

Sexual Violence In The Workplace Against Farmworker Women: An Overview Of The Problem, The Protections, And The Movement To End It

By Mónica Ramírez¹

CHAPTER Introduction

Immigrant women are arriving in the United States in record numbers to work in low-wage jobs. They travel long and far, typically leaving their families behind, to do difficult and dangerous work in the fields, in produce packing sheds, and in nurseries. All too often they are forced to compromise their dignity — to endure sexual harassment and exploitation — to obtain a better life and a measure of economic security for themselves and their families.

“Once inside, he attacked me. He grabbed me and told me not to fight. Then he told me that it was time to repay him for having hired me. I was shocked, frightened, almost paralyzed. I couldn’t move. He penetrated me and then told me to go to the bathroom to clean up. I was trembling. I couldn’t believe what had just happened. I didn’t complain to management right away. I was too shocked. I just wanted everything to be OK. I needed my job. For the first time I had a job that paid more than the minimum wage and I needed every penny to take care of my family.”

Though vast in number, these women are voiceless. They are isolated and afraid. They do not know their rights. To make matters worse, many cultures fault the woman, no matter what the facts, for any perceived sexual deviations — including rape. Due to their vulnerable economic status and their fear, shame, and lack of access to legal resources, few of these women ever come forward to speak out against the wrongs committed against them.

This legal manual is designed for those who are committed to helping farmworker women speak out about their plight. It provides tools for lawyers and non-lawyer advocates to help farmworker women pursue their civil rights. We welcome your feedback and ask that you share your experiences using this manual with us.

What Are The Protections?

What is sexual harassment?

Title VII of the Civil Rights Act of 1964 makes it “an unlawful employment practice for an employer...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.”² Sexual harassment is a form of discrimination against an individual because of his or her sex.

An individual can be harassed by someone of the same sex or opposite sex. In addition, the owner of a company, a co-worker, supervisor, or third party (like a customer at a store) can harass an individual. The harassment must create a hostile, offensive or

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² 42 USC §2000e-2(a)(1) (2008).

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intimidating work environment because of the victim's sex. These types of cases have been typically called "hostile environment" cases by the courts.

A person may also experience adverse or negative employment actions by the owner of the company or a supervisor if the person is forced to acquiesce to the sexual requests or if he or she fails to perform the sexual request.

Even if no tangible economic or substantive job action (such as a termination, a demotion, a failure to hire, a reduction in benefits) has been taken against the employee, the employer may still be liable. However, the company might have a defense to the employee's claim if the employee did not follow the company's complaint policy to give the company an opportunity to remedy the harassment or to otherwise avoid the harm. (See *infra* Chapter 13 for more information about the elements of sexual harassment and defenses.)

How Serious Is The Problem Of Sexual Harassment Against Farmworker Women?

Sexual harassment against farmworker women is a pervasive problem. In fact, "[n]inety percent of female farmworkers report that sexual harassment is a major problem."³ The U.S. Equal Employment Opportunity Commission (EEOC), the federal agency that enforces the civil rights laws, found that "hundreds, if not thousands, of women had to have sex with supervisors to get or keep jobs and/or put up with a constant barrage of grabbing and touching and propositions for sex by supervisors."⁴

In addition to this information, anecdotal information exists indicating that sexual harassment is a major problem for farmworker women. Media and other publications have reported:

Workers in Salinas, California, refer to one company's fields as the field of calzón, or the "field of panties," because so many supervisors rape women there. For the same reasons, female farmworkers in Florida call the fields "The Green Motel." In Iowa, a group of women [said]... "[w]e thought that it was normal in the United States that in order to keep your job, you had to have sex."⁵

Sexual harassment is a significant and wide-spread problem for farmworker women and discussions with farmworker women and farmworker advocates corroborate these numbers. Sadly, few women have ever brought legal action against companies for this unlawful harassment.

More than 40 years after the Civil Rights Act of the United States was passed into law, a farmworker woman finally had her case heard before a federal jury. In January of 2005, Olivia Tamayo prevailed against her employer in the case *EEOC vs. Harris Farms* for the unspeakable harassment committed against her by her supervisor.⁶ The EEOC brought suit against the company for violation of Title VII and private plaintiff's attorney William Smith intervened on behalf of Ms. Tamayo, bringing additional

3 Maria Ontiveros. *Lessons From the Fields: Female Farmworkers and the Law*, 55 ME. L. Rev. 157, 169. (2003).

4 *Id.*

5 Rebecca Clarren. *The Green Motel*, MS. MAGAZINE, Summer 2005, at 42; See also Ontiveros at 169.

6 *EEOC v. Harris Farms, Inc.*, No. 02-060199-AWI-LJO (E.D. Cal. Jan. 24, 2005).

claims for violation of the California Fair Employment and Housing Act.⁷ Ms. Tamayo experienced both physical and verbal harassment, including rape in the fields.⁸ She was awarded nearly \$1 million by the jury for the company's failure to protect her civil rights after she protested her abuse.⁹ The decision in Tamayo's case was upheld in April 2008.¹⁰

Although Ms. Tamayo's case was not the first case brought by a farmworker woman against a U.S. agricultural employer for sexual harassment, she became a pioneer for the movement to end sexual harassment and sexual assault in the workplace against farmworker women. Her case was first to reach a federal jury trial, and therefore allowed a new level of exposure to be shed on this issue. The verdict in Ms. Tamayo's case drew great attention from media sources throughout the country. The media coverage educated community members about this serious problem and gave other workers the opportunity to learn from the example of one individual who pursued legal action for this unlawful discrimination.

Ms. Tamayo's case was the first of such cases decided by a federal jury. However, she was not the first farmworker woman to experience this grave problem. In fact, other women filed complaints for sexual harassment before her. These women reached negotiated settlements with their employers before reaching a federal trial. As some cases reached confidential settlements and some were likely resolved at the administrative stage, we cannot know exactly how many sexual harassment claims have been filed by farmworker women across the U.S.

A case brought on behalf of a class of farmworker women in Florida was the first major case that grabbed the public's attention in 1989. Florida Rural Legal Services represented women in a case against Caulkins Indiantown Citrus Company for sexual harassment committed by a supervisor.¹¹ According to an article written about the case, "[f]ive of the women giving depositions in the case claimed rape by various supervisors. Some of the alleged attacks were said to have taken place as far back as the late 1960s. Some were as recent as 1979 and 1980. Others complained of sexual innuendos, obscene jokes, pats, pinches and rubs."¹²

The U.S. Equal Employment Opportunity Commission found after an investigation into complaints submitted by a woman named Sue Kahn that her supervisor "demanded sexual favors from his female subordinates as a condition of their employment, and then favored those who succumbed with special favors not accorded to those who refused."¹³ The case settled for \$550,000 on behalf of 45 women.¹⁴

*EEOC vs. Tanimura & Antle*¹⁵ was the first major case waged against the agricultural industry by the federal government for permitting sexual harassment against farmworker women. The case involved sexual harassment of and retaliation against female employees. The EEOC claimed "that a production manager subjected a

7 Cal Gov't Code §1290, et. seq.

8 Clarren at 42.

9 *Id.* at 44.

10 *Harris Farms, Inc. v. EEOC*, No. 05-16945, U.S. App. Lexis 9127 (9th Cir. April 17, 2008).

11 *Milord v. Caulkins Indiantown*, No. 86-8259-civ-Roettger (S.D. Fla. 1989).

12 Margo Harakas. *Tales from the Green Motel*. SUN SENTINEL, Feb. 12, 1989, at 86.

13 *Id.*

14 Pat Plarski. 'A Little of the Burden is Lifted Off of Me.' PALM BEACH POST, July 1, 1989, at B1.

15 *EEOC v. Tanimura & Antle*, No. C-99-20088-JW (N.D. Cal. filed February 19, 1999).

female employee, Blanca Alfaro, to demands ... for sexual favors as a condition for her employment and the receipt of job benefits.”¹⁶

The EEOC claimed that Alfaro was subjected to repeated unwanted sexual advances by two management officials.¹⁷ Ultimately, Alfaro was fired in retaliation for complaining about the harassment.¹⁸ Other women were also found to have been sexually harassed and retaliated against.¹⁹ In addition, a male co-worker suffered retaliation for complaining about the sexual harassment against Ms. Alfaro.²⁰ California Rural Legal Assistance (CRLA) and the Golden Gate University Law School’s Women’s Rights Clinic represented Ms. Alfaro during the EEOC administrative proceedings and throughout the course of the proceedings to ensure that her individual rights were protected.

After extensive negotiations between EEOC, CRLA, the Golden Gate University Law School’s Women’s Rights Clinic and Tanimura & Antle, in February 1999 the parties entered into the largest consent decree to date in a farmworker sexual harassment case against an agricultural employer in *EEOC v. Tanimura & Antle*.²¹ They settled Ms. Alfaro’s claims and the other workers’ claims for \$1,855,000.²² The EEOC also required the company to improve their sexual harassment policies and other anti-discrimination policies, and provide training for workers, supervisors and managers about sexual harassment.²³

The EEOC and CRLA have worked together to settle a number of other lawsuits on behalf of farmworker women, including *EEOC v. Coastal Valley Management, Inc.*,²⁴ *EEOC v. Fresh Express, Inc.*,²⁵ and *EEOC v. RC Packing, Inc.*²⁶ In each of these cases, CRLA intervened on behalf of farmworker women to ensure that their state claims were also included as part of the litigation.

In September 1998, the San Francisco EEOC District Office sued labor contractor C & M Packing for sexual harassment and retaliation against farmworker women.²⁷ The case was settled for \$90,000 on behalf of four individuals and included other injunctive relief such as a written sexual harassment policy issued in English and Spanish, and additional training.²⁸ The women involved in this lawsuit were subject to “vulgar comments, sexual propositions, and inappropriate physical contact.”²⁹ The women were also fired for failing to submit to the sexual requests.³⁰

16 U.S. Equal Employment Opportunity Commission. (February 23, 1999). EEOC and Tanimura & Antle Settle Sexual Harassment Case in the Agricultural Industry. U.S. EEOC Press Release. Last visited November 3, 2008 at the World Wide Web: www.eeoc.gov/press/2-23-99.html

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.*

24 *EEOC v. Coastal Valley Management, Inc.*, No. 5:01-mc-070006-RMW (N.D. Cal. filed Feb. 15, 2002).

25 *EEOC v. Fresh Express, Inc.*, No. C-02-04614-JF (N.D. Cal. filed Sept. 24, 2002).

26 *EEOC v. RC Packing, Inc.*, No. C-02-01713-JF (N.D. Cal. filed Apr. 10, 2002).

27 *EEOC v. C & M Packing, Inc.*, No. 5:98-cv-20975-JW (N.D. Cal. Filed Sept. 24, 1998); See also DAILY LABOR REPORT, CONTRACTOR AGREES TO SETTLE EEOC CHARGES FOR HARASSING, RETALIATING AGAINST LABORERS, 1 (1999). (BNA).

28 Daily Labor Report at 1.

29 *Id.*

30 *Id.*

In the decade following these important cases, other women have begun coming forward to speak out about the harassment against them. Women in Iowa denounced the egregious sexual harassment against them, including rape in the workplace, in the case *EEOC v. DeCoster Farms*.³¹ The EEOC and the defendant reached a consent decree settling the case for \$1.5 million dollars and other non-monetary relief, including training and improved anti-discrimination policies.³²

In 2005, Esperanza: The Farmworker Women's Legal Initiative (Esperanza)³³ and Arthur T. Schofield, a private plaintiff's attorney, represented a female farmworker, Guadalupe Valerio, in a lawsuit filed in state court for sexual harassment in violation of the Florida Civil Rights Act, battery, and intentional infliction of emotional distress by the owner of Vila and Son Nursery, Corp.³⁴ In that case, the Plaintiff sued for unwelcome sexual propositions, kissing, touching, and, on one occasion, forced participation in a sexual act at knifepoint.³⁵ The case was resolved in a confidential settlement agreement that same year. In addition to this case, Esperanza represented farmworker women who were sexually harassed, some of whom were also retaliated against, at five other agricultural companies by 2006.

Esperanza filed charges of discrimination on behalf of four Haitian farmworkers who were sexually harassed and retaliated against by their supervisor at Gargiulo, Inc., one of the largest fruit and vegetable wholesalers in the state of Florida. In September 2005, the EEOC brought suit against Gargiulo, Inc. on behalf of the four women represented by Esperanza and an additional female farmworker who separately filed a charge of discrimination with the EEOC.³⁶ In December 2006, Esperanza and private plaintiff's attorneys Webb, Scarmozzino and Gunter, P.A. intervened on behalf of these five Haitian farmworker women.

The lawsuit stated that the women, who worked as tomato graders during the 2003 to 2004 season, were sexually harassed by their supervisor.³⁷ The harassment included requests for sex, vulgar comments and physical contact with their bodies.³⁸ In addition, they were retaliated against for not accepting the sexual advances.³⁹ This retaliation included suspension without pay, firing and failure to re-hire.⁴⁰

Gargiulo, Inc. was sued for violations of Title VII, as well as for violations of the Florida Civil Rights Act.⁴¹ The case settled in January 2007 for \$215,000 on behalf of the five Plaintiff/Intervenors and three additional women identified by the EEOC.⁴² The company also agreed to create an anti-harassment and retaliation policy in English,

31 *EEOC v. DeCoster Farms*, No. 3:01-cv-03070-MWB (N.D. IA filed Aug. 8, 2001).

32 U.S. Equal Employment Opportunity Commission. (September 30, 2002). EEOC and Decoster Farms Settle Complaint for \$1,525,000. U.S. EEOC Press Release. Last visited November 3, 2008 at the World Wide Web: www.eeoc.gov/press/9-30-02-b.html

33 Esperanza: The Farmworker Women's Legal Initiative was founded in September 2003 as a project of Florida Legal Services. In February 2006, Esperanza became a project of the Southern Poverty Law Center. The project then came to be known as Esperanza: The Immigrant Women's Legal Initiative. Esperanza expanded from a state-wide Florida-based project to a national initiative on behalf of all low-wage immigrant women.

34 *Valerio v. Vila and Son Nursery, Corp.*, No. 05-01084CA31 (Fla. Cir. Ct. filed Jan. 18, 2005).

35 *Id.* at 2.

36 *Gargiulo, Inc.*, No. 2:05-cv-460-Ft.M-29-SPC.

37 *Id.* at Amended Complaint in Intervention p. 3.

38 *Id.* at EEOC Amended Complaint p. 4.

39 *Id.* at Amended Complaint in Intervention pp. 4-5.

40 *Id.*

41 *Id.* at Complaint in Intervention p. 1.

42 *Id.* at Gargiulo Consent Decree p. 6 and Exhibit B.

Spanish, and Creole, a procedure for complaining about discrimination and a training for its supervisors and employees.⁴³

Other cases have been filed by the EEOC,⁴⁴ legal services attorneys, and private attorneys on behalf of farmworker women throughout the country in both federal and state courts. The recent push to bring more judicial cases on behalf of farmworker women in the face of this major problem has been joined by grassroots organizations, legal scholars, state and federal agencies, civil rights organizations, legal services and legal aid programs and other professionals. These groups are devoting more resources to provide community education, administrative advocacy, technical assistance and trainings, and an increased amount of litigation in an attempt to put an end to the wide-spread problems of sexual harassment and sexual assault in the workplace against farmworker women.

Groups like Lideres Campesinas in California, the U.S. Equal Employment Opportunity Commission, California Rural Legal Assistance, The Oregon Law Center, the Mexican Consulate, private practitioners, the California Agricultural Labor Relations Board, the National Sexual Violence Resource Center, and the American Civil Liberties Union have joined Esperanza's national initiative to address these issues faced by farmworker women collectively.

In fact, many of these groups came together in April 2007 during sexual assault awareness month to promote the Bandana Project, a public awareness campaign launched by Esperanza in June of 2007. The Bandana Project was created to raise public awareness about this devastating problem. Due to the fact that farmworker women use their clothes, including bandanas, as weapons in the field to protect them from workplace sexual violence,⁴⁵ white bandanas were chosen as a symbol of the sexual exploitation of farmworker women. Together community members, grass roots organizations, legal advocates, anti-violence advocates and many others called for an end of workplace sexual violence against farmworker women by decorating and hanging these bandanas. An estimated 1,000 bandanas were decorated and at least 70 Bandana Project events were held in the U.S. and Mexico. Thirty-three partners helped coordinate these exhibits. Major media outlets also covered the project which resulted in increased public awareness about this problem. (See Supplements Chapter 1 for more information about the Bandana Project).

In addition, in August of 2008 California Rural Legal Assistance was awarded a \$435,000 grant from the Department of Justice's Office on Violence Against Women to launch a national technical assistance program to combat sexual violence in migrant farmworker communities. The two year grant will allow CRLA to partner with Esperanza, the Victim Rights Law Center and Lideres Campesinas, along with other consultants. The project will focus on training lawyers, law enforcement and farmworker community members on the issue of sexual violence and ways in which to support farmworker victims who endure this violence. The grant will allow for the creation of much needed safety planning tools to be used by farmworker women faced by this problem. The award of this grant and the continued creation of new tools,

⁴³ *Id.* at 4-5.

⁴⁴ See the Supplements to Chapter 1 for more information about sexual harassment cases handled by the EEOC.

⁴⁵ Xóchil Castañeda and Patricia Zavella, Changing Constructions of Sexuality and Risk: Migrant Mexican Women Farmworkers in California, *The Journal of Latin American Anthropology* 8(2):126-151, 135 (2003).

including this manual, is a sign of the significant steps that have been taken to remedy this problem.

With Olivia Tamayo and the other brave women who have come forward bringing administrative complaints and lawsuits across the country, we strive to promote an end to sexual harassment and sexual assault against farmworker women and to pool resources so that organizations throughout the nation will have the tools necessary to address this serious problem facing farmworker women. As part of this effort, we have come together to produce this Best Practices Manual so that all farmworker attorneys and advocates will have a practical guide for dealing with the legal, health, social and cultural problems faced by farmworker women who have suffered from sexual violence in the workplace.

We hope that this manual will be both comprehensive and accessible. This manual is designed to be a reference to allow advocates to provide the highest quality of representation to these women.

A portion of this book is designed for all advocates to understand the basics of the law and strategies for educating farmworkers about their rights in the face of sexual harassment. The remaining chapters were specifically designed to help attorneys as they navigate the legal proceedings. Few farmworker women have brought these cases and, thus, few attorneys have had the opportunity to represent female farmworkers who have been sexually harassed or assaulted at work. Therefore, the latter chapters of this manual are meant to provide insight into litigating these cases for those who will soon begin to bring these actions on behalf of farmworker women.

“Sexual harassment does not happen in isolation and services don’t and can’t happen in isolation either. You don’t have to do everything. Other agencies, even those organizations that you may not think of at first, can be great resources. We need to create connections, maintain them, and use them to better serve those that need them.”

—ESPERANZA NATIONAL CONFERENCE, JUNE 2007 PARTICIPANT