

Attorney, Author Sack Advises Women on Sexual Harassment

Text by Jennifer G. Hickey/Photograph by Rick Kozak

Labor and employment lawyer Steven Mitchell Sack says that while statistically harassment in the work place is decreasing, with more women entering the work place, the number of complaints is rising.

With the dismissal of the Paula Corbin Jones sexual-harassment lawsuit and her recent decision to appeal the ruling of U.S. District Judge Susan Webber Wright, sexual harassment is once again in the news. In the Jones case, Americans have come to varying and numerous conclusions as to the guilt or innocence of Bill Clinton. But what does the law say on sexual harassment and other issues of employment discrimination? New York labor and employment lawyer Steven Mitchell Sack has some of the answers. He is author of the recently published book, *The Working Woman's Legal Survival Guide*.

Insight: Why did you think it was necessary to write a book addressing women's legal issues?

Steven Sack: Well, as a practicing labor and employment lawyer with my own law firm, I have represented thousands of women in my career. There have been a slew of new laws and regulations impacting women favorably.

Looking at it as I normally do from a female's perspective, I saw there were many subjects that needed to be covered in a book of this magnitude. We have sex discrimination — not just harassment, but failure to be promoted or paid as men are just because they are women. There also is pregnancy discrimination. Women get fired for discriminatory reasons and they don't know what to do about it. Most women who are independent consultants or sales representatives entering areas that men usually or typically have dominated don't know how to protect their businesses or themselves, so there is a separate section for that.

Insight: Do you think harassment and discrimination are as much a problem as they were 20 years ago?

SS: They are more prevalent as more

and more women enter the workforce, many for the first time. Few are knowledgeable about their legal rights. Even when they know they have rights, they don't know what those rights are. And secondly, while the number of discrimination complaints and the amount of harassment might be going down statistically on a ratio basis, many more women are entering the workplace, so collectively the number of these complaints is staggering and increasing every year.

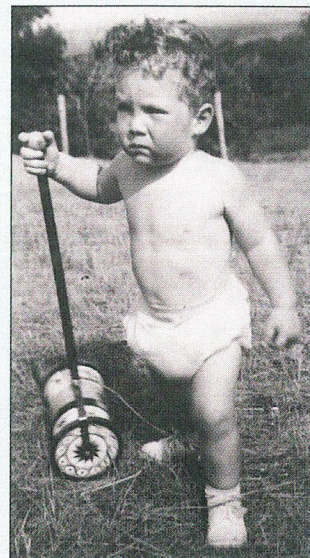
Insight: Is it a larger problem that most women say, "This is something the law can't help me with, what we really need is a change in society?"

SS: The fact that the glass ceiling exists does not mean that women should accept it. And if you notice in the introduction of my book, when I was doing my research I found that [Florida-based supermarket chain] Publix reportedly paid about \$81.5 million to settle a class-action lawsuit brought by 150,000 women accusing the grocery chain of relegating them to dead-end jobs. I also discovered that State Farm reportedly had paid \$215 million to settle a case for a class of women who said they were denied and deterred from positions as insurance agents.

Meanwhile, millions and millions of women are not being compensated fairly. I was interviewed on a women's radio program last week and was telling the interviewer that my studies indicate that the typical woman earns 71 cents to every dollar a man earns and [the interviewer] said, "No, it's up to 74 cents."

Knowledge is power and I want women to know that there are things they can do. For example, what do you do if you are not given a favorable performance review? Women of color, women over 40, can file a discrimination lawsuit

Personal Bio



Sue me! The workers' rights lawyer in training.

Born: Feb. 16, 1954, Brooklyn, New York.

Education: Boston College, Juris Doctor, 1979; Stony Brook University, B.A. 1975, Phi Beta Kappa, Magna Cum Laude.

Family: Wife, Gwen; Sons Andrew, 8, David, 4.

Professional: Sack is a partner in Sack & Sack, a New York law firm.

Books: In addition to *The Working Woman's Legal Survival Guide*, Sack has written *The Salesperson's Legal Guide*; *The Complete Legal Guide to Marriage, Divorce, Custody and Living Together*; *The Hiring and Firing Book*; and *Legal Documents for Employers*.

Favorite film: *Witness*, with Harrison Ford: "I like the simple life of the Amish."

with the EEOC [Equal Employment Opportunity Commission] if they feel they are being discriminated against on the basis of their sex or age. Companies know this — so they are not just going to fire you, they are going to set you up, they are going to create a paper trail.

So what would a sharp woman do to level the playing field? If she got a performance review from a new man which she thought was incorrect, especially if she had worked 20 years for the company with good performance reviews and raises, many women would refuse to sign the review. But the better step, if they knew, would be to write a rebuttal, a respectful rebuttal, attach it to the performance review, and give it to her supervisor and someone higher up. That would slow the discrimination proceeding and the company might be likely to say, "Hey, this woman is pretty clever, let's not jump on this."

Insight: Is failing to establish a paper trail the biggest mistake that women make?

SS: Absolutely. Let me give you two tips in this area. In sexual harassment many women are afraid to come forward if they believe they will be deemed a troublemaker and might end up getting fired. Nothing could be more unlikely.

No. 1, you have to document your complaint so you don't indicate that it was something that was insignificant to you. Workers can't suddenly complain about something that happened three years ago and expect to get relief in court. Under federal EEOC rules you have 300 days, and in some areas 150 days, to make a complaint.

No. 2, by documenting your complaint you put the company on notice. Companies are legally responsible objectively and immediately to investigate the complaint. Then if they demote you, transfer you, reassign you or fire you, you can file a retaliatory complaint. When you write a complaint you may actually be protecting your job.

Insight: Sexual harassment often is subjective and is not the same to one woman as to another. For instance, how do you document verbal harassment?

SS: The first thing you should do is maintain a diary, and while the incident is fresh in your mind you should recollect in the diary and in front of witnesses what

was said and how you felt. It wouldn't be a bad idea — as we read in connection with the White House incidents [e.g. Kathleen Willey telling Linda Tripp about alleged harassment by the president] — to come right out of a meeting and, if you are flushed and feel frazzled, to tell someone right then and there what happened. I think that would help many women in this country. It is a very important area where I think the pendulum is swinging to favor the employee.

Insight: Is it important for the person who is harassed to bring to the attention of the harasser that this is unwelcome conduct?

SS: Absolutely. Because if you welcome the comments or partake in the offensive banter you can hardly claim you were the victim. If you wisecrack and laugh with the boys, you can't expect to be able to file a charge alleging offense. Say immediately that you won't tolerate sexual banter and you have established a valid claim.

Insight: What about women, as in the case involving Anita Hill and Clarence Thomas, where the woman follows her alleged harasser from job to job?

SS: You have to draw the line. If you do not document your complaint over time you may be deemed by your conduct to have waived your rights. If you go along with the harasser then you may be creating a question in everybody's mind as to whether you acquiesced to the conduct and did not find it offensive.

Insight: How important is simple common sense in many of these matters?

SS: Very important. Take contractual agreements. Samuel Goldwyn, the movie producer, once said, "A handshake is only as good as the paper it is written on." If a company asks you to relocate to New York from Washington, and they say in an oral agreement that they are going to give you \$500,000 in

relocation expenses, how am I to prove that they made that promise to you? So here is my common-sense advice: Send a letter to the company saying, "I understand the terms of our agreement and I will be working on May 1 — the whole thing." At the bottom say, "If any terms of this letter are ambiguous or incorrect, please advise me in writing, otherwise this letter will set forth and be an accurate reflection of our agreement." Bang, you have yourself a contract.

Insight: Is there enough protection in the law for employers?

SS: Yes. Many more companies are sending their supervisors to training seminars to learn to be more responsive and

objective to any type of charge, be it pregnancy discrimination, failure to promote or sexual harassment. They are sending their supervisors to training schools so that they will be more sympathetic and professional in handling these matters.

The law has gone very far in protecting people. I mean, when

we talk about women's rights we really are talking about worker's rights. It's just that women have a special status under the law and occupy special protection by virtue of their gender. Which is, I guess, a result of historical inequities in the law. It is the hottest area of law right now.

Insight: If you had one piece of advice for men and women in the workplace, what would it be?

SS: Read my book, and know your rights. I personally favor settling out of court in most matters unless the company is totally unreasonable. A lot of times an apology is more important than money.

But if any of your readers have any questions they may call me at my law office in New York and I will get back to them at no charge.

I have been blessed, and I want to give back as much as I can. ●

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