

# Psychiatric Injury in the Women's Workplace

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The number of women gainfully employed has mushroomed dramatically since World War II. This explosion is not merely one of increased opportunity; it also reflects the increased need of women to work. One in seven households in this country is headed by a woman.<sup>1</sup> It is estimated that two-thirds of the working women must work and about one-half of them provide the sole or the major support for their families.<sup>2</sup> Thus, women's employment is neither frivolous nor a luxury that can be easily dispensed with.

With this accelerating presence of women in the workplace have come increasing reports of problems they encounter by virtue of them being women. Some of these problems, such as lower economic compensation, unequal education and employment opportunities, and cultural barriers to integrating work and family life, while important as social policy issues,<sup>3</sup> are not immediately relevant to this article. Sexual discrimination and harassment on the job are more relevant because their agents of cause are more easily identifiable and their psychiatric consequences, when present, are sharper and more pronounced.

While sexual discrimination and harassment are two different concepts, there is also an area of overlap. Essentially, discrimination occurs when women as a group are treated less favorably than men in terms of job opportunities, compensation, etc.<sup>4</sup> Perhaps this would better be called gender discrimination because there are no explicit sexual overtones. Sexual harassment occurs when sexuality enters the picture. It has been defined as "the exploitation of a powerful position to impose sexual demands or pressures on an unwilling but less powerful person."<sup>4</sup>

There are two types of sexual harassment.<sup>5</sup> The *quid pro quo* situation occurs when sexual favors are demanded in exchange for job opportunities and/or when refusal of such favors brings retaliation. The *persistant condition of work* situation occurs when sexual conversation or touching continually occurs in the workplace. There may be persistent comments, propositions, attempts to discuss the employee's sex life, repeated "accidental" bumpings, more obviously intentional touching, or even rape.<sup>5</sup> Surveys have indicated that 49 to 81 percent of working women experience sexual pressure on the job.<sup>6,7</sup> While these surveys may be flawed because of sampling problems and because what men may perceive as innocent behav-

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ior may be perceived by women as offensive behavior,<sup>4</sup> the fact remains that a significant number of women feel discriminated against and harassed, and they are pressing their claims in court. I have had the opportunity to evaluate several women who claimed psychiatric injury because of sexually unfair or offensive treatment.

### The Legal Setting

Legal actions based on sexual discrimination and harassment in the workplace may be brought in four areas. (1) Criminal charges may be brought. (2) Charges of sex discrimination may be leveled under Title VII of the Civil Rights Act of 1964 (amended 1972)<sup>8</sup> and the Equal Protection clause of the Fourteenth Amendment. (3) If the woman alleges that the job situation has so affected her that she is unable to work, she may claim entitlement to workers' compensation. (4) If the woman feels she has suffered a personal injury, she may bring a tort action.

Criminal proceedings are rarely pursued with regard to activities of the workplace unless the harm is serious or the activity is clearly against the law (rape, indecent exposure, etc.).<sup>9</sup> Prosecutors are unlikely to carry the case forward unless it is reasonably clear-cut. This type of proceeding will not be considered further in this article.

Actions under Title VII are essentially claims of sexual discrimination. The discrimination must result in economic disadvantages to women. It is illegal to discriminate in hiring or firing practices or in the provision of specific job opportunities within the work organization. Where discrimination has been found, the individual employee must be restored to position of equal opportunity and may be entitled to compensation for lost wages. The company has to stop its discriminatory practices.<sup>1</sup>

Since the major thrust of this law is social rather than personal and it is aimed at the economic disadvantages of women who are discriminated against, early attempts to litigate the pernicious effects of sexual harassment under Title VII were unsuccessful.<sup>10</sup> However, subsequent cases have tended to support the notion that sexual harassment is a form of discrimination under Title VII. *Quid pro quo* harassment may be discriminatory because refusal of the employer's sexual advances places women at a disadvantage with regard to employment opportunities.<sup>11</sup> Sexual harassment as a *persistent condition of work* is seen as discriminatory because by fostering an offensive working environment, it presents a barrier to the full participation of women in the workplace.<sup>12, 13</sup>

Worker's compensation cases more specifically address sexual harassment. Essentially, workers' compensation is an insurance system set up to compensate people whose ability to work and earn has been limited by an

injury arising from the work situation. The degree of compensation is based on complicated tables involving the employee's earning capacity, nature of the injury, and other factors. Because the monetary awards in workers' compensation cases are frequently smaller than those in tort actions, many plaintiffs' attorneys prefer the latter. However, often workers' compensation actions take precedent and may be a bar to tort actions.<sup>14</sup>

Tort actions claiming sexual harassment may take several forms.<sup>14</sup> Battery is an intentional touching which is unwanted by the woman and causes her injury. Assault is a verbal activity which can reasonably lead the woman to have an apprehension or expectation of battery. Intentional infliction of emotional distress occurs when the supervisor purposely, knowingly, or recklessly takes some action that causes the woman employee emotional distress.<sup>9</sup> Reckless behavior occurs when a reasonable person would have known that emotional distress would result.<sup>15</sup> This tort is not meant to apply to mere teasing; the behavior must be "sufficiently outrageous" and the emotional distress must be "sufficiently severe."<sup>14</sup> These are questions of fact to be decided by the jury. Invasion of privacy can occur when the behavior is sufficiently intrusive, such as in the case of sexually harassing telephone calls which intrude into the home.<sup>16</sup>

A psychiatric evaluation of the plaintiff may be requested in these various types of cases. Although in the Title VII cases, the issue is usually economic rather than psychiatric injury, an abusive environment has been defined in part as one having a serious effect on the psychologic well being of the employees.<sup>17</sup>

In workers' compensation cases, the job-related injury likely to be claimed is an emotional or psychiatric one. It is not enough for the psychiatrist to delineate injury; the injury must be such that it limits the women's ability to work. Judging loss of capacity to work often is exceedingly difficult.<sup>18</sup> Sometimes, when a psychiatrist legitimizes the inability to work, recovery may be hampered.

The extent of psychiatric injury is in center stage in tort actions because that is what will be compensated. Emotional distress can include fright, humiliation, embarrassment, anger, and worry<sup>19</sup> as well as more clearly defined syndromes.

### **The Problem of "Compliance"**

Although this question is infrequently put to the psychiatrist, attorneys on either side may ask why the discriminated or especially the harassed woman did not leave the job. If the employee did have sexual relations with her supervisor, the question is framed even more sharply: By "going along," did she not show that despite her protests she really enjoyed it, or at least

that it did not bother her as much as she claims? Ultimately, this question is better left to the jury to decide as it judges whether the distress was sufficiently severe to uphold the claim.<sup>14</sup> It is not dissimilar to the question which may arise in judging whether a man raped a friend.<sup>20</sup>

However, there are some general facts which are helpful for the psychiatrist and the attorneys to know. Even in cases where discrimination is the issue, the woman does not have to leave the job in order to escape the unfair treatment.<sup>21</sup> The social facts of women needing employment, which may not be abundantly available, tends to create a willingness to tolerate persistently abusive conditions of work or even a *quid pro quo* situation. A certain amount of compliance may occur because the woman knows about the supervisor's pattern of retaliation against others who did not tolerate the harassment.<sup>5</sup> On the more personal level, many women subjected to sexual harassment are afraid, embarrassed, and feel alone. They may not report the harassment because they feel powerless, demeaned, and intimidated. While a question may be raised in any individual case, it is probably safest to conclude that tolerance of the atmosphere or compliance with the sexual request does not necessarily imply willingness; it may be the reaction to felt coercion.

### Case 1

Ms. A. prided herself on being independent and "doing for herself." She was a bit restless and had moved several times when her employment became "boring" or when she felt that her involvement with a boyfriend was becoming too serious. She had an optimistic approach to life which bolstered her spirits and allowed her to try new things despite adversity. At times, this optimism led her naively to think that obstacles would just go away. Most recently, she had come to the Memphis area. She had to borrow money from her mother and sister to finance both this move and a new car. She had borrowed money from them in the past and had always repaid the loan conscientiously. She got the highest paying secretarial job she had ever had and was doing well until her supervisor began approaching her sexually. At first, she dismissed his actions as "the usual office flirtation" and she reminded him that he was a married man. As he began to demand that she work late, she optimistically believed she could handle him. She learned from others that he could be very vindictive if his advances were refused. One evening, he came over and started to undress her. She felt numb and trapped; she owed money and she needed the job. The supervisor continued a sexual relationship with her for eight weeks, and she optimistically hoped he would tire of her. However, she developed irritability, loss of concentration, dizzy spells, nausea, and insomnia. She was given Valium

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by the company physician, but she never revealed what the problem was. One day, when the supervisor patted her in the office, she blurted out, "Keep your damn hands off me." This ended the sexual advances but he retaliated by making her working conditions increasingly difficult.

### The Psychiatric Injury

Similar symptoms may develop regardless whether the stressor is *quid pro quo* or *persistant condition of work* harassment. Crull<sup>22</sup> describes three categories of symptoms: decline in work performance and attitude, psychological symptoms, and physical symptoms.

Lack of concentration, fear, humiliation, and constant attempts to avoid the harassing situation can all interfere with the quality of work. Self-esteem on the job wanes as the woman feels powerless and motivation for work suffers.<sup>23-25</sup>

These reactions, of course, are not limited to the work situation. The woman may experience irritability, anxiety, anger,<sup>23</sup> shame, and even guilt because of a feeling that she is somehow at fault.<sup>5</sup> I have seen patients who not only felt depressed and helpless, but who also had terminal insomnia, anorexia and weight loss, and loss of sexual interest. Some women report an increase in drinking.<sup>5</sup> Some women become preoccupied with a need to restore meaning to the situation. For example, a woman with a strong traditional religious background experienced sexual harassment while working for a religious organization. Her faith was shaken and she felt cut adrift. She even had trouble praying to God for help.

The harassing occurrence can disrupt the woman's family because it upsets the husband. Sometimes, a spark of suspicion about whether the wife is telling the truth may be kindled. Occasionally, the occurrence strikes an especially sensitive chord in the husband with unfortunate consequences.

### Case 2

A woman told her husband about her supervisors *quid pro quo* sexual demand. He became enraged and demanded that she sue. I had the opportunity to evaluate the husband at several points during the lengthy litigation. He had a narcissistic personality style which demanded that his wife, like the image of his mother, be idealized and pure. Although he never doubted his wife, the implications of infidelity at the wife's workplace disturbed him greatly. He became obsessed with the need to make "them" pay monetarily and publicly for implying that his wife (or his mother) might be "that kind of woman." The wife and her attorney finally decided on a lump sum settlement out of court. The husband was furious because the

offender could not be publicly rebuked. He turned on his wife for "giving in" and the marriage deteriorated.

The physical symptoms which Crull<sup>22</sup> refers to may run the gamut of somatoform disorders. Fatigue, nausea, and headaches are not uncommon.<sup>23</sup> Psychogenic pain may be present<sup>25</sup> and back problems and fainting spells have been reported.<sup>26</sup> Stomach aches, muscle spasms, and hypertension may be precipitated.<sup>27</sup>

Backhouse and Cohen<sup>26</sup> refer the "sexual harassment syndrome" to describe the effects of sexually based job stress. In my view, the use of the word "syndrome," while politically and rhetorically useful, is unwise.<sup>28</sup> The psychiatric consequences of sexual harassment are not particularly different from those of many other stress situations in which the person sees no real way out. Most cases can adequately be subsumed under the category of "adjustment disorder." Other cases may better be described in terms of the predominant symptom according to other established DSM-III categories.

These various symptoms are not limited to instances of sexual harassment. Sexual discrimination can also produce them.

### Case 3

A woman with a high school education obtained a job in an office in a large organization. Because she was ambitious and she worked hard, she began to advance. She took night courses in a local university's business school, and, after several years, she became a purchasing agent in the company. A divorcee, she remarried a wealthy man shortly after her promotion. When a managerial job was open, she was told that she did not need it; she did not have to work for a living. Her response was that, although she might not need it financially, "it was my career." A man with less experience was given the post and the vice-president of the section asked her to show him the ropes. Although she assisted the man, he was soon fired for incompetence. Once again, she was passed over with remarks such as "we don't need women bosses." She complained to the personnel officer who told her that she had gone as high as a woman could go in the organization. She began to hate her job and she felt alienated from the other purchasing agents (all men). She became irritable, bitter, and developed insomnia and her concentration, appetite, and sexual interest declined. She became prone to unpredictable crying spells in the office and, on one occasion, she fainted. All of this merely served to convince her superior that women were, indeed, too emotional to be bosses.

There are no good data on whether certain women are more vulnerable to certain types of reactions to sexual discrimination or harassment. Indeed, it would be difficult to disentangle differences in value systems among

women employees from vulnerability to severe reactions when these value systems are challenged. However, in the cases I have studied, it was never possible for the woman to return to that particular job situation. Of course, partly this reflects the selected sample of women who had felt that they could not put up with the discrimination or harassment and had sought legal assistance in the pursuit of their grievances. Attempts to continue working usually exposed them to the same stressors and perpetuated their psychiatric problems.

One should not conclude, however, that leaving the job is necessarily therapeutic. The decision to litigate is, itself, stressful. For some, it represents a potential public exposure of a problem about which they may feel guilty or embarrassed; for others, the initial feeling that they are about to right a wrong is soon dashed as the long and sometimes ugly legal proceedings take their course. Most of the women I have worked with have a strong desire for revenge and vindication. While monetary compensation may be important, it usually has less meaning to the woman than the fact that the situation be "set to rights." This involves the company (or a court) acknowledging that she has been wronged and someone taking disciplinary action against the discriminator or harasser. In this sense, the situation is not dissimilar to that of the rape victim. In my view, this need for vindication and revenge may be the victim's way of restoring meaning to a situation which, while understood, is still incomprehensible.

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