

FIGHTING DISCRIMINATION ON THE JOB

BY STEVEN MITCHELL SACK

Although employment discrimination is illegal, it is commonly practiced throughout the United States. More than 130,000 formal complaints are currently filed with the Equal Employment Opportunity Commission (EEOC), one of the federal agencies responsible for enforcing the law, and approximately 5,000 discrimination lawsuits are tried in court each year.

Some six-figure verdicts in favor of individuals have included job reinstatement, back pay, payment of retroac-

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tive benefits, and also counsel fees.

The most comprehensive and significant federal legislation dealing with employment is Title VII of the Civil Rights Act of 1964, as amended by

An expert simplifies confusing laws and tells you how to file a timely complaint, prove your charges, and collect damages.

the Equal Employment Opportunity Act of 1972. These laws apply to companies employing more than 15 persons and prohibit discrimination in all aspects of the employment relationship—recruiting, interviewing, hiring,

promotion, training, transfer, assignment, discipline, layoffs, and discharge procedures—on the basis of race, color, religion, age, sex, or national origin. Private employers, employment agencies, labor organizations, and training programs are all required to uphold the law.

Many employers having fewer than 15 employees and not covered under federal law fall within the jurisdiction of state law, which is sometimes more strict and inclusive. For example, under many state and city laws, the age discrimination prohibition covers ages 18 to 70. Federal law protects only those between 40 and 70.



PHOTOGRAPHED BY JOE RUSON

when the person must submit to such activity to be hired, receive a raise, or be promoted.

Such conduct constitutes sexual harassment when it interferes with the person's work performance or creates an intimidating, hostile, or offensive working environment. An example would be a situation in which a worker is subjected to repeated humiliating

Penalizing older employees with reduced privileges, employment opportunities, or compensation.

Age discrimination frequently occurs in areas you may not notice. For example, advertisements for job applicants are often illegal when they contain terms such as "age 25 to 35," "young girl," "recent college graduate," or similar words. So, too, are job require-

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comments or is touched repeatedly without that person's consent.

Within the past year, the Supreme Court went so far as to rule that employers, in some cases, could be held liable for acts of harassment by their employees even when they were unaware that such acts were taking place. In addition, the harassment for which employers can be held liable can stem from anyone, not just fellow employees. For example, sexual harassment was found in one case when female employees were required to wear revealing uniforms and suffer derogatory comments from passersby.

Yet another type of employment discrimination is that based on age. Employers can, of course, fire older workers for inadequate job performance and good cause such as tardiness or intoxication. They can entice older workers into early retirement by offering such additional benefits as bigger pensions, extended health insurance, outplacement counseling, and substantial bonuses.

WHEN JOB PERFORMANCE REQUIRES YOUTH

They can also lay off older workers provided younger employees are similarly treated. And they can discriminate against older applicants when successful job performance absolutely requires youth, as in the case of an airline pilot.

However, the following actions are prohibited by law:

- Denying an older applicant a job on the basis of age.
- Imposing compulsory retirement before age 70.
- Coercing older employees into retirement by threatening them with termination or other penalties.
- Firing older persons because of age.
- Denying promotions, transfers, or assignments because of age.

ments that exclude older applicants because the company is seeking employees with a recent college degree. Thus, for example, if you are over 40 and are told by an interviewer that you are "overqualified," "lack formal education credits," (even though you are highly qualified by previous work experience and a college degree is not necessary for successful job performance), or asked to take a pre-employment physical that is either unnecessary, not job-related, or not requested of all other applicants, there is a good possibility that you are being victimized by age discrimination when you don't get the job.

THE SUBTLE FORMS OF RACIAL DISCRIMINATION

The final major category of job discrimination is that based on race. Racial discrimination can be very subtle. It is illegal, for example, to ask a minority applicant at the hiring interview about his or her credit background.

Recognizing discrimination is only part of the battle; steps must also be taken to enforce your rights. The law entitles victims of discrimination to such compensations as hiring, reinstatement, wage adjustments, back pay and double back pay, promotions, reimbursement of legal fees and costs, and punitive damages. The institution of an affirmative action program on behalf of your fellow employees might be yet another penalty.

Again, as with discriminatory questions, you start the ball rolling by filing a complaint with the EEOC or appropriate state agency. No one, incidentally, can stop you from filing a complaint. The law forbids employers from threatening reprisals or retaliation—for example, denying you a promotion when action is taken.

It is not necessary for the complaint to be lengthy or elaborate. The main

purpose is to allege sufficient facts to trigger an agency investigation. The advantage of filing a complaint with the EEOC is that charges of discrimination are initiated and investigated at no cost to you. If the complaint seems plausible, the EEOC will develop the claim on your behalf.

Once a formal complaint is received, the agency assigns it a number. A copy of the complaint, together with a request for a written response, is then sent to the employer. The employer must respond to the charges within several weeks. After charges and countercharges have been examined by an EEOC investigator, the employer is invited to attend a no-fault conference to negotiate an informal settlement. Approximately 40% of all complaints made to the EEOC are disposed of in this way.

PRESSURING THE EMPLOYER FOR A MONEY SETTLEMENT

The conference is conducted by an experienced representative who may place considerable pressure on the employer to offer a money settlement (back pay, for instance) or some other form of restitution. Otherwise, it is understood that the agency will conduct a formal investigation in which an employer's business records, employment applications, inter-office memos, and pay records may be examined.

If your case cannot be settled at the conference, there are several options:

- The EEOC may refer the matter to an appropriate state or local human rights agency for action.
- The EEOC or the Justice Department may commence a class-action lawsuit for you and others similarly situated.
- You can hire a lawyer and sue the employer privately.

In any event, both federal and state discrimination laws require that formal complaints be filed within a certain period of time, usually within nine months of the allegedly illegal incident. Thus, you must move quickly so that the statute of limitations does not operate to bar your claim.

To prove discrimination, it will be helpful to take certain steps to document your claim. For example, I advise my clients to speak with other employees to learn whether they have also been victimized on the job. Also, if you are being sexually harassed on the job, it is wise to complain to a supervisor in writing before filing charges. Judges are more willing to award damages for sex harassment when a formal complaint was made requesting the offensive conduct to stop and the request was ignored.