

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	Mac Reed to Carol Rasco re: Civil Rights Working Group (1 page)	6/13/1994	P5
002. memo	Carol Rasco to Mac Reed re: "Civil Rights Working Group" memorandum (1 page)	4/22/1994	P5
003. memo	Heads of Executive Departments and Agencies re: Civil Rights Working (7 pages)	n.d.	P5
004. memo	Claire Gonzales to Eric S�nunas re: summary of meeting with Maria Cuprill (4 pages)	5/4/1994	P2, P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Stephen Warnath (Civil Rights)
OA/Box Number: 9589

FOLDER TITLE:

[Civil Rights Working Group] [2]

ds53

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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Draft Press Release

**PRESIDENT CLINTON ESTABLISHES
CIVIL RIGHTS WORKING GROUP**

President Clinton today signed a memorandum for the heads of executive departments and agencies establishing an interagency working group to evaluate and improve the effectiveness of the Federal government's civil rights enforcement missions and policies.

The memorandum directs the cabinet level working group to identify barriers to equal access, impediments to effective enforcement of the law, effective strategies to promote tolerance and understanding in communities and work places, and collaboratively develop new approaches that address these concerns.

President Clinton said, "Throughout the nation, each of us must bring new energy to our efforts to promote an open and inclusive society. At the Federal level, we will do this by re-evaluating the civil rights missions, policies and resources of every agency. We must seek not only to eliminate barriers to equal access and opportunity but also identify opportunities for innovation."

The working group will be co-chaired by the Attorney General and the Director of the Office of Management and Budget and will focus on the following:

- examine the missions of significant civil rights agencies and evaluate the effectiveness of how those missions are being implemented;
- review cross-cutting civil rights law enforcement challenges and identify innovative means of coordinating and leveraging resources;
- develop better civil rights enforcement performance measures; and
- provide support to agencies as they reinvent strategies to promote a more open and inclusive society.

Steve, "Gul rights"
attached as de/Warling

Group "package"

It's in John A. DeLoe's file

max.

Thank you
Moe



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 1, 1994

94 JUL 1 P4:07

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

FROM: Leon E. Panetta
Director

SUBJECT: Proposed Memorandum Establishing a Civil Rights Working Group

SUMMARY: This forwards for your consideration a proposed memorandum, prepared by this office, that would establish a Civil Rights Working Group.

BACKGROUND: The proposed memorandum would establish a Civil Rights Working Group ("Working Group"). The Working Group would be co-chaired by the Attorney General and the Director of the Office of Management and Budget and it would comprise the Secretaries of Commerce, the Treasury, Agriculture, the Interior, Education, Health and Human Services, Housing and Urban Development, Labor, Transportation, and Veterans Affairs, the Administrator of the Environmental Protection Agency, the Chair of the Equal Employment Opportunity Commission, the head of the National Economic Council, and the head of the Domestic Policy Council. The Chair of the Commission on Civil Rights and all other Cabinet officers and agency heads would be invited to participate in the Working Group.

The Working Group would be tasked to: (a) evaluate and improve the effectiveness of Federal civil rights enforcement missions and policies; (b) identify barriers to equal access and impediments to effective enforcement of the law; and (c) identify effective strategies to promote tolerance and understanding in work places and communities. Among other things, it would be specifically charged to examine each Federal agency with a significant civil rights mission and to provide the President with an evaluation of the agency's implementation of the mission. It would be charged to examine cross-cutting civil rights enforcement challenges (such as voting rights and equal access to government benefit programs). It would be charged to develop better measures of performance for federal civil rights enforcement programs. The Working Group would report to the President and to the Cabinet every six months.

None of the affected agencies objects to the proposed memorandum.

RECOMMENDATION: I recommend that you sign the proposed memorandum.

Attachment

✓ ^{THE}
MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES
SUBJECT: CIVIL RIGHTS WORKING GROUP

I am writing to you about our responsibility to promote equal opportunity for all Americans. We have accomplished much in our pursuit of a society in which all our people can achieve their God-given potential. But we still have a long way to go.

Americans believe that, in spite of our differences of race and religion and national origin, there is in all of us a common core of humanity that obliges us to respect one another and to live in harmony and peace. We must build on this belief and give real meaning to civil rights by tearing down all remaining barriers to equal opportunity -- in education, employment, housing, and every area of American life.

✓
✓
Throughout the Nation, each of us must bring new energy to our efforts to promote an open and inclusive society. Those of us who are public servants have a special obligation. At the federal level, we will do this by re-evaluating the civil rights missions, policies, and resources of every agency, so that they carry out their missions in a manner consistent with the Administration's commitment to equal opportunity. In reviewing our activities, we must seek not only to eliminate barriers to

*Black's
edit
11-5-94*

✓ equal access and opportunity, but also to identify opportunities
for innovation. No federal office should be exempt from the
obligation to further the struggle for civil rights. And every
✓ State and local government should be encouraged to do the same.

On January 17, 1994, I issued an Executive order
establishing a President's Fair Housing Council to be chaired by
the Secretary of Housing and Urban Development. Working across
agencies and programs, this Council will bring new focus and
leadership to the administration of the Federal Government's fair
housing programs. On February 11, 1994, I issued an Executive
order directing agencies to develop strategies to identify,
✓ analyze, and address environmental inequities that are the result
of federal policies. That order will increase public
participation in the environmental decision-making process.

In addition to these efforts, I believe more can be done to
exercise leadership for civil rights enforcement. That is why I
hereby establish a Civil Rights Working Group, under the auspices
of the Domestic Policy Council, to evaluate and improve the
✓ effectiveness of federal civil rights enforcement missions and
policies. The Civil Rights Working Group will identify barriers
to equal access, impediments to effective enforcement of the law,
and effective strategies to promote tolerance and understanding
✓ in our communities and work places. ^(one word) Most important, ⁽¹⁴⁾ I expect the
Working Group to develop new approaches to address these issues.

The principal focus of the Working Group will be our civil rights enforcement efforts. We must recognize, however, that public and private enforcement resources will never be fully adequate to the task, and all of the remaining obstacles to opportunity cannot be removed through litigation alone. Therefore, I direct the Working Group to identify innovative strategies that can leverage our limited resources to provide new avenues for equal opportunity and equal rights. Among those potential strategies are new measures relying on civic education and voluntary efforts to engage citizens in overcoming the effects of past discrimination. These new strategies should be designed to complement our improved and reinvigorated enforcement efforts.

The Attorney General and the Director of the Office of Management and Budget will co-chair the Working Group. The following Administration officials will serve as members: the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Transportation, the Secretary of ~~the~~ Veterans Affairs, the Administrator of the Environmental Protection Agency, the Chair of the Equal Employment Opportunity Commission, the Assistant to the President for Economic Policy, and the Assistant to the President for Domestic Policy. I also have invited the Chair ^{of} of the Commission

on Civil Rights to participate in this crucial endeavor on an informal basis, respecting the independent and critical voice we expect of that Commission. Finally, this membership list is not exclusive. I invite and encourage all Cabinet officers and agency heads to participate in the Working Group.

The Working Group will advise appropriate Administration officials and me on how we might modify Federal laws and policies to strengthen protection under the laws and on how to improve coordination of the vast array of Federal programs that directly or indirectly affect civil rights. I direct the Working Group to provide the Cabinet and me with a brief progress report no less than every ⁶ six months, and specifically to:

- (a) examine each Federal agency with a significant civil rights mission and provide me with an evaluation of how well that mission is being implemented. These analyses should examine whether each agency uses the experience gained from enforcement activities of other agencies and other levels of government. Counterproductive and inconsistent practices should be identified and proposals for change recommended;
- (b) examine cross-cutting civil rights law enforcement challenges such as voting rights and equal access to government benefit programs and identify innovative means of coordinating and leveraging resources;

- (c) develop better measures of performance for Federal civil rights enforcement programs, taking into account the real impact of programs on the daily lives of all Americans; and
- (d) support and advise all agencies as we reinvent our strategies for the promotion of an open and inclusive society.

With this interagency effort, I underscore the commitment of this Administration to bring new energy and imagination to the opportunity agenda. In departments and agencies throughout the Federal Government, this work is already well underway. The Working Group will provide a mechanism to expand and accelerate that vital work. Its work will be among our greatest contributions to the people we serve.

Press Release format

Draft Press Release STATEMENT BY THE PRESS SECRETARY

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edit
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Helli - Compelling government interest
least restrictive

Metzenbaum / Helli / Brown
modification ^{based upon} agreement / Metzenbaum
Not to pull religion out superlativity
Amendments

~~EEOC to~~

Met

Concerned that religion separate - EEOC should be
able to look at all harassment in the workplace

Not sure ^{EEOC} they were wrong, not sure they were right
This will allow EEOC to reevaluate

~~Metzenbaum~~

~~EEOC~~ resolution
withdraw the Guidelines
overly broad

Sen. Mark Brown / Hq. in
Colo.

1.8% of complaints relate to religion - it is an area of problems
1/5 of 1.8% deals / religious harassment

to We do not want First Amendment curtailed

Standard: \ someone "feels" is harassing

ref

Supports EEOC guidelines pd be issued
Fascist society

DA v one standard of \ a offense -- There are
61 different recognized religions -- each one a different

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

FACSIMILE COVER SHEET



TO: Steve Karmath

FAX NO.: 456-7028

FROM: Gorri Gatliff

PHONE: 514-4021

DATE: July 5th, 1994

NO. OF PAGES: ~2~ (EXCLUDING COVER)

COMMENTS: _____



Department of Justice

FOR IMMEDIATE RELEASE
SATURDAY, JULY 2, 1994

CR
(202) 616-2765

STATEMENT OF DEVAL L. PATRICK
ASSISTANT ATTORNEY GENERAL FOR CIVIL RIGHTS
COMMEMORATING THE 30TH ANNIVERSARY OF THE 1964 CIVIL RIGHTS ACT

WASHINGTON, D.C. -- As the nation spends this Independence Day weekend reflecting on our proud history, Americans should also remember that today is the 30th anniversary of the historic Civil Rights Act of 1964.

Thirty years ago, a courageous Congress and an inspired president, Lyndon Johnson, produced this nation's most sweeping law to ensure equality for all Americans. The Act, signed on July 2, 1964, outlawed discrimination in public accommodations, education and employment.

I am proud of my colleagues at the Justice Department who strive daily to make the law work recognizing that its vigorous enforcement must always be the cornerstone of our civil rights policy.

The nation has made important strides in thirty years, but our mission has not been wholly achieved. On this important anniversary date, I hope that we can recommit ourselves as a nation to meeting the challenge set out for us in 1964. To do so, we must

(MORE)

restore the moral imperative that civil rights is all about.

We must resolve to recommit ourselves to the fundamental principles of the law. Excluding anyone from full participation in society because of race, ethnic origin, gender, religion or disability is simply wrong, and only when we invest in each other's civil rights can we end discrimination.

#

94-362

safety, and improving access for disabled persons.

Ensuring Real Choices in Employment and Residency

Discrimination in hiring and barriers to fair housing block families and individuals from improving their living standards. Employment and residency discrimination contributes to the disillusionment of minority youth in distressed communities; ending that discrimination is crucial to restoring the hope for a better tomorrow among disadvantaged youth.

Under the Clinton Administration, the Equal Employment Opportunity Commission is more vigorously and efficiently enforcing Federal laws prohibiting discrimination in employment. The Labor Department's Office of Federal Contract Compliance Programs (OFCCP) ensures that disadvantaged racial and ethnic minorities and immigrants have an equal opportunity to obtain jobs with Federal contractors. OFCCP targets contractors with fewer women and minorities in their workforces or more women and minorities concentrated in low-paying jobs. OFCCP also enforces equal employment opportunity in apprenticeship and training programs to increase opportunities for minorities and women to enter nontraditional occupations.

Dismantling Barriers to Fair Housing

Barriers to fair housing opportunity can take several forms: the outright hostility of potential neighbors; the refusal of real estate agents to show certain properties; or the reluctance of

Major Supreme Court Cases in Employment Discrimination Law

Title VII

Griggs v. Duke Power Co., 401 U.S. 424 (1971):

The seminal case establishing the disparate impact theory of discrimination. Employer could not require high school degree or passing a standardized intelligence test as condition of employment when the standards operated to disqualify Blacks at substantially higher rate than Whites and neither standard was shown to be significantly related to successful job performance.

Love v. Pullman, 404 U.S. 522 (1972):

The Court upheld the validity of EEOC deferral procedures, finding that EEOC can act on a charging party's behalf to fulfill the deferral requirements, that deferral to a 706 agency can be done orally and that state inaction or waiver of its right to attempt resolution of the charge does not prevent resort to EEOC or the courts.

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973):

The seminal case on the burden of proof in a disparate treatment case. Plaintiff can establish *prima facie* Title VII hiring violation by showing: (1) (s)he belongs to a protected class; (2) (s)he applied and was qualified for job that employer was trying to fill; (3) (s)he was rejected; and (4) the employer continued to seek applicants with plaintiff's qualifications. Employer then has the opportunity to provide non-discriminatory reasons for its decision. If it does so, the plaintiff then may show that the employer's stated reasons were pretextual.

A charging party's right to bring suit under Title VII is not confined to charges as to which EEOC has made a reasonable cause finding. Court actions under Title VII are *de novo* proceedings.

Espinoza v. Farah Manufacturing Co., 414 U.S. 86 (1973):

Citizenship requirements are not per se violations of Title VII, but would be found to be discrimination on the basis of national origin if the purpose or effect of the citizenship requirement was to discriminate based on national origin. Thus, employer was not in violation of Title VII when it refused to hire plaintiff because she was not a U.S. citizen. Title VII does cover national origin discrimination against aliens working inside the U.S.

Alexander v. Gardner-Denver, 415 U.S. 36 (1974):

Employee's statutory right to Title VII trial de novo is not foreclosed by prior submission of claim to final arbitration under non-discrimination clause of collective bargaining agreement.

Johnson v. Railway Express Agency, 421 U.S. 454 (1975):

The filing of a charge of discrimination with EEOC does not toll the running of the statute of limitations applicable to actions brought under 42 U.S.C. § 1981.

Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975):

Tests shown to have disparate impact must be validated under professionally-accepted theories in order for employer to avoid liability. In addition, Court held that once a violation of Title VII has been proved, back pay should be denied only for reasons that, if applied generally, would not frustrate the central purposes of Title VII: of eradicating discrimination by penalizing employers for wrongdoing and making persons whole for injuries suffered.

Franks v. Bowman Transportation Co., 424 U.S. 747 (1976):

Award of seniority was necessary as part of "make whole" relief in class action Title VII suit on behalf of Blacks who were discriminatorily denied employment.

Brown v. General Services Administration, 425 U.S. 820 (1976):

Section 717 provides the exclusive judicial remedy for claims of discrimination in federal employment.

Chandler v. Roudebush, 425 U.S. 840 (1976):

Federal employees have the same right to a trial de novo as is enjoyed by private sector or state government employees under Title VII.

Electrical Workers v. Robbins & Myers, 429 U.S. 229 (1976):

The time for filing a charge with EEOC is not tolled during the pendency of a grievance hearing.

General Electric Co. v. Gilbert, 429 U.S. 125 (1976):

Employer held not to have discriminated on basis of sex by providing its employees coverage under disability plan which paid benefits for all non-occupational disabilities except those arising from pregnancy. This decision led to enactment of the Pregnancy Discrimination Act, which overturned Gilbert.

International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977):

Seniority system that is adopted without discriminatory motive is insulated from attack under § 703(h) of Title VII. Fact that seniority system perpetuates past discrimination does not affect its bona fide status.

Occidental Life Insurance Co. v. EEOC, 432 U.S. 355 (1977):

Section 706(f)(1) imposes no limitation on EEOC's power to file suit in federal court, but was intended to enable an aggrieved person unwilling to await the conclusion of EEOC proceedings to institute a private lawsuit 180 days after filing a charge. EEOC enforcement actions are not subject to state statutes of limitations.

Trans World Airlines v. Hardison, 432 U.S. 63 (1977):

Court found it would be undue hardship on employer if it had to bear more than de minimis cost in order to accommodate an employee's religious practices.

Dothard v. Rawlinson, 433 U.S. 321 (1977):

Police department minimum height and weight requirements had disparate impact on females and were not justified by business necessity. Requirements were artificial and unnecessary barrier to employment that Title VII was intended to eliminate.

Hazelwood School District v. United States, 433 U.S. 299 (1977):

Proper statistical comparison in pattern-or-practice action against school district for alleged racial discrimination in hiring practices is between percentage of Black teachers employed in school district and percentage of Black teachers in relevant labor market.

City of Los Angeles Department of Water and Power v. Manhart, 435 U.S. 702 (1977):

Even though women usually live longer than men, that generalization does not justify obligating women to make larger pension fund contributions in order to receive equal monthly benefits after retirement. Since the focus of Title VII is on the individual, the use of sex-segregated actuarial tables that differentiate solely on the basis of generalizations about life expectancy of women as a class violates Title VII.

Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978):

The Court set the standard for awarding fees to a prevailing defendant in a Title VII lawsuit; only when the court has found that plaintiff's or EEOC's action was frivolous, unreasonable, or without foundation should the defendant be awarded fees. District court exercised its discretion within permissible bounds of Section 706(k) of Title VII when it denied award of attorney's fees to employer that prevailed in action brought by EEOC, because EEOC's interpretation of disputed statutory provision was not frivolous.

United Steelworkers v. Weber, 433 U.S. 193 (1979):

Affirmative action plan was found valid because it was designed to eliminate manifest racial imbalance in employer's workforce; Whites were not completely barred from program; and plan was not intended to maintain racial balance.

Mohasco Corp. v. Silver, 447 U.S. 807 (1979):

In accordance with § 706(c), a complainant in a deferral state must file a charge with, or EEOC must refer a charge to, the state or local agency within 240 days of the alleged discriminatory event in order to ensure that it may be filed within § 706(e)'s extended 300 day limit, unless the state or local agency terminates its proceedings before 300 days.

General Telephone Co. of the Northwest v. EEOC, 446 U.S. 318 (1980):

EEOC may seek class-wide relief under § 706(f)(1) of Title VII without being certified as a class representative under Rule 23 of the Federal Rules of Civil Procedure.

New York Gaslight Club v. Carey, 447 U.S. 54 (1980):

Federal action may be brought to recover attorney's fees for work in prevailing complainant's state administrative and judicial proceedings to which complainant was referred pursuant to Title

VII.

Delaware State College v. Ricks, 449 U.S. 250 (1980):

A charge alleging discriminatory denial of tenure must be filed within 180 days of the date on which the decision to deny tenure was communicated to the applicant; triggering event is decision to deny tenure, not actual termination of employment.

EEOC v. Associated Dry Goods Corp., 449 U.S. 590 (1981):

Charging parties are not members of the "public" to whom disclosure of charge and other information relating to their own charges of discrimination is illegal under §§ 706(b) and 709(e).

Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981):

When employee proves *prima facie* case of job discrimination, employer bears only burden of articulating some legitimate non-discriminatory reason for its action, and does not bear a burden of persuasion.

Ford Motor Co. v. EEOC, 458 U.S. 219 (1981):

An unconditional offer of reinstatement tolls the continuing accrual of back pay.

County of Washington v. Gunther, 462 U.S. 161 (1981):

Women bringing sex-based wage discrimination claims under Title VII are not required to satisfy equal work standard of Equal Pay Act. Sex-based wage discrimination may violate Title VII even if it does not violate EPA.

Zipes v. Trans World Airlines, Inc., 455 U.S. 385 (1982):

Filing a timely charge of discrimination with EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver and estoppel.

Kremer v. Chemical Construction Co., 456 U.S. 461 (1982):

Plaintiff is precluded from filing Title VII action in federal court after state court has affirmed state agency decision finding no discrimination, if suit would be precluded by prior state court decision under that state's law and if due process requirements were met in the state proceedings.

Patterson v. American Tobacco Co., 456 U.S. 63 (1982):

The immunity from challenge granted by Title VII to bona fide seniority systems is not limited to those in existence at time of Title VII's enactment.

Connecticut v. Teal, 457 U.S. 440 (1982):

Written test that denied job opportunities to disproportionately large number of Black applicants established prima facie case of disparate impact even though whole job selection process, of which test was a part, ultimately resulted in selection of greater proportion of Blacks than Whites. A disparate impact claim can be based on a component of a selection process, even if there is no disparate impact in the entire selection process, i.e., at the "bottom line."

Crown, Cork & Seal v. Parker, 462 U.S. 345 (1983):

The filing of a class action tolls the 90 day suit filing period for all putative class members.

Newport News Shipbuilding and Dry Dock v. EEOC, 462 U.S. 669 (1983):

Fringe benefits are part of the "compensation, terms, conditions and privileges of employment" which must be provided on non-discriminatory basis. Thus, employer's health plan, which provided female employees with hospitalization benefits for pregnancy but provided less extensive pregnancy benefits to spouses of male employees, discriminated against male employees in violation of Title VII.

Arizona Governing Committee v. Norris, 463 U.S. 1073 (1983):

Violation of Title VII found where retirement plan paid lower periodic benefits to women than to men who made the same contributions.

Baldwin County Welcome Center v. Brown, 466 U.S. 147 (1984):

Failure to file a complaint within 90 days of receipt of a right to sue letter bars suit under Title

VII. Filing the right to sue letter with the court within 90 days does not toll the suit filing period.

EEOC v. Shell Oil Co., 466 U.S. 54 (1984):

The existence of a charge that meets the requirements of § 706(b), including compliance with the notice requirement, is a jurisdictional prerequisite to judicial enforcement of a subpoena issued by EEOC. A Commissioner's pattern-and-practice charge need only identify the groups of aggrieved persons, the categories of employment positions from which they were excluded, the methods by which the respondent allegedly discriminated, and the periods of time the discrimination allegedly occurred.

Cooper v. Federal Reserve Bank of Richmond, 467 U.S. 867 (1984):

An adverse judgment on the merits of a Title VII action brought by EEOC and private intervenors barred further litigation of class claims in a subsequent lawsuit brought under 42 U.S.C. § 1981.

Hishon v. King & Spaulding, 467 U.S. 69 (1984):

Promise to consider employee for partnership was a term, condition or privilege of employment. Firm was required, therefore, to consider plaintiff for partnership without regard to sex.

Goldman v. Weinberger, 475 U.S. 503 (1986):

Air Force regulation prohibiting wearing of unauthorized headgear did not violate First Amendment rights of Air Force officer whose religious beliefs prescribed the wearing of a yarmulke at all times. Court found no constitutional mandate that military accommodate wearing of religious headgear when, in military's judgment, this would detract from uniformity sought by the dress regulations. [Decision did not address Title VII, but has Title VII implications.]

Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986):

Sexual harassment is a form of sex discrimination in violation of Title VII. A plaintiff can establish a violation of Title VII by proving that (s)he was subjected to a hostile or abusive work environment, even if there was no economic or tangible injury. Agency principles should be used for guidance in determining employer liability for sexual harassment.

Bazemore v. Friday, 478 U.S. 385 (1986):

That employer discriminated with respect to salaries prior to date that it was covered by Title VII does not excuse perpetuating the salary discrimination subsequent to coverage. Each paycheck delivering less to a Black employee than a White is a wrong actionable under Title VII.

Library of Congress v. Shaw, 478 U.S. 310 (1986):

Title VII does not contain an express waiver of sovereign immunity for awards of pre-judgment interest on back pay against the government in actions brought by federal employees or applicants.

Ansonia Board of Education v. Philbrook, 479 U.S. 60 (1986):

Employer has met its obligation to accommodate an employee's religious practices when it demonstrates that it has offered a reasonable accommodation to the employee. Employee is not entitled to his or her preferred accommodation.

California Federal Savings and Loan Association v. Guerra, 479 U.S. 272 (1987):

California could statutorily require that employers provide reinstatement to pregnant workers, regardless of their policies for disabled workers generally, without coming into conflict with Title VII.

Johnson v. Transportation Agency, Santa Clara County, California, 480 U.S. 616 (1987):

Affirmative action plan that allowed race or sex to be considered as one factor in making employment decisions was upheld because plan was intended to remedy manifest imbalance in workforce; it did not unnecessarily trammel the rights of non-minorities; and it was temporary and flexible.

EEOC v. Commercial Office Products Co., 486 U.S. 107 (1988):

A state agency's decision to waive § 706(c)'s 60 day period, pursuant to a worksharing agreement with EEOC, "terminates" the agency's proceedings so that EEOC may immediately deem the charge filed and begin processing it. A complainant who files a charge untimely under state law is entitled, nonetheless, to § 706(e)'s extended 300 day federal filing period.

Loeffler v. Frank, 486 U.S. 549 (1988):

Congress waived U.S. Postal Service's sovereign immunity as to pre-judgment interest on Title VII back pay awards in the Postal Reorganization Act of 1970's "sue and be sued" clause.

University of Pennsylvania v. EEOC, 493 U.S. 182 (1990):

A university does not enjoy a special privilege requiring a judicial finding of particularized necessity of access, beyond a showing of mere relevance, before peer review materials pertinent to charges of discrimination in tenure decisions are disclosed to EEOC.

Irwin v. Veterans Administration, 498 U.S. 89 (1990):

A notice of final action was "received" when EEOC delivered it to the complainant's attorney. Statutes of limitations in actions against the federal government are subject to the rebuttable presumption of equitable tolling.

Six substantive Supreme Court cases under Title VII overturned in whole or in part by 1991 Civil Rights Act:

- **Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)** [When plaintiff in Title VII case proves that her gender played part in job decision, employer may avoid liability by proving that it had a "mixed motive," i.e., it would have made same decision regardless of discrimination.]
- **Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)** [Plaintiff maintains burden of persuasion in disparate impact case; employer's burden is only to produce evidence that practice significantly serves business needs; to make out prima facie case of impact, plaintiff must show that disparity is result of one or more specific job practices.]
- **Martin v. Wilks, 490 U.S. 754 (1989)** [Interested parties are not precluded from challenging employment decisions taken pursuant to a consent decree, even though they did not intervene at the time that the decrees were entered.]
- **Lorance v. AT&T Technologies, 490 U.S. 900 (1989)** [Title VII charge alleging that facially neutral seniority system had been adopted for discriminatory purpose had to be filed within 180 days of adoption of the system in order to be timely.]
- **Patterson v. McLean Credit Union, 491 U.S. 164 (1989)** [42 U.S.C. § 1981 does not apply to conduct occurring after formation of job contract.]

- EEOC v. Arabian American Oil Co. and Boureslan v. Arabian American Oil Co., 499 U.S. 244 (1991) [Title VII does not apply extraterritorially to U.S. employers that discriminate against U.S. citizens abroad.]

United Auto Workers v. Johnson Controls, 499 U.S. 187 (1991):

Employer's policy of excluding all fertile women from jobs involving exposure to hazardous substances, e.g., in which lead levels were defined as excessive, violated Title VII. Such a policy could not be justified as a BFOQ because women could perform the essential functions of the jobs at issue.

St. Mary's Honor Center v. Hicks, 113 S.Ct. 2742 (1993):

Fact finder is not compelled to find for a plaintiff if it determines that the reasons offered for the adverse employment decision are not credible. The burden of proof remains at all times with the plaintiff to show intentional discrimination.

Harris v. Forklift Systems, 114 S.Ct. 367 (1993):

Plaintiff is not required to prove psychological harm in order to prevail on a hostile environment sexual harassment claim. To prove hostile environment, plaintiff must prove that reasonable person would find environment hostile or abusive and that the plaintiff subjectively perceived environment as abusive.

Landgraf v. USI Film Products, 62 U.S.L.W. 4255 (U.S. Apr. 26, 1994) and Rivers v. Roadway Express, Inc., 62 U.S.L.W. 4271 (U.S. Apr. 26, 1994):

Sections 101 and 102 of Civil Rights Act of 1991 (overruling Patterson v. McLean Credit Union and authorizing damages and jury trials) may not be applied to pending cases. Neither language of Act nor its legislative history manifest clear Congressional intent that Act be retroactive. Substantive provisions such as Sections 101 and 102, that impair rights a party had when (s)he acted or increase liability, are presumptively prospective.

Age Discrimination in Employment Act

United Air Lines, Inc. v. McMann, 434 U.S. 192 (1977):

The ADEA formerly contained an exemption for employee benefit plans that were not a "subterfuge" to evade the Act. In McMann, the Court ruled that the ADEA did not prohibit the age-based involuntary retirement of an employee as required by the terms of a bona fide employee benefit plan where that plan had been put in place before enactment of the ADEA. Such a plan could not possibly be a "subterfuge" to evade the Act, as it predated the Act by several years. McMann is no longer pertinent to ADEA enforcement because the "subterfuge" language has been deleted from the employer benefits exemption.

Lorillard v. Pons, 434 U.S. 575 (1978):

A jury trial is available in a private ADEA suit for lost wages.

Oscar Mayer & Co. v. Evans, 441 U.S. 750 (1979):

Where unlawful age discrimination occurs in a state which has an agency empowered to seek or grant relief, no suit may be brought by an individual until 60 days have passed from the commencement of proceedings under state law. Such filing under state law is a jurisdictional prerequisite to an ADEA lawsuit, although state procedural requirements, including timely filing of a state charge, cannot foreclose federal relief.

Lehman v. Nakshian, 453 U.S. 156 (1981):

Federal employees are not entitled to a jury trial in an ADEA suit as are private sector employees. Sovereign immunity principles preclude such a right in the absence of a clear expression of congressional intent.

EEOC v. Wyoming, 460 U.S. 226 (1983):

The Tenth Amendment does not preclude application of the ADEA to state and local government employers.

Trans World Airlines v. Thurston, 469 U.S. 111 (1985):

The transfer policy that did not allow 60 year old pilots to bump less senior flight engineers

while allowing younger pilots disqualified for reasons other than age to automatically do so was age discrimination with regard to a privilege of employment and violative of the ADEA.

The case also established that a violation of the ADEA was willful (and the violator liable for liquidated damages) if the employer "knew or showed reckless disregard" for the matter of whether its conduct was prohibited by the Act.

Johnson v. Mayor of Baltimore, 472 U.S. 353 (1985):

City of Baltimore must prove that its age 55 mandatory retirement for firefighters was based on a BFOQ. It is not sufficient for the City to simply point out or reference a federal civil service state which applied an age 55 mandatory retirement for federal firefighters.

Western Airlines v. Criswell, 472 U.S. 400 (1985):

To prove a BFOQ, an employer must show, first, that the age limitation is reasonably necessary to the essence of its business. It must then show either that it had a factual basis for believing that all or substantially all persons over the age in question would be unable to perform safely and efficiently the duties of the job involved, or that it is impossible or highly impractical to deal with older employees on an individualized basis. The Court said the greater the safety factor, measured by the likelihood of harm and probable severity of that harm in case of an accident, the more stringent may be the job qualifications designed to insure safety.

Public Employees Retirement System of Ohio v. Betts, 492 U.S. 158 (1989):

The Supreme Court interpreted the Age Discrimination in Employment Act of 1967, as amended (ADEA), 29 U.S.C. § 621 *et seq.*, with regard to the legality of employee benefit plans, and rejected longstanding EEOC interpretations relating to employee benefits. The Court determined that employee benefit plans were exempt from the purview of the ADEA as long as such plans were not a method for discriminating in non-fringe benefit aspects of employment. An employee would bear the burden of proving discrimination in a non-fringe benefit area. The effect of this decision was to permit virtually any age-based differential in treatment in the area of fringe benefits; for example, an employer could decide to deny sick leave or vacation pay for persons over the age of 50, as long as the decision was not taken to force such persons to retire or to retaliate for prior EEOC activity. Congress overruled Betts by way of the OWBPA of 1990 which, for the most part, restored the law to its pre-Betts state.

Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991):

An individual's claim under the ADEA may be subjected to compulsory arbitration pursuant to

an arbitration clause set forth in a registration application with a stock exchange. This holding does not preclude the individual from filing a charge with the EEOC or affect the EEOC's investigative and enforcement authority under the ADEA.

Astoria Federal Savings and Loan Association v. Solimino, 501 U.S. 104 (1991):

Judicially unreviewed state administrative findings have no preclusive effect on age-discrimination proceedings in federal court.

Gregory v. Ashcroft, 498 U.S. 980 (1991):

Appointed state court judges are not covered by the ADEA because the Act's term "employee" excludes elected state officials (including judges) and most high-ranking state officials, including "appointees on the policymaking level," a category to which an appointed judge could reasonably be said to belong.

Stevens v. Dept. of Treasury, 500 U.S. 1 (1991):

Clarified that a federal employee who chooses to go directly to court must file a notice of an intent to sue with EEOC within 180 days of the alleged unlawful practice, and file a lawsuit after the expiration of 30 days. This decision corrected an erroneous lower court reading of the statute to the effect that suit must be filed within 180 days and EEOC notified within 30 days of the filing.

Hazen Paper Co. v. Biggins, 113 S.Ct. 1701 (1993):

Discharging an older employee for the sole purpose of preventing the vesting of pension rights that rest on basis of years of service with an employer does not violate the ADEA.

The "knowing or reckless disregard" standard for determining willful violations of the ADEA applies not only where age discrimination entered into an employment decision through a formal and facially discriminatory policy but also in cases where age is an informal and undisclosed motivating factor.

Equal Pay Act

Corning Glass Works v. Brennan, 417 U.S. 188 (1974):

Court laid out requirements for prima facie case under EPA. Plaintiff must show that employer pays different wages to employees of opposite sexes for equal work on jobs the performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions.

Rehabilitation Act

Southeastern Community College v. Davis, 442 U.S. 397 (1979):

An educational institution may require reasonable physical qualifications for admission to a clinical training program. Respondent was not qualified because she could not meet the college's legitimate physical requirement of ability to understand speech without lipreading, and no accommodation existed that would permit her to benefit from the program.

This case is significant for EEOC because it explains that, if an otherwise qualified individual cannot meet a particular qualification standard because of a handicap, s/he must show either that the standard is not legitimate, or that there is a reasonable accommodation that will enable him/her to meet the standard.

Alexander v. Choate, 469 U.S. 287 (1985):

An across-the-board reduction in the number of days of inpatient hospital care covered by Medicaid does not violate Section 504 of the Rehabilitation Act by virtue of having an adverse impact on persons with handicaps. Court upheld the reduction because individuals with handicaps had "meaningful and equal access" to the number of days of coverage being offered. This case is significant for EEOC because it severely limits the use of impact analysis in the benefits area when disability discrimination is at issue.

School Board of Nassau County v. Arline, 480 U.S. 273 (1987):

People with contagious diseases are protected by Section 504 of the Rehabilitation Act, and a person with tuberculosis can be a handicapped person. This case is significant for EEOC because it sets forth the direct threat analysis adopted by Congress in enacting the ADA.

- (i) in the separation and control of air traffic; or
- (ii) in providing preflight, inflight, or airport advisory service to aircraft operators; or

(B) is the immediate supervisor of any employee described in subparagraph (A); and

(2) "Secretary", when used in connection with "air traffic controller" or "controller", means the Secretary of Transportation with respect to controllers in the Department of Transportation, and the Secretary of Defense with respect to controllers in the Department of Defense.

CHAPTER 23—MERIT SYSTEM PRINCIPLES

Sec.	
2301.	Merit system principles.
2302.	Prohibited personnel practices.
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2305.	Coordination with certain other provisions of law.

§ 2301. Merit system principles

(a) This section shall apply to—

- (1) an Executive agency; and
- (2) the Government Printing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be—

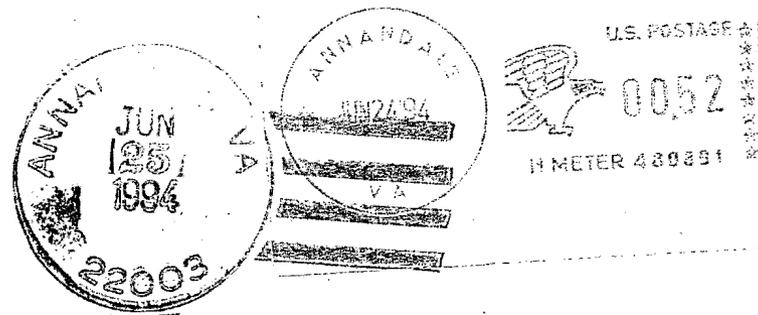
(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.



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