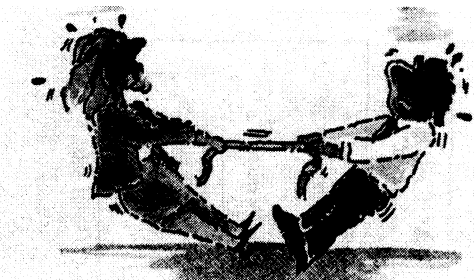


Harassment Watch



Keeping an Eye on Discrimination and Sexual Harassment Law for Businesses and Employees

Mansfield, Tanick & Cohen, P.A.

Winter, 2003

SEX AND DISABILITY DISCRIMINATION CHARGES INCREASING

Age discrimination cases rise slightly, while EEOC charges increase

The number of discrimination and harassment claims are rising. During the past year, the Equal Employment Opportunity Commission (EEOC), which is the federal agency that regulates compliance with the Federal Civil Rights Act, reported a total of 80,840 new discrimination and harassment claims, an increase of 1.2% from the previous year.

This slight increase was dwarfed by the large rise in cases filed directly by the EEOC in federal courts throughout the country. They rose by nearly one-third, increasing from 329 in 2000 to 431 last year.

Ordinarily, the administrative body accepts charges from complaining parties. After investigating the charges, and if settlement cannot be reached, the EEOC decides whether there is "probable cause" to support a charge. In a small number of cases, more than 5%, the EEOC will pursue the charge itself in court, as it did 431 times last year.

Increasing Issues

The types of issues that attracted the greatest increase in EEOC filings last year included age and disability discrimination claims. Charges filed for age discrimination increased by almost 9%, rising from 16,008 in 2000 to 17,405 last year. The total number of claims exceed 100% because the number of claims allege multiple offenses.

Disability discrimination claims also increased. The number of charges went from 15,864 in 2000 to 16,470 in 2001, a 4% increase.

All other types of charges either declined slightly or

remained relatively steady.

Slightly more than one-fifth of the total number of cases filed last year, 21.5%, consisted of age discrimination. Nearly the same number, 20.4%, were claims of disability discrimination. The largest single charge consisted of race discrimination, which comprised 36% of all of the claims. Claims of sex discrimination and sex harassment constituted 31% of the claims. The remaining 27.5% of the claims alleged retaliation or reprisal.

The EEOC also has strived to resolve charges more speedily. The average amount of time taken to resolve a charge through voluntary mediation was 84 days.

The average time taken to process charges against a private employer decreased to 182 days.

Meanwhile, the EEOC has decreased its backlog to 32,481 cases, which is its lowest number in nearly 20 years.

Minnesota Matters

The EEOC statistics for charges filed in Minnesota are fairly comparable to the national trends. Disability claims increased by approximately 33%, rising from 159 claims in 2000 to 237 claims last year. Sex and race discrimination claims also increased, both by around 20%. Specifically, the number of sex discrimination claims increased from 164 filed in 2000 to 204 in 2001, while race discrimination charges rose from 163 filed in 2000 to 208 in 2001.

Surprisingly, the number of age discrimination claims filed with the Minnesota EEOC *decreased* from 169 claims in 2000 to 136 last year, a decline of 19.5%.

In addition to the EEOC, discrimination and harassment

Harassment Watch Fact

	EEOC			MN Department of Human Rights		
	2000	2001	Charges	2000	2001	Charges
Sex	164	204	+19.7%	544	511	-6%
Race	163	208	+21.7%	385	435	+11.5%
Age	169	136	-19.5%	235	289	+18.7%
Disability	159	237	+33%	464	572	+18.9%

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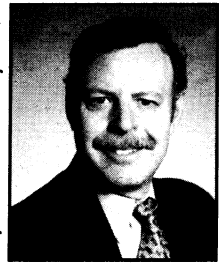
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charges are often filed with the Minnesota Department of Human Rights, which oversees compliance with the state Human Rights Act. The most recently available statistics from the Department show that the total number of employment charges filed with this Minnesota agency have also increased. Last year, 981 employment charges were filed, which is a 6% increase over the 2000 number of 923.

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These statistics are telling in many respects," said Marshall H. Tanick, an attorney with the law firm of MANSFIELD, TANICK & COHEN, P.A. While they show that employers are seemingly doing a better job of curbing discrimination harassment in the workplace, there is a growing number of incidence of claims, especially for age and disability discrimination," Mr. Tanick stated. "These claims are attributable, in part, to a greater number of older employees who often assert discrimination and harassment charges when they are laid off or their jobs are eliminated," he added.



Marshall H. Tanick

Within this segment, the number of age discrimination claims increased from 235 filed in 2000 to 289 in 2001, almost a 19% increase. The number of disability claims also increased by almost 19%, from 464 filed in 2000 to 572 last year. Charges for race discrimination increased by almost 12%, rising from 385 in 2000 to 435 in 2001.

The number of sex discrimination claims actually decreased, however, declining from 544 filed in 2000 to 511 in 2001.

AGE DISCRIMINATION CLAIMANTS PREVAIL IN TWO CASES

Age discrimination claimants prevailed in recent rulings before the Minnesota Court of Appeals. In both cases, the group of nine aged employees at Interlachen Country Club in Edina Appellate Court reversed lower court rulings dismissing lawsuits in *Strand v. Interlachen Country Club*, 2002 WL 1365637 (Minn. Ct. App. 2002) (unpublished). The employees, who ranged in age from early 40's to late 60's, were laid off when the Country Club

remodeled but were promised that they would be given consideration for recall after the facility was upgraded. Following the remodeling, none was recalled and all were replaced by younger employees. In *Orensteen v. St. Cloud University*, 2002 WL 1018948 (Minn. App. 2002) (unpublished), a 71 year old male faculty member at St. Cloud State University alleged that he was discriminated against on the basis of both age and gender when he was

bypassed for a tenure-track position, which was given to a 40 year old woman. The Stearns County District Court dismissed the lawsuit, but the Court of Appeals reversed and reinstated it. Appellate Court reversed and remanded the case for new trial. It

The Appellate Court relied on age-related statements based its decision on various evidentiary rulings made by the trial made by college officials in the decision-making process. Also court judge, which sustained objections made at trial by the noting that the school "bent" the rules to allow choosing the ployer and also failed to articulate the grounds as to why some woman, even though another male candidate had "far superior" objections were upheld, which prevented "the claimants from being able to present their case."

to permit the claimant to show that he was discriminated against on the basis of his age and his gender. But prior to the re-trial, the trial case was settled for more than \$300,000. The case was sent back to the same trial judge for a new trial with the assurance that the judge would act in a "fair and unbiased" manner.

HARASSMENT WATCH is a publication of the law firm of MANSFIELD, TANICK & COHEN, P.A. and is provided as a complimentary service to parties interested in all forms of discrimination and sexual harassment in the workplace in Minnesota and elsewhere. It focuses upon recent legal developments concerning harassment under Federal, State, and local laws affecting both employers and employees. Further information about the subject is available by contacting the law firm at (612) 339-4295, by faxing communications to (612) 339-3161, or by e-mail at mtanick@mansfieldtanick.com. © MANSFIELD, TANICK & COHEN, P.A., 2003

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