

Rise in Gay Sex-Harassment Cases

By David Tuller
Chronicle Staff Writer

One year after the Anita Hill-Clarence Thomas hearings raised the nation's consciousness about sexual harassment, employers and gay rights advocates say they are seeing a growing number of such cases involving gay men and lesbians.

Among the recent cases, including three filed last week in San Francisco, are those in which gays have accused either other gays or heterosexuals of inappropriate sexual behavior or language. There are also cases in which straight people are accusing gay people of sexual harassment — although gay rights advocates contend that some of those allegations stem from a discomfort with gay people in the workplace.

"Before the hearings last year, this was a much more gradual trend, but now the whole process has been intensified, just as in the heterosexual community," said Victor Schachter, a San Francisco attorney who represents employers.

Government agencies do not keep separate statistics on gay-related sexual harassment claims, but gay rights advocates say that such cases involve both kinds recognized by the law: "quid pro quo" situations, in which sex is demanded in exchange for benefits in the workplace, or the creation of a "hostile work environment" through sexually explicit behavior and language.

They also say such incidents may be even more widely underreported than claims involving heterosexuals. Gays who are closeted in the workplace, said Art Bain, publisher of the New York-based Gay/Lesbian/Bisexual Corporate Letter, may fear that acknowledging that they have been harassed will be viewed as a tacit admission of their sexual orientation.

Perpetuating a Myth

Even those who are open about their orientation, said Los Angeles attorney Thomas Coleman, may be reluctant to accuse another gay person because they do not want to perpetuate a widespread perception that gays are obsessed with sex and cannot keep their hands to themselves — a stereotype that is currently contributing to the fierce opposition to allowing open gays and lesbians in the military.

"Sexual harassment between gays has a kind of 'dirty linen' aspect to it, so it hasn't taken on a priority in the community," said Coleman. He noted that many blacks, even those who may have believed Hill, were unhappy that she came forward with her charges against Thomas while his confirmation to the U.S. Supreme Court was being considered by the Senate.

James Brown worked from the spring of 1991 until earlier this year as an administrative assistant to Robert Hoffman, whose Bay Area firm runs personal development seminars. In his lawsuit — one of three same-sex harassment cases filed last week in San Francisco by attorney Paul Wotman — Brown charged that Hoffman repeatedly asked him whether he liked having sex with older men, "patted and caressed (him)..." and offered him "worldwide travel and advancement" if he would consent to having sex.

"The response I've gotten from some gays is like, 'You're an attractive man. What do you expect?'" said Brown. "But it's important to remember that being at work is different from being in a bar."

In a written statement, Hoffman's attorney denied Brown's allegations "in the strongest possible terms."

Some of the gay-related cases involve heterosexuals charging gay or lesbian co-workers with sexual harassment. Gay rights advocates say, however, that just as women and men often have different perceptions of the same set of words and behavior, so do gays and heterosexuals.

Freaked Out by Gays

"Some straight people will be so threatened by having openly gay people around that behavior that is not meant to offend will freak them out and send them through the roof," said Liz Hendrickson, executive director of the San Francisco-based National Center for Lesbian Rights.

Last fall, Frank Lostaunau, 50, was suspended for three days from his job as a therapist in the psychiatry department at Kaiser Permanente in San Francisco after a staff meeting in which participants discussed sexual transmission of HIV among chemically dependent gay men. A female co-worker filed a grievance charging that Lostaunau "verbally violated and verbally sexually abused" her with graphic descriptions of gay sexual practices.

"I challenged his introduction of all this material into the discussion and was told that all this was part of a routine safe-sex interview," wrote the co-worker in a memo to management.

Lostaunau was upset by the charge. "I felt battered, psychologically violated," he said. "How can a heterosexual woman feel sexually harassed in a clinical meeting in which I talk about how to assess risk factors by describing the sexual practices of chemically dependent gay men?"

But a spokeswoman for Kaiser said an internal investigation determined that the complaint was legitimate, and the facility suspended Lostaunau for "inappropriate conduct." After additional disputes that took place after his return, Lostaunau was placed this month on indefinite suspension and has filed his own complaints with government agencies.

In another case, an openly lesbian employee at a Bay Area publishing company has been formally charged with sexual harassment by a heterosexual co-worker for behavior, such as social invitations to lunch and compliments on clothing, that she maintained would have been considered completely acceptable in a heterosexual context.

GAYS: Sex Harassment

Straight People's Vision

"It's the myth of the oversexed homosexual," said the woman, who asked to remain anonymous because her supervisors are still investigating the case. "Straight people have this vision that all gays ever think about is sex, that every social gesture by a gay person is a gesture of wanting them."

Attorneys for employers and employees agree that, under both state and federal law, repeated and unwanted sexual advances constitute sexual harassment regardless of the sex of the parties involved. But the legal issues are murkier in situations where an employee is charging that someone of the same sex has created a "hostile work environment" through sexual innuendos, remarks and other behaviors that do not necessarily involve an explicit proposition.

Under federal and state law, sexual harassment is illegal because it is considered to be discrimination based on an individual's sex, and courts have ruled that sex discrimination cannot be construed to include discrimination based on sexual orientation. In a 1987 case, the state Court of Appeal ruled against a man who charged that his supervisor sexually harassed him by repeatedly grabbing his genitals.

The court noted that the plaintiff, John Hart, did not interpret such gestures to mean that the defendant was actually demanding sexual favors of him. In the absence of such a "quid pro quo" situation, the court ruled that the evidence did not prove that the defendant "harassed Hart because of Hart's sex."

A Los Angeles case could clarify the legal situation. Jim Delaney, a bisexual office employee at a trucking company, said that co-workers knew of his sexual orientation and repeatedly made offensive remarks, rubbed up against him and left such items as condoms, false eyelashes and fake fingernails on his desk.

A Humiliating Experience

"I found it very humiliating—I had horrible headaches, chest pains, a horrible time sleeping. I couldn't eat," he said. The strain became so severe, he said, that he finally called both a radio talk show and his office and threatened violence. After that, he was fired.

Delaney sued. He lost his case, but the ruling is on appeal. Paul Causey, an attorney for Superior Fast Freight, flatly denied Delaney's allegations but said that even if they were true, he had no legal ground to sue the company for creating a hostile work environment.

"You can only have same-sex sexual harassment where there's some sexual interest," he said. He added that in the absence of sexual interest, "it's not illegal for me to make gross, crude remarks of a sexual nature to another man, even if they don't want to hear them—it's only illegal if I do it to a woman."

Jack Pemberton, a regional attorney for the U.S. Equal Employment Opportunity Commission, disagreed with Causey's interpretation but did acknowledge that there is a theoretical "bisexual loophole" in federal law.

