



UAW ADMINISTRATIVE LETTER

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CORRECTED

**IN THIS ISSUE:
POLICY ON THE ELIMINATION
OF WORKPLACE SEXUAL
HARASSMENT**

TO ALL LOCAL UNIONS:

Greetings:

Sexual harassment of workers by members of supervision or co-workers should not be tolerated at any workplace organized by the UAW. Nonetheless, UAW members have been victims of sexual harassment. This letter confirms the policy of the International Union that sexual harassment is a serious obstacle to the achievement of full employment opportunity for workers of both sexes. The International Officers, Directors and staff, and Local Union leadership must commit their efforts to its elimination. Just as the UAW abhors the use of racial or ethnic slurs, the International Union views sexual harassment of any form as an attack on the dignity of the worker who is its victim.

Definition of Sexual Harassment

Sex-based harassment may be unwanted attention directed to an employee because of their sex. Equal Employment Opportunity Commission (EEOC) guidelines stress that sexual harassment can be verbal abuse as well as unwanted physical contact or offensive pictures, cartoons, slogans or posters displayed in a work area:

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 the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Recent court decisions also have recognized that sexual harassment can occur in many different ways. A worker need not be propositioned, touched offensively or harassed by sexual innuendo.

In some sexually charged workplaces, proving the "unwelcomeness" of the harassment activity is complicated by the behavior of the complainant. Mixed signals may indicate the complainant is showing welcomeness, while in fact; the employee's behavior is simply an effort to adjust to the prevailing workplace culture. Under the law, conduct that is initially welcomed may later become unwelcome. An employee's initial acceptance does not waive their right to complain about later conduct, but the initial acceptance may complicate any attempt to prove unwelcomeness.

There are at least four types of victims of sexual harassment: 1) those who are penalized for refusing the harasser's advances; 2) those whose fear of reprisal or desire for privileges traps them in unwanted sexual relationships; 3) workers who suffer as a result of the harasser's favoritism toward one of them who does submit to sexual advances; and 4) everyone who is required to work in an environment tainted with hostile or offensive language, behavior or visual displays.

When in Doubt About International Policy -- Contact Your Regional Director

Sexual Harassment is Grievable

Sexual harassment of a union member by another union member is a matter of grave concern. Some union representatives have been reluctant to write grievances that they feel may be against another member. These kinds of grievances should be written against management, citing the employer's responsibility to maintain an environment free of hostility.

Over the years, EEOC sexual harassment guidelines and the federal courts have established that sexual harassment is sex discrimination and violates Title VII of the 1964 Civil Rights Act, as amended.

In 1986, the U.S. Supreme Court unanimously ruled, in *Meritor Savings Bank v. Vinson*, that sex-based harassment was unlawful if it created a hostile, abusive, offensive and intimidating work environment even if no sexual favors were sought. This had long been the law concerning hostile environment created due to an employee's national origin, race or religion.

Because sexual harassment may cause a form of hostile work environment, the employer has a legal duty to maintain a work environment free of any form of sexual harassment. Likewise, the Local Union has an obligation, under law, to require management to promptly investigate such charges and to take immediate corrective action(s) where necessary when sexual harassment is reported.

We advise Local Unions to file and pursue grievances if the employers fail to meet any part of their legal responsibilities to provide a workplace free of sexual harassment. It is the position of the International Union that sexual harassment may be grieved as a form of sex discrimination under a no-discrimination clause and/or equal application clause where such language exists in the contract.

Sexual harassment may result in other contract violations which could also be grieved, for example, unjust discipline. We believe that sexual harassment can best and most speedily be remedied through the grievance procedure where it is possible to do so under the provisions of the contract. Just as with any other complaint of unfair treatment, grievance handlers have a duty to investigate complaints of sexual harassment. The Union also has a duty to take prompt corrective action where the initial investigation indicates that sexual harassment has occurred. In this context, "prompt corrective action" means writing a grievance.

Proof that sexual harassment has occurred often involves a credibility dispute between the victim and the "harasser". As with any credibility problem, additional evidence, while not necessary, is highly desirable where it is available. Two frequent sources for such outside support in sexual harassment cases are co-workers who witness sexual comments or overtures toward the grievant and present or former co-workers who were also sexually approached by the same harasser. However, the absence of testimony from other victims should not preclude the writing of a grievance.

The Union could also be named as a respondent, along with management, in an EEOC charge or a subsequent lawsuit. Therefore, if the facts show that sexual harassment has occurred, a grievance should be pursued.

Special Protection Against Sexual Harassment

In addition to grievances on sex discrimination, additional efforts can be made through collective bargaining to eradicate sexual harassment. Since 1979, the problem of sexual harassment has been brought to the bargaining table for frank and open discussion with management. Contractual language was won at Chrysler, Ford, and General Motors, which identifies sexual harassment as a subject within the jurisdiction of the National and Local

Equal Application Committee. In 1996 letters, these auto employers agreed that discrimination because of sexual orientation could be grieved the same as other types of improper discrimination.

The International Union encourages the development of special complaint provisions to address the problem of sexual harassment, as long as such provisions offer an additional avenue of relief, rather than a substitute for the grievance procedure and can be applied equally to all UAW members.

Probationary Employees

Probationary employees are frequently the most vulnerable to sexual harassment because they are less aware of their rights and can be intimidated into believing that successful completion of the probationary period depends on their cooperation with a harasser's sexual advances.

For these reasons, it is important that Union leadership be sensitive to the potential problems of sexual harassment encountered by probationary employees and provide the support and information necessary to prevent the probationary employee from becoming a victim.

In some of our contracts, probationary employees have the right to file a grievance based on discrimination. Where it exists, this right may be exercised. As indicated earlier, sexual harassment of even probationary employees may be grieved as a form of sex discrimination. If it is believed that probationary employees may not have their grievances processed, even if they relate to discrimination, they should be referred to the Equal Employment Opportunity Commission (EEOC) or certain state agencies responsible for fair employment practices where they can pursue a claim with those government agencies. In this case, time limits for filing charges must be checked immediately and carefully watched. As with any other sex discrimination charge, copies of any charge should be forwarded to your Regional Director, National Department Director, and the Civil Rights Department of the UAW. If legal advice is needed, they will contact the UAW Legal Department. In some states, harassment victims can file civil lawsuits in state courts. However, a charge with an outside agency or a lawsuit should not be used as a substitute for the grievance procedure if the situation is grievable.

Remedies for Sexual Harassment

The remedy for a victim of sexual harassment depends on the particular case. For example, if the grievant has suffered economic harm (e.g., demotion, suspension, discharge) due to retaliation by a supervisor for the employee's failure to submit to the supervisor's advances, the requested remedy should include the standard "make whole" demand. On the other hand, if the grievance is directed at stopping harassment, the requested remedy should at least demand that the supervisor cease and desist the objectionable conduct. It can also request that the supervisor be transferred or disciplined up to and including discharge and that the company fulfill its duty to provide a workplace *free* of sexual harassment.

Other forms of relief or grievance settlement may include a demand that management print, distribute and post a policy against sexual harassment in the workplace. This demand can also be pursued during contract negotiations.

Confidentiality

A sexual harassment complaint is a very sensitive topic and must be handled with great seriousness and respect for the rights of all concerned. Sometimes workers are too embarrassed or humiliated by the experience to come forward with their complaints. This problem can only be corrected if workers feel assured that the Union will take their complaints seriously and will treat them as confidential as possible.

Of course, the filing of a grievance on sexual harassment means that the complaint will not be totally secret forever. However, the substance of the grievance can determine how much detail must be revealed to management or how prominent a role the individual victim must play. For example, the committee person may wish to file a union policy grievance or group grievance when the aim of the grievance is to stop a harasser's conduct and no economic award for an individual grievant is sought. The names of the alleged harasser and victim(s) should be included in the grievance in order for it to be properly investigated. As with any other grievance, supporting facts should be released on a "need to know" basis only and be kept confidential. This will decrease the probability that anyone will file a defamation suit.

Unemployment Compensation

In the event a member quits a job to avoid sexual harassment, certain state employment security commissions (including Michigan) have ruled that the employee should not be considered a voluntary quit and should not lose unemployment benefits. Workers should be encouraged to appeal any agency denial of unemployment benefits in this situation.

Sexual Harassment by Co-Workers

Unfortunately, sexual harassment is not only practiced by supervision. Co-workers have too often been known to sexually harass other workers. Sexual harassment in the form of remarks, gestures, physical touching, etc., by co-workers can make the victims' work lives miserable and hurt their ability to do their jobs.

Sexual harassment of co-workers runs contrary to the basic Union objective of decent working conditions free of discrimination, as set forth in Article 2 of the CONSTITUTION and reaffirmed in innumerable policy statements and actions.

Sexual harassment of a Union member by another Union member is a matter of concern and may be dealt with in the grievance procedure as described elsewhere in the ADMINISTRATIVE LETTER. Sexual harassment is particularly offensive if it involves a Union official abusing their position of Union authority. These offenses should be called to the attention of the Regional Office and the International Union for remedy.

Local leadership should also assist the International Union in educating our membership on this problem. Sexual harassment violates the fundamental principles of fairness and equality for which the Union has fought so hard.

Assistance

For additional information on the problem of sexual harassment and ways to combat it, contact the appropriate International Representative from your Region who will contact the Civil Rights Department of the International Union, if assistance is needed.

As far back as February 1951, the UAW issued an ADMINISTRATIVE LETTER on how to assure members of a workplace free of sex discrimination. Until sexual harassment has been eliminated, we can never meet this goal.

Fraternally,

Stephen P. Yokich, President
International Union, UAW