sexual activity or language — may also give rise to Title VII liability (just as in the case of harassment based on race, national origin or religion) if it is "sufficiently patterned or pervasive" and directed at employees because of their sex. *Hicks v. Gates Rubber Co.*, 833 F.2d at 1416; *McKinney v. Dole*, 765 F.2d 1129, 1138, 37 EPD ¶35,339 [38 FEP Cases 364] (D.C. Cir. 1985).

Acts of physical aggression, intimidation, hostility or unequal treatment based on sex may be combined with incidents of sexual harassment to establish the existence of discriminatory terms and conditions of employment. *Hall v. Gus Construction Co.*, 842 F.2d at 1014; *Hicks v. Gates Rubber Co.*, 833 F.2d at 1416.

ment they were disturbed and offended, the employer did not reprimand the supervisor.

5) Constructive Discharge — Claims of "hostile environment" sexual harassment often are coupled with claims of constructive discharge. If constructive discharge due to a hostile environment is proven, the claim will also become one of "quid pro quo" harassment.[26] It is the position of the Commission and a majority of courts that an employer is liable for constructive discharge when it imposes intolerable working conditions in violation of Title VII when those conditions foreseeably would compel a reasonable employee to quit, whether or not the employer specifically intended to force the victim's resignation. *See Derr v. Gulf Oil Corp.*, 796 F.2d 340, 343-44, 41 EPD ¶36,468 [41 FEP Cases 166] (10th Cir. 1986); *Goss v. Exxon Office Systems Co.*, 747 F.2d 885, 888, 35 EPD ¶34,768 [36 FEP Cases 344] (3d Cir. 1984); *Nolan v. Cleland*, 686 F.2d 806, 812-15, 30 EPD ¶33,029 [29 FEP Cases 1732] (9th Cir. 1982); *Held v. Gulf Oil Co.*, 684 F.2d 427, 432, 29 EPD ¶32,968 [29 FEP Cases 837] (6th Cir. 1982); *Clark v. Marsh*, 665 F.2d 1168, 1175 n.8, 26 EPD ¶32,082 (D.C. Cir. 1981); *Bourque v. Powell Electrical Manufacturing Co.*, 617 F.2d 61, 65, 23 EPD ¶30,891 [22 FEP Cases 1191] (5th Cir. 1980); Commission Decision 84-1, CCH EEOC Decision ¶6839. However, the Fourth Circuit requires proof that the employer imposed the intolerable conditions with the intent of forcing the victim to leave. *See EEOC v. Federal Reserve Bank of Richmond*, 698 F.2d 633, 672, 30 EPD ¶33,269 (4th Cir. 1983). But this case is not a sexual harassment case and the Commission believes it is distinguishable because specific intent is not as likely to be present in "hostile environment" cases.

An important factor to consider is whether the employer had an effective internal grievance procedure. (*See* Section E, *Preventive and Remedial Action*). The Commission argued in its *Vinson* brief that if an employee knows that effective avenues of complaint and redress are available, then the availability of such avenues itself becomes a part of the work environment and overcomes, to the degree it is effective, the hostility of the work environment. As Justice Marshall noted in his opinion in *Vinson*, "Where a complainant without good reason bypassed an internal complaint procedure she knew to be effective, a court may be reluctant to find constructive termination. . . ." 106 S.Ct. at 2411 (Marshall, J., concurring in part and dissenting a part). Similarly, the court of appeals in *Dornhecker v. Malibu Grand Prix Corp.*, 828 F.2d 307, 44 EPD ¶37,557 [44 FEP Cases 1604] (5th Cir. 1987), held the plaintiff was not constructively discharged after an incident of harassment by a co-worker because she quit immediately, even though the employer told her she would not have to work with him again, and she did not give the employer a fair opportunity to demonstrate it could curb the harasser's conduct.

D. Employer Liability for Harassment by Supervisors

In *Vinson*, The Supreme Court agreed with the Commission's position that "Congress wanted courts to look to agency principles for guidance" in determining an employer's liability for sexual conduct by a supervisor:

> While such common-law principles may not be transferable in all their particulars to Title VII, Congress' decision to define "employer" to include any "agent" of an employer, 42 U.S.C. §2000e(b), surely evinces an intent to place some limits on the acts of employees for which employers under Title VII are to be held responsible.

106 S.Ct. at 2408. Thus, while declining to issue a "definitive rule on employer lia-

[26] However, while an employer's failure to utilize effective grievance procedures will not shield an employer from liability for "quid pro quo" harassment, such failure may defeat a claim of constructive discharge. *See* discussion of impact of grievance procedures later in this section, and section D(2)(c)(2), below.

bility," the Court did make it clear that employers are not "automatically liable" for the acts of their supervisors. For the same reason, the Court said, "absence of notice to an employer does not necessarily insulate that employer from liability." *Id.*

As the Commission argued in *Vinson*, reliance on agency principles is consistent with the Commission's Guidelines, which provide in section 1604.11(c) that:

> ... an employer ... is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

Citing the last sentence of this provision, the Court in *Vinson* indicated that the Guidelines further supported the application of agency principles. 106 S.Ct. at 2408.

1) Application of Agency Principles — "Quid Pro Quo" Cases — An employer will always be held responsible for acts of "quid pro quo" harassment. A supervisor in such circumstances has made or threatened to make a decision affecting the victim's employment status, and he therefore has exercised authority delegated to him by his employer. Although the question of employer liability for "quid pro quo" harassment was not at issue in *Vinson*, the Court's decision noted with apparent approval the position taken by the Commission in its brief that:

> where a supervisor exercises the authority actually delegated to him by his employer, by making or threatening to make decisions affecting the employment status of his subordinates, such actions are properly imputed to the employer whose delegation of authority empowered the supervisor to undertake them.

106 S.Ct. at 2407-08 (citing Brief for the United States and Equal Employment Opportunity Commission as *Amicus Curiae* at 22).[27] *See also Sparks v. Pilot Freight Carriers, Inc.*, 830 F.2d 1554, 44 EPD ¶37,493 [45 FEP Cases 160] (11th Cir. 1987) (adopting EEOC position quoted in *Vinson* opinion); *Lipsett*, 864 F.2d at 901 (adopting, for Title IX of the Education Amendments, the *Vinson* standard that an employer is absolutely liable for acts of quid pro quo harassment "whether [it] knew, should have known, or approved of the supervisor's actions"). Thus, applying agency principles, the court in *Schroeder v. Schock*, 42 FEP Cases 1112 (D. Kans. 1986), held an employer liable for "quid pro quo" harassment by a supervisor who had authority to recommend plaintiff's discharge. The employer maintained the supervisor's acts were beyond the scope of his employment since the sexual advances were made at a restaurant after work hours. The court held that because the supervisor was acting within the scope of his authority when making or recommending employment decisions, his conduct

[27] This well-settled principle is the basis for employer liability for supervisors' discriminatory employment decisions that violate Title VII. 106 S.Ct. at 2408; *see, e.g., Anderson v. Methodist Evangelical Hospital, Inc.*, 464 F.2d 723, 725, 4 EPD ¶7901 [4 FEP Cases 987] (6th Cir. 1972) (racially motivated discharge "by a person in authority at a lower level of management" is attributable to employer despite upper management's "exemplary" record in race relations); *Tidwell v. American Oil Co.*, 332 F.Supp. 424, 436, 4 EPD ¶7544 [3 FEP Cases 1007] (D. Utah 1971) (upper level management's lack of knowledge irrelevant where supervisor illegally discharged employee for refusing to disqualify black applicant discriminatorily); *Flowers v. Crouch-Walker Corp.*, 552 F.2d 1277, 1282, 14 EPD ¶7510 [14 FEP Cases 1265] (7th Cir. 1977) ("The defendant is liable as principal for any violation of Title VII ... by [a supervisor] in his authorized capacity as supervisor.")

may fairly be imputed to the employer. The supervisor was using his authority to hire, fire, and promote to extort sexual consideration from an employee, even though the sexual advance itself occurred away from work.

2) Application of Agency Principles — "Hostile Environment" Cases

a) *Vinson* — In its *Vinson* brief the commission argued that the employer should be liable for the creation of a hostile environment by a supervisor when the employer knew or had reason to know of the sexual misconduct. Ways by which actual or constructive knowledge could be demonstrated include: by a complaint to management or an EEOC charge; by the pervasiveness of the harassment; or by evidence the employer had "deliberately turned its back on the problem" of sexual harassment by failing to establish a policy against it and a grievance mechanism to redress it. The brief argued that an employer should be liable "if there is no reasonably available avenue by which victims of sexual harassment can make their complaints known to appropriate officials who are in a position to do something about those complaints." Brief for the United States and Equal Employment Opportunity Commission as *Amicus Curiae* at 25. Under that circumstance, an employer would be deemed to know of any harassment that occurred in its workplace.

While the *Vinson* decision quoted the Commission's brief at length, it neither endorsed nor rejected its position.[28] 106 S.Ct. at 2407-08. The Court did state, however, that "the mere existence of a grievance procedure and a policy against discrimination, coupled with [the victim's] failure to invoke the procedure" are "plainly relevant" but "not necessarily dispositive." *Id.* at 2408-09. The Court further stated that the employer's argument that the victim's failure to complain insulated it from liability "might be substantially stronger if its procedures were better calculated to encourage victims of harassment to come forward." *Id.* at 2409.

The Commission, therefore, interprets *Vinson* to require a careful examination in "hostile environment" cases of whether the harassing supervisor was acting in an "agency capacity" (29 C.F.R. §1604.11(c)). Whether the employer had an appropriate and effective complaint procedure and whether the victim used it are important factors to consider, as discussed below.

(b) Direct Liability — The initial inquiry should be whether the employer knew or should have known of the alleged sexual harassment. If actual or constructive knowledge exists, and if the employer failed to take immediate and appropriate corrective action, the employer would be directly liable.[29] Most commonly an employer acquires actual knowledge through first-hand observation, by the victim's internal complaint to other supervisors or managers, or by a charge of discrimination.

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[28]The Court observed that the Commission's position was "in some tension" with the first sentence of section 1604.11(c) of the Guidelines but was consistent with the final sentence of that section. (*See supra* at 21).

[29]*Barrett v. Omaha National Bank*, 584 F.Supp. 22, 30-31 [35 FEP Cases 593] (D. Neb. 1983), *aff'd.* 726 F.2d 424, 33 EPD ¶34,132 (8th Cir. 1984); *Ferguson v. duPont Corp.*, 560 F.Supp. 1172, 1199 (D. Del. 1983); Commission Decision No. 83-1, CCH EEOC Decisions (1983) ¶6834. "[A]n employer who has reason to know that one of his employees is being harassed in the workplace by others on ground of race, sex, religion, or national origin, and does nothing about it, is blameworthy." *Hunter v. Allis-Chalmers Corp.*, 797 F.2d 1417, 1422, 41 EPD ¶36,417 [41 FEP Cases 721] (7th Cir. 1986).

This is the theory under which employers are liable for harassment by co-workers, which was at issue in *Hunter v. Allis-Chalmers*. Section 1604.11(d) provides:

With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

Section E(2) of this paper discusses what constitutes "immediate and appropriate corrective action," and is applicable to cases of harassment by co-workers as well as supervisors.

An employer is liable when it "knew, or *upon reasonably diligent inquiry should have known*," of the harassment. *Yates v. Avco Corp.*, 819 F.2d 630, 636, 43 EPD ¶37,086 [43 FEP Cases 1595] (6th Cir. 1987) (emphasis added) (supervisor harassed two women "on a daily basis in the course of his supervision of them" and the employer's grievance procedure did not function effectively). Thus, evidence of the pervasiveness of the harassment may give rise to an inference of knowledge or establish constructive knowledge. *Henson v. City of Dundee*, 682 F.2d 897, 905, 29 EPD ¶32,993 [29 FEP Cases 787] (11th Cir. 1982); *Taylor v. Jones*, 653 F.2d 1193, 1197-99, 26 EPD ¶31,923 [28 FEP Cases 1024] (8th Cir. 1981). Employers usually will be deemed to know of sexual harassment that is openly practiced in the workplace or well-known among employees. This often may be the case when there is more than one harasser or victim. *Lipsett*, 864 F.2d at 906 (employer liable where it should have known of concerted harassment of plaintiff and other female medical residents by more senior male residents).

The victim can of course put the employer on notice by filing a charge of discrimination. As the Commission stated in its *Vinson* brief, the filing of a charge triggers a duty to investigate and remedy any ongoing illegal activity. It is important to emphasize that an employee can always file an EEOC charge without first utilizing an internal complaint or grievance procedure[30] and may wish to pursue both avenues simultaneously because an internal grievance does not prevent the Title VII charge-filing time period from expiring.[31] Nor does the filing of an EEOC charge allow an employer to cease action on an internal grievance[32] or ignore evidence of ongoing harassment.[33] Indeed, employers should take prompt remedial action upon learning of evidence of sexual harassment (or any other form of unlawful discrimination), whether from an EEOC charge or an internal complaint. If the employer takes immediate and appropriate action to correct the harassment and prevent its recurrence, and the Commission determines that no further action is warranted, normally the Commission would administratively close the case.

(c) Imputed Liability — The investigation should determine whether the alleged harassing supervisor was acting in an "agency capacity" (29 C.F.R. §1604.11(c)).[34] This requires a determination whether the supervisor was acting within the scope of his employment (*see* Restatement (Second) of Agency, §219(1) (1958)), or whether his actions can be imputed to the employer under some exception to the "scope of employ-

[30]Sexual harassment claims are no different from other types of discrimination claims in this regard. *See Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 52, 7 EPD ¶9148 [7 FEP Cases 81] (1974).

[31]*See I.U.O.E. v. Robbins & Myers, Inc.*, 429 U.S. 229, 236, 12 EPD ¶11,256 [13 FEP Cases 1813] (1976).

[32]The Commission has filed suit in such circumstances, alleging that termination of grievance processing because a charge has been filed constitutes unlawful retaliation in violation of §704(a). *See EEOC v. Bo[illegible] Governors of State Colleges & Universities*, [illegible] pp. 1378, 50 EPD ¶39,035 [50 FEP Cases [illegible] 1989) (denying EEOC's motion for sum[illegible]ment on ground that ADEA's retaliation p[illegible] not violated if termination of grievance pr[illegible] was done in good faith).

[33]*See Brooms v. Regal Tube Co.*, 44 FEP Cases 1119 (N.D. Ill. 1987), *aff'd in relevant part*, 881 F.2d 412 (7th Cir. 1989).

[34]The fact that an EEOC charge puts the employer on notice of sexual harassment means that the question of imputed employer liability under agency principles often will become of secondary importance. It figured critically in the *Vinson* case because the plaintiff never filed an EEOC charge before filing her Title VII lawsuit. Without having given any prior notice of the sexual harassment to anyone, she waited to file her lawsuit until almost a year after she admitted it had ceased. The sexual harassment was alleged to have taken place mostly in private, and she produced no witnesses either to the alleged harassment or to its adverse effects on her. Her case did not include a constructive discharge claim, and the district court found no "quid pro quo" harassment.

ment" rule (*Id.* at §219(2)). The following principles should be considered, and applied where appropriate in "hostile environment" sexual harassment cases.

1. Scope of Employment. — A supervisor's actions are generally viewed as being within the scope of his employment if they represent the exercise of authority actually vested in him. It will rarely be the case that an employer will have authorized a supervisor to engage in sexual harassment. *See Fields v. Horizon House, Inc.*, No. 86-4343 (E.D. Pa. 1987) (available on Lexis, Genfed library, Dist. file). *Cf. Hunter v. Allis-Chalmers Corp.*, 797 F.2d 1417, 1421-22, 41 EPD ¶36,417 [41 FEP Cases 721] (7th Cir. 1986) (co-worker racial harassment case). However, if the employer becomes aware of work-related sexual misconduct and does nothing to stop it, the employer, by acquiescing, has brought the supervisor's actions within the scope of his employment.

2. Apparent Authority — An employer is also liable for a supervisor's actions if these actions represent the exercise of authority that third parties reasonably believe him to possess by virtue of his employer's conduct. This is called "apparent authority." See Restatement (Second) of Agency, §§7, 8; 219(2)(d) (1958). The Commission believes that in the absence of a strong, widely disseminated, and consistently enforced employer policy against sexual harassment, and an effective complaint procedure, employees could reasonably believe that a harassing supervisor's actions will be ignored, tolerated, or even condoned by upper management. This apparent authority of supervisors arises from their power over their employees, including the power to make or substantially influence hiring, firing, promotion and compensation decisions. A supervisor's capacity to create a hostile environment is enhanced by the degree of authority conferred on him by the employer, and he may rely upon apparent authority to force an employee to endure a harassing environment for fear of retaliation. If the employer has not provided an effective avenue to complain, then the supervisor has unchecked, final control over the victim and it is reasonable to impute his abuse of this power to the employer.[35] The Commission generally will find an employer liable for "hostile environment" sexual harassment by a supervisor when the employer failed to establish an explicit policy against sexual harassment and did not have a reasonably available avenue by which victims of sexual harassment could complain to someone with authority to investigate and remedy the problem. (*See* Section E.) *See also EEOC v. Hacienda Hotel*, 881 F.2d 1504, 51 EPD ¶39,250 [50 FEP Cases 877] (9th Cir. 1989) (finding employer liable for sexual harassment despite plaintiff's failure to pursue internal remedies where the employer's anti-discrimination policy did not specifically proscribe sexual harassment and its internal procedures required initial resort to the supervisor accused of engaging in or condoning harassment).

But an employer can divest its supervisors of this apparent authority by implementing a strong policy against sexual harassment and maintaining an effective complaint procedure. When employees know that recourse is available, they cannot reasonably believe that a harassing work environment is authorized or condoned by the employer.[36] If an employee failed to use an effective, available complaint procedure, the employer may

[35] *See also Fields v. Horizon House, supra* (an employer might be charged with constructive notice of a supervisor's harassment if the supervisor is vested with unbridled authority to retaliate against an employee).

[36] It is important to reemphasize, however, that no matter what the employer's policy, the employer is always liable for any supervisory actions that affect the victim's employment status, such as hiring, firing, promotion or pay. *See supra* at 21-22. Moreover, this discussion of apparent authority recognizes the unique nature of "hostile environment" sexual harassment claims and therefore is limited to such cases.

be able to prove the absence of apparent authority and thus the lack of an agency relationship, unless liability attaches under some other theory.[37] Thus, even when an employee failed to use an effective grievance procedure, the employer will be liable if it obtained notice through other means (such as the filing of a charge or by the pervasiveness of the harassment) and did not take immediate and appropriate corrective action.

> **Example** — Charging Party (CP) alleges that her supervisor made repeated sexual advances toward her that created a hostile work environment. The investigation into her charge discloses that CP had maintained an intermittent romantic relationship with the supervisor over a period of three years preceding the filing of the charge in September of 1986. CP's employer was aware of this relationship and its consensual nature. CP asserts, however, that on frequent occasions since January of 1986 she had clearly stated to the supervisor that their relationship was over and his advances were no longer welcome. The supervisor nevertheless persisted in making sexual advances toward CP, berating her for refusing to resume their sexual relationship. His conduct did not put the employer on notice that any unwelcome harassment was occurring. The employer has a well-communicated policy against sexual harassment and a complaint procedure designed to facilitate the resolution of sexual harassment complaints and ensure against retaliation. This procedure has worked well in the past. CP did not use it, however, or otherwise complain to higher management. Even if CP's allegations are true, the Commission would probably not find her employer liable for the alleged harassment since she failed to use the complaint procedure or inform higher management that the advances had become unwelcome. If CP resigned because of the alleged harassment, she would not be able to establish a constructive discharge since she failed to complain.

In the preceding example, if the employer, upon obtaining notice of the charge, failed to take immediate and appropriate corrective action to stop any ongoing harassment, then the employer will be unable to prove that the supervisor lacked apparent authority for his conduct, and if the allegations of harassment are true, then the employer will be found liable. Or if the supervisor terminated the charging party because she refused to submit to his advances, the employer would be liable for "quid pro quo" harassment.

3. Other Theories — A closely rated theory is agency by estoppel. *See* Restatement (Second) of Agency at §8B. An employer is liable when he intentionally or carelessly causes an employee to mistakenly believe the supervisor is acting for the employer, or knows of the misapprehension and fails to correct it. For example, an employer who fails to respond appropriately to past known incidents of harassment would cause its employees to reasonably believe that any further incidents are authorized and will be tolerated.

Liability also may be imputed if the employer was "negligent or reckless" in supervising the alleged harasser. *See* Restatement (Second) of Agency §219(2)(6); *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1418, 44 EPD ¶37,542 [45 FEP Cases 608] (10th Cir. 1987). "Under this standard,

[37] *Cf. Fields v. Horizon House* ("Apparent authority is created by and flows from the acts of the principal, not from the personal beliefs of the third party."). Moreover, as noted above, an employee would find it difficult to establish a constructive discharge in this situation because she could not show she had no alternative but to resign. Failure to complain also might undermine a later assertion that the conduct occurred or was unwelcome.

liability would be imposed if the employer had actual or constructive knowledge of the sexual harassment but failed to take remedial action." *Fields v. Horizon House, Inc.*, No. 86-4343 (E.D. Pa. 1987). This is essentially the same as holding the employer directly liable for its failure to act.

An employer cannot avoid liability by delegating to another person a duty imposed by statute. Restatement (Second) of Agency at §492 (1958), Introductory Note, p.435 ("liability follows if the person to whom the performance is delegated acts improperly with respect to it"). An employer who assigns the performance of a non-delegable duty to an employee remains liable for injuries resulting from the failure of the employee to carry out that duty. Restatement, 11214 and 219. Title VII imposes on employers a duty to provide their employees with a workplace free of sexual harassment. An employer who entrusts that duty to an employee is liable for injuries caused by the employee's breach of the duty. *See, e.g., Brooms v. Regal Tube Co.*, 44 FEP Cases 1119 (N.D. Ill. 1987) (employer liable for sexual harassment committed by the management official to whom it had delegated the responsibility to devise and enforce its policy against sexual harassment), *aff'd on other ground*, 881 F.2d 412, 240-21 (7th Cir. 1989).

Finally, an employer also may be liable if the supervisor "was aided in accomplishing the tort by the existence of the agency relation," Restatement (Second) of Agency §219(2)(d). *See Sparks v. Pilot Freight Carriers, Inc.*, 830 F.2d 1554, 44 EPD ¶37,493 [45 FEP Cases 160] (11th Cir. 1987); *Hicks v. Gates Rubber Co.*, 833 F.2d at 1418. For example, in *Sparks v. Pilot Freight Carriers*, the court found that the supervisor had used his supervisory authority to facilitate his harassment of the plaintiff by "repeatedly reminding [her] that he could fire her should she fail to comply with his advances." 830 F.2d at 1560. This case illustrates how the two types of sexual harassment can merge. When a supervisor creates a hostile environment through the aid of work-related threats or intimidation, the employer is liable under both the "quid pro quo" and "hostile environment" theories.

E. Preventive and Remedial Action

1) Preventive Action — The EEOC's Guidelines encourage employers to:

> take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their rights to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

29 C.F.R. §1604.11(f). An effective preventive program should include an explicit policy against sexual harassment that is clearly and regularly communicated to employees and effectively implemented. The employer should affirmatively raise the subject with all supervisory and non-supervisory employees, express strong disapproval, and explain the sanctions for harassment. The employer should also have a procedure for resolving sexual harassment complaints. The procedure should be designed to "encourage victims of harassment to come forward" and should not require a victim to complain first to the offending supervisor. *See Vinson*, 106 S.Ct. at 2408. It should ensure confidentiality as much as possible and provide effective remedies, including protection of victims and witnesses against retaliation.

2) Remedial Action — Since Title VII affords employees the right to work in an environment free from discriminatory intimidation, ridicule, and insult" (*Vinson*, 106 S.Ct. at 2405), an employer is liable for failing to remedy known hostile or offensive work environments. *See, e.g., Garziano v. E.I. DuPont deNemours & Co.*, 818 F.2d 380, 43 EPD ¶37,171 [43 FEP Cases 1790] (5th Cir. 1987) (*Vinson*

holds employers have an "affirmative duty to eradicate 'hostile or offensive' work environments"); *Bundy v. Jackson*, 641 F.2d 934, 947, 24 EPD ¶31,439 [24 FEP Cases 1155] (D.C. Cir. 1981) (employer violated Title VII by failing to investigate and correct sexual harassment despite notice); *Tompkins v. Public Service Electric & Gas Co.*, 568 F.2d 1044, 1049, 15 EPD 7954 [16 FEP Cases 22] (3rd Cir. 1977) (same); *Henson v. City of Dundee*, 682 F.2d 897, 905, 15 EPD ¶32,993 [29 FEP Cases 787] (11th Cir. 1982) (same); *Munford v. James T. Barnes & Co.*, 441 F.Supp. 459, 466, 16 EPD ¶8233 [17 FEP Cases 107] (E.D. Mich. 1977) (employer has an affirmative duty to investigate complaints of sexual harassment and to deal appropriately with the offending personnel; "failure to investigate gives tacit support to the discrimination because the absence of sanctions encourages abusive behavior").[38]

When an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should investigate promptly and thoroughly. The employer should take immediate and appropriate corrective action by doing whatever is necessary to end the harassment, make the victim whole by restoring lost employment benefits or opportunities, and prevent the misconduct from recurring. Disciplinary action against the offending supervisor or employee, ranging from reprimand to discharge, may be necessary. Generally, the corrective action should reflect the severity of the conduct. *See Waltman v. International Paper Co.* 875 F.2d at 479 (appropriateness of remedial action will depend on the severity and persistence of the harassment and the effectiveness of any initial remedial steps). *Dornhecker v. Malibu Grand Prix Corp.*, 828 F.2d 307, 309-10, 44 EPD ¶37,557 [44 FEP Cases 1604] (5th Cir. 1987) (the employer's remedy may be "assessed proportionately to the seriousness of the offense"). The employer should make follow-up inquiries to ensure the harassment has not resumed and the victim has not suffered retaliation.

Recent court decisions illustrate appropriate and inappropriate responses by employers. In *Barrett v. Omaha National Bank*, 726 F.2d 424, 33 EPD ¶34,132 [35 FEP Cases 593] (8th Cir. 1984), the victim informed her employer that her co-worker had talked to her about sexual activities and touched her in an offensive manner. Within four days of receiving this information, the employer investigated the charges, reprimanded the guilty employee, placed him on probation, and warned him that further misconduct would result in discharge. A second co-worker who had witnessed the harassment was also reprimanded for not intervening on the victim's behalf or reporting the conduct. The court ruled that the employer's response constituted immediate and appropriate corrective action, and on this basis found the employer not liable.

In contrast, in *Yates v. Avco Corp.*, 819 F.2d 630, 43 EPD ¶37,086 [43 FEP Cases 1595] (6th Cir. 1987), the court found the employer's policy against sexual harassment failed to function effectively. The victim's first-level supervisor had responsibility for reporting and correcting harassment at the company, yet he was the harasser. The employer told the victims not to go to the EEOC. While giving the accused harasser administrative leave pending investigation, the employer made the plaintiffs take sick leave,

[38] The employer's affirmative duty was first enunciated in cases of harassment based on race or national origin. *See, e.g., United States v. City of Buffalo*, 457 F.Supp. 612, 622-35, 18 EPD ¶8899 [19 FEP Cases 776] (W.D.N.Y. 1978), *modified in part*, 633 F.2d 643, 24 EPD ¶31,333 [24 FEP Cases 313] (2d Cir. 1980) (employer violated Title VII by failing to issue strong policy directive against racial slurs and harassment of black police officers, to conduct, full investigations, and to take appropriate disciplinary action); *EEOC v. Murphy Motor Freight Lines, Inc.*, 488 F.Supp. 381, 383-86, 22 EPD ¶30,886 [22 FEP Cases 892] (D. Minn. 1980) (defendant violated Title VII because supervisors knew or should have known of co-workers' harassment of black employees, but took inadequate steps to eliminate it).

which was never credited back to them and was recorded in their personnel files as excessive absenteeism without indicating they were absent because of sexual harassment. Similarly; in *Zabkowicz v. West Bend Co.*, 589 F.Supp. 780, 35 EPD ¶34,766 [35 FEP Cases 610] (E.D. Wis. 1984), co-workers harassed the plaintiff over a period of nearly four years in a manner the court described as "malevolent" and "outrageous." Despite the plaintiff's numerous complaints, her supervisor took no remedial action other than to hold occasional meetings at which he reminded employees of the company's policy against offensive conduct. The supervisor never conducted an investigation or disciplined any employees until the plaintiff filed an EEOC charge, at which time one of the offending co-workers was discharged and three others were suspended. The court held the employer liable because it failed to take immediate and appropriate corrective action.[39]

When an employer asserts it has taken remedial action, the Commission will investigate to determine whether the action was appropriate and, more important, effective. The EEOC investigator should, of course, conduct an independent investigation of the harassment claim, and the Commission will reach its own conclusion as to whether the law has been violated. If the Commission finds that the harassment has been eliminated, all victims made whole, and preventive measures instituted, the Commission normally will administratively close the charge because of the employer's prompt remedial action.[40]

Date 3/19/90

Approved:

/s/R. Gaull Silberman
Vice Chairman

[39] *See also Delgado v. Lehman*, 665 F.Supp. 460, 44 EPD ¶37,517 [43 FEP Cases 593] (E.D. Va. 1987) (employer failed to conduct follow-up inquiry to determine if hostile environment had dissipated); *Salazar v. Church's Fried Chicken, Inc.*, 44 FEP Cases 472 (S.D. Tex. 1987) (employer's policy inadequate because plaintiff, as a part-time teenage employee, could have concluded a complaint would be futile because the alleged harasser was the roommate of her store manager); *Broome v. Regal Tube Co.*, 44 FEP Cases 1119 (N.D. Ill. 1987) (employer liable when a verbal reprimand proved ineffective and employer took no further action when informed of the harasser's persistence).

[40] For appropriate procedures, see §§4.4(e) and 15 of Volume I of the Compliance Manual.

How to File a Sexual Harassment Complaint at GAO

GAO Order 2713.2, "Processing Discrimination Complaints," describes the process at GAO for filing discrimination complaints, including those involving sexual harassment. In summary, the procedures are as follows:

(1) Within 30 calendar days of the alleged harassment, the employee must first consult with a civil rights counselor at headquarters or a regional office. The individual may remain anonymous. The counselor has 21 days to resolve the issue informally. By mutual agreement, the counseling period may be extended but not to exceed 35 days.

(2) If informal counseling fails, the employee has 15 calendar days to file a formal, written complaint with the Comptroller General and Deputy Comptroller General, the Director and Deputy Director of the Civil Rights Office (CRO), or the Civil Rights Officer of the employee's unit.

(3) Within 15 calendar days of receiving the complaint, the CRO will advise the person filing the complaint—the complainant—of (a) acceptance or rejection of the complaint, (b) all administrative rights, (c) the right to file a civil action, and (d) the time limits for exercising all rights.

(4) If the complaint is accepted, the CRO will investigate it and provide the complainant with a copy of the investigative report. The CRO provides a second chance for an informal resolution.

(5) During the investigation, the CRO will keep the alleged harasser fully informed of the progress of the investigation and upon completion, provide him/her with a summary of the evidence and supporting documents. The alleged harasser then has 15 calendar days to respond to the allegation and to identify potential witnesses.

(6) If there is no resolution, the Comptroller General or designee will issue a final agency decision. If a final decision is not issued within 120 calendar days, the complainant may file an appeal with the GAO Personnel Appeals Board, or, after 180 days, the complainant may file a civil action in U.S. District Court.

(7) The complainant can appeal the agency decision to the GAO Personnel Appeals Board within 20 calendar days and file a civil action in U.S. District Court within 30 calendar days.

(8) If the complainant is not satisfied with the decision of the Personnel Appeals Board, he/she may file a civil action in the U.S. District Court within 30 days after receiving notice of the Board's final action.

For more information and guidance, contact GAO's Civil Rights Office (202-275-6388, room 3027), the civil rights officer of your unit, or consult the GAO order.

GAO Women's Advisory Council Survey

Dear GAO Employee:

In 1987, the Merit Systems Protection Board (MSPB), an independent federal agency, surveyed 22 of the largest federal departments and agencies on sexual harassment in the federal workplace. Equal Employment Opportunity Commission (EEOC) guidelines define sexual harassment as "unwelcome sexual advances, request for sexual favors, and other verbal or or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

The Women's Advisory Council (WAC) is administering this questionnaire to all GAO employees, both men and women. This effort is being undertaken with the support of GAO management. The Council chose the MSPB questionnaire because it had already been widely used througbout the federal government.

The questionniare contains nothing to identify an individual respondent. By mailing the enclosed postcard you will notify us that you completed and returned your questionnaire. Your responses therefore are totally confidential. You should not put your name anywhere on the questionnaire.

We appreciate your cooperation and the time you have taken to complete the questionnaire. Please return the completed questionnaire in the enclosed envelope to the Women's Advisory Council, 441 G St., N.W., Room 4476, Washington, D.C. 20548, and separately mail the enclosed postcard. Your prompt response will save both time and money required for follow-up mailings.

If you have any questions, please call Kathleen J. Hancock on (703) 557-1533.

Sincerely,

Kathleen Hancock

Kathleen J. Hancock
President, WAC

Women's Advisory Council (WAC) of the U.S. GENERAL ACCOUNTING OFFICE

SEXUAL HARASSMENT IN THE WORKPLACE

WAC is administering this Merit Systems Protection Board survey on sexual harassment in the workplace to all GAO employees. The first and second sections of the questionnaire ask about your views on relationships among people who work together. The third section inquires whether or not you have personally experienced sexual harassment. The fourth section asks demographic questions such as your sex, age, and education.

You may not have to answer every question in the survey, so please follow the instructions carefully. Also, please use the last page of this questionnaire to write any additional comments you may have.

PRIVACY ACT NOTICE

Collection of the requested information is authorized by the Civil Service Reform Act of 1978 (P.L. 95-454). Your participation in this survey is completely voluntary and none of the information you choose to supply will be associated with you individually.

THIS IS A CONFIDENTIAL SURVEY

SECTION I

This section asks how you feel about certain types of interactions among people who work together.

We would like to know what you would think if the following happened to you or to someone else at work. For each behavior listed below, please mark ONE response for each behavior. (6-17)

BEHAVIOR	YOUR RESPONSE TO BEHAVIOR: Definitely Not (1)	Probably Not (2)	Don't Know (3)	Probably Yes (4)	Definitely Yes (5)
1. Uninvited letters, telephone calls, or materials of a sexual nature.					
a. If a supervisor did this, would you consider this sexual harassment?	○	○	○	○	○
b. If another worker did this, would you consider this sexual harassment?	○	○	○	○	○
2. Uninvited and deliberate touching, leaning over, cornering, or pinching.					
a. If a supervisor did this, would you consider this sexual harassment?	○	○	○	○	○
b. If another worker did this, would you consider this sexual harassment?	○	○	○	○	○
3. Uninvited sexually suggestive looks or gestures.					
a. If a supervisor did this, would you consider this sexual harassment?	○	○	○	○	○
b. If another worker did this, would you consider this sexual harassment?	○	○	○	○	○
4. Uninvited pressure for sexual favors.					
a. If a supervisor did this, would you consider this sexual harassment?	○	○	○	○	○
b. If another worker did this, would you consider this sexual harassment?	○	○	○	○	○
5. Uninvited pressure for dates.					
a. If a supervisor did this, would you consider this sexual harassment?	○	○	○	○	○
b. If another worker did this, would you consider this sexual harassment?	○	○	○	○	○
6. Uninvited sexual teasing, jokes, remarks or questions.					
a. If a supervisor did this, would you consider this sexual harassment?	○	○	○	○	○
b. If another worker did this, would you consider this sexual harassment?	○	○	○	○	○

7. If you have worked outside of the Federal Government, would you say that there is more or less unwanted sexual attention in non-Federal jobs? (Check one) (18)

1. O I have never held a non-Federal job.
2. O There is more on non-Federal jobs.
3. O There is about the same in Federal and non-Federal jobs.
4. O There is less on non-Federal jobs.
5. O I don't know.

8. In your opinion, is sexual harassment in the Federal Government more or less a problem than it was 5 years ago? (Check one) (19)

1. O It was never a problem.
2. O It is much more of a problem.
3. O It is more of a problem.
4. O It is about the same.
5. O It is less of a problem.
6. O It is much less of a problem.
7. O Don't know/can't judge.

9. We want to know (A) whether you think the following possible formal actions are available to those who have been sexually harassed and (B) if the actions would be effective in helping those employees. For each action listed below, please mark ONE response for each action. (20-29

ACTIONS	A. THIS ACTION IS AVAILABLE IN GAO			B. HOW EFFECTIVE WOULD THIS ACTION BE?					
	Yes	No	Don't Know	Very Effective	Somewhat Effective	Neither Effective nor Ineffective	Somewhat Ineffective	Not At All Effective	Do Not Know
a. Requesting an investigation by my agency	O	O	O	O	O	O	O	O	O
b. Requesting an investigation by an outside entity [i.e., Personnel Appeals Board (PAB)]	O	O	O	O	O	O	O	O	O
c. Filing a grievance or adverse action appeal.	O	O	O	O	O	O	O	O	O
d. Filing a discrimination complaint.	O	O	O	O	O	O	O	O	O
e. Filing a complaint through special channels set up for sexual harassment complaints.	O	O	O	O	O	O	O	O	O

10. GAO makes reasonable efforts to stop sexual harassment. (Mark one response) (3

1. O Strongly disagree
2. O Disagree
3. O No opinion
4. O Agree
5. O Strongly agree

SECTION II

In this section, we would like your views on what actions you consider useful in reducing any sexual harassment which may occur in the workplace.

11. In most cases, which of the following do you think are the most effective actions for employees to take to make others stop bothering them sexually? (Mark all that apply) (31-38)

1. ○ Ignoring the behavior.
2. ○ Avoiding the person(s).
3. ○ Asking or telling the person(s) to stop.
4. ○ Threatening to tell or telling other workers.
5. ○ Reporting the behavior to the supervisor or other officials.
6. ○ Filing a formal complaint.
7. ○ There is very little that employees can do to make others stop bothering them sexually.
8. ○ None of the above.

12. In your opinion, (A) has GAO taken any of the following actions in an effort to reduce sexual harassment which may have occurred in your workplace, and if so, (B) how effective has each action been? (39-56)

ACTION	A. GAO TOOK THIS ACTION (Mark one response for each action)			B. HOW EFFECTIVE HAS THIS ACTION BEEN?						
	Yes	No	Don't Know	Very Effective	Somewhat Effective	Neither Effective nor Ineffective	Somewhat Ineffective	Not At All Effective	Do Not Know	Not Applicable
a. Establishing policies prohibiting sexual harassment	○	○	○	○	○	○	○	○	○	○
b. Providing swift and thorough investigations of complaints	○	○	○	○	○	○	○	○	○	○
c. Enforcing penalties against managers who allow that behavior to continue	○	○	○	○	○	○	○	○	○	○
d. Enforcing penalties against sexual harassers	○	○	○	○	○	○	○	○	○	○
e. Publicizing availability of formal complaint channels	○	○	○	○	○	○	○	○	○	○
f. Providing counseling services for victims of sexual harassment	○	○	○	○	○	○	○	○	○	○
g. Providing awareness training for employees	○	○	○	○	○	○	○	○	○	○
h. Providing awareness training for managers and EEO officials	○	○	○	○	○	○	○	○	○	○
i. Other	○	○	○	○	○	○	○	○	○	○

SECTION III

This section asks about any experience you may have had with uninvited and unwanted sexual attention on the job from persons of either sex.

13. How often have you received any of the following uninvited and unwanted sexual attention during the last 24 months from someone in GAO? Mark one response for each attention. (57-

UNINVITED SEXUAL ATTENTION	Frequency in the Last 24 Months: Never	Once	Once a month or less	2 - 4 times a month	Once a week or more
a. Actual or attempted rape or assault	○	○	○	○	○
b. Unwanted pressure for sexual favors	○	○	○	○	○
c. Unwanted deliberate touching, leaning over, cornering, or pinching	○	○	○	○	○
d. Unwanted sexual looks or gestures	○	○	○	○	○
e. Unwanted letters, telephone calls or materials of a sexual nature	○	○	○	○	○
f. Unwanted pressure for dates	○	○	○	○	○
g. Unwanted sexual teasing, jokes, remarks or questions	○	○	○	○	○

If you have not received any uninvited sexual attention in the last 24 months, go to Section IV on page 12.

If uninvited and unwanted sexual attention has happened to you in GAO within the last 24 months, select the one experience that is either the most recent or that had the greatest effect on you and answer the questions in this section in terms of that one experience.

14. Is the experience you are about to describe the most recent one or the one that had the greatest effect on you? (Mark all that apply) (64-

1. ○ This was my only experience.
2. ○ This was my most recent experience.
3. ○ This was the experience that had the greatest effect on me.
4. ○ This experience is still continuing.

(58 = blar

15. During any particular experience, a person may receive more than one kind of unwanted sexual attention. During the experience you describe here, which of the following happened to you? (Mark all that apply) (69-75)

1. ○ Actual or attempted rape or sexual assault.
2. ○ Unwanted pressure for sexual favors.
3. ○ Unwanted and deliberate touching, leaning over, cornering, or pinching.
4. ○ Unwanted sexually suggestive looks or pressures.
5. ○ Unwanted letters, telephone calls, or materials of a sexual nature.
6. ○ Unwanted pressure for dates.
7. ○ Unwanted sexual teasing, jokes, remarks, or questions.

16. How often did the unwanted sexual attention occur? (Mark one response) (76)

1. ○ Once
2. ○ Once a month
3. ○ 2 to 4 times a month
4. ○ Every few days
5. ○ Every day

17. How long did this unwanted sexual attention last? (Mark one response) (77)

1. ○ Less than 1 week
2. ○ 1 to 4 weeks
3. ○ 1 to 3 months
4. ○ 4 to 6 months
5. ○ More than 6 months

(Go to page 8)

18A. What action(s) did you take in response to this unwanted sexual attention? Mark all that apply.

See Question 18B at right

18B. For each action that you took, what effect did it have? Mark one response for each action that you took. (78-9

ACTION	A. I TOOK THIS ACTION	B. EFFECT OF ACTION: Made Things Worse	Made No Difference	Made Things Better
a. I ignored the behavior or did nothing	○	○	○	○
b. I avoided the person(s)	○	○	○	○
c. I asked/told the person(s) to stop	○	○	○	○
d. I threatened to tell or told others	○	○	○	○
e. I reported the behavior to the supervisor or other officials	○	○	○	○
f. I made a joke of the behavior.	○	○	○	○
g. I went along with the behavior	○	○	○	○
h. I transferred, disciplined, or gave a poor performance rating to the person.	○	○	○	○
i. I did something other than the actions listed above (Please explain on page 13)	○	○	○	○

19. Did any of the following changes happen in your work situation as a result of the unwanted sexual attention? (Mark all that apply) (96-10:

1. ○ My working assignments or conditions got worse.
2. ○ I was denied a promotion, step increase, good performance rating, or reference.
3. ○ I was reassigned or fired.
4. ○ I transferred or quit to take another job.
5. ○ I quit without having another job.
6. ○ My working conditions got better.
7. ○ I received a promotion, step increase, good performance rating or reference.
8. ○ No changes occurred in my work situation.

20. Did you take any formal actions? (Mark one) (104:

1. ○ No - Go to Question 23
2. ○ Yes

21A. What formal actions did you take? Mark all that apply.

See Question 21B at right

21B. For each action that you took, mark one response for each action you took. (105 - 114)

	A. I TOOK THIS ACTION	B. Effect of Action: Made Things Worse	Made No Difference	Made Things Better
a. I requested an investigation by GAO	○	○	○	○
b. I requested an investigation by an outside entity (i.e., the PAB)	○	○	○	○
c. I filed a grievance or adverse action appeal	○	○	○	○
d. I filed a discrimination complaint or lawsuit	○	○	○	○
e. Other (Please explain in page 13)	○	○	○	○

f. None of the above. Mark here ○ Go to Question 23. (115)

22. How did GAO's management respond to the formal action you took? (Mark all that apply) (116 - 124)

1. ○ I did not take formal action.
2. ○ Found my charge to be true.
3. ○ Found my charge to be false.
4. ○ Corrected the damage done to me.
5. ○ Took action against the person who bothered me.
6. ○ Were hostile or took action against me.
7. ○ GAO did nothing.
8. ○ The action is still being processed.
9. ○ I don't know whether management did anything.

23. What were your reasons for not taking any formal actions? (Mark all that apply) (125 - 133)

1. ○ I did take formal action.
2. ○ I did not know what actions to take.
3. ○ I saw no need to report it.
4. ○ I did not want to hurt the person who bothered me.
5. ○ I was too embarassed.
6. ○ I did not think anything would be done.
7. ○ I thought it would take too much time and effort.
8. ○ I thought that it would be held against me or that I would be blamed.
9. ○ I thought that it would make my work situation unpleasant.

24. How did the unwanted sexual attention affect you? For each statement listed below, mark the response which best describes how you were affected. (134 - 139

STATEMENT	How Were You Affected? Became Worse	Had No Effect	Became Better
a. My feelings about work	○	○	○
b. My emotional or physical condition	○	○	○
c. My ability to work with others on the job	○	○	○
d. The quality of my work	○	○	○
e. The quantity of my work	○	○	○
f. My time and attendance at work	○	○	○

25. Was the person(s) who sexually bothered you: (Mark all that apply) (140 - 14

1. ○ Your immediate supervisor(s)
2. ○ Other higher level supervisor(s)
3. ○ Your co-worker(s)
4. ○ Your subordinate(s)
5. ○ Other employee(s)
6. ○ Other or unknown

26. How long have/had you worked for GAO when the incident occurred? (Mark one response) (14

1. ○ Less than 6 months
2. ○ 6 months to 1 year
3. ○ 1 to 2 years
4. ○ 2 to 5 years
5. ○ 5 years or more

27. Did you receive either medical assistance or emotional counseling as a result of the unwanted sexual attention? (Mark one response) (14

1. ○ Yes, I received medical assistance.
2. ○ Yes, I received emotional counseling.
3. ○ Yes, I received both medical assistance and emotional counseling. → Continue
4. ○ No, but emotional counseling may have been helpful.
5. ○ No, but medical assistance may have been helpful.
6. ○ No, I did not need either medical assistance or emotional counseling. → Go to Question 29

28. Where did you receive this medical assistance and/or emotional counseling? (Mark one response) (14

1. ○ GAO
2. ○ Outside
3. ○ Both

29. If you used any sick leave as a result of the unwanted sexual attention, please indicate approximately how much sick leave you used. (Mark one response) (149)

1. ◯ I took no sick leave as a result of the unwanted sexual attention.
2. ◯ I used 8 hours or less.
3. ◯ I used between 9 and 16 hours.
4. ◯ I used between 17 and 40 hours.
5. ◯ I used between 41 and 80 hours.
6. ◯ I used more than 80 hours.

30. If you used any annual leave as a result of the unwanted sexual attention, please indicate approximately how much annual leave you used. (Mark one response) (150)

1. ◯ I took no annual leave as a result of the unwanted sexual attention.
2. ◯ I used 8 hours or less.
3. ◯ I used between 9 and 16 hours.
4. ◯ I used between 17 and 40 hours.
5. ◯ I used between 41 and 80 hours.
6. ◯ I used more than 80 hours.

31. Did you use leave without pay as a result of the unwanted sexual attention? (Mark one response) (151)

1. ◯ I took no leave without pay as a result of the unwanted sexual attention.
2. ◯ I used 8 hours or less.
3. ◯ I used between 9 and 16 hours.
4. ◯ I used between 17 and 40 hours.
5. ◯ I used between 41 and 80 hours.
6. ◯ I used more than 80 hours.

32. In comparison to your normal job performance, was your productivity (i.e., either how much work you did or how well you did it) affected by the unwanted sexual attention? If so, please indicate the extent your productivity was affected. (In responding to this question do not count time lost due to use of sick or annual leave.) (Mark one response) (152)

1. ◯ My productivity was not reduced - Go to Question 34.
2. ◯ My productivity was slightly reduced (i.e., 10% or less).
3. ◯ My productivity was noticeably reduced (i.e., 11-25%).
4. ◯ My productivity was markedly reduced (i.e., 26-50%).
5. ◯ My productivity was dramatically reduced (i.e., more than 50%).
6. ◯ Don't know/Can't judge - Go to Question 34.

33. If you said that your productivity was reduced, how long did this reduction continue? (Mark one response) (153)

1. ◯ Less than 1 week
2. ◯ 1 week to 1 month
3. ◯ 1 to 3 months
4. ◯ 4 to 6 months
5. ◯ More than 6 months
6. ◯ Don't know/Can't judge

SECTION V

This section asks for information we need to help us with the statistical analysis of the survey.

43. What is the highest level of education that you have completed? (Mark only ONE) (163)

1. ○ Less than a high school diploma.
2. ○ High school diploma or GED (Graduate Equivalency Diploma)
3. ○ High School diploma plus some technical training or apprenticeship.
4. ○ Some college
5. ○ Graduated from college (B.A., B.S. or some other bachelor's degree).
6. ○ Some graduate school.
7. ○ Graduate or professional degree.

44. What is your age? (164)

1. ○ 16 - 19
2. ○ 20 - 24
3. ○ 25 - 34
4. ○ 35 - 44
5. ○ 45 - 54
6. ○ 55 or older

45. What is your marital status? (165)

1. ○ Single
2. ○ Married
3. ○ Divorced or Separated
4. ○ Widowed

46. What is your sex? (166)

1. ○ Male
2. ○ Female

47. Where in GAO do you work? (Mark one response) (167)

1. ○ Washington
2. ○ Regional Office - Go to Question 49

48. In what division/office do you work? (Mark one response) (168-169)

1. ○ AFMD
2. ○ GGD
3. ○ HRD
4. ○ IMTECD
5. ○ NSIAD
6. ○ PEMD
7. ○ RCED
8. ○ CRO
9. ○ FM
10. ○ GS&C
11. ○ HRMAS
12. ○ JFMIP
13. ○ OAAP
14. ○ OAM
15. ○ OB
16. ○ OCCD
17. ○ OCE
18. ○ OCG
19. ○ OCR
20. ○ OFM
21. ○ OGC
22. ○ OIAOL
23. ○ OIE
24. ○ OIRM
25. ○ OLS
26. ○ OP
27. ○ OPA
28. ○ OPC
29. ○ OPI
30. ○ OPP
31. ○ OOD
32. ○ OR
33. ○ OS
34. ○ OSI
35. ○ PAB
36. ○ PERS
37. ○ PM
38. ○ RA
39. ○ TI
40. ○ Other. Please specify _____

(Go to Question 50)

SECTION IV

This section asks about your work setting. If you responded to Section III (if you received unwanted sexual attention), please answer these questions in terms of the job where the incident occurred. If you did not complete Section III, please answer these questions in terms of your present job.

34. Recently, women have been taking jobs that mostly men did in the past and men have been moving into jobs held mostly by women. For example, there are now more female airplane mechanics and male nurses. Are you one of the first of your sex in your job? (154)
    1. ○ No
    2. ○ Yes

35. How long have you been a Federal employee? (155)
    1. ○ Less than 1 year
    2. ○ 1 to 5 years
    3. ○ 6 to 10 years
    4. ○ 11 to 15 years
    5. ○ 16 to 20 years
    6. ○ 21 to 25 years
    7. ○ 26 to 30 years
    8. ○ 31 years or more

36. How long have you been a GAO employee? (156)
    1. ○ Less than 1 year
    2. ○ 1 to 5 years
    3. ○ 6 to 10 years
    4. ○ 11 to 15 years
    5. ○ 16 to 20 years
    6. ○ 21 to 25 years
    7. ○ 26 to 30 years
    8. ○ 31 years or more

37. Is your immediate supervisor: (157)
    1. ○ Male
    2. ○ Female

38. Are the people you work with during a normal workday: (158)
    1. ○ All men
    2. ○ More men than women
    3. ○ Equal numbers of men and women
    4. ○ More women than men
    5. ○ All women

39. What is your pay category or classification? (Mark one response) (159)
    1. ○ General Schedule (GS, GM, GG, GW, etc.) or Pay Bands
    2. ○ Wage system (WG, WS, WL, WD, WN, etc.)
    3. ○ Executive (SES, ES, ST, EX, etc.)
    4. ○ Other

40. What is your pay grade? For example GS-5, WG-9. (Mark one response) (160)
    1. ○ 1 - 4
    2. ○ 5 - 8
    3. ○ 9 - 12 (or Band I)
    4. ○ 13 - 14 (or Band II)
    5. ○ 15 (Band III) and over (or SES)

41. How would you describe your job? (Mark one response)
    1. ○ Trainee
    2. ○ Blue collar/service
    3. ○ Office/clerical
    4. ○ Professional/technical
    5. ○ Administration/management
    6. ○ Other

42. Are you a supervisor who gives performance ratings to other employees?
    1. ○ Yes
    2. ○ No

49. In what region do you work? (Mark one response) (170-17

1. ○ Atlanta
2. ○ Boston
3. ○ Chicago
4. ○ Cincinnati
5. ○ Dallas
6. ○ Denver
7. ○ Detroit
8. ○ Europe
9. ○ Far East
10. ○ Kansas City
11. ○ Los Angeles
12. ○ New York
13. ○ Norfolk
14. ○ Philadelphia
15. ○ San Francisco
16. ○ Seattle
17. ○ Other. Please specify _____.

50. In the space provided below, please suggest actions (other than those already in place) GAO could take to reduce the problems of sexual harassment. (17:

OTHER COMMENTS

If you have any other comments, please write them here. If you need more space, please attach additional sheets of paper. (173)

THIS COMPLETES THE QUESTIONNAIRE.

Please use the enclosed, postage paid envelope to return your completed questionnaire. If pre-printed envelope is unavailable, return form to:

Women's Advisory Council
U.S. General Accounting Office
441 G Street N.W. Room 4476
Washington, D.C. 20548

THANK YOU FOR YOUR COOPERATION!

Postcard and Survey Response by Unit

Unit	Packages sent	Postcards returned		Surveys returned	
		Number	Percent	Number	Percent
AFMD	299	201	67	198	66
GGD	452	285	63	287	63
HRD	316	217	69	221	70
IMTEC	209	113	54	121	58
NSIAD	556	360	65	351	63
PEMD	86	61	71	50	58
RCED	458	326	71	335	73
GS&C[b]	216	99	46	104	48
OGC	242	139	57	128	53
Combined offices[c]	589	317	54	278	47
Atlanta	180	124	69	137	76
Boston	108	77	71	75	69
Chicago	121	96	79	98	81
Cincinnati	120	84	70	101	84
Dallas	151	105	70	109	72
Denver	121	95	79	98	81
Detroit	108	80	74	83	77
Europe	52	35	67	40	77
Far East	32	25	78	29	91
Kansas City	116	87	75	95	82
Los Angeles	130	92	71	103	79
New York	131	97	74	98	75
Norfolk	109	91	83	94	86
Philadelphia	128	92	72	99	77
San Francisco	137	94	69	97	71
Seattle	103	78	76	90	87
Unspecified[d]				197	
Total	**5,270**	**3,470**	**66**	**3,716[e]**	**71[e]**

[a]We expected some discrepancy between the number of postcards and the number of surveys returned. Two options were available. WAC could have sent employees either (1) unnumbered surveys and numbered postcards or (2) numbered surveys. The decision to use numbered postcards with unnumbered surveys was made to encourage more employees to respond to questions on a sensitive topic.

[b]Includes FM, GS&C, HRMAS, OAM, OB, OFM, OLS, PM, and RA.

[c]Includes CRO, JFMIP, OAAP, OCCD, OCE, OCG, OCR, OIAOL, OIE, OIRM, OP, OPA, OPC, OPI, OPP, OOD, OR, OS, OSI, PAB, PERS, TI, and Other.

[d]Refers to the 197 surveys on which respondents did not complete the questions indicating the unit where the respondent works (question 48 or 49).

[e]Includes the 197 surveys with unspecified locations. A total of 3,519 surveys, or 67 percent of the total number sent out, were returned with location information included in questions 48 or 49 in the survey.

Analysis of Survey Comments

Of the 3,716 sexual harassment surveys returned, 25 percent (937 surveys) included comments. WAC developed a content analysis coding structure that included 10 major areas with subcategories. Each of the 937 surveys were coded to collect as much information from the comments as possible. Table 5.1 shows the percent of responses in the major coding categories. Since any comment could receive more than one code, the percentages specified in this appendix are of responses—not of surveys with comments—unless otherwise specified.

Table 5.1: Comments by Major Category

Topic	Responses (Percent)
Proposal of GAO actions	33
Reaction to the survey	18
Comments on sexual harassment in GAO	10
Examples of sexual harassment described	10
GAO response to sexual harassment complaints	6
Effects of sexual harassment	6
Perceived causes or explanations of sexual harassment	4
Discussion of "What constitutes sexual harassment?"	2
Expression of concern that surveys would be used to identify individuals	1
Miscellaneous[a]	9
Total	99[b]

[a]Includes all comments that did not fit under any of the other categories; e.g., "perceptions are important" and "facts are better than opinions."

[b]Total does not add to 100 percent due to rounding.

Proposal of GAO actions. These comments focused on two areas. Training was the most frequently cited suggestion—included in 28 percent of the responses in this category. Regardless of whether the comment suggested regular/recurring or mandatory training, the suggestion that everyone receive the training was made most often. The other frequently cited suggestion (15 percent of the responses in this category) concerned publishing or advertising GAO's policies.

Reaction to the survey. These comments focused on two areas. The most frequent comments of this type were criticisms of the survey instrument—39 percent of the responses in this category. These comments focused on, for example, defining unwanted or uninvited behaviors, specific wording in the survey, and choice of the MSPB survey. The other major area for comments focused on other problems, such as racism, sex discrimination, and romantic relationships causing favoritism—24 percent of the comments in this category.

Sexual harassment in GAO. The majority of the comments either stated that there was no problem in GAO or that the person commenting was unsure whether there was a problem in GAO—63 and 24 percent of the responses in this category, respectively. Eight percent of the comments in this category indicated that there was a problem in GAO.

Examples of sexual harassment cited. The majority of these comments provided details of the example used in responding to the survey—33 percent of the responses in this category—or described examples of sexual harassment that the respondents had either observed or heard about, some outside the time frame requested for the survey example—52 percent of the responses in this category.

GAO's response to sexual harassment complaints. These comments focused on two areas. The majority of the responses in this category—70 percent—expressed the opinion that GAO either covers up or condones the problem or that it takes no action. The second major area of comment—14 percent of the responses in this category—expressed the opinion that GAO's actions were inadequate.

Effects of sexual harassment. The two major areas of comment included an expression of the perception that a person will suffer if they file a sexual harassment complaint—accounting for 62 percent of the responses in this category. The second area referred to leaving or transferring because of the sexual harassment experience—13 percent of the responses in this category.

Perceived causes or explanations of sexual harassment. These comments focused on describing sexual harassment as people overreacting—31 percent of the responses in this category—or that sexual harassment was simply a part of the current GAO work environment (for example, related to the "old boy network")—28 percent of the responses in this category.

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