

NEWS

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New U.S. Guidelines on Reproductive Hazards

The government defines protection of workers as distinct from discrimination against women.

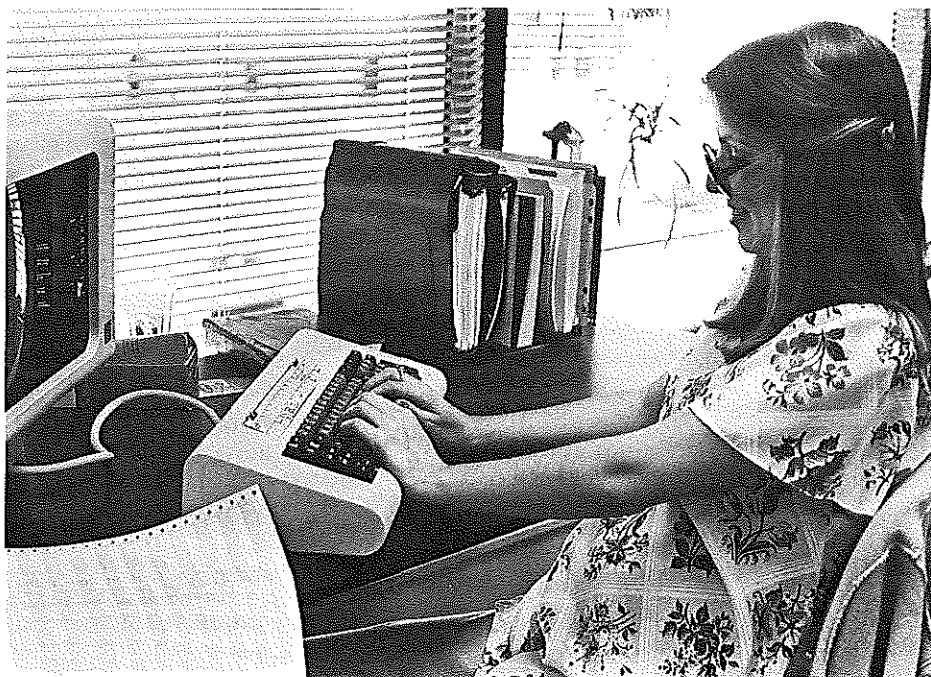
On February 1, for the first time, the Equal Employment Opportunity Commission (EEOC) and the Department of Labor published the proposed guidelines to clarify the relationship between employment discrimination and protection of workers against reproductive hazards.

Written after consultation with several federal agencies, including the Occupational Safety and Health Administration (OSHA), the guidelines were prompted by charges that employment discrimination is taking place in workplaces containing substances and conditions hazardous to reproductive health.

EEOC and the DOL enforcement agency, the Office of Federal Contract Compliance Programs (OFCCP) said that they are becoming aware of "the increasing number of employers and contractors who are initiating policies excluding all women of childbearing capacity from certain jobs because of exposure to hazardous substances or conditions.

"Preliminary evidence indicates that as many as 20 million jobs may involve exposure in the workplace to alleged reproductive hazards," said the two agencies. "Chemicals and physical agents which have been alleged to pose such hazards include lead, polyvinyl chloride, radiation, estrogen, anesthetic gases, and organic solvents."

Reaction to the guidelines by health, civil rights, and women's organizations has been cautious. The Coalition for Reproductive Rights of Workers (CRROW), of which WOHRC is a member, reports much controversy among its constituents, and has not yet announced a position. Some members are said to fear that allowing any sex-



Pregnant workers like this one would be protected under the guidelines.

based exclusions might give employers an excuse not to clean up the workplace for all employees.

Deadline for written comments on the guidelines is June 2.

Principal points of the guidelines are:

1. "An employer/contractor whose work environment involves employee exposure to reproductive hazards shall not discriminate on the basis of sex (including pregnancy or childbearing capacity) in hiring, work assignment or other conditions of employment.

2. "An employer/contractor may not have policies, practices or plans designed to protect employees from reproductive hazards which, by their terms, exclude applicants or employees from employment opportunities on the basis of sex. Such policies are discriminatory on their face."

An employer may establish a neutral policy to protect its employees, but a "facially neutral" policy which in fact

has an adverse impact on one sex "must be justified in accordance with relevant legal principles."

In determining whether an employer's conduct is justifiable or discriminatory, the following may be considered: continued on page 4

WOHRC Moves

The Women's Occupational Health Resource Center has joined the School of Public Health of Columbia University. In January, WOHRC moved its offices from the American Health Foundation to the School of Public Health's Division of Environmental Sciences, located in upper Manhattan in the Columbia University Health Sciences complex.

WOHRC's new address is 60 Haven Avenue, B-1, New York, New York 10032.

New York Times Exposes "Genetic Screenings"

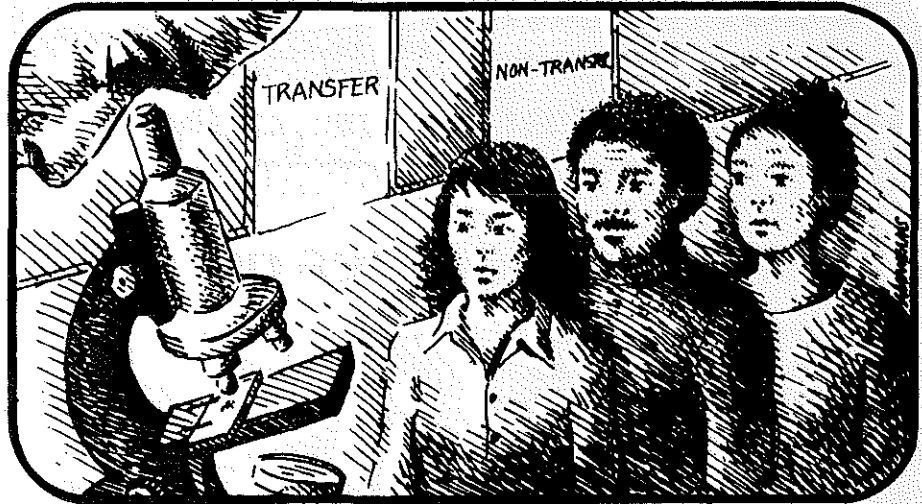
Chemical companies use "vulnerable genes" as excuse to deny jobs to women and minorities.

A new practice of "genetic screening" by major chemical companies has particularly prejudiced job opportunities for women and minorities, according to a series of articles published by the *New York Times*.

The four-part series raised serious questions about the efficacy and ethics of such testing, which has been used to screen women and racial and ethnic groups out of certain workplaces. Among the scientists interviewed was WOHR's executive director, Dr. Jeanne Stellman.

Both Du Pont and the Dow Chemical Company have conducted tests on thousands of employees, according to the *Times*. The companies claim they do so to protect workers with "vulnerable genes" from exposure to chemicals which might harm them. When scientists, feminists and trade unionists suggest that industry clean up the workplace instead, so that it is safe for everyone, industry calls this "economically unfeasible." Its attitude has led scientists such as Dr. Jonathan King, a molecular biologist at the Massachusetts Institute of Technology, to charge one company with "scientific racism." Dr. Stellman said that it is also an attempt to keep women out of nontraditional jobs.

Noting the practice of several large companies to bar women of childbear-



Nancy Hannans

ing age from working near lead, which is harmful to both sexes, Dr. Stellman commented: "I absolutely resent the assumption that if you look at a 14- to 45-year-old woman, you are looking at a woman who is presumed pregnant unless proved otherwise."

"If it is going to be the policy of this society to ban fertile women from working with teratogens" (substances that harm the fetus after conception), "let's talk about it with X-rays. We know that X-rays have a tremendous teratogenic effect. I haven't heard anyone suggest that we eliminate all fertile women from the health care industry where they can be exposed to radiation."

Dr. King claimed that "testing switches the locus of the problem from the company to the worker, it gets the company out of having to start a cleanup program, it is a forum of social and intellectual propaganda. It may protect management later on against legal claims, and it deflects attention from the real problem. It costs a lot more to lower cadmium levels than to screen."

The MIT scientist charged Du Pont with scientific racism because it singles out black applicants for testing for the gene for sickle cell anemia, even though the trait (as opposed to the illness itself) is regarded as largely harmless. Although there are other genetically transmitted blood diseases and metabolic disorders that predominate in other racial or ethnic groups, blacks are the only ones to be identified with a disease and examined for it at Du Pont. In its three-month study of

genetic screening, the *Times* found no other racial or ethnic group so singled out at any major company.

In the case of women, there are "documented instances" where they, as well as blacks, have been barred from jobs as a result of current thinking on hypersusceptibility, said the paper.

Also reported:

- At Dow Chemical, cytogenetic tests were given to determine whether workers who started with "good genes" suffered undue breakage of chromosomes, or bundles of genes, because of exposure to toxic chemicals. Such breakage is suspected as a harbinger of cancer.

When a Dow geneticist did find evidence of undue chromosome breakage among workers exposed to benzene, a widely used chemical and a known carcinogen, the company refused to inform anyone.

"We wanted them to tell the workers what we had found, reduce the levels of benzene to which workers were exposed and inform the appropriate Government agencies and the rest of the petrochemical industry," the geneticist, Dr. Dante J. Picciano, told the *Times*. But Dow refused, saying the data were hard to evaluate and that it would have been irresponsible to alarm workers with evidence that might eventually prove inaccurate. Dr. Picciano and several of his colleagues have left Dow.

- Most scientists agreed with Dr. Stellman that no tests have yet been devised that can accurately predict in advance which workers might be sickened by which chemicals. There-



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(Subscription information on page 4.)

fore, most of the tests as now given are useless as well as discriminatory.

"The opportunities for possible abuse by management present a socially unacceptable risk," commented Dr. Nicholas A. Ashford, associate professor of technology and policy at MIT, and chair of the National Advisory Committee on Occupational Safety. "It would be foolish to let management do the testing without legally guaranteeing full disclosure to the worker, a job at equal pay within the firm, and an

aggressive policy of job redesign by management and labor to provide a reasonable number of places for these workers within the firm.

"From a social policy perspective we may be focusing on the wrong pathology in addressing genetic factors," said Dr. Ashford. "The most serious pathology is misguided industrial practice. Perhaps we should find a way to screen out firms that are especially susceptible to unfair and unethical practices."

It's Not Just Your Genes

The genetic screening expose has special significance for women, WOHRC believes.

First of all, the question of who's not selected goes far beyond a woman's genes. Her physical requirements for a job usually have a great deal more to do with how she looks. Stewardesses must be of a certain height and weight to be hired. Receptionists and other "front office" workers are routinely required to be "attractive".

Even more serious, however, is the question of who's not protected. As Dr. Stellman pointed out to the *Times*, no one is suggesting safeguards for women in traditional occupations. General Motors and other big corporations may be screening women out of well paid production jobs around lead, but large numbers of women are exposed to lead poisoning in thousands of small factories around the country.

A partial list of occupations in which lead exposure may occur was recently released by the U.S. Department of Health, Education and Welfare. It included the manufacture of ceramics, enamel, glass, imitation pearls, and matches, all of which industries employ significant numbers of women. In the jewelry and watch industries, in fact, women predominate. Soldering was also listed as dangerous, and there are millions of women solderers employed in the manufacture of small machines and radio and television sets.

Were industry truly concerned with teratogens, it would consider not only the health workers exposed to X-rays mentioned by Dr. Stellman, but to farm workers exposed to pesticides.

A Historical Note

Exposure of women to industrial poisons has been a concern of feminists for over 50 years.

In September 1926, Dr. Alice Hamilton, pioneer woman doctor, feminist, and professor of industrial medicine at Harvard Medical School, spoke on this subject to the Women's Industrial Conference held by the U.S. Department of Labor. During World War I, she told the conference, a number of government bureaus had studied the problem, which was then chiefly limited to lead and a few explosives.

"At the present," she said then, "the field is much more complicated. Since the war there has been a great change in the solvents which are used in industry, causing a new situation in rubber factories and in factories using varnish, lacquer, shellac, and all other coatings."

She spoke of lead poisoning in pottery factories—much worse in the U.S. than in Europe—benzol

poisoning which destroys the ability of the blood to clot, and which killed a number of women; and poisoning from wood alcohol in the manufacture of hats and artificial flowers, which caused loss of sight.

"It is hard to understand why so rich and important an industrial country as ours should show penuriousness in just this particular field," said Dr. Hamilton, "and I cannot help believing that in the near future we may be in a position to solve our problems."

Although a staunch feminist, Dr. Hamilton was persuaded that women in her time needed special protective legislation. In a pamphlet she wrote for the Consumers League of Connecticut, she said:

"To say: 'Then let women enter these occupations and make them safe for both sexes' may be logical, but I have seen too much of American industry to be willing to take such a risk." ■

Materials Available

Copies of the EEOC guidelines, the Schweiker bill, and the *New York Times* articles described in this issue are available from WOHRC. You can also still order the illustrated fact pack and calendar, Women's Health/Women's Work '80, with 12 factsheets on health and safety on the job. Just check which item(s) you want and mail to the address below:

- Women's Health/Women's Work '80 (\$5.00)
- EEOC guidelines on employment discrimination and reproductive hazards (\$1.00)
- Occupational Safety and Health Improvement Act of 1980 introduced by Senator Schweiker
- New York Times* articles on genetic screening (\$1.00)

Enclosed is my check for \$_____ made out to WOHRC/Columbia University.

Name (please print) _____

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- whether the policy is applied consistently to both sexes and to all scientifically recognized reproductive hazards in each of the employer's workplaces;
- whether the employer has complied with applicable occupational safety and health laws;
- whether the employer has studied the effects of the hazard not only on those adversely affected by the policy, but on relevant employees not adversely affected by the policy;
- whether the hazard is "significantly greater or confined to" the class of employee excluded;
- whether, prior to the institution of the policy, the employer had provided equal employment opportunities to the adversely affected sex;

- whether the exclusion is "narrowly tailored" to the type of hazard involved (this would not permit, for instance, exclusion of all fertile women because of possible danger to a fetus);
- whether there is no evidence that the hazard poses a significant health risk to body systems other than the reproductive system in the class not excluded;
- whether the employer has investigated alternatives to exclusion and, where feasible, adopted alternative means of protecting the affected employees;
- whether the employer is monitoring scientific research and technological developments which may affect the appropriateness of the policy.

3. There may be "temporary, emergency exclusion" of a class of employees in a situation "where an employer/contractor has obtained reputable scientific evidence that workplace hazard causes or is likely to cause significant harm to the reproductive health of employees of one sex only, or of pregnant employees, and also where there is insufficient reputable scientific evidence concerning the reproductive harm to the other employees."

In order to maintain such an exclusionary policy, however, an employer must show that the existing scientific evidence has been thoroughly searched, that the policy has been narrowly tailored to the group endangered, and that suitable alternatives have been investigated and adopted.

The employer must also, within six months of the effective date of these guidelines, initiate research designed to produce evidence of the effect of the hazard on the class *not* excluded. This must be conducted "according to accepted scientific methods," and must not exceed two years in duration. If the employer does not have the capacity to conduct such research, assistance may be requested from OSHA. Employers are also encouraged to undertake such research jointly.

The employer may be excused from such research only if reputable scientific evidence already exists that shows there is no hazard to the reproductive health of employees not excluded.

Once published, guidelines do not have the force of law, and are not controlling on the courts. ■

Alerts

In April, WOHRC members were alerted to Senate committee hearings on a new bill that would seriously undermine the powers of the U.S. Occupational Safety and Health Administration (OSHA).

Many feminist, labor, and public interest groups were scheduled to testify against the bill. It would provide exemptions from safety inspections and penalty assessment for firms with good safety records, authorize most OSHA intervention only after injury had occurred, and reduce most fines for safety violations.

The proposed Occupational Safety and Health Improvement Act of 1980 was sponsored by a group of senators usually associated with liberal causes,

and led by Senator Richard S. Schweiker of Pennsylvania. Hearings were scheduled before the Senate Committee on Labor and Human Resources April 15-17.

More heartening news came from the Supreme Court in February with the unanimous decision in the Whirlpool case that a worker may legally refuse to do work which he/she believes would threaten serious injury or death, and where there is insufficient time to eliminate the danger through normal OSHA channels.

While hailing the decision, however, trade unionists pointed out that it does not require the employer to pay for the time not worked during the refusal period. Legislation which sought to provide pay in such an instance has been defeated in Congress. ■

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