

138-3

The New York Times

NEW YORK, SUNDAY, JUNE 10, 2001

Men, Increasingly, Are the Ones Claiming Sex Harassment by Men

By REED ABELSON

The managers at a used-car dealership were notorious for telling lewd jokes and teasingly groping the salesmen who worked there, according to a lawsuit brought on the salesmen's behalf.

A gay hotel employee says men who worked with him would continually pick on him, sometimes coming up behind him and simulating sex in front of others.

A Wall Street analyst complained that his male supervisor demanded — possibly as a put-down rather than a proposition — sexual favors in exchange for a larger bonus. The supervisor told the analyst, who is heterosexual, that he would be better off as a “homosexual prostitute,” according to the analyst's lawsuit.

More and more men are coming forward to file sexual harassment charges about behavior that employers once dismissed as simply horseplay or locker-room antics, according to employment lawyers and government regulators. While some of these men are complaining of unwanted sexual overtures, just as women frequently do, most complaints involve men being picked on, through boorish hijinks that come across as offensive and humiliating.

These men are filing charges of sexual harassment with the United States Equal Employment Opportunity Commission and bringing private lawsuits against employers.

Women are also bringing cases claiming harassment by other women, according to lawyers, but such cases are rare.

Men's claims now account for 13.5 percent of all sexual harassment charges being brought to the commission, nearly double the percentage a decade ago, according to the E.E.O.C. While the commission tracks only the sex of the person making the claim, it believes the vast majority of these charges involve harassment by other men.

“Employers really need to look at their workplace,” said Ida L. Castro,

Continued on Page 41



Cindy Karp for The New York Times

Medina Rene, a gay former butler at the MGM Grand Hotel in Las Vegas, lost a sexual harassment suit against the hotel because the court said the harassment was based on his sexual orientation, and not on his sex.

In Same-Sex Cases, Little Shelter for Men

Continued From Page 1

chairwoman of the E.E.O.C., describing what she called an "explosion of expression" of same-sex sexual harassment even as other forms of harassment also rise.

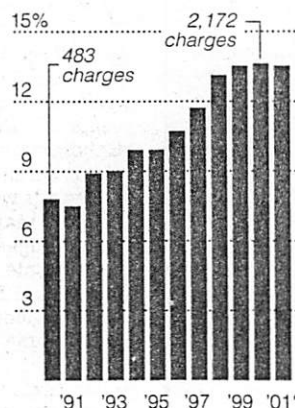
But because of the way the current federal law is being interpreted, much of the most egregious behavior goes unpunished, according to lawyers. For example, many employees who are gay and are picked on have little recourse under the federal law under which sexual harassment is prohibited, or under most state laws. And a manager or co-worker who is crude or displays other unwanted sexual behavior not clearly aimed just at men or just at women may not be covered.

"There is really not a workplace protection for that," said Stephen M. Katz, a lawyer in Atlanta who has represented employees complaining of same-sex harassment.

Some forms of behavior long tolerated by employers, particularly among men, are beginning to be regarded as just as virulent as those in which men harass women. While some courts had refused to acknowledge that such harassment was possible, the Supreme Court ruled three years ago that employees are protected under Title VII of the Civil Rights Act of 1964 from harassment by someone of the same sex, even when that harassment is not based on sexual attraction. Sexual harass-

More Men Are Saying 'Stop'

An increasing percentage, and number, of workplace sexual harassment charges are being filed by men.



*First half (1,058 charges)

Figures are for fiscal years Oct. 1 through Sept. 30 and are based on charges filed with the E.E.O.C. and state and local fair employment practices agencies.

Source: Equal Employment Opportunity Commission

The New York Times

ment is considered "discrimination because of sex" under the framework of Title VII.

In the case involving the used car dealership, Burt Chevrolet in Englewood, Colo., two supervisors were accused of harassing 10 salesmen and therefore creating a hostile work environment for male employees, a form of discrimination under Title VII. The supervisors would refer to the men with terms like "woman" or "whore" and tell offensive sexual jokes, according to a lawsuit brought by the E.E.O.C. in 1999. The men were also subjected to "having their genital areas repeatedly grabbed," according to the suit. The E.E.O.C. said the behavior was aimed at undermining the masculinity of the employees.

The E.E.O.C. added that the dealership's management had dismissed the incidents as horseplay.

But according to one man, who asked that he not be identified, the physical nature of the harassment — the grabbing, the coming up from behind and simulating sex — clearly was "stepping over the line."

"Certain people just think they have to project a macho image," he said.

The case was settled last year for \$500,000.

Burt Chevrolet says the behavior was never as severe as the E.E.O.C. claimed and was nothing more than what goes on in "a typical high school locker room," according to John Held, the company's lawyer.

Two years ago, a jury awarded David Gonzales, a shoe salesman for Dillard's Department Stores, \$7.3 million because he said he was sexually harassed by his male supervisor, who would frequently touch his buttocks and groin area, according to the lawsuit, brought under the Texas law that is modeled after Title VII.

The case is now under appeal. Dillard's declined to comment.

In the case of the former Wall Street analyst, he brought a lawsuit against Bear Stearns in late 1999 in which he said his supervisor suggested he perform a sex act in exchange for a higher bonus. The supervisor also made repeated comments, including referring to a male colleague as the analyst's "girlfriend," and making derogatory remarks about other employees' supposed sexual orientation like describing someone

Straight and gay, men are finding the law on sexual harassment unclear.

as "supergay," according to the lawsuit.

The suit has since been settled for an undisclosed amount. Bear Stearns declined to comment.

But unless employees can demonstrate that they were harassed because of their sex, they may be out of luck. Because Title VII, which is the basis for most state laws, is aimed at prohibiting sex discrimination, it does not cover all kinds of harassment. The Supreme Court ruling only clarified that one could be harassed by someone of the same sex.

When motivation is unclear, courts are often reluctant to conclude that an individual was harassed because of his or her sex unless the harassment involves a man and a woman, according to lawyers who represent employees.

"When it's opposite-sex sexual harassment, it's obvious," said Ferne Wolf Wiesenthal, a lawyer in St. Louis who is appealing a case involving same-sex harassment.

In that case, Michael S. Penberthy, a technician for the T. J. Gundlach Machine Company, complained that

men with whom he worked harassed him by claiming he had sex with his supervisor and circulated cartoons depicting him having sex. The company declined to comment.

The court ruled for the company on the grounds that it was not clear such harassment was based on Mr. Penberthy's sex, even while it acknowledged disgust at the "juvenile conduct."

In March, Medina Rene, a hotel employee who is openly gay, lost his case against the MGM Grand Hotel in Las Vegas in an appeal before the United States Court of Appeals for the Ninth Circuit. Mr. Rene, 48, had worked for the hotel for more than two years as a butler for wealthy guests and claimed he was continually harassed by other butlers. They would try to pinch his buttocks and engage in other inappropriate contact, he contended.

"That's physical violence," Mr. Rene said.

The hotel investigated Mr. Rene's claims twice and each time found them without merit, according to Alan Feldman, a spokesman.

Because Mr. Rene is gay, the court ruled that any harassment would have been based on his sexual orientation, not his sex. "The degrading and humiliating treatment Rene contends that he received from his fellow workers is appalling, and is conduct that is most disturbing to this court," the court said. "However, this type of discrimination, based on sexual orientation, does not fall within the prohibitions of Title VII."

One judge on the three-member panel dissented, arguing that "while gay-baiting insults and teasing are not actionable under Title VII, a line is crossed when the abuse is physical and sexual."

Mr. Rene's lawyer, Richard Segerblom, is requesting an appeal before an 11-member panel of judges. He argues that the court unnecessarily delved into the motivation of the harassment. Because the very nature of the acts was sexual, they constitute sexual harassment, he argues.

Mr. Segerblom also said that Mr. Rene should not have to prove that the only reason he was harassed was because of his sex.

In another case, the court concluded that a postal worker in Farmingdale, N.Y., was not protected because the harassment was based on his sexual orientation.

"It's very upsetting as a lawyer to know someone can't get into the courtroom doors for relief," said Rick Ostrove, an attorney for Leeds Morelli & Brown who was involved in the case's appeal. While New York City prohibits discrimination based on sexual orientation, the State of New York does not, he noted.

The Supreme Court decision "has required the courts and plaintiffs to know what is really motivating the harassment," said Heather Sawyer, an attorney for the Lambda Legal Defense and Education Fund, a civil rights group for gay men and lesbians.

"It certainly gets at the clear need for a law that gets at circumstances that are solely based on sexual orientation," she said.

Other cases have been lost on the grounds that the harasser did not target any one sex. An \$80,000 jury verdict against Wal-Mart Stores was reversed earlier this year because the harasser "was just an indiscriminately vulgar and offensive supervisor, obnoxious to men and women alike."