

Sexual Harassment



IMSC Outreach Worker Training
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Today's Overview



- **Sexual and Discriminatory Harassment**
 - What is it? Quid Pro Quo vs. Hostile Environment
 - Rights and Responsibilities: Employee/Service Provider/First Responder Retaliation Issues
- **Unique Risks for Migrant and Seasonal Farmworkers**
- **Where to turn for help**
- **U & T Visas**
- **Q&A**

Unique Risks for MSFW



- Transient population that stays isolated and, due to migratory nature of the job, does not put down roots or connect with local social services in the same way non-migratory families do.
 - May not feel entitled to complain or access resources.
- Work and stay is seen as temporary, can lead to a mentality of: “I’ll just deal with a bad situation, it’s only for a limited period of time.”
- Limited English Proficiency, difficult to reach out and access services/help
- Vulnerability due to immigration status—50% of MSFW population is undocumented
- For all these reasons threats and intimidation are so much more effective against MSFW

Sexual harassment



Rape in the Fields



https://youtu.be/pUv2X_f_kK4?t=2m12s

Where to turn for help



- Victims can call the police if in immediate, physical danger. Under VAWA confidentiality provisions victims cannot not be turned over to ICE while reporting a crime.
- Can report to the state AND/OR federal agency responsible for enforcing sexual harassment laws
 - Michigan Department of Civil Rights: 1-800-482. 3604
 - ✦ Harassment must have occurred w/in 180 days
 - Equal Opportunity Employment Commission
 - Call a legal services organization and ask for further guidance.
 - ✦ Farmworker hotline: [1-800-968-4046](tel:1-800-968-4046) (number on our calendars)
 - ✦ Do not need to file with a state agency to bring a claim in court; **MUST FILE** within 180 days to bring a federal claim AND to utilize the state process

U Visa



- Available to victims of specific crimes (e.g. DV, rape, sexual assault, torture, FGM, kidnapping, stalking), regardless of immigration status to encourage immigrant victims of crime to report them to the police without fear of deportation.
- Requirements*:
 1. **Victim suffered substantial physical or mental abuse from a criminal activity**
 2. **Recognizes both direct and indirect victim (parent of minor child)**
 3. **Victim has information regarding the criminal activity,**
 4. **Victim has certification from law enforcement that s/he has been helpful, are helpful, or could be helpful in the investigation and/or prosecution of the crime,**
 5. **Criminal activity violated U.S. law, and**
 6. **Victim is admissible (or successful in filing a waiver)**

U Visa Qualifying Crimes



- | | | |
|--|--|--|
| <ul style="list-style-type: none">• Abduction• Abusive Sexual Contact• Blackmail• Domestic Violence• Extortion• False Imprisonment• Female Genital Mutilation• Felonious Assault• Fraud in Foreign Labor Contracting | <ul style="list-style-type: none">• Hostage• Incest• Involuntary Servitude• Kidnapping• Manslaughter• Murder• Obstruction of Justice• Peonage• Perjury• Prostitution• Rape | <ul style="list-style-type: none">• Sexual Assault• Sexual Exploitation• Slave Trade• Stalking• Torture• Trafficking• Witness Tampering• Unlawful Criminal Restraint• Other Related Crimes |
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U Visa Adjudications



- If approved, petitioner will receive U nonimmigrant status for 4 years, along with work authorization. May apply for permanent residency after three years of continuous physical presence (meaning, no absences from the United States)
- Only 10,000 U visas per fiscal year; in the interim, deferred action
- If approved, petitioner may add spouse, children (under 21 y/o), and if the petitioner is also under 21 y/o, siblings and parents.
 - Derivatives can be in the U.S. or abroad

*Any credible evidence standard applies

Human Trafficking



"Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today."

Trafficking Victims Protection Act, 22 USCS
§ 7101(b)(1).

Sex Trafficking, TVPA 22 USC § 7102(A)



Action

- The **recruitment, harboring, transportation, provision, or obtaining of a person...**

Means

- ... by the use of **force, fraud, or coercion** **or** in which the person induced to perform such an act has not attained 18...

Purpose

- ... for purpose of a commercial sex act.

Force

Fraud

Coercion

FORCE

- Physical confinement
- Punishment or violence

FRAUD

- False Promises
- Tricking into a contract
- Different work than expected
- Debt Peonage

COERCION

- Threats toward victim and/or victim's family of:
 - Violence
 - Shame
 - Imprisonment or deportation

Migrant Labor v. Exploitation v. Trafficking



- **Sexual Act**

- Action

- X

- X

- **Exploitative Sexual Act**

- Action

- Means

- X

- **Trafficking**

- Action

- Means

- End

- ✦ Commercial Sex Act

T nonimmigrant status / visas



Five requirements for T visa

- 1. Victim of severe form of human trafficking**
- 2. Physically present in the United States**
- 3. Cooperate with law enforcement unless under 18 y/o or unable to do so as a result of physical or psychological trauma**
- 4. Demonstrate that s/he would suffer “extreme hardship involving unusual and severe harm upon removal”**
- 5. Victim is admissible (or successful filing a waiver)**

T nonimmigrant status / visas



- DHHS certification allows “adult victims of trafficking who are not United States (U.S.) citizens or Lawful Permanent Residents (LPRs) to be eligible to receive benefits and services under any Federal or state program or activity to the same extent as a refugee.”
- Trafficking ≠ smuggling
- If approved, petitioner will receive T nonimmigrant status for 4 years, along with work authorization. Adjustment process is very similar to that of a U nonimmigrant
- Petitioner may add spouse, children (under 21 y/o), and if the petitioner is also under 21 y/o, siblings and parents.
- As of December 2014, petitioner may also add family members who face a present danger of retaliation as a result of the principal’s escape and/or cooperation with law enforcement (e.g. principal’s grandchild, the principal’s spouse’s child, the principal’s sibling, and the principal’s niece or nephew)

Warning Signs of Trafficking



How do I Identify Human Trafficking?

Human trafficking is often “hidden in plain sight.” There are a number of red flags, or indicators, which can help alert you to human trafficking. Recognizing the signs is the first step in identifying victims.

Behavior or Physical State:

- Does the victim act fearful, anxious, depressed, submissive, tense, or nervous/paranoid?
- Does the victim defer to another person to speak for him or her?
- Does the victim show signs of physical and/or sexual abuse, physical restraint, confinement, or torture?
- Has the victim been harmed or deprived of food, water, sleep, medical care, or other life necessities?
- Does the victim have few or no personal possessions?

Social Behavior:

- Can the victim freely contact friends or family?
- Is the victim allowed to socialize or attend religious services?
- Does the victim have freedom of movement?
- Has the victim or family been threatened with harm if the victim attempts to escape?
- Is the employer/authority figure showing signs of anxiety, depression, or aggressive behaviors?

Immigration Status:

- Has the victim been threatened with deportation or law enforcement action?
- Is the victim in possession of identification and travel documents; if not, who has control of the documents?

Work Conditions:

- Does the victim work excessively long and/or unusual hours?
- Was the victim recruited for one purpose and forced to engage in some other job?
- Is the victim's salary being garnished to pay off a smuggling fee or other debt?
 - Paying off a smuggling fee alone is not considered trafficking.
- Is the victim being denied adequate food, sleep, or medical care?
- Are there rules or limitations regarding camp access?
- Is the victim being denied free communication with family, other workers, etc.?

Special Confidentiality Protections



- The VAWA confidentiality provisions were specially designed to counter efforts by perpetrators of criminal activities against immigration victims from:
 - Triggering enforcement actions against the victim
 - Undermining or interfering in a victim's immigration case
 - Obtaining information from government officials that can be used to stalk or harm the victim
- VAWA Confidentiality applies to victims of U and T visas, including individuals “in the process of applying” for these applications for relief.

Case Example: Mila the Victim



- One day in 2012 when Mila was at work, her boss sent her back to the supply room to get some more boxes. When she entered the supply room he suddenly closed the door behind her and began groping her all over and attempted to remove her clothes. She screamed, pushed him off of her and ran out the door.
- Mila doesn't report the incident to her employer, or the police, but just quietly leaves her job for fear of getting fired.
- *Can Mila qualify for a U or T visa?*

Questions

