Working with immigrant survivors of sexual violence in the workplace: Holistic responses

National Webinar, Part II


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Overall project goal

Forge partnerships between labor and anti-violence advocates that create models to challenge and eradicate workplace sexual violence against immigrant women.

Debbie Smith
Today

1. Introduction to basic interviewing techniques

2. Safety considerations when working with survivors impacted by trauma

3. Documenting your case (EEOC)

4. Building strong models
Effective interviewing skills

Sonia Parras
Lifetime Spiral of Gender Violence

**ADULT**
- Domestic violence;
- Same-sex domestic violence;
- Violence by fathers, mothers, sisters, brothers-in-law and in-laws, family members;
- Sexual abuse includes marital rape, forced to watch and imitate pornographic acts, extreme sexual neglect or control; 
- Economic abuse includes ruined credit, gambling, isolation, permanent or temporary abandonment;
- Battery during pregnancy;
- Coerced into criminal activity;
- Extreme exploitation of household labor;
- Sexual harassment by employers, other employees, fathers, brothers-in-law, clergy, therapists, doctors;
- Victim-blaming, rejection by community;
- Forced into unprotected sex, infected with STIs, STIs, HIV;
- Denying mothers access to custody of children, international abduction/kidnapping;
- Intimate homicide, femicide, honor killings;
- Withholding adequate food, clothing, daily necessities;
- Stalking, cyber-stalking.

**ELDER**
- Physical abuse by adult children, caretakers;
- Spousal abuse;
- Exploitation of household labor, care;
- Withholding health care, medications, daily necessities;
- Demeaning widowhood;
- Coerced suicide pacts or mercy killings.

**CHILD**
- Little or no schooling;
- Child labor;
- Child prostitution;
- Physical abuse;
- Neglect;
- Abandonment;
- Incest;
- Sexual abuse;
- Molestation;
- Abusive 'teasing' by sibling;
- Virgin cleansing.

**TEENAGER**
- Coerced sexual initiation, rape;
- Forced marriage to parents' choice, much older man, teen's rapist;
- Ignorance about sex, anatomy, sexual health;
- Control over sexuality and sexual orientation;
- Trafficked; forced into prostitution;
- Cyber-stalking by boyfriend or unknown predators;
- Date violence;
- Harrassment, public lewdness;
- Sexual harassment by extended family, teachers, coaches, peers.

**INFANT**
- Female infanticide, sex-selected abortion;
- Infanticide;
- Malnutrition/nutrient deprivation by withholding nutritious food;
- Medical care withheld.

**YOUNG ADULT**
- Date violence, drug-facilitated rape;
- Rape, including wartime rape;
- Denied choice of marriage partner and/or sexual orientation;
- Down-related deaths;
- Intimate partner violence;
- Sexual harassment at work, college.
POLL

Did she consent?
She “consented”...?

- **Control** is influencing someone to do something they would not otherwise do.

- **Coercion** is the act of getting someone to act or think in a particular way by using or threatening with negative consequences for noncompliance.
  
  * Better pay-raise
  * Improve working conditions
  * Scheduling
  * Getting/keeping a job for a family member
  * Not getting “punished”
  * Chisme
  * Avoid physical harm to self or others
Dynamics

Strengthening your interviewing skills

- What
- When
- How
  - Repeat

- Conversation starters
  - How are things at work?
  - Do you like your job?
  - What do you do there?
  - How many hours do you work?
Strengthening your interviewing skills

A step removed

• Did any of your supervisors/co-workers ever ask you out or offer you to go to lunch, call you outside of work, invite you to give you a ride home before or after work?

  • What happened if you said no? (potential punishment/retaliation)
  • Did your supervisor/co-worker ever touch you in an offensive way or in any manner?
    • How many times did it happen? Did anyone see it?
    • Did this happen to you ever?
    • Did you tell anyone about it?
    • Did anyone see it?

On sexual violence

• Money
  • Are they paying you all your hours, overtime?
  • How are they treating your co-workers? Any complaints?
  • What do you see?

• Supervisors or anyone with perceived power
  • How does your supervisor/co-workers treat you?
  • Has anyone mistreated or disrespected your peers? How?
  • Did any of it ever happen to you?
  • Has your supervisor/Co-worker ever made you feel uncomfortable? If so, how?

• Did you complain about it or talked about it to
  • a trusted person in the office/company or a peer? Human resources representative? Union leader? Nurse? Anyone else?
What does safety look like?

Perceived threats

vs.

Completed threats

- Union/promotorass
- Lawyers
- Co-worker?
- Police?
- Religious leaders
- Lawyer & advocate & SANE
- EEOC
- DOL
- OSHA?

- Family
Strategies for creating safer environments with labor organizers & union leadership

- Educate
- Advocate
- Refer
- Secure
Consideration for union leaders

Safety First

Giselle Hass
Interviewing techniques:

Remember that the interview:

- Can be immense, unforgettable, inspiring
- Can have consequences for the traumatized survivor
- Can have consequences for the interviewer
- Can cause her to re-live the trauma
Invite the survivor to write/tell her story

- You have to provide a safe environment, without judgment
- Bear witness to her experiences
- Provide support and validation
Eliciting the trauma story

- Allow adequate time and breaks
- Your attitude will be CRITICAL
- The more understanding you show, the better the results
- Watch for SUBTLE CLUES reflecting internal experiences
- Follow survivor’s lead
- Use open-ended questions if possible
- Facial expressions, eye movements, body language
- Watch for flashbacks
- Watch for dissociation
Interviewing techniques

Give
• Give survivor as much CONTROL as possible

Offer
• Offer to change anything in setting that triggers bad memories

Let
• Let survivor tell story at OWN pace as much as possible

Allow
• Allow survivor to STOP talking about trauma
Interviewing techniques

Use general explorative questions to help survivor expand the story

Use gentle questions

“I wonder if you could tell me ….”

“Would you be comfortable telling me what happened to you during …..?”
Symptoms that affect the interview:

• Reliving the trauma
• Having intense distress at reminders
• Avoiding trauma memories at all costs
• Feel too ashamed to speak of what was done to them
• Have sleep or eating disturbances
• Being depressed but not showing emotions
• Having difficulty concentrating
• Having memory problems
• Being afraid of reprisals or revenge

Interviewing techniques
May be quite realistic

Ask survivor for his/her suggestions for getting the info you need

Find alternative ways to get the affidavit in a way that the survivor feels is safer

Find an alternative source of info

Find solutions to their fear or threat to themselves and their family
Most of all: Avoid replicating the traumatic situation

Acknowledge how difficult it might be to discuss the trauma

Be respectful, compassionate

Exercise caring & nonjudgmental listening

Image of “shattered glass.” Be careful not to crush any pieces

Show it in your eyes, facial expressions, body language

Social amenities can help (i.e., coffee)
Interviewing Techniques

When directly asked about abuse, a survivor may show:
• Extreme stress,
• Anxiety,
• Fear
• Anger

Engaging:
• What can trigger you or make you feel upset?
• What are some ways I would know if something were making you upset?
• What helps when you start to feel upset? How can I help you calm down and feel better?
• What does not help you when you are upset?
POLL

What is “wrong” with her!
Identifying trauma

• The impact of trauma varies

- Physiological problems
- Post Traumatic Stress Disorder
- Re-experiencing symptoms
- Anxiety and Hyperarousal symptoms
- Depression and memory disturbances
- Avoidance symptoms
Do not forget to assess coercion

Perpetrators of coercion intimidate victims by creating fears, credible to the victim, of disastrous consequences if they do not obey or acquiesce to the abuse. This creates a great deal of anxiety and fear.
It is normal for a survivor of severe trauma to:

- Be unable to provide linear account
- Avoid memories
- Have difficulty remembering dates, details
- Changing the trauma account
- Increase level of details with trust, good questions, increased stabilization

Documenting trauma
Sometimes symptoms are not reported but show up in their behavior:

- Client does not answer telephone
- Afraid of talking about past; no energy for social conversations
- Client does not show up on time
- Afraid of interview; depleted emotional & physical energy
- Client does not show up at all!
- Forgetful because of trauma; can’t face interview
- Client reluctant to reveal info
- Talking means re-living it for days; difficulty trusting
Ask about functioning before and after the traumatic experience.
### Acknowledge
- Acknowledge person’s courage

### Help
- If possible, help person identify ways s/he can feel safe after the interview

### Observe
- Observe how you feel after hearing about the trauma and what do you need.

**Ending the interview**
Resources

https://www.youtube.com/watch?v=05Z95q1bkG4
Pre-viewing questions

• What red flags would lead you to suspect workplace violence, gender violence, sexual violence. (This scene will help you understand how there can be a synergy of destabilizing factors in play at the workplace.)

• What are some of the potential challenges a worker in housekeeping or janitorial professions might face? Are there risks specific to female workers in janitorial/housekeeping positions?

• What potential workplace problems can arise if partners (such as husband and wife) work for the same employer?

• Do workers with children face special challenges? What issues might a worker with small children think about during her workday?
Follow-up questions

• Signs of violence
• Dynamics
• Special Vulnerabilities
“Beatriz”

https://www.youtube.com/watch?v=n7tqnJCmplc&list=PLTifqDcaHT3XFum9XxjEOmGSFh3wZtl6&index=3

Jennifer Cooley
Documenting cases

Lauren Bonds
Documenting cases of sexual violence

- Strength of the Legal Claim Depends on Strength of the Evidence
- When assisting workers w/ potential claims, think about what they need to show to make out a case:
  - Severe or Pervasive:
    - Severe: Documents from hospital visit?
    - Pervasive: Notebook to write down every comment, or tell the worker to text you every time they are touched, are told an offensive statement
Documenting cases of sexual violence (Contd.)

• Employer Knew or Should Have Known:
  – Record meetings w/ supervisor where complaints are made (if allowed in your state), take pictures of documents/complaints you file with HR

• Help collect anything that Supports Your Case:
  – Witnesses?
  – Cameras at the worksite that could have captured incident?
  – Inappropriate text messages?
VIOLENCE IS VIOLENCE

• Sexual violence and assault in the workplace is a form of sexual harassment

• Title VII of the Civil Rights Act of 1964 prohibits race, color, sex, national origin and religion discrimination; Equal Employment Opportunity Commission investigates and litigates

• Sexual Assault criminal action: target abusers, criminal justice

• Sexual Harassment civil lawsuit: target is company for $$ and changes in company practices
Vulnerable workers: Priority for EEOC

- Immigrant, Migrant, and Vulnerable Workers priority under the National Strategic Enforcement Plan—since 2012
- Agriculture, service industry, restaurant, janitors
- Need to collaborate with public interest groups, advocates; sexual assault program staff may be the “first line” to identify harassment
Remedies

• **Monetary ($)**
  • Remedy is $ for victims of harassment (backpay, reinstatement, compensatory damages (*emotional distress, pain and suffering*), *punitive damages, $300k CAP*)
  • Remedy may also include $ for those who were retaliated against as witnesses

• **Non-monetary**
  EG. New company policies to encourage complaints without fear of retaliation (as part of court order); bar rehiring of harasser; discipline, termination of harasser
Selected cases

- **EEOC v. Tanimura & Antle**: rapes, $1.855 million settlement (California Rural Legal Assistance)
- **EEOC v. DeCoster Farms**, rapes, retaliation, $1.525 million (Iowa Coalition Against Domestic Violence)
- **EEOC v. Rivera Farms**, harassment of 20 women and one rape $1.0 million
- **EEOC v. Harris Farms**, multiple rapes of farm workers, nearly $1.0 million verdict (Lideres Campesinas, rape crisis center)
Selected cases

• **EEOC v. ABM**, sexual harassment of 20 female janitors, one raped, $5.8 million settlement

• **EEOC v. National Food Corp.**, forced oral sex of poultry worker, $650,000 (Columbia Legal Services)

• **EEOC v. Monterey Gourmet Foods**, same-sex harassment, retaliation $535,000 (California Rural Legal Assistance)

• [www.eeoc.gov](http://www.eeoc.gov) for more cases
POLL

Filing charges
Filing the charge

- Charge notifies EEOC to investigate; [www.eeoc.gov]; mail, walk-in, letter from advocacy group
- **Third Party Charge** (advocacy group, church, union, etc.)
- Commissioner’s charge
- **Class members**: EEOC can gather information regarding named and unidentified class members if CP alleges that there’s a class of workers similarly situated
- Charge must be filed within 180/300 days of last act of harassment
Filing the charge, investigation

- Information from claimant (and her counsel) to investigator is **not covered** by confidentiality privilege
- **Lawyer for Employer shares no privilege with EEOC investigator**
- All **factual information** given to EEOC during investigation can be discovered in litigation
- (BUT in EEOC **lawsuit**, Trial Attorneys share **quasi-attorney-client privilege** with Charging Party)
Key issues in EEOC investigation

- Did harassment occur?
- Did Charging Party (CP) complain to a supervisor? HR?
- Did the employer fail to protect the employee from harassment? Why?
- Is harasser the top official? Nowhere for CP to go?
- Did employer or its agents threaten CP if and/or after she complained???
Proving harassment

- **Charging Party: is she credible?** (Do not assume that CP is lying.)
- Emotionally upset? Crying? (Caveat: no one way for rape victims to react)
- Describes details? Physical touching, grabbing? Frequency?
- Verbal harassment? What was said?
Proving harassment

• Post-Traumatic Stress??
• Any physical injuries? What? Medical treatment?
• Need ongoing medical or psychological treatment??
• Evidence bolsters credibility to establish liability and damages
• This evidence could also support claim for compensatory damages (emotional distress, pain and suffering) (sexual assault program staff could be key witnesses)
• See EEOC v. Willamette Tree Wholesale; examination by and testimony of psychologist Dr. Fabiana Wallis and therapist documented trauma caused by multiple rapes and threats to kill farm worker and her family
Proving harassment

- **Harasser**: is he credible? Who supports his story? Any prior complaints of harassment?
- **What did company do??** Was harasser previously disciplined or not? Position in company – supervisor, manager, co-worker, owner? Company officials ill-trained to handle issue? Did they retaliate?
- **Note**: during EEOC investigation agency will obtain personnel file and records of previous complaints
POLL
Documenting the case
Proving harassment

• **Corroboration through Witnesses:** co-workers, supervisors, actual eyewitnesses? Note: Most egregious harassment happens “behind closed doors”.

• **Counselors, doctors:** what was observed? What did claimant say? Injuries? Treatment?

• Parents, spouse, other relatives,

• Other harassed individuals? Did CP complain to anyone about the harassment? What was said? Evidence could support victim’s credibility.
Proving harassment

• **Cops:** Was police report filed? (non-conclusive); Note: less than 10% of sexual assault crimes are reported

• **Compare:** “beyond a reasonable doubt” v. “by a preponderance of the evidence, i.e. 51%”

• **EEOC v. Harris Farms:** 3 Rapes by supervisor; Deputy sheriff: “victim is lying”; Jury: “we believe her and here’s $1 million”
Building partnerships
Lideres Campesinas’ approach
Key questions to consider in outreach and prevention with immigrant communities

• What are the priorities in the community? What can you do to support the community in addressing these priorities?
• Who are the natural leaders in the community?
• How can you partner with these leaders to support their efforts? Who in your community is currently engaging immigrant survivors?
• What do your outreach efforts currently look like? Who are you reaching? Who are you missing? How can you strengthen your current efforts to reach communities that may be under-served?
An unusual team

- Survivo
- Churches/Faith based organizations
- Criminal division investigations & AG's office
- DV/SA advocates & Immigration & Labor rights organizations
- Workforce development /DOL/EEOC/Civil rights
- Psychologists/Therapists/Counselors
- Lawyers/National law firms
- Civil rights criminal division investigations & AG's office
Changing workplace culture

• Information is the best tool
• Support/assistance for victims
• Accountability/consequences for perpetrators
• Role of co-workers as “upstanders”
Resource List

Advocates can use the following resources when working with employers to improve workplace prevention and response to sexual violence. Many of the resources listed are tailored to the response and prevention of domestic violence. However, they include aspects of sexual violence and can be adapted and applied to sexual violence prevention and advocacy within the workplace. Advocates can share many of these resources with employers to help inform their policies and violence prevention plans.

Websites

- American Bar Association Commission on Domestic and Sexual Violence
- ASISTA
- California Rural Legal Assistance, Inc., Farmworker Sexual Violence Technical Assistance Project
- Centers for Disease Control and Prevention (CDC)
- Corporate Alliance to End Partner Violence
- Domestic Violence and Sexual Assault Project SURVIVE
- Centers for Disease Control and Prevention, Injury Prevention & Control: Data & Statistics (WISQARSTM)
- Futures Without Violence
- Legal Momentum-The Women’s Legal Defense and Education Fund
- Lideres Campesinas
- Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH)
- National Sexual Violence Resource Center (NSVRC)
What is ahead?

- **Thursday, March 8, 2018 - 1:00pm - 2:30pm EDT:** “Assessing possible legal remedies for immigrant survivors”
- In this webinar, speakers will discuss the array of possible legal options for immigrant survivors of sexual violence in the workplace, including challenging labor violations, gaining immigration status, and other civil and criminal system options. We will look at options in the context of a union organizing campaign and in a workplace covered by a bargaining agreement.
- **Registration link:** [https://register.gotowebinar.com/register/8650692893347243267](https://register.gotowebinar.com/register/8650692893347243267)
Thank you for your participation!

- Link to ASISTA national webinars: https://youtu.be/GZqFsw8XWTs