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see page 18

by Julia Méndez

Equality in the workplace: Are women treated the same as men?

- » Identify the number of complaints filed with the Equal Employment Opportunity Commission regarding sex-based and sexual harassment.
- » Review several top cases involving harassment and discrimination against women.
- » Learn about the issue of pay equality and how this affects women.
- » Discover how unconscious bias and stereotypes can influence how women are viewed and treated.
- » Identify best practices to mitigate discrimination and harassment in the workplace.

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Although laws that protect women against discrimination and harassment in the workplace have been around for decades, there still is much work to be done when it comes to the fair and respectful treatment of women. In the more than 20 years that I have been consulting and training organizations on equal opportunity laws and diversity/inclusion principles, I truly believed that by now companies and employees within the United States would have noticed a marked



Méndez

level of progress. However, when it comes to equality in pay, non-discrimination in hiring practices, equal access to promotions, and other opportunities that could assist women in gaining the access and experience needed to advance within the organization, the progress has lagged. The following is an overview of recent settlements and research conducted regarding the treatment of

women in the workplace and possible steps that employers can take in order to hasten progress in this area.

Sex-based and sexual harassment

In recent years, there has been a trend of increased sex-based harassment and sexual harassment charges filed with the Equal Employment Opportunity Commission (EEOC). In fact, the EEOC reported that in fiscal year 2014, 12,146 cases were filed; FY 2015 had 12,573 cases filed; and FY 2016 had 12,860 cases filed. (Note that these charges do include males. However, the overwhelming majority were charges of sex-based harassment, sexual harassment, and sex discrimination against women.) The number of charges filed has not improved much since FY 2010, when the EEOC received 12,695 charges alleging sex-based harassment and sexual harassment. Recently, the FY 2017 figure—12,428 complaints—has been posted to the EEOC's website, which reflects a slight decrease in reports of sex-based harassment. That would lead me to conclude that things have not gotten much better. In fact, with regard to sexual

harassment, you only need to turn on the news to hear about cases such as Uber, where several senior managers were accused and later terminated due to alleged harassment against female employees, or other cases of sexual assault and harassment that sparked the #MeToo movement.

The following are recent sexual harassment cases settled by the EEOC that were reported in the EEOC’s *Fiscal Year 2017 Performance and Accountability Report*¹:

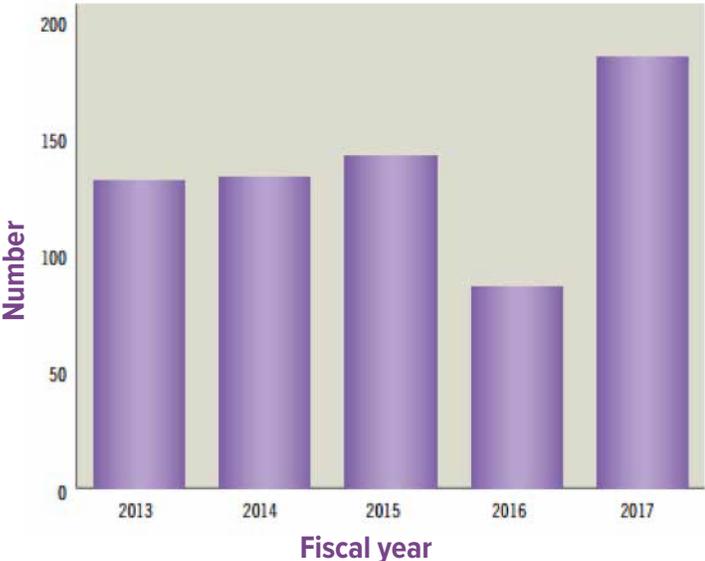
- ▶ **Ford Motor Company:** \$10.1 million settlement. Alleged female and African-American sexual and racial harassment, as well as retaliation after employees complained of discriminatory behavior.
- ▶ **Northwest Territorial Mint, LLC:** \$725,000 settlement for systemic harassment by the owner.
- ▶ **GEO Group,** operator of a correctional facility: \$550,000 settlement for sexual harassment and retaliation after years of harassment, which included sexual assault of female employees by male employees.

Sex discrimination

Not only have women had to face inappropriate jokes, demeaning comments, and inappropriate physical contact in the workplace, but they have also faced discrimination in hiring practices and other employment activities. According to the EEOC’s *Fiscal Year 2017 Performance and Accountability Report*, it filed 184 lawsuits, including 124 suits on behalf of individuals; 30 non-systemic suits with multiple victims; and 30 systemic suits involving multiple victims or discriminatory policies (see Figure 1). Many of these involve sex discrimination suits.

Unfortunately, high-profile sexual harassment cases have had an impact on women in the workplace in unexpected ways. Some men, many with good intentions regarding the treatment of women in the workplace, are consciously or subconsciously refraining from mentoring women, inviting women to after-work functions or lunch to discuss company projects, or engaging in harmless bonding for fear that they could be perceived as acting inappropriately or harassing women. This lack of interaction could translate to lost opportunities to obtain needed skills or experience or trust from fellow coworkers that could be needed to advance within the organization.

Figure 1: Suits filed by the EEOC



The following are some key cases settled recently:

- ▶ **B&H Foto** settled a case brought forth by the Office of Federal Contract Compliance Programs (OFCCP), which alleged that the organization discriminated against female, black, and Asian job seekers for entry-level positions. Under the consent decree, the retailer agreed to pay \$3.2 million in back wages and other monetary relief to more than 1,300 affected class members.²
- ▶ **Mach Mining and Foresight:** These two coal mining companies discriminated

against hiring female applicants into mining and mining-related jobs. The firms were ordered to pay a combined total of \$4.3 million in damages to approximately 70 women.³

- ▶ **Nestlé Waters North America:** The world's largest bottled water company settled on paying \$300,000 to resolve a sex discrimination lawsuit involving the failure to promote a female employee who had worked for the organization for 20 years into a position of business manager due to her gender. Instead, a non-qualified male employee was selected for the newly created position.⁴

Equal pay

The Institute for Women's Policy Research (IWPR) conducts and publishes results from research regarding women's issues, including pay equity and discrimination. According to IWPR, women are the sole or co-breadwinner in 50% of American homes with children. However, women continue to get paid less than men—80% of men's wages as of 2015. According to research conducted by IWPR regarding gender wage gaps over time, if the pay change continues at the rate it has in the past 50 years, it will be 2059 before women reach pay parity, 2124 before black women reach pay parity, and 2233 before Hispanic women achieve pay parity.⁵

In January 2018, *CNNMoney* reported the controversy surrounding actor Mark Wahlberg reportedly being paid \$1.5 million

and actress Michele Williams being paid less than \$1,000 for re-shooting scenes for the movie *All the Money in the World*.⁶ But this was not the only highly publicized case of pay disparity between men and women. In the fourth quarter of 2017, Google also received negative publicity after *The New York Times* published salary information on more than 1,000 United States employees in six pay levels, which demonstrated that females make, on average, a lower

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salary than men. The report also demonstrated that men's bonuses are typically higher than those of women. Several Google female employees filed a lawsuit after the report was published. Google is also undergoing a compliance review by the OFCCP in which the federal agency

alleges that it has uncovered pay disparities against females.⁷

More recently, *USA Today* published an article in January 2018 informing its readers that a former female teacher for Google's childcare center filed a claim in San Francisco Superior Court alleging that female teachers were paid less than male teachers with lesser qualifications.⁸

The pay gap also persists across the ranks of faculty within the United States. According to a 2017 article published by *The Chronicle of Higher Education* by Joshua Hatch, even though women's salaries grew at a rate of 3% in recent years according to information from the U.S. Education Department, this increase is still not

enough to even start closing the gap that exists between female and male faculty members.⁹

The following are several recent key settlements involving pay discrimination:

- ▶ **State Street Corporation** settled a pay discrimination claim reviewed by the OFCCP for \$5 million following allegations that the company discriminated against more than 300 female executives by paying them less than male colleagues.
- ▶ **LexisNexis Risk Solutions** will pay \$1.2 million in back wages, interest and benefits to affected female employees for pay discrimination following an OFCCP review.
- ▶ **Prince George’s County, Maryland:** 2017 settlement involving a female engineer who was paid less than a male coworker performing the same job. She was denied the opportunity to negotiate her starting pay, and two weeks after her being hired, a male was hired into the same job and was paid what he had requested. Also, the county promoted and paid a male engineer a higher salary than hers, even though he had less experience. The settlement was for \$145,402.

Stereotypes and unconscious bias

Stereotypes often play a role in whether or not a woman is selected for a job. Job steering, a practice whereby an organization steers job applicants to apply for certain jobs, has been the focus of reviews by both the EEOC and the OFCCP. At times, someone may inquire about

job opportunities within the organization, and a company representative will steer women to the traditionally female-filled occupations that typically are lower-paying positions than those held by men.

Unconscious bias or conscious biases could also impact not only who we decide to hire, but how we conduct the job interview, who we select to be mentored, who we decide to promote, or who is selected for training opportunities. Biases have been found to influence whether a person’s ideas or suggestions are given much thought during company meetings. Studies show that when a woman makes a suggestion during a company meeting, she often is ignored. But if a man offers the same or similar suggestion at the same meeting,

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employees are more open to hear what he has to say. Many studies have demonstrated that even the name on a résumé or article can impact whether or not it is well received. Even if the résumé or article is the same, if it has a female name as the author, it is often rated lower than if it had a male name as the author.

And women typically are the primary caregivers for children. Think of your own organization regarding the following questions:

- ▶ Are women looked at unfavorably for taking time off to be with a newborn or with a child until they enter pre-K?
- ▶ Are women looked upon negatively when they leave work early to pick up a sick child from school or take an

elderly or sick parent or relative to a doctor's appointment?

- ▶ Are women treated negatively simply for announcing their pregnancy to their employer?

The following are recent settlements involving pregnancy discrimination:

- ▶ **Trinity Hospital:** The hospital paid \$95,000 to settle the charge that it refused to provide light-duty work upon request to a nurse with lifting restrictions from a pregnancy-related health condition. Although other nurses injured on the job were provided light-duty positions, this employee was fired instead of accommodated.¹⁰
- ▶ **Ichiban Japanese Steakhouse:** The restaurant settled for \$35,000 to resolve a pregnancy discrimination lawsuit in which an employee who worked as a server and bartender was fired once the restaurant learned of her pregnancy.¹¹

Decisions with negative impact and barriers

Reduction in the workforce due to layoffs sometimes disproportionately affects women as well, especially when an organization is letting go those employees who have the least amount of time on the job. For women who are filling positions that up until very recently were only filled by men, layoffs can have an unduly negative impact. And for minority women in these traditionally male roles, the negative impact can be even greater, because

minorities oftentimes receive unfair treatment in the workplace whether intentionally (adverse treatment) or unconsciously due to biases, stereotypes, or employment practices (adverse impact).

Frequently, companies focus on intentional discrimination in the workplace. However, processes that have an adverse impact, regardless of whether there was any intent to produce a negative impact toward a protected

class, should also be reviewed carefully.

The following are some practices that often have a negative impact against women and an even greater impact on minority women:

- ▶ **Glass ceiling:** An invisible barrier that keeps women and minorities from advancing into upper levels within their profession. This could be caused by

unconscious biases, stereotypes, or basic job requirements that are not necessary.

- ▶ **Concrete ceiling:** This is a barrier that is encountered by minority women because they face not only sexism in the workplace, but also racism, which makes it even tougher to advance into upper levels within the organization.
- ▶ **Glass door:** These are barriers that keep women and minorities from obtaining access to employment in higher paying jobs.
- ▶ **Glass cliff:** This describes what often happens to women when they financially reach senior levels within the organization. They often are treated differently (in a negative way) than men

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and often rated on a much tougher scale, causing them to have poor reviews and ultimately causing them to fall over the financial cliff.

- ▶ **Glass wall:** This occurs when females have barriers keeping them from moving laterally within the organization. This is particularly an issue when experience across different divisions or departments is essential in gaining the experience needed to move up the ladder.
- ▶ **Glass elevator:** This describes the practice of promoting men at a faster rate for positions that have traditionally been filled by women (e.g., nurses), even if they have less time on the job than women.

What can be done to decrease these issues?

The following are some best practices to instill in the workplace to mitigate the possibility of sexual harassment, sex-based harassment, or discrimination occurring:

1. Ensure diversity in the group that conducts interviews and screens applicants.
2. Require diversity in the group that decides promotions.
3. Ask the same interview questions of all applicants.
4. Review basic job requirements—years of experience, lifting requirements, travel requirements, etc.—to ensure they are relevant.
5. Become familiar with unconscious biases (take the Project Implicit Test¹²).
6. Ensure job titles are gender neutral.
7. Train all employees annually on topics such as sexual harassment, respect, and equal employment opportunity laws as well as consequences for failing to behave appropriately.
8. Offer job sharing and/or flexible work schedules.
9. Put in place a toll-free hotline for confidentially submitting complaints of inappropriate behavior in the workplace.

Conclusion

Sex discrimination, sex-based harassment, and sex discrimination do not appear to be approaching elimination soon. In 2017, we saw an increase in very high-profile cases involving inappropriate treatment and unfair employment practices affecting women. These high-profile cases have served as a wakeup call to many organizations that now is the time to step up and ensure that practices and policies are put into place to decrease the likelihood of these types of behaviors occurring. Through regular training and follow-through on concerns raised by employees, it is possible to see women enjoy a workplace where they are respected and given equal access to programs that will allow them to compete fairly and be paid equitably. *

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