



FENWICK & WEST LLP

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Male-On-Male Sexual Harassment Claims On The Rise

The number of men taking advantage of Title VII of the Civil Rights Act and other laws designed to protect women from sex bias in the workplace is on a steady climb. National numbers from the Equal Employment Opportunity Commission show that complaints of male-on-male sexual harassment increased from 9.1 percent of such claims filed with the EEOC in 1992 to 13.6 percent in 2000. Complaints of so-called “reverse discrimination,” or female-on-male harassment, remained uncommon. The trend is especially pronounced in New Jersey, where the percentage of men filing sex bias complaints with the New Jersey Division on Civil Rights doubled between 1998 and 1999. Men’s increasing awareness of their right to a bias-free workplace is a driving factor in the statistical jump; employers can reduce their exposure to lawsuits by taking such complaints seriously and pursuing swift remedial action.

California State Legislature Hears “Drag Queen Bill”

The California legislature is hearing debate on AB 1649, the so-called “drag queen bill,” which would amend the state’s Fair Employment and Housing Act and bar discrimination against transsexuals, cross-dressers, and other employees whose appearance and behavior are “different from that traditionally associated with a person’s sex at birth.” While opponents complain that the bill “turns the ‘Rocky Horror Picture Show’ into California labor law,” the law’s supporters argue that the new language is needed to protect both women whose bosses insist that they act more feminine as well as men who are harassed for appearing insufficiently masculine. Recent amendments to the bill have made it more

palatable to conservatives; the law now permits companies to keep their dress and grooming policies and leaves it to the courts to decide if similar policies could be imposed in the case of transsexual employees. Thirty other states and cities, including New York, Massachusetts, and Washington, D.C., have similar statutes on the books.

A Green Light For Social Security Employees’ Age Bias Lawsuit

A group of employees over the age of forty may proceed with their age discrimination class action lawsuit against the Social Security Administration, a federal court has held. In *Duffy v. Massinari*, a Pennsylvania district court rejected the government’s argument that the 130 plaintiffs could not be certified as a class because they had neglected to raise the age discrimination argument during earlier administrative proceedings before the EEOC. The court concluded that it was free to hear charges “growing out of” the initial administrative complaint. The group is claiming that during a recent restructuring, the SAA upgraded the work descriptions of and gave raises to younger employees, while manipulating older employees’ duties to avoid giving them pay increases. Employers should use caution when restructuring to avoid disparate treatment of a protected group or class.

Academics Conclude That Failure To Report Will Poison Sexual Harassment Lawsuit

Employees who failed to report sexual harassment to management before suing their employers will have their lawsuits thrown out of court, according to a recent law review article. “Don’t Train Your Employees and Cancel Your ‘1-800’ Harassment Hotline,”

published in the Fordham Law Review in March 2001, suggests that employers should make sure their anti-sexual harassment training is effective . . . but not too effective. The authors surveyed 109 lawsuits brought between 1998 and 2001 and found that as long as employers had extended reasonable efforts to prevent and to remedy sexual harassment, employees who failed to report incidents to management before bringing a lawsuit had their cases dismissed. Although training remains necessary, the authors' findings suggest that the ideal educational program would be one that exercises "just enough reasonable care to satisfy a court, but not enough to make it easy or comfortable for employees to complain of workplace harassment." Well-advised employers should continue to take necessary steps to minimize harassment and exposure to lawsuits.

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