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Work Force Diversity: EEOC: The Mill Grinds Slowly

At Understaffed and Underbudgeted Agencies, the Backlog of Cases Continues to Grow

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In a real-life episode that invites comparisons to the Michael Crichton bestseller "Disclosure," Sabino Gutierrez alleged that his boss at a Pomona spa company regularly embraced him, kissed him, fondled him and told him of her desire to have sex with him.

When Gutierrez announced his engagement to another woman, the supervisor, Maria Martinez, had his office demolished, demoted him and eventually tried to get him fired, Gutierrez later said in court records.

He complained to the company's owner, then to the federal Equal Employment Opportunity Commission. All to no avail.

"By that time, there was not much I could do. I could leave the job . . . or I had to confront the problem," he said in an interview.

In the end, Gutierrez, 34, took his case to a private lawyer, Carla Barboza, now a partner with Walker & Barboza in Los Angeles. In 1992, he filed a sex-discrimination lawsuit against Martinez and California Acrylic Industries Inc., or Cal-Spas. Last May, a jury awarded him more than \$1 million in what was believed to be the first verdict of its kind.

That verdict is being appealed; a judge has already reduced the award to \$350,000 in response to a defense motion. Martinez, who is chief financial officer of Cal-Spas, denies there was any sexual harassment.

However the case turns out, it highlights the limited options available to someone who feels discriminated against but doesn't have a lot of money.

If not for Barboza's willingness to take his case without a retainer--unusual for an attorney in private practice--Gutierrez may have had no other recourse.

Ostensibly, the federal EEOC and its state counterparts help anyone who believes he or she has been the victim of illegal discrimination in the workplace. Plaintiffs are required to pursue their complaints through these agencies before seeking legal remedies.

In reality, however, the agencies are overworked, underbudgeted and understaffed, and few of the cases brought to them result in corrective action.

After a worker first contacts the EEOC, it can be months before an investigator is assigned, and months longer before the investigation begins. In an internal analysis, the EEOC found that the average processing time for a case in 1993 was 294 days--two days longer than the year before. And the backlog is growing with complaints covered by the new Americans With Disabilities Law.

If discrimination is found, the agency can issue a letter stating the offense and seeking negotiation of a settlement or, ultimately, court action. The likelihood of legal action is small, however. In 1993, the EEOC dismissed or found no discrimination in 84.2% of the charges brought to it.

Long before the process runs its course, however, most complainants may request a letter authorizing them to pursue a lawsuit on their own--in effect freeing the agency from further responsibility.

Most lawyers who handle discrimination cases urge workers to pursue internal remedies first: talk with their supervisors, personnel officer or other company officials, or go through mediation. That's particularly important if a worker wishes to remain on good terms with the employer.

If talks don't resolve the situation, the employee can turn to a public interest law firm or legal aid. But the case must be a strong one or one that will have meaning for a large group of workers, such lawyers say.

To hire a lawyer, a worker must have money up front or expect an award that would cover the \$15,000 to \$30,000 cost of litigating a routine discrimination case, Barboza said.

"If you have someone who is experiencing discrimination in the workplace, but not at a level that will command six-figure damages in court . . . or if you have a \$10,000 case, then you have no access to the private legal system," said Douglas J. Farmer, a former trial attorney with the EEOC in San Francisco who now represents employers in discrimination cases for the law firm Corbett & Kane in Emeryville, Calif.

Michael Wilton, 40, an African American who has worked 19 years as a gardener for the city and county of San Francisco, found that out. Wilton says he has been a victim of racial discrimination on the job since 1989.

He filed several complaints with the EEOC and sought help from at least six private lawyers. None would take his case. He eventually ended up at the city's nonprofit Employment Law Center. Staff attorney William McNeill listened to Wilton's complaints and helped him file a federal lawsuit, but chose not to represent him in court.

Why? Wilton's case would have required too much factual investigation and didn't have broad enough application to others, McNeill said. Wilton's 1991 lawsuit was thrown out of court when the city sought and won a summary judgment. He has appealed.

Consulting a private lawyer can sometimes pay off handsomely. Take the case of Pamela Farrington, a worker at the Albertsons supermarket in Napa.

From 1984, when she began working as a grocery bagger, Farrington had been denied promotions to the night crew or the retail floor--jobs considered stepping stones to management. Her qualifications and seniority were disregarded and men were given the jobs, she said in court records.

She and colleagues approached their union, the United Food & Commercial Workers. They were referred to Saperstein, Mayeda & Goldstein, an Oakland law firm that was handling class-action discrimination suits against other grocery chains.

The firm saw an opportunity to mount another class action and took the case. Months later, Albertson's Inc. agreed to settle. Under the terms of last November's pact, Farrington and 20,000 female and Latino employees at 144 Albertsons stores in California will get \$29.5 million. The chain agreed to modify its employment practices without admitting any violation.