

**Testimony for Fair Employment and Housing Council Public Hearing on Civil Rights in
California's Central Valley
Friday, April 20, 2018**

Panel Two: Anti-Discrimination Protections in Employment (11:30am – 12:30 pm)

Estella M. Cisneros, Esq., Regional Director of Advocacy, California Rural Legal Assistance, Inc. (CRLA), Fresno, CA

Good Morning Council. My name is Estella Cisneros and I am a Regional Director of Advocacy based in the Fresno office of California Rural Legal Assistance Inc. CRLA is a nonprofit legal services program created in 1966 to represent California's low-income rural communities and their residents. The Fresno office focuses on providing legal services to agricultural workers, which includes farmworkers, dairy workers, packing house workers and nursery workers. My office handles employment and workplace health and safety cases both in court and before administrative bodies such as the DFEH, Cal/OSHA and the Labor Commissioner.

Thank you for the opportunity to share both my clients' experiences and what CRLA believes are the greatest civil rights issues facing agricultural workers in the Central Valley - sexual harassment and assault, pregnancy and disability discrimination, language access, and retaliation.

1) Sexual Harassment and Assault in the Fields

Sexual harassment and assault at work has "gone viral" in the past year with famous and powerful men in Hollywood and the tech industry being held accountable for sexual violence inflicted on their employees or colleagues as well as thanks to the rise of the "MeToo" movement founded by Tarana Burke. Farmworker women, however, have been speaking out against sexual harassment and assault in the workplace for decades. Worker-led groups like Lideres Campesinas in California, the Coalition of Immokalee Workers in Florida and La Alianza Nacional de Campesinas have been engaging in this work since the late 1980s and early 1990s, as have administrative agencies like the EEOC and DFEH. Organizations such as CRLA and other plaintiff attorneys have been litigating these cases on behalf of agricultural workers in the courts for decades as well. Most recently for CRLA, for example, a state jury in Salinas awarded two farmworker clients \$550,000 in 2016 after being raped and sexually harassed by a supervisor for several years while employed for Jackpot Harvesting. We settled the case for \$1 million dollars.

If men and women in Hollywood and the tech industry had such trouble reporting sexual harassment and assault in the workplace, imagine how much harder it is when you don't speak English or even Spanish, when you may be putting your job and your husband's and your brother's jobs at risk, when you know this is the only job available to you right now because you live in a small town and don't have a car or it's the off-season, only to be told your story is not credible or that the sex was consensual and that they will not discipline or prosecute the perpetrator because they believe him over you. Imagine too that instead of being commended for

having the courage to speak up, you instead are accused in the media of selling your body and “sucking the blood from the system” as well as lying about being raped, filing a false police report and lying under oath in a court of law. Claims are made against you that you’re trying to take advantage of “all the privileges” of being a victim of sexual violence, including, perhaps most perversely, being potentially eligible for or applying for a U-visa, which was actually created by Congress to *encourage* undocumented people to report crimes to the police, not to have it be used against them.

The prevalence of sexual harassment and assault in the agricultural industry cannot be understated. A 2010 study from the University of California, Santa Cruz, found that more than 60% of the 150 female farmworkers interviewed had experienced some form of sexual harassment. A 2012 Human Rights Watch report found that nearly all of the 52 female farmworkers surveyed had experienced sexual harassment or knew others who had. Sexual violence is experienced by both men and women in agricultural industry and, because low wage workers are disproportionately women of color, this issue also touches on racial inequality.

There are many reasons why farmworkers are particularly vulnerable to sexual harassment and assault in the workplace. Many are unaware state and federal laws protect them in the first place. Others are afraid to report it due to fear of losing their jobs, being blacklisted in small, close knit rural communities, being deported, and of course having to face the social stigma and “victim blaming” that many victims of sexual violence are forced to endure. This includes the very real risk of having your entire life before you were harassed or assaulted put under the spotlight, sometimes for the first time, during discovery, the public trial, or even the media. Having your name and reputation dragged through the mud is just as devastating for a farmworker as it is for an actor in Hollywood.

2) Pregnancy and Disability Discrimination

Another frequent type of discrimination that our agricultural worker clients face is pregnancy discrimination. Farmworkers are entitled to the same protections that all other workers receive under the state’s Pregnancy Disability Leave Act, including reasonable accommodation and up to four months of unpaid leave for medical appointments or if the employee is disabled due to pregnancy. Similarly, farmworkers are entitled to take up to 12 weeks of leave to bond with their child under the California Family Rights Act.

Our clients experience being outright fired or not hired because the employer has paternalistic concerns about whether it is safe for a pregnant woman to work or continue working. Instead of having that be a decision made between a woman and her doctor, the employer makes that decision for our client by firing her after disclosing a pregnancy or requesting a reasonable accommodation. Sometimes, the employer refuses to provide our client with the reasonable accommodation, forcing our client to quit in order to not endanger her health or that of her unborn child.

Pregnancy discrimination cases we've seen in our office include a client who was fired after asking for reasonable accommodation due to her pregnancy in an egg packing plant as well as a client who was fired from a cannery after requesting the reasonable accommodation of working ten hours a day instead of twelve hours a day.

Many agricultural employees are also unaware that disability discrimination laws apply equally to them as they do to employees who work in offices. Agricultural employers have the same affirmative duty to engage in the interactive process with an employee whether that employee works in the fields or in their administrative office. Agricultural employers should not assume that they cannot accommodate an employee with a physical disability because agricultural work is labor intensive. We've represented workers who have been fired or not hired because of a physical disability that the agricultural employer assumes makes our clients unable to perform the job with or without a reasonable accommodation as well as clients who were denied reinstatement due to the employer's belief that they were too ill to work, despite doctor's approval to the contrary.

3) Language Access

Third, language access continues to be an issue for agricultural workers throughout the Central Valley, especially for workers who do not speak Spanish. Many of our clients born in Mexico identify as Indigenous and do not speak Spanish at all or speak very little Spanish. Access to critical workplace information, such as a company's anti-discrimination or harassment policy and workplace health and safety training, is denied if it is only provided in English or Spanish or if it is only provided in writing, as many of our clients have literacy issues as well.

4) Retaliation

Finally, by and large, the most common reason our clients do not step forward and report discrimination or harassment at work is the fear of retaliation, in its many forms, against them or their loved ones. Our clients are not alone in this fear, as we saw most recently with the sexual harassment and abuse allegations against Judge Alex Kozinski of the 9th Circuit Court of Appeals and his former law clerks. Of course, victims do not only face retaliation from their employers but from the public as well, resulting in the many forms of victim blaming that are common in these cases, especially sexual harassment and assault cases.

5) Proposed Solutions/Interventions

First, we need to have a victim-centered approach to discrimination in the workplace, much like we've adopted in California when it comes to victims of crime. In fact, some of the discriminatory acts employees are subjected to are in fact state or federal crimes.

Second, the statute of limitations needs to be extended to allow employees to first, come to terms with the discriminatory acts, and second, find an attorney who can counsel them on their legal

options. When it comes to certain discriminatory acts, such as sexual violence, it can take months for the victim to even begin to discuss it with a therapist, let alone a judge or a jury.

In terms of what employers can do, employers must take these types of complaints seriously and seriously investigate them. When an employee makes a complaint of discrimination or harassment at work, employers have to recognize that it took a lot of courage for that employee to speak up. Being taken seriously and seeing their employer take quick, corrective action if necessary has been one of the most satisfying results for our clients.

Thank you for your time and attention.