

SEX DISCRIMINATION & SEXUAL HARASSMENT IN AGRICULTURAL LABOR

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INTRODUCTION

Over the last decade, attention to gender-related employment issues rose dramatically. Sex discrimination and sexual harassment in employment are two topics receiving intense scrutiny since the 1980s. Women's participation in the labor force grew, and numerous studies have been conducted marking the increase and its results. Courts all over the country decided a multitude of cases affecting women in the workforce by finding employers guilty of discriminating against women. It seems that almost everywhere we look, feminists are fighting to gain rights for women in all occupations. At the same time, organizations like the National Organization of Women have been created to deal with many issues, including reproductive rights and sexual harassment of women.

Unfortunately, women employed in the agricultural sector have not benefited from these changes. Although sex discrimination and sexual harassment in agricultural occupations are genuine concerns for female farmworkers, there are only two studies conducted on the problems that farmworker women encounter.¹ While discrimination and sexual harassment occur in agricultural labor, there is a dearth of studies explaining the steps needed to improve situations for women farmworkers. To make matters worse, few court cases brought by farmworker women lead to changes in the law. If courts refuse to hold employers liable for discriminating against women and allowing sexual harassment in their places of employment, women will continue to be disadvantaged in agricultural occupations. In addition, other remedies must be sought to improve the conditions of farmworker women. Research must be conducted to create programs that focus on the needs of women who work in agricultural occupations. There is no reason for excluding farmworker women from the rest of the feminist movement.

PROBLEMS IN ESTIMATING THE NUMBER OF FARMWORKERS

Before considering current trends in agricultural labor, it is important to note some problems in accurately estimating the number of workers who are employed in agricultural labor. The Department defines "hired farmworkers" as:

1. Maria Elena Lopez-Treviño, *The Needs and Problems Confronting Mexican American and Latin Women Farmworkers: A Socioeconomic and Human's Right Issue* (1995) (unpublished document on file with the author) [hereinafter Lopez-Treviño, *Needs and Problems*]; Maria Elena Lopez-Treviño, *A Radio Model: A Community Strategy to Address the Problems and Needs of Mexican American Women Farmworkers* (1989) (unpublished M.S. thesis, Cal. State University) (on file with the author) [hereinafter Lopez-Treviño, *A Radio Model*].

Employed persons who, during the survey week, did farmwork for cash wages or salary, or who did not work but who had farm jobs from which they were temporarily absent. Hired farmworkers include persons who manage farms for employers on a paid basis, supervisors of farmworkers, and farm and nursery workers.²

The U.S. Department of Agriculture relies on three sources of data to provide demographic and employment characteristics of "hired farmworkers."³ However, each source has its limitations⁴

The Current Population Survey

The Bureau of the Census conducts the Current Population Survey (CPS).⁵ The CPS provides information on "demographic, social, and economic characteristics of the employed, unemployed, and persons not in the labor force."⁶ This survey is the primary guide for determining monthly employment and unemployment rates in the United States.⁷ The CPS estimates are based on a probability sample of households, and participation in the survey is voluntary.⁸

Approximately 57,000 households are sampled per month. Selected households are interviewed for four consecutive months, removed from the survey for eight months, then interviewed for four final months.⁹ During the visits, trained enumerators question each person who is fifteen years of age or older.¹⁰ "Questions are asked about the household member's labor force activity during the survey week . . ."¹¹ The information gathered provides national estimates.¹² In addition, one-quarter of the CPS households are asked questions about their weekly earnings and hours worked.¹³

There are many problems with relying on the CPS as a source of data for determining the number of agricultural employees. The

2. See JACK L. RUNYAN, U.S. DEP'T OF AGRIC., A PROFILE OF HIRED FARMWORKERS, 1992 ANNUAL AVERAGES at vi (1994).

3. See RUNYAN, *supra* note 2, at 2.

4. RUNYAN, *supra* note 2, at 2 (indicating problems with timing of data collection, exclusion of certain groups of workers, and lack of certain categories of data, among other problems).

5. RUNYAN, *supra* note 2, at 3.

6. RUNYAN, *supra* note 2, at 3.

7. RUNYAN, *supra* note 2, at 3.

8. RUNYAN, *supra* note 2, at 3.

9. RUNYAN, *supra* note 2, at 3.

10. RUNYAN, *supra* note 2, at 3.

11. RUNYAN, *supra* note 2, at 3.

12. RUNYAN, *supra* note 2, at 3.

13. RUNYAN, *supra* note 2, at 3.

CPS classifies workers based on the occupation in which they worked the greatest number of hours during the survey week.¹⁴ Thus, if a farmworker maintains multiple jobs and spends a greater amount of time in a job other than farmwork, he or she may not be classified as an agricultural worker.¹⁵

The CPS does not provide any information about employees who may sometimes work on farms, but whose hours of work are greater in other types of labor,¹⁶ and as a result, female farmworkers with more than one job may not be identified as farmworkers for purposes of the CPS. Women who work short hours at farms also have to work elsewhere in order to earn their livelihood. This means that an employer's decision to give female workers fewer hours than their male counterparts affects CPS statistics, underrepresenting female participation. Further, the CPS does not distinguish between employers who fail to hire women altogether and employers who hire women with second jobs (to which they devote a majority of time). This makes it difficult to determine whether sex discrimination is occurring and, if so, what forms of discrimination are taking place.

Participation in the CPS is voluntary,¹⁷ and many people may be reluctant to participate. For example, some Mexican workers may hesitate to participate if they are in the country illegally. Thus, the number of farmworkers is likely underestimated by the CPS.

The language barrier may also affect the CPS. Unlike the racial/ethnic structure of other workers, where Hispanics are in the vast minority, a large percentage of hired farmworkers are Hispanic.¹⁸ The CPS stated that:

One of the notable features of the hired farm work force is the large proportion of Hispanic workers. The hired farm work force in 1992 was about 60 percent white, 30 percent Hispanic, and 10 percent black and other. . . . In comparison, the U.S. wage and salary work force was about 7 percent white, 8 percent Hispanic, and 14 percent black and other.¹⁹

Where the agricultural employee only speaks Spanish, he or she may have difficulty communicating with English-speaking enumerators. There is no data regarding the languages the survey

14. RUNYAN, *supra* note 2, at 3.

15. RUNYAN, *supra* note 2, at 3.

16. RUNYAN, *supra* note 2, at 3.

17. RUNYAN, *supra* note 2, at 3.

18. RUNYAN, *supra* note 2, at 1,3. "Hispanics" include people who are Mexican, Puerto Rican, Cuban, Central or South American, or other persons of Hispanic origin. *Id.* at vi.

19. RUNYAN, *supra* note 2, at 1.

enumerators speak. Communities that have a large farmworker population may be composed of a variety of people with other ethnic backgrounds. Thus, an accurate determination of the number of hired farmworkers requires enumerators with knowledge of different languages.

Women are less likely than men to speak English. Therefore, they are more likely to be underrepresented and "more at risk of exploitation, [and] more often working below minimum wage."²⁰ In addition, Mexican women may be less likely to discuss their employment status on a voluntary basis. The Mexican culture teaches women to be submissive. Mexican women, therefore, may be unwilling to speak to men who are strangers to them.²¹ Thus, "[farmworker women's] problems are compounded by the cultural reluctance to speak out."²²

The CPS may also underestimate the total number of Hispanics in agricultural labor. "Because the CPS is based on a survey of households, it may undercount farmworkers living in unconventional living quarters. Other studies suggest that Hispanic farmworkers may be more likely to live in nonstandard housing units."²³ For example, studies conducted by Maria Elena Lopez-Treviño found that some farmworkers "live either in abandoned cars, in shacks made of cardboard and plastic or simply under a tree."²⁴

If the majority of Hispanic farmworkers living in unconventional or nonstandard housing are men, then men make up a greater percentage and women a lesser percentage of the "hired farmworker" population than the report estimates. The reverse also holds true. If the majority of farmworkers living in unconventional or nonstandard housing are women, women make up a larger percentage of the "hired farmworker" population than currently counted. Employers have been brought to court for providing "single-sex, shared unit" housing to men but not to women.²⁵ This type of household is not recognized by the CPS, suggesting that a larger number of men than women are underrepresented in the CPS based on their housing.

20. Pamela Warrick, *A Life Of Their Own: They Have Been The Victims Of Abusive Men—Husbands, Bosses—And Have Spent Years Laboring In The Fields. But Farmworker Women Are Learning How To Fight For Their Rights*, L.A. TIMES, June 7, 1996, at E1.

21. Warrick, *supra* note 20, at E1.

22. Warrick, *supra* note 20, at E1.

23. RUNYAN, *supra* note 2, at 3 (citing VICTOR J. OLIVEIRA, U.S. DEP'T OF AGRIC., A PROFILE OF HIRED FARMWORKERS, 1990 ANNUAL AVERAGES (1992) and RUTH B. MAKAY, BUR. OF LAB. STATS., U.S. DEP'T OF LAB., UNDERCOVERAGE OF HISPANICS IN HOUSEHOLD SURVEYS (1993)).

24. Lopez-Treviño, Needs and Problems, *supra* note 1, at 11.

25. *Farmer v. Employment Sec. Comm'n of N. C.*, 4 F.3d 1274, 1277-78, (4th Cir. 1993).

Therefore, women are likely to make up a smaller percentage of farmworkers than the CPS indicates.

Inconsistency is another problem plaguing the CPS. Due to the seasonal nature of agricultural labor, agricultural workers move frequently. Thus, households which have been surveyed for the first four consecutive months may be unavailable for a second interview, conducted after an eight month waiting period.²⁶ This means that the CPS cannot effectively follow households to maintain accurate employment statistics.

There is a final reason to question the adequacy of CPS estimates of the number of "hired farmworkers." Enumerators only question household members who are fifteen years of age and older, so a large number of young farmworkers may be left out of the household samples.²⁷ Agricultural employers are notorious for hiring underaged workers.²⁸ It is estimated that "[o]ver 500,000 children in the United States are forced to work on farms in California. Most of these children are Mexican."²⁹ Considering that this estimate only includes farmworker children in California, the national estimate should be much higher. A 1984 article stated "[t]hey are children under 15, having illegal, full-time jobs A report for the U.N. Sub-Commission on Prevention of Discrimination said a million Mexican children were employed as seasonal workers in the United States in the late 1970s."³⁰ Thus, it is impossible to accurately determine the percentage of female child farmworkers.

There are other indications that the statistics on child employment in agricultural labor are low, and that there is a much higher percentage of children presently employed in agricultural labor than in the late 1970s. "In the United States, a 1990 government study³¹ showed a 250 percent increase in child labour law violations between 1983 and 1990. Child labour in the United States is most prevalent [sic] in agriculture, particularly among immigrant families"³² It

26. See RUNYAN, *supra* note 2, at 3.

27. One way to explain the high percentage of children employed as agricultural workers is that employing children minimizes costs. Employers can pay child workers a smaller wage than their adult counterparts.

28. See Dillman v. Madsen, 688 F. Supp. 1402 (D.S.D. 1988); Lenroot v. Kemp, 153 F.2d 153 (5th Cir. 1946).

29. Victor Ego Ducrot, *Children: Child Labor Still Prevalent in Rich and Poor Countries*, Inter. Press Service, May 27, 1993.

30. Claude Fillet, *Child Labour: An International Scandal*, ILO Chief Says, REUTERS N. EUR. SERVICE, July 26, 1984.

31. Conducted by the U.S. General Accounting Office.

32. Leila Corcoran, *Child Labour Throughout World Exploding - Study*, THE REUTER LIBR. REP. (July 20, 1992) (study conducted by the International Labour Organisation).

is unclear from the article whether the increase in reported violations results from more diligent law enforcement or a rise in the number of working children. Both factors may contribute to the increase. Thus, it is probable that the CPS does not account for children under age fifteen, who may make up a substantial percentage of farmworkers.

The Decennial Census of Population

The second source the U.S. Department of Agriculture uses to gain information regarding "hired farmworkers" is the Decennial Census of Population.³³ This census, like the CPS, has inaccuracies. It is conducted during the last week of March, "generally a slack period for farmwork. As a result, the census fails to collect information on many of the Nation's farmworkers not working on farms when the data were collected."³⁴ In addition, the census is conducted every ten years.³⁵ Because many demographic changes may occur during a ten-year period, it is difficult to obtain an accurate estimate of men and women farmworkers at any given time.

The National Agricultural Workers Survey

The last survey considered by the U.S. Department of Agriculture to establish estimates of "hired farmworkers" is the National Agricultural Workers Survey (NAWS).³⁶ The U.S. Department of Labor commissioned the NAWS, which provides information regarding the work patterns of seasonal agricultural workers.³⁷ However, the survey excludes livestock work³⁸ and does not provide estimates on the number of farmworkers or their geographic distribution.³⁹ Without estimates of the number of farmworkers, including a breakdown of male and female workers, one cannot identify patterns of sexual discrimination.

It would be difficult to compare the number of women to men in the agricultural sector by examining only one of the surveys at any given time. However, the totality of information from the three sur-

33. RUNYAN, *supra* note 2, at 2.

34. RUNYAN, *supra* note 2, at 2 (citing LESLIE A. WHITENER, *A Statistical Portrait of Hired Farmworkers*, 107 MONTHLY LAB. REV. (1984)).

35. RUNYAN, *supra* note 2, at 2.

36. RUNYAN, *supra* note 2, at 2.

37. RUNYAN, *supra* note 2, at 2.

38. RUNYAN, *supra* note 2, at 2.

39. RUNYAN, *supra* note 2, at 2.

veys provides a clearer picture of the gender ratio, and a better understanding of the composition of the agricultural sector.

General Estimates of Women Farmworkers

The most recent estimates of "hired farmworkers" provided by the U.S. Department of Agriculture suggest that women are being discriminated against in employment for agricultural positions.⁴⁰ In 1992, approximately eighty-four percent of the hired farmworkers were male.⁴¹ Out of an estimated 848,000 hired farmworkers, only 137,000 were female.⁴² This explains the finding that "[h]ired farmworkers were more likely than other U.S. wage and salary workers to be male"⁴³ In 1993, only 123,000 of 803,000 farmworkers were women.⁴⁴ Estimates by the U.S. Bureau of Labor Statistics indicate that in 1994, only 16.6% of 748,000 farmworkers were women.⁴⁵

Recent data suggests that more women are migrating to the U.S. than before.

According to immigration experts, pressing economic needs and political unrest in Third World countries will be forcing more women head of households to seek a better future in wealthier countries. Current data indicates that the women's migration rate has been consistently increasing over the last decade. During and before the early 1960's men immigrated to California in considerably higher numbers than women. At that time, the male-female ratio was two to one. This pattern has been consistently changing; today women and men migrate at the same rate.⁴⁶

If women migrate at the same rate as men, there should not be such a large disparity between the numbers of male and female farmworkers. It is unlikely that men are the only ones in search of agricultural positions. Aside from the estimates of female "hired farmworkers" and the increase in the number of women coming to this country in search of work (without a corresponding increase in the number of women working in agriculture), there is no other information providing evidence of sex discrimination in agricultural labor.

40. RUNYAN, *supra* note 2, at 1.

41. RUNYAN, *supra* note 2, at 1.

42. RUNYAN, *supra* note 2, at 2.

43. RUNYAN, *supra* note 2, at v.

44. JACK L. RUNYAN, U.S. DEP'T. OF AGRIC., A PROFILE OF HIRED FARMWORKERS: NO. 649 (forthcoming).

45. U.S. BUREAU OF LAB. STAT., U.S. DEP'T OF LAB., EMPLOYED CIVILIANS, BY OCCUPATION, SEX, RACE, AND HISPANIC ORIGIN: 1983 AND 1994.

46. Lopez-Treviño, A Radio Model *supra* note 1, at 51 (citation omitted).

Unfortunately, the number of undocumented immigrants compounds the problem of quantifying women's participation in farmwork. The statistics of "hired farmworkers" do not account for many undocumented workers. In addition, there are different estimates of the undocumented population and such estimates do not provide statistics on gender makeup (nor the number of farmworkers). The Immigration and Naturalization Service estimated that in 1990 there were 2.6 million undocumented aliens in the United States.⁴⁷ In 1992, that number rose to 3.2 million.⁴⁸ Between 1970 and 1992, an estimated 4.8 million undocumented immigrants entered the country.⁴⁹ Obviously, it is extremely difficult to determine how many undocumented immigrants are actually in the United States.

The last and most disturbing reason for not being able to obtain reliable estimates of women in farm labor is a lack of interest in researching sex discrimination in agricultural labor. Consider the following quote:

One might choose to exclude agriculture from an analysis of long-term trends [in occupational segregation] for several reasons. First, the classification of men and women in farming may be more prone to error than in other types of occupations. Economists have long debated the labor force participation rate of farm women

Second, our theories about trends in occupational segregation apply most specifically to competition in the burgeoning industrial society, and they may not apply with equal force to the shrinking agricultural sector. The view that industrial society promotes standards of universalism over particularism applies most forcefully to the industrial economy, not to the vestiges of preindustrial social organization found on the farm. The competitive forces that drive employers to find the lowest-wage worker for a given job also apply primarily to the industrial economy, since women on a farm are mostly in the role of unpaid family worker and thus outside the cash nexus of the broader economy

Removing the agricultural sector from our analysis, we see that occupational segregation by sex has in fact been declining⁵⁰

47. Jeffrey S. Passel, *Immigrants and Taxes: A Reappraisal of Huddle's 'The Cost of Immigrants'*, The Tomas Rivera Center (Pre Publication Copy), Feb. 1994, at 24, (citing Robert Warren, *Estimates of the Resident Illegal Alien Population: October 1992*, Immigration and Naturalization Service (Aug. 1993)).

48. *Id.*

49. *Id.* at 27 (citing Donald Huddle, *The Costs of Immigration, Carrying Capacity Network*, Revised (July 1993)).

50. JERRY A. JACOBS, REVOLVING DOORS: SEX SEGREGATION AND WOMEN'S CAREERS, 25-26

Contrary to the quote, one should not refrain from investigating the long-term trends in occupational segregation simply because "the classification of men and women in farming may be more prone to error than in other types of occupations."⁵¹ Rather, we need to first accurately assess the participation rates in the various agricultural positions. Although the statistics currently available are neither conclusive nor exhaustive, they are a starting point for further investigation.

In addition, the author of the quote underestimates the large number of people that continue to be employed in agricultural labor by stating that there is a "shrinking agricultural sector."⁵² The Pacific region of the United States (composed of California, Oregon, Washington, Alaska and Hawaii) employed approximately 216,000 farmworkers in 1992 (not including undocumented workers).⁵³

Nor is the author correct in saying that "women on the farm are mostly in the role of unpaid family worker and thus outside the cash nexus of the broader economy. . . ."⁵⁴ Many of the farms in California cannot be classified as "family farms." Women who work on farms are paid. The same competitive forces at work in industrial occupations (including a desire to find the lowest-wage worker) are equally prevalent in the agricultural sector. Thus, farmworker women, like any other worker, fall within "the cash nexus of the broader economy."⁵⁵

DISCRIMINATORY PRACTICES

Employers discriminate against female workers in a number of ways. They give them fewer hours of work than their male counterparts, or pay them less for the same work as their male counterparts. Employers sometimes refuse to hire or promote women based solely on their gender. They limit women to certain kinds of work. For instance, when all the positions employers categorize as "women's work" are filled, remaining positions are filled with men, rather than employing women. Finally, employers may discriminate against women by refusing to provide them housing that is otherwise provided to men.

(1989).

51. *Id.*

52. *Id.*

53. RUNYAN, *supra* note 2, at 4.

54. JACOBS, *supra* note 50, at 25-26.

55. JACOBS, *supra* note 50, at 25-26.

Wages & Hours

Women generally earn less than their male counterparts. A 1992 newspaper article detailed a 1989 report by the Committee on Women in Agriculture.⁵⁶ The report appears to be the first of its kind in Ventura County, California. The report determined that:

Women farm workers earned an average of \$6,435 a year [in 1989], less than two-thirds the average wage of male farm workers who toil at similar agricultural jobs Male farm workers earn an average of \$10,010 a year Women were also paid less for hourly work, earning \$5.22 an hour compared to \$5.58 an hour for men.⁵⁷

The Department of Agriculture found that in 1992 the median weekly earnings of all male farmworkers were \$220 compared to \$175 earned by women.⁵⁸ In 1993, the earnings were \$225 and \$192 respectively.⁵⁹ Lopez-Treviño explains the difference in wages by stating that:

[The] wage differential is in part due to the fact that men are hired more often than women in piece rate jobs, performing arduous tasks that often involve fast pace and intensive labor. Under the piece rate system, workers are paid for units of work performed, number of buckets filled, instead of being paid for the number of hours worked. [Women farmworkers] are earning significantly less than men because they are in the less skilled jobs.⁶⁰

Another way to explain the wage difference is to examine the different number of hours that men and women work. Employers often give more hours to men. Therefore, women do not earn as much. This is supported by the finding that "[m]ore than 21 percent of the 1992 hired farm work force were employed part-time (worked less than 35 hours per week). These part-time workers were more likely to be female . . . compared with full-time hired farmworkers."⁶¹

Hiring, Work Assignments, Promotions & Housing

Employment rates in agricultural labor suggest that employers often prefer to hire men over women. When women are hired, they work for shorter periods of time than men.

56. Psyche Pascual, *Harvest of Shame: Women on Ventura County Farms Face Lower Pay, Hazards, Report Says*, L.A. TIMES, Nov. 13, 1992, at A3.

57. *Id.*

58. RUNYAN, *supra* note 2, at 7.

59. JACK L. RUNYAN, U.S. DEP'T OF AGRIC., A PROFILE OF HIRED FARMWORKERS: No. 1121 (forthcoming).

60. Lopez-Treviño, A Radio Model, *supra* note 1, at 22 (citation omitted).

61. See RUNYAN, *supra* note 2, at v.

[F]emale farmworkers work fewer weeks during the year On the average, women work sixteen weeks a year and men work about 25 weeks. It has been estimated that women do more than half of the hoeing and sorting. In comparison, men dominate the more skilled jobs, such as machine operators, irrigators and supervisors. Women work less than men and perform the lower paid jobs in the fields.⁶²

One argument is that due to the labor-intensive nature of agricultural work, not as many women apply for work in this area as men do. However, by examining claims brought in different states, it becomes evident that the disparity is in part caused by sex discrimination in hiring and in a number of other practices, including unfair work assignments, promotions, and housing.

SEX DISCRIMINATION CLAIMS BROUGHT IN DIFFERENT STATES

A limited number of sex discrimination cases have been brought by farmworker women. However, those cases may be analyzed to understand the kinds of discriminatory practices being used by employers and the types of services being provided to farmworker women in the states where women took legal action against their employers. Perhaps the same services should be implemented in states where sex discrimination claims in agricultural labor are practically nonexistent.

California

California has been one of the most progressive states in bringing about positive change for migrant farmworkers. Although a lot remains to be done, a number of factors have aided agricultural laborers in obtaining basic human rights in the state. In California, the only state that protects farmworkers in forming unions,⁶³ the strong presence of the United Farm Workers of America, AFL-CIO (UFW), has had an important impact on farmworkers.

The National Labor Relations Act, the federal law that gives employees the right to form unions for the purpose of collective bargaining,⁶⁴ excludes agricultural laborers from protection. Subsequently, the Agricultural Labor Relations Act was created to protect agricultural workers in their efforts to organize for the purpose of collective bargaining.⁶⁵ The UFW is a union formed to protect the rights of farmworkers. Union organizers are aware of the rights of

62. Lopez-Treviño, *A Radio Model*, *supra* note 1, at 19 (citation omitted).

63. See CAL. LABOR CODE § 1140.2 (West 1989).

64. National Labor Relations Act, 29 U.S.C. §§ 151-168 (1973).

65. See CAL. CODE §§ 1140-1166.3 (West 1989).

farmworkers and the union provides farmworkers with attorneys when workers have legal concerns. If organizers believe a farmworker's rights are being violated, they bring the worker to attorneys representing the Union, and claims are filed. Sexual harassment or sex discrimination claims are brought to the Department of Fair Employment and Housing (which was created under the California Fair Employment and Housing Act).⁶⁶ The California Fair Employment and Housing Act prohibits discrimination in employment and states that one has "[t]he opportunity to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age"⁶⁷ By bringing such claims, the UFW attempts to improve the working conditions for women in agricultural labor.

Another alternative is to bring sexual discrimination claims to the United States Equal Employment Opportunity Commission (EEOC). However, filing claims through the EEOC is an extremely time consuming procedure. Because the claims of employment discrimination addressed by the EEOC are numerous and varied, and federal resources are limited, it is more difficult to get a claim through this channel.⁶⁸

The California Rural Legal Assistance Program is another organization that provides legal aid and information to California's farmworkers. It assists agricultural workers obtain housing, and brings lawsuits dealing with employment wage and hour violations, as well as pesticide-related issues on behalf of farmworkers.⁶⁹

California is also the birthplace of the Farmworker Women's Leadership Project, "a statewide effort that is the first of its kind in the nation. The grass-roots project, organized under the aegis of the California Rural Legal Assistance Program, takes on a host of issues facing Latina farmworkers, from domestic violence to AIDS, education, housing and pesticide use."⁷⁰

The organization has grown considerably since its inception:

In a few short years, Lideres Campesinas [the Farmworker Women's Leadership Project] has grown from a shoestring operation with an annual budget of \$8,000 to one of national

66. See CAL. GOV'T. CODE § 12901 (West 1992).

67. See *id.* § 12921.

68. Telephone Interview with Annabelle Cortez, Attorney, Marcos Camacho, A Law Corp. (Dec. 5, 1996) (providing legal representation for the UFW in California).

69. *Id.*

70. Rick Vanderknyff, *Growing Confidence: Mily Treviño-Sauceda Used To Work the Harvests. Now She Helps Female Farm Laborers Pull Together*, L.A. TIMES, Aug. 11, 1996, at E1.

prominence—it was honored with a major public service award last year in Washington—and a budget of more than \$200,000 and growing.⁷¹

Due to the efforts of organizations like the UFW and the California Rural Legal Assistance Program, farmworker women are becoming aware of their legal rights. Women have brought actions under Title VII of the Civil Rights Act of 1964,⁷² the California Constitution, and the California Fair Employment and Housing Act.

Title VII prohibits employment practices which "adversely affect [an individual's] status as an employee, because of such individual's race, color, religion, sex, or national origin."⁷³ Under Title VII, the following employment practices are unlawful:

(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 race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify . . . employees or applicants for employment in any way which would deprive . . . any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.⁷⁴

Title VII prohibits two different types of discrimination. Employers can neither treat some employees less favorably than others ("disparate treatment"),⁷⁵ nor implement practices that are "facially" neutral but have a negative impact on one group of workers, without a justified business necessity ("disparate impact").⁷⁶

In "disparate treatment" claims, the plaintiff must prove "discriminatory motive" on the part of the employer, although it may sometimes be inferred from the mere fact that the plaintiff was treated differently.⁷⁷ Under a "disparate impact" analysis, the motive behind a policy does not have to be discriminatory, but the plaintiff must prove impact.⁷⁸

71. *Id.*

72. *See, e.g., Sandoval v. Saticoy Lemon Ass'n.*, 747 F. Supp. 1373 (C.D. Cal. 1990).

73. 42 U.S.C. § 2000e-2(a)(2) (1994).

74. *Id.* § 2000e-2(a).

75. *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 335 & n.15 (1977).

76. *Id.* at 349.

77. *Id.* at 335, 365-66.

78. *Id.* at 349.

In 1990, the United States District Court for the Central District of California found that Saticoy Lemon Association, a packinghouse, was guilty of sex discrimination in a class action case brought by four women.⁷⁹ More than 75 women divided \$550,000 in a settlement with Saticoy.⁸⁰

In 1985, Saticoy Lemon Association decided to merge with Seaboard Lemon Association, which was in the business of processing, packing, and shipping lemons.⁸¹ As a result, "Saticoy accepted any potential liability for Seaboard's discriminatory activities."⁸² Seaboard continuously discriminated against women and when both companies merged, with the exception of a few operational differences, Saticoy "recreated many of the conditions which had existed at Seaboard."⁸³ However, some of the practices were considered lawful even though they were discriminatory because they served a legitimate interest of the employer.⁸⁴

The first issue the court considered was whether Saticoy "had regularly and systematically discriminated against women in hiring because of their sex."⁸⁵ Plaintiffs claimed that from 1986 to 1988, Saticoy Lemon Association only hired women for "women's jobs."⁸⁶ Men were given ninety-eight percent of the vacant "men's jobs."⁸⁷ General laborers were responsible for unskilled duties which included cleaning and maintenance.⁸⁸

The court noted that establishing a *prima facie* case of discriminatory refusal to hire required the plaintiff to prove four elements:

- (1) that [she] belongs to a protected minority group; (2) that [she] applied for and was qualified for a job for which the employer was seeking applicants; (3) that despite [her] qualifications [she] was rejected; and (4) the position remained open and the employer

79. *Sandoval*, 747 F. Supp. at 1395.

80. Jeff McDonald, *2 Oxnard Women Join Sex Bias Suit Against Dole: Attorneys Hope the Naming Saticoy Subsidiary Becomes a Class Action Representing More Than 200 Female Employees*, L.A. TIMES, May 14, 1993, Metro, at part B.

81. *Sandoval*, 747 F. Supp. at 1376.

82. *Id.* at 1381.

83. *Id.* at 1382.

84. *Id.* at 1393-94 (noting that "[a] policy which adversely affects a protected group may still be lawful if 'the challenged practice serves, in a significant way, the legitimate employment goals of the employer.'" (citing *Wards Cove Packing v. Atonio*, 490 U.S. 642, 659 (1989))).

85. *Id.* at 1390.

86. *Sandoval*, 747 F. Supp. at 1392 (identifying lemon "grader" and "sorter" positions as women's jobs).

87. *Id.* at 1392 (identifying general labor positions as "traditionally male" jobs).

88. *Id.* at 1378.

continued to seek applicants from persons with plaintiff's qualifications.⁸⁹

The plaintiffs were able to prove that women were usually not considered for general labor work even though the positions did not require specialized skills.⁹⁰ Although some strenuous work was involved when lifting, Saticoy did not claim that women could not do the job.⁹¹ In addition, some of the women stated that their supervisors often told them that general labor positions would not be available to them because those positions were "men's jobs."⁹²

The court determined that although women may not have formally applied for the jobs by filling out applications, their inquiries about job openings were sufficient to fulfill the second and third elements listed above.⁹³ The women also demonstrated that even though they had applied for jobs and were qualified, the positions remained open, and the employer continued to seek applicants.⁹⁴ Plaintiffs had either applied for, or repeatedly asked for, work for which they were qualified. After being told that no jobs were available, forty-five male general laborers were hired.⁹⁵

The second issue the *Sandoval* court considered was whether "Saticoy's post-merger decisions in December 1985 to hire only those employees actively working at the Seaboard plants, to assign them to the same jobs they held at Seaboard, and to cut-off the recall rights of all other ex-Seaboard employees had a disparate impact on women."⁹⁶ The plaintiffs argued that, as a result of assigning the men to the general labor positions, female workers received fewer regular hours of work, fewer overtime hours, and less pay.⁹⁷

The court found that although Saticoy's December 1985 business practices had a disparate impact on female workers, the employer was justified in light of its business needs.⁹⁸ Saticoy had simply transferred Seaboard's workforce to its own because it had to meet "exigent circumstances which mandated the immediate hiring. . . ."⁹⁹

89. *Id.* at 1390.

90. *Id.* at 1392.

91. *Sandoval*, 747 F. Supp. at 1392.

92. *Id.*

93. *Id.* at 1387.

94. *Id.* at 1387, 1392.

95. *Id.* at 1387.

96. *Sandoval*, 747 F. Supp. at 1393.

97. *Id.* at 1376.

98. *Id.* at 1394.

99. *Id.*

The court held that Saticoy should not be required to train one-third of its workforce after it merged with Seaboard. The court reasoned:

Since fewer women were employed at Seaboard at the time of the merger and more female employees were on layoff, it was inevitable that Saticoy's decision would impact the female Seaboard employees more harshly. The plaintiff's expert, Thomas DiPrete, showed that if Saticoy had followed Seaboard seniority, 71% of those hired would have been women and 29% men; instead, 77% of those hired were men and 23% women. Similarly, Saticoy's decision to give no preferential consideration to ex-Seaboard employees in hiring disproportionately impacted the female employees. . . . If Saticoy had followed seniority in hiring, approximately 38 (84%) of these jobs would have gone to women.¹⁰⁰

The court decided that Saticoy was justified in hiring only those employees working at Seaboard in December 1995, because doing so would allow the employer to get workers into its plant as quickly as possible in order to pack the perishable fruit in storage.¹⁰¹ "If Saticoy had hired strictly by seniority, the women comprising the additional workforce would have been unskilled and inexperienced for the tasks that they would be asked to perform."¹⁰² Although the plaintiffs argued that the jobs did not require any skill, the court nevertheless held that the employer's business needs mandated "an immediate experienced workforce in Plant 4."¹⁰³

The last issue considered was whether Saticoy had a duty to remedy effects of Seaboard's prior discrimination.¹⁰⁴ Plaintiffs argued that Seaboard had systematically discriminated against women and that once Saticoy merged with Seaboard, it was prohibited from continuing the discriminatory practices that were already in place.¹⁰⁵ The court held that although under Title VII an employer must maintain non-discriminatory policies, "absent a presently existing discriminatory policy, there is no affirmative duty to remedy the present effects of past discrimination."¹⁰⁶ The court differentiated between the duty of an employer "not to adopt discriminatory practices and a duty to remedy residual discrimination which is not the result of any existing discriminatory policy."¹⁰⁷ Whereas the first duty was obligatory, the

100. *Id.* at 1393.

101. *Sandoval*, 747 F. Supp. at 1394.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Sandoval*, 747 F. Supp. at 1394.

107. *Id.*

second was not.¹⁰⁸ At the time of the decision, the court determined that Saticoy continued to discriminate against women in hiring on the basis of sex.¹⁰⁹ Thus, Saticoy had a duty to remedy its own discriminatory practices.

In order to facilitate improvement in the agricultural sector, courts must take on a more active role in mandating change. In all other workforce sectors, women have essentially been recruited into the mainstream workforce. As of 1992, women made up approximately 48% of all wage and salary workers.¹¹⁰ However, when it comes to farmworkers, women still only make up approximately 16% of the agricultural labor force.¹¹¹ "About 84 percent of the hired farmworkers in 1992 were male, compared with 52 percent of all wage and salary workers. . . ."¹¹² Perhaps the reason for the disparity is that courts have not been as strict on agricultural employers as they have been on other employers. It appears that "agriculture has been very slow in coming into compliance with equal-opportunity laws."¹¹³

*Guzman v. Oxnard Lemon Associates*¹¹⁴ was the second class action suit in which a packinghouse was brought to court for sex discrimination against women. The allegations were essentially the same as in *Sandoval v. Saticoy Lemon Ass'n*: sex discrimination in hiring, work assignments, and promotions.¹¹⁵ Some of the plaintiffs had applied for work and were told there were no openings.¹¹⁶ In addition, plaintiffs claimed that Oxnard Lemon Associates only hired women when "grader" positions were available and turned them away when the only jobs open were for "general floor employees."¹¹⁷ Those women who were employed as graders argued that as a result of the work assignments, they received fewer hours of work, longer layoff periods, and lower earnings than men.¹¹⁸ Graders were only allowed to work when the production lines were running, "whereas men [were] given

108. *Id.*

109. *Id.* at 1395.

110. See RUNYAN, *supra* note 2, at 2 (table 7).

111. See RUNYAN, *supra* note 2, at 2 (table 7).

112. See RUNYAN, *supra* note 2, at 1.

113. Barbara De Lollis, *Settlement Reached in Sex-bias Lawsuit: Dole Packing Plants Agree to Pay Women Denied Access to Jobs, Promotions*, THE FRESNO BEE, Dec. 28, 1994, at D1 (quoting Valeriano Saucedo, an attorney).

114. *Guzman v. Oxnard Lemon Assoc.*, 60 Fair Empl. Prac. Cas. (BNA) 436 (C.D. Cal. 1992).

115. *Id.* at 437.

116. *Id.*

117. *Id.*

118. *Id.*

additional tasks so that they [could] work a full eight-hour day."¹¹⁹ When the production lines were shut down for the season, women were laid off while men remained for a longer period.¹²⁰ Lastly, plaintiffs alleged that the employer would only promote women from grader to sample grader but not to higher paying "men's jobs."¹²¹ The company agreed to a settlement of \$575,000.¹²²

In 1993, a third class action claim was brought against two Dole packinghouses, Buenaventura Lemon Company and Central Valley Citrus.¹²³ The settlement required that each company pay \$265,000¹²⁴ and that they each "guarantee that women will make up at least 20% of the work force."¹²⁵ It is obvious from the settlement that society does not yet consider farmworker women's rights fundamental. Since the companies agreed to fill only 20% of their workforce with women, there are still some women who will continue to be discriminated against, assuming that women would attempt to fill 50% of the agricultural positions.

Packinghouses are not the only places where discrimination against women exists. In California, higher paying positions are often filled by men. For instance, supervisors, truck drivers (those who transport fruits to coolers), foremen or crew leaders (those who are in charge of the crew), irrigators, and row inspectors (those who check to see that fruit was not left behind in the rows), are often men. Most of the women are segregated into "picking" positions and on rare occasions, some women will fill "checker" positions (those who check off the workers' cards when they hand in their boxes of picked fruits). Women also have difficulty obtaining agricultural work because the housing provided by the farm owners are often "single-sex" and sleeping or bath facilities for women are not provided. Because the occupants of the labor camps are usually male, women find it hard to adjust to such living arrangements. Often the only way women get higher paying jobs is if they provide sexual favors to their foremen or supervisors.

The International Covenant on Economic, Social and Cultural Rights mandates "equal opportunity for everyone to be promoted in

119. *Guzman*, 60 Fair Empl. Prac. Cas. (BNA) at 437.

120. *Id.*

121. *Id.*

122. Kermit Pattison, *Dole Will Settle Bias Suit Filed by Women*, L.A. DAILY NEWS, December 28, 1994, at "News" section.

123. *Id.*

124. *Id.*

125. Jack Searles, *Dole Food Unit Settles Discrimination Lawsuit*, L.A. TIMES, Jan. 10, 1995, at 19.

his employment to an appropriate higher level, subject to no other considerations other than those of seniority and competence"¹²⁶ It is difficult to believe that these injustices are occurring in a country that makes it a point to proclaim economic, social and cultural rights. A Mexican group called "*Los Tigres del Norte*" ("Tigers from the North") dedicated a song to Cesar Chavez, founder of the United Farm Workers of America, which discusses the plight of the farmworker. After going through a list of injustices, they sing "*Y aunque no lo quieras creer, querido amigo, esto sucedió en los Estados Unidos*" ("And even though you won't want to believe it, my dear friend, this occurred in the United States"). These injustices continue to occur.

North Carolina

In 1993, in *Farmer v. Employment Security Commission of North Carolina*, a group of farmworkers alleged discrimination based on their gender and familial status.¹²⁷ At issue was the interrelation of two statutes, the Fair Housing Amendments Act of 1988 (FHAA)¹²⁸ and the Immigration Reform and Control Act of 1986 (IRCA).¹²⁹ The former prohibits discrimination based on familial status¹³⁰ and the latter requires employers to provide housing "in accordance with regulations."¹³¹ IRCA also states:

The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps [Provided that] when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it.¹³²

Through the federal government's "H-2A" program, the Secretary of Labor issues employers certification to hire temporary foreign workers.¹³³ The employer must submit a job order to a state agency that cooperates with the Employment Service System, a federal job referral service for domestic workers.¹³⁴ If there is a shortage of do-

126. BASIC DOCUMENTS ON HUMAN RIGHTS, 116 (Ian Brownlie ed., 3rd ed. 1992).

127. 4 F.3d 1274 (4th Cir. 1993).

128. Fair Housing Amendments Act of 1988, 42 U.S.C. § 3604 (1994).

129. Immigration Reform and Control Act of 1986, 8 U.S.C. § 1188(c)(4) (1994).

130. 42 U.S.C. § 3604.

131. 8 U.S.C. § 1188(c)(4) (1994).

132. *Id.*

133. 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (1994) (providing definition of a temporary alien who will perform agricultural work); 8 U.S.C. § 1188(a)-(b) (1994) (outlining conditions for H-2A criteria).

134. *Farmer*, 4 F.3d at 1276.

mestic workers, the employer receives certification to hire foreign workers.¹³⁵

In *Farmer*, there is a conflict because federal law requires that employers provide housing to all temporary agricultural laborers. Therefore, employers, at the very least, must offer U.S. workers the same conditions as H-2A workers.¹³⁶

The plaintiff class in *Farmer* included all "United States workers" who claimed that when they went to the North Carolina Employment Security Commission (a local employment agency in North Carolina), they were discouraged from seeking temporary agricultural employment with housing.¹³⁷ For instance, when plaintiff Jacqueline Wilson accompanied her husband to the agency, the Commission's representative checked to see if there were any jobs available, and told her that "all of the available jobs had 'single-sex' or 'barracks-type' accommodations with no sleeping or bath facilities for women."¹³⁸ He then offered her husband a job.¹³⁹

Other plaintiffs claimed they were discriminated against because employers offered housing to workers but not to non-working family members (spouses and children).¹⁴⁰ In determining whether the FHAA or IRCA controlled, the court reiterated that if two statutes are in conflict, the more specific statute relating to the controversy is to be applied.¹⁴¹ Because the FHAA is more general, IRCA controls in this instance and "requires family housing only when it is the prevailing practice in the area and occupation of intended employment."¹⁴² Unfortunately, in *Farmer*, it was undisputed that employers did not usually provide housing to women or to men and their children.¹⁴³ Since providing housing to families was not a prevailing practice in the area, the U.S. Court of Appeals for the Fourth Circuit affirmed the district court holding that participating H-2A farmers did not have to provide family housing if that was not the usual practice.¹⁴⁴

135. *Id.*

136. See 20 C.F.R. §§ 655.102(a)-(b) (F) (1997) (ensuring minimum working conditions to U.S. workers by requiring H-2A job offers to include free housing provisions for workers who cannot reasonably return to their residences within the same day); *Farmer*, 4 F.3d at 1276.

137. *Farmer*, 4 F.3d at 1275.

138. *Id.* at 1277.

139. *Id.*

140. *Id.*

141. See *id.* at 1283-84 (adhering to established principles of statutory construction).

142. *Id.* at 1279.

143. *Id.* at 1275.

144. *Id.* at 1274.

Oregon

More recently, courts have made decisions benefiting farmworkers. For example, in *Villegas v. Sandy Farms, Inc.*,¹⁴⁵ the court held that Sandy Farms, Inc. violated the Fair Housing Act by refusing to rent cabins to two farmworker families that had children.¹⁴⁶ Additionally, in *Hernandez v. Ever Fresh Co.*,¹⁴⁷ the court decided that workers who were denied housing based on their familial status had standing to bring a claim under the Fair Housing Act.¹⁴⁸ One can only hope that other states will follow the steps taken by courts in Oregon.

New York

Compared to other states, New York has been slow to ensure that farmworker women obtain equal opportunities in agricultural labor. In fact, cases related to sex discrimination or sexual harassment of farmworker women are non-existent in New York.

Discrimination claims are brought to the Commission on Human Rights for a number of reasons.¹⁴⁹ However, there is no statutory basis for sex discrimination claims to be brought before the Commission.¹⁵⁰ Therefore, farmworker women might attempt to establish their claims on the basis of race. This assumes that they have actually been subjected to some form of racial employment discrimination.

Linda Gulley, a paralegal for Farmworker Legal Aid, enumerated the reasons for the dearth of discrimination cases.¹⁵¹ Gulley stated that employers often tell crew leaders to go and "bring back a certain number of men."¹⁵² In other words, "employment is obtained through word of mouth."¹⁵³ For this reason, it would be extremely difficult to litigate a case of this sort. She explained that employers want men and, for that reason, "only . . . men are recruited to do the work."¹⁵⁴ Gulley stated that in the four months prior to the interview,

145. 929 F. Supp. 1324 (D. Or. 1996).

146. *Id.*

147. 923 F. Supp. 1305 (D. Or. 1996).

148. *Id.*

149. N.Y. GEN. MUN. LAW § 239r (McKinney 1996). The Commission does recognize complaints of discrimination based on "race, creed, color or national origin." *Id.*

150. *Id.*

151. Telephone Interview with Linda Gulley, Paralegal, Farmworker Legal Aid (Oct. 11, 1996).

152. *Id.*

153. *Id.*

154. *Id.*

she had encountered only one woman while doing outreach.¹⁵⁵ She estimated that among four counties (Fulton, Wayne, Orleans, and Oswego), only 2% of the farmworkers she spoke with were women.¹⁵⁶

Gulley is familiar with farmwork in both New York and California. According to her, the farmworker labor forces in the two states differ sharply in composition.¹⁵⁷ Gulley asserts that a large majority of farmworkers in California are Mexican, while in New York, there are also Haitians, Puerto Ricans, Guatemalans, and African-Americans.¹⁵⁸ She explained that up until the 1980s, African-Americans and Puerto Ricans made up a large number of agricultural laborers in New York, but in the past four or five years, many more Mexicans and Guatemalans have been working in the fields of New York.¹⁵⁹ Gulley estimated that approximately 60% to 70% of the workers are Mexican with a small percentage composed of Guatemalans.¹⁶⁰ Gulley stated that Puerto Ricans are the next largest group after Mexicans and Guatemalans, followed by Haitians, and lastly, African-Americans.¹⁶¹ Racial composition is important because knowledge of a worker's language and culture assists provision of legal aid.

"Unionization" *per se* has not been attempted in New York State. However, the Farmworker Task Force (a University at Buffalo Law School organization), in coordination with Farmworker Legal Aid, has conducted outreach in the Rochester, New York area. The two organizations inspect housing to determine if there are any violations of state and federal regulations. According to Jo Anne Howlett, currently an attorney for the UFW, "there were no organizing efforts conducted because without a statute that protects workers when they are attempting to create a Union, such efforts are more likely than not, doomed. Although the Migrant and Seasonal Agricultural Protection Act does provide some protections, it does not protect workers attempting to unionize."¹⁶²

In fact, the purpose of the Migrant and Seasonal Agricultural Worker Protection Act is to "remove the restraints on commerce

155. *Id.*

156. Telephone Interview with Linda Gulley, Paralegal, Farmworker Legal Aid (Oct. 11, 1996).

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. Telephone Interview with Linda Gulley, Paralegal, Farmworker Legal Aid (Oct. 11, 1996).

162. Telephone Interview with Jo Anne Howlett, Attorney, Marcos Camacho, A Law Corp. (Dec. 5, 1996).

caused by activities detrimental to migrant and seasonal agricultural workers; to require farm labor contractors to register under this chapter; and to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers."¹⁶³

Protections provided for under the Act include safety in transportation of farmworkers,¹⁶⁴ availability of working conditions by the labor contractors,¹⁶⁵ compliance with written agreements with labor contractors,¹⁶⁶ certification of farm labor contractors,¹⁶⁷ payment of wages when due,¹⁶⁸ provision of housing in compliance with federal and state safety and health standards,¹⁶⁹ private rights of action for workers,¹⁷⁰ and prohibition of discrimination on the basis of filing a complaint.¹⁷¹

Other States

There have been organizing efforts by the United Farm Workers in other states such as Arizona, Texas, Florida and Washington state, where the union has offices. Those states utilize a large number of farmworkers. Washington State, as well as California, has collective bargaining agreements.

SEXUAL HARASSMENT IN AGRICULTURAL LABOR

Statistics indicate that farmworker women are harassed more often than women employed in other types of labor.

The researchers who used probability samples found from 20% to 47% [of female employees] and the higher figures were the findings of non-probability, sometimes self-selected samples. Consistent with this generalization, the recently completed random survey of federal employees found that 25% of all male and 42% of female employees had experienced harassment.¹⁷²

163. Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. § 1801 (West 1994).

164. *Id.* at § 1841.

165. *Id.* at § 1843.

166. *Id.* at § 1844.

167. *Id.* at § 1811.

168. Migrant and Seasonal Agricultural Worker Protection Act § 1822(a) (West 1994).

169. *Id.* at § 1823(a).

170. *Id.* at § 1854(a).

171. *Id.* at § 1855(a).

172. See Sexual Harassment in the Workplace . . . A Survey, at 5; D.C. Commission for Women, 1980 (citing Merit Systems Protection Board, Summary of Preliminary Findings on Sexual Harassment in the Federal Workplace Given Before the Subcommittee on Investigations

Because the statistics on the non-agricultural sector are from 1980, incidents of harassment in the non-agricultural sector may be occurring less frequently today.

In a 1995 study, Maria-Elena Lopez-Treviño discovered that sexual harassment is an growing problem for farmworker women.¹⁷³

Women [farmworkers] have indicated in community forums that foreman [sic] and coworkers are more blatant today than in the past In 1988, about 59% of the women considered sexual harassment a problem in the fields. However, in 1993 approximately 90% of the [farmworker women] reported that this is a major problem confronting women farmworkers in the work place. Only 10% of the women reported that they had been sexually harassed [themselves] at work by a foreman or co-worker.¹⁷⁴

Lopez-Treviño explained the disparity between the large percentage of women who claim sexual harassment is a problem and the smaller percentage of women who admit they were harassed.¹⁷⁵ She suggested that although women were willing to admit that sexual harassment was a problem, they were not as comfortable about revealing that they had been harassed themselves.¹⁷⁶ She stated that only the most severely harassed and degraded women were willing to admit their experiences,¹⁷⁷ and the 10% incidence in reporting of sexual harassment reflects the "reluctance of women [farmworkers] to report less severe forms of sexual harassment."¹⁷⁸

REASONS FOR FAILING TO REPORT SEX DISCRIMINATION AND SEXUAL HARASSMENT

A variety of factors may contribute to the failure to report cases of sex discrimination or sexual harassment including language, culture, education, immigration status, and fear of economic repercussions.

Language

One of the reasons women may not report these cases is that they do not speak English and are therefore unaware of their rights, or in-

Committee on Post Office and Civil Service. U.S. House of Representatives, Sept. 25, 1980).

173. See Lopez-Treviño, A Radio Model, *supra* note 1; Lopez-Treviño, Needs and Problems, *supra* note 1.

174. Lopez-Treviño, Needs and Problems, *supra* note 1, at 7.

175. Lopez-Treviño, Needs and Problems, *supra* note 1, at 7.

176. *Id.*

177. Telephone Interview with Maria Elena Lopez-Treviño, Former Student, Cal. State, Long Beach (Oct. 14, 1996).

178. Lopez-Treviño, Needs and Problems, *supra* note 1, at 7.

capable of discussing the problem with legal authorities. Pamela Warrick describes a typical situation for women farmworkers:

[T]he women are less likely . . . to speak English and, therefore, more at risk for exploitation, more often working below minimum wage, and more often the subjects of sexual harassment and threats of deportation. Because of the language barrier, women farmworkers tend to be almost invisible in our society, although their special problems are dramatic . . .¹⁷⁹

Culture

Cultural differences may exacerbate women's predicaments. For instance, Hispanic women are taught that they should obey men. As a result, women may not complain about being discriminated against or harassed. When Maria Elena Lopez-Treviño and Mily Treviño-Sauceda conducted the study on farmworker women by going door-to-door with questionnaires, Treviño-Sauceda recalls that, "[t]he stories we heard were not so different from [other farmworker women's stories]. . . . They all reflected this belief that the job of women is to obey the men—the men at home, the crew leaders in the field, all the men are to be obeyed, no matter what."¹⁸⁰

A female farmworker explained that until she had talked to other women who were experiencing domestic abuse, she had no idea it even existed. She stated, "I didn't understand about domestic abuse, I didn't know there was such a thing, growing up in Mexico, I learned the man is the boss. If you don't do what he wants, then you must pay the price"¹⁸¹

Education

Many farmworker women are uneducated, and this may inhibit them from reporting harassment and discrimination. Many farmworker women do not even know how to read and write, as confirmed by the surveys conducted by Maria Elena Lopez-Treviño.¹⁸² The Department of Agriculture determined that in 1992, more than 30% of farmworkers had not completed more than nine years of education, as compared with only 4% of all wage and salary workers.¹⁸³ As a re-

179. Pamela Warrick, *A Life of Their Own: They Have Been the Victims of Abusive Men—Husbands, Bosses—and Have Spent Years Laboring in the Fields. But Farm Worker Women are Learning How to Fight for Their Rights*, L.A. TIMES, June 7, 1996, at E1.

180. *Id.*

181. *Id.*

182. Lopez-Treviño, A Radio Model, *supra* note 1, at 42.

183. RUNYAN, *supra* note 2, at 3.

sult, many women are unaware of their rights and do not know how to file a claim or where to seek guidance. In the worst circumstances, they may not even know that they are the victims of a crime.

Immigration Status

Women may not report cases of sex discrimination or sexual harassment because they may be in the country illegally. They may feel that they do not have a right to be in the country and fear deportation if they bring a claim. In other words, they may feel that as undocumented workers, the United States does not provide a mechanism for seeking remedies for crimes against their persons. Rather than risk deportation, they may continue to accept the injustices committed against them.

Fear of Economic Repercussions

A final possibility for not reporting discrimination and harassment is that women may fear retaliation, such as getting fired from their jobs, if they bring a claim. They may prefer to tolerate harassment or discrimination rather than lose a job as a result of reporting the incidents. Because many of the women farmworkers earn just enough to make ends meet, unemployment could have severe economic repercussions, especially if they support children.¹⁸⁴ At the same time, workers may require easily accessible jobs. Due to the minimum wages for farmwork, women may not be able to afford cars to get to the work site. As a result, keeping a job within walking distance may be especially critical. Further evidence of this fear is expressed by Dolores Huerta, First Vice President of the UFW:

There is a tremendous oversupply of workers. The rural areas of the United States have constant double digit unemployment. These surpluses exacerbate the above mentioned conditions, and make workers afraid to complain about bad working conditions such as lack of sanitation, cheating on hours, sexual harassment, pesticide poisoning, etc. If they complain, they will get fired and even black listed. Workers know there are three to four workers ready to take their jobs.¹⁸⁵

184. Lopez-Treviño, A Radio Model, *supra* note 1, at 61 (finding that, on average, women farmworkers had three to four children).

185. Prepared Testimony of Dolores Huerta, First Vice President, United Farm Workers, AFL-CIO, Before the Senate Judiciary Committee Subcommittee on Immigration, Federal News Service, Thurs., Sept. 28, 1995.

STEPS TO IMPROVE THE CURRENT SITUATION

Considering the reality of sex discrimination and sexual harassment in agricultural labor, steps must be taken to ensure that women are provided equal footing in agricultural positions. Improvements include creating organizations that cater to farmworker women, conducting extensive research, and the provision of educational services to women in order for them to learn English. Lastly, women's groups should devote time to issues concerning farmworker women.

Organizations

One means of assisting farmworker women would be to fund organizations such as the Farmworker Women's Leadership Project. Such organizations could conduct extensive research on the needs of these workers and examine how to address those needs. Other organizations should be created to deal specifically with tracking the number of workers in order to provide beneficial policy recommendations and assistance. For example, legislation could be enacted to require employers to provide organizations with demographic information about workers solely for the purpose of conducting research on how to assist women farmworkers.

In addition, the United Farm Workers Union needs to support gender discrimination law suits so that employers become aware that they can no longer participate in discriminatory or harassing practices without being penalized. In fact, attorneys representing the UFW are looking into ways in which these types of cases should be pursued and are considering hiring attorneys who specialize in sex discrimination and sexual harassment suits. The problem is that so many violations of farmworkers' rights already fill the UFW attorneys' agenda. As Marcos Camacho, an attorney for the UFW, described:

We are extremely concerned with women's issues. However, we have to choose between ensuring that farmworkers are being paid enough money so that they can put food on their tables or providing the same occupational positions for women as men. As of now, with the numerous wage and hour violations, it is very hard to ensure that workers have a roof over their heads and proper food to eat. Therefore, we need to deal with these types of issues as well. But sex discrimination cases are definitely being looked into.¹⁸⁶

186. Telephone Conversation with Marcos Camacho, Attorney, Marcos Camacho, A Law Corp. (Nov. 19, 1996).

Providing Educational Services

Funding should be provided to schools in large farmworker communities to educate women so that farmworker women may be able to ultimately obtain higher paying jobs. By going to classes and learning English, these women may have more contact with other women which, in turn, might facilitate their cultural transition and aid in child care responsibilities. It may also raise farmworker women's self-esteem and allow them to get out of violent relationships by allowing discussions of this problem with others. The Farmworker Women's Leadership Project has dedicated a lot of time to this issue. Other women's groups should offer their services in assisting women who are coping with domestic violence.

Help from Other Women's Groups

Other women's groups should assist farmworker women because these groups are already familiar with the issues. Organizations like the National Organization for Women have national recognition. Therefore, groups of this sort should contribute by helping new organizations in their administrative duties. They could share their expertise with new organizations and provide additional assistance to women who have been forgotten in the women's movement. If women's organizations work together, perhaps all women would benefit, rather than leaving the least empowered women to face their problems alone.

CONCLUSION

Our knowledge of the current status of female farmworkers in the U.S. remains incomplete. Further research needs to be done in order to enhance our ability to adequately assess their status.

Currently, there are legislators who wish to curtail the rights of farmworkers who are legally and illegally in this country. If this type of legislation becomes a reality, our chances of determining the actual status of farmworker women may be out of reach because fewer women will be willing to express their predicaments. Such legislation treats harshly those who are in the country illegally. Thus, female farmworkers would be less likely to come forward with information. At the same time, workers who are legally in the country may not want to call attention to themselves in an effort to prevent jeopardizing any benefits they had under pre-existing legislation. If attempts are being made to take away the rights of those who are in this country legally, unfortunate consequences may result for farmworker women who are in the country illegally.

