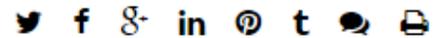




Employees Are Fearful of Filing Sexual Harassment Lawsuits, Instead Place Priority With Job

Ellen Chang | +Follow Apr 28, 2015 9:06 AM EDT



NEW YORK (MainStreet) — [Sexual harassment in the workplace](#) remains widespread, but many victims remain more fearful of the repercussions reporting could bring, such as losing their jobs, and opt out of filing lawsuits.

This pervasive problem affects one out of every four working women in the U.S. and hurts women in the lowest paying fields and even high wage male-dominated industries. Still, the majority of cases are not reported, said Fatima Goss Graves, vice president for education and employment at the National Women's Law Center, when she testified before the [Equal Employment Opportunity Commission \(EEOC\)](#) in January.

“There are consistent reports of sexual harassment that go unaddressed,” she said. “Whether suffering harassment from supervisors, co-workers or third parties, most victims of harassment are [still suffering in silence](#).”

Many Victims Refrain From Lawsuits

Even though the [law protects victims of sexual harassment](#), the threat of facing a [reprisal](#) remains at the forefront for many employees, said Sam Cleaver, an attorney who represents victims of sexual harassment in Los Angeles. Many women are concerned that filing a lawsuit hinders their ability to get another job, especially if they work in an insular industry.

“If you complain, you can be [retaliated against](#) – do you want to have a great lawsuit or a great job?” he said.

In many cases, [businesses want to stay out of the spotlight](#) and instead chose to settle with the [employee](#) through mediation or arbitration, said Lisa Banks, a partner at an employment law firm in Washington, D.C.

The “good” cases are ones with plenty of facts, evidence and a history of harassment and tend to settle out of court, she said.

“The cases which end up in court aren’t always the best cases, and the most egregious cases often get settled,” said Banks.

The cases that proceed to a trial are often the “bet the company” cases where the victim has enough evidence to survive a dispositive motion, but not enough to convince the employer it would likely lose at a trial, said Nannina Angioni, a partner with Kaedian, a Los Angeles-based law firm.

Women who are executives or in an upper management position are less likely to bring a [sexual harassment lawsuit](#), because these cases are personal and having your life critiqued by juries and lawyers is tough, she said.

“Even nowadays, there are far less women than men in these positions,” Angioni said. “It’s a competitive field and once a woman obtains an upper management position, she’s not going to risk losing it or possible retaliation for speaking out.”

Companies Often Settle Cases

Some companies have all of their employees [sign an arbitration agreement](#), which means any disputes are settled privately with usually no option to appeal. While arbitrators are theoretically independent individuals who are appointed to settle disputes, there is a potential conflict of interest, because the employer pays for the arbitrator. The arbitrator has a vested interest in generating repeat business from the employer or its lawyers, Cleaver said.

A lack of lawsuits also means that in these cases, employers and harassers are not being publicized and the law is not “being pushed forward,” he said.

“In some of these cases, sometimes you win by just bringing the case to court,” Cleaver said. “It’s not always the person who stands up the first time who succeeds.”

Arbitrations and mediations can still be successful, because they are still holding the employer accountable. When employers are faced with paying an employee to settle a case, “you’re hitting them where it actually hurts,” Banks said.

When companies realize they have a problem in their culture that potentially costs them money, they will attempt to remedy it, she said.

“It’s in their best interest to change it,” Banks said. “Not only is it a business decision, it is the right thing to do and will cost them less money.”

Deciding whether or not to file a lawsuit can be an agonizing decision for most employees. Due to the emotional and financial toll, litigation can be an “excruciating process” and even if the jury rules in the employee’s favor, the company can still appeal and stretch out the process even longer, Banks said.

“You can make the same point without filing a lawsuit,” she said. “Some companies still won’t admit to any liability and the victim will feel victimized again. It is almost always in the employee’s interest to try and resolve it since the alternative is full of risk and more harm.”

Before employees come to a conclusion, they should consider if they have the stomach for enduring a potentially lengthy trial and having to face the harasser for the next year or two, said Cleaver. During a lawsuit, the defendant’s attorneys will attempt to [discredit the victim](#), especially if the evidence is weak.

Employees who have a good chance of winning their case will have obtained evidence such as emails, photos, cards, witnesses and employee reviews, because it adds credibility to their case, he said. Nine out of ten lawsuits are settled, but employees shouldn't count on a large settlement.

“You also want to have a support group and have people in your corner so you are not emotionally out there on your own,” Cleaver said.

More people are willing to face the public and bring these lawsuits now, even though there is a lot more at stake than your career, he said.

“It’s still not a great situation, and it is tough to put yourself out there,” Cleaver said.

Companies Can Be More Pro-Active

What many companies fail to do is [enforce and communicate](#) their sexual harassment policy, said Steve Paskoff, CEO of ELI, an Atlanta-based workplace training company.

“Here is where many companies go wrong - it’s easy enough to write a strict policy,” he said. “Many have the policies drafted and in place, but except for building a legal defense, they are not really preventing the misconduct. If it is a strict policy, but there is

no evidence that it is enforced, the effect on employees is going to be cynicism, criticism and distrust.”

Managers at companies who seek to [improve the workplace environment](#) can make a difference in the behavior of employees, said Kent Sprinkle, a partner in the San Francisco office of Carothers DiSante & Freudenberger LLP, an employment, labor and immigration law firm.

“I think that positive changes including intolerance of harassing behaviors are best sought through culture change, training and leadership improvements,” he said. “I rarely think lawsuits are the answer to solve a problem.”

Sexual harassment cases in the workplace range from minor jokes and a slightly hostile workplace to overt touching, “which is nothing less than a sexual battery,” said Peter Ticktin, a senior partner at Ticktin Law Group in Deerfield Beach, Fla.

The bottom line is that wrongful conduct will never be stopped or fixed unless the perpetrators “understand that it is going to cost them more than it is worth,” he said. One benefit of lawsuits is that they have shown companies they need to create rules and procedures to avoid and deal with the claims.

“Sexual harassment is no laughing matter, except to the insensitive self-gratifying boss or superior, who has no clue as to the harm he or she is committing,” Ticktin said. “This is a process which can never be relaxed. The day we stop making companies accountable, companies will start to slip.”

--Written by Ellen Chang for MainStreet