

1984 WL 249956 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 9, 1984

*1 The Honorable Charles B. Johnson
Magistrate
Horry County
813 Wright Boulevard
Conway, South Carolina 29526

Dear Judge Johnson:

You have asked for an opinion as to whether the law provides a remedy for sexual harassment. It is our conclusion that it does. However, each situation is dependent on its own facts and circumstances and, therefore, a broad conclusion cannot be stated which would be applicable to all situations.

Title VII of the 1964 Civil Rights Act, 42 U.S.C.S. §§ 2000 et seq., forbids sexual discrimination in employment based upon an individual's sex. Section 2000e-2(a) states in pertinent part that:

It shall be an unlawful employment practice for an employer—(1) 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 . . . sex . . .

Although such provision does not specifically reference sexual harassment, it is clear that such conduct can constitute discrimination on the basis of sex under Title VII. [Coley v. Consolidated Rail Corporation](#), 561 F.Supp. 645 (E.D. Mich. 1982). In [Tomkins v. Public Service Electric and Gas Co.](#), 568 F.2d 1044 (3rd Cir. 1977), it was determined that to state a claim under such provision it was necessary that a plaintiff establish that the act complained of constituted a condition of employment and that such condition was imposed by the employer on the basis of sex.

The federal courts have repeatedly found that certain sexual advances or demands by an employee's supervisor on the employee imposed a sex based 'term or condition' of employment which was prohibited by Title VII. See: [Heelan v. Johns-Manville Corp.](#), 451 F.Supp. 1382 (D.Colo. 1978); [Williams v. Saxbe, et al.](#), 413 F.Supp. 654 (D.C. Cir. 1976); [Toscano v. Nimmo](#), 570 F.Supp. 1197 (D. Del. 1983); [Craig v. Y and Y Snacks, Inc.](#), 721 F.2d 77 (3rd Cir. 1983); [E.E.O.C. v. Sage Realty Corp.](#), 507 F.Supp. 599 (S.D.N.Y. 1981). In [Katz v. Dole](#), 709 F.2d 251 (1983) the Fourth Circuit Court of Appeals determined that a former federal air traffic controller established a case of sexual harassment under Title VII. In its opinion, the Court noted that sexual harassment basically has two forms: harassment which creates an offensive environment ('condition of work') and harassment in which a supervisor demands sexual consideration in return for a job benefit ('quid pro quo'). In [Henson v. City of Dundee](#), 682 F.2d 897 (1982), the Eleventh Circuit Court of Appeals determined that the creation of a hostile and offensive working environment due to sexual harassment is proscribed by Title VII regardless of whether there is a tangible job detriment to the employee. It was recognized that 'terms, conditions or privileges of employment' included mental well-being on the job. See also: [Cummings v. Walsh Construction Co.](#), 561 F.Supp. 872 (S.D. Ga. 1983); [Morgan v. Hertz Corp.](#), 542 F.Supp. 123 (W.D. Tenn. 1981). Referencing the above, clearly a remedy exists under federal law for instances of sexual harassment.

*2 In addition to a remedy under federal law, there are possible state law remedies available to a victim of sexual harassment depending on the facts and circumstances of each case. A situation could be examined as to whether it would constitute a cause of action for the intentional infliction of emotional distress. In [Ford v. Hutson](#), 276 S.C. 157, 276 S.E.2d 776 (1981), the South Carolina Supreme Court adopted the following rule of liability:

'one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.' 276 S.E.2d 776 at 778.

Additionally, pursuant to [Section 16-17-430, Code of Laws of South Carolina](#), 1976, certain uses of the telephone are unlawful. Such statute prohibits the use of obscene language on the telephone. Furthermore, the use of the telephone for purposes of harassment is prohibited.

A person who is discriminated against in employment on the basis of sex could also register a complaint with the South Carolina Human Affairs Commission. The authority, powers, and duties of the Commission are set forth in [Sections 1-13-10 et seq., Code of Laws of South Carolina](#), 1976, as amended. Section 1-13-80 uses almost identical language to that included in Title VII referenced above in prohibiting certain employment practices.

Referencing the above, it is clear that remedies exist under federal and State law for incidences of sexual-harassment. However, of course, each situation is dependent on its own facts and circumstances. Therefore, this Office is hesitant to comment further because of the necessity for a factual determination in each particular case.

If there is anything further, do not hesitate to contact me.

Sincerely,

T. Travis Medlock
Attorney General

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