Chapter 12: Specific Examples of Employment Discrimination by State and Local Governments, 1980-Present

Based on the reports on employment law and discrimination related to sexual orientation and gender identity for each of the 50 states (See Appendices), this chapter compiles almost 400 specific examples of workplace discrimination against state and local employees, almost all occurring within the last 20 years, and none occurring prior to 1980. The state reports collected examples of discrimination from court opinions, administrative complaints, academic journals, books, newspapers, and publications by and complaints made to community-based organizations.

This record demonstrates that discrimination against LGBT state and local employees is widespread in terms of quantity, geography, and occupational category. The quantity compares favorably to that of past records of public employment discrimination supporting civil rights legislation. Geographically, the examples reach into every state except North Dakota, which has a smaller population. The LGBT employees discriminated against work for every branch of state government: legislatures, judiciaries, and the executive branch. The examples include public employees who help people find jobs, housing, and health care; teachers and professors; state troopers and prison guards; judges, bus drivers and tax collectors; and those who work for museums and for the DMV.

In many of these cases, courts have found violations of rights to equal protection, free expression, and privacy, as well as the impermissible use of sex stereotypes. There

are also cases where plaintiffs lose because judges rule that, in the absence a law like ENDA, state and federal law do not provide a remedy.

What is missing in all of these cases is *any rational reason* for the adverse employment action, whether or not the law provides a remedy. In none of these cases do employers assert that sexual orientation or gender identity impacts an employee's performance in the workplace. To the contrary, among the examples of public servants who have been discriminated against are a gay faculty member at Louisiana State University who had received a Distinguished Service Award; a transgender sheriff in Oregon who had received a commendation for delivering a baby on the side of a highway, and a lesbian social worker in Mississippi who was told she was one of the best employees at her center helping mentally disabled children.

The irrationality of the discrimination is also vividly indicated by the harassment that many of these workers have been subjected to. Here is a very limited sense of what these employees have been called in the workplace: an officer at a state correctional facility in New York, "pervert" and "homo"; a lab technician at a state hospital in Washington, a "dyke"; an employee of New Mexico's Juvenile Justice System, a "queer." There are a large number of examples where employees are called "fag" or "faggot."

What is also striking about these examples of workplace harassment is the degree to which the words are accompanied with physical violence. A gay employee of the Connecticut State Maintenance Department was tied up by his hands and feet; a firefighter in California had urine put in her mouthwash; a transgender corrections officer in New Hampshire was slammed into a concrete wall; and a transgender librarian at a college in Oklahoma had a flyer circulated about her that said God wanted her to die.

When employees complain about this kind of harassment, they are often told that it is of their own making, and no action is taken.

These nearly 400 documented examples are not a complete record of discrimination against LGBT people by state and local governments, and should not be read as such. Based on our research, and on other scholarship, we have concluded that these examples represent just a fraction of the actual discrimination for at least seven reasons:

- We were unable to collect administrative complaints from the vast majority of state and local enforcement agencies. For example, of the twenty state enforcement agencies we contacted to collect administrative complaints of discrimination, only six made available redacted complaints for us to review. Of the 203 cities and counties we contacted, only two, Philadelphia and Providence, provided administrative complaints for us to review.
- Of those we did contact, many agencies lacked the resources, knowledge and willingness to consider sexual orientation and gender identity discrimination complaints. Of the 36 city and county agencies that responded to our requests, two incorrectly referred such complainants to the EEOC even though there is no federal law prohibiting sexual orientation discrimination, one incorrectly said their jurisdiction did not prohibit such discrimination, one said there was no administrative enforcement mechanism for such complaints and callers had to file in court, five said they did not have the resources to enforce such claims and referred callers to their state administrative agency, and three said they lacked the resources to compile the requested data. Another 136 city and county agencies,

two-thirds of those contacted, never responded in any manner to repeated phone calls, e-mails, letters, and formal requests for information by the Williams Institute. Our research findings on this point confirmed earlier studies.[1]

- Scholarship[2] and surveys indicate that some courts may not be receptive to the claims of LGBT plaintiffs, dissuading them from filing complaints. Even in California and New Jersey, states at the forefront of anti-discrimination efforts, surveys of thousands of persons who used the judicial system found a widespread perception that the courtroom experience was not fair or unbiased toward lesbians and gay men.[3] In 1998, the Sexual Orientation Fairness Subcommittee of the Judicial Council of the State of California surveyed 1,225 LGBT users of the California court system.[4] Fifty percent of these court users believed that the courts were not providing "fair and unbiased treatment to lesbians or gay men."[5] A report by the New Jersey Supreme Court, released in 2001, replicates many of the findings from the California state court survey. Of the 2,594 court users surveyed in New Jersey, 7% self-identified as lesbian, gay, or bisexual.[6] Over 60

[1] Norma M. Riccucci & Charles W. Gossett, *Employment Discrimination in State and Local Government: The Lesbian and Gay Male Experience*, 26 AMERICAN REVIEW OF PUBLIC ADMINISTRATION 182 (1996) (observing that in some states, the enforcement of statutes or executive orders was "questionable"); *see also* Roddrick A. Colvin, *Improving State Policies Prohibiting Public Employment Discrimination Based on Sexual Orientation*, 20 REVIEW OF PUBLIC PERSONNEL ADMINISTRATION 5 (2000) (finding state laws were lacking sufficient accountability measures, including active support from constituents and policy makers, explicit commissions or advisory boards to oversee implementation of the policy, and committed and skillful enforcement staff. The implementation barriers that arise from these deficiencies include the inability to make employees aware of their legal rights, poor enforcement mechanisms, and a fear of retaliation experienced by potential claimants.).

[2] *See* Rhonda R. Rivera, *Our Straight-Laced Judges: The Legal Position of Homosexual Persons in the United States*, 50 HASTINGS L.J. 1015

[3] Sexual Orientation Fairness Subcommittee, Judicial Council of the State of California, *Sexual Orientation Fairness in the California Courts* (2001); New Jersey Supreme Court, *Final Report of the Task Force on Sexual Orientation Issues* (Jan. 2, 2001).

[4] *Sexual Orientation Fairness in the California Courts*, *supra*, note 3.

[5] *Id.* At 5.

[6] *Final Report of the Task Force on Sexual Orientation Issues, supra,* note 3.

percent of LGB participants in the survey felt that sexual orientation bias impacted cases outcomes; 78 percent had heard a judge or supervisor make a derogatory joke or statement about homosexuals. Based on these findings, the New Jersey Task Force concluded, "[S]exual orientation bias, whether actual or perceived, has the capacity to … affect case disposition …[and] d*issuade individuals from using the court system*."[7]

- Scholars have also indicated that that judges may be uncomfortable with writing opinions about LGBT people or issues.[8] The mere failure to publish opinions can distort the development of the law. Howard Slavitt discusses the impact on legal precedent of the failure to publish certain cases by using as an example a case involving an LGBT state employee, in this case an inmate employed in the prison's education department.[9] The plaintiff won his employment discrimination claim on constitutional grounds, but the Fourth Circuit chose not to publish the opinion, greatly reducing its value as precedent to support future claims.
- A large proportion of claims are settled before any complaint is filed, and therefore no record of the case is established. In 2002, Roddrick A. Colvin and Norma M. Riccucci published a study in which they assessed the effectiveness of

[7] *Id.* at 3.

[8] *See*, for example, Rhonda R. Rivera, *Our Straight-Laced Judges: The Legal Position of Homosexual Persons in the United States*, 50 HASTINGS L.J. 1015, 1022 n.27 (1999), citing *In State v. Brown*, 39 Ohio St. 2d 112, 118, 313 N.E.2d 847, 851 (1974) ("Justice Stern noted in his dissent: 'In fact, nowhere in the recorded decisions of the Ohio Supreme Court has any justice ever used the term 'homosexual' or 'homosexuality' . . . .'His opinion indicates that Justice Stem did computerized research using LEXIS."). See also *To Publish or Not to Publish - That Is The Question*, 2 Sex L. Rptr. 18 (1976); KENNETH DAVISON, RUTH BADER GINSBURG & HERMA HILL KAY, SEX-BASED DISCRIMINATION (West Pub. Co. 1974), discussing unreported lesbian mother cases and applying the California standards with respect to certification for non-publication to determine whether many of the child custody cases were properly denied publication.

[9] Howard Slavitt, *Selling The Integrity of the System of Precedent: Selective Publication, Depublication and Vacatur*, 30 HARV. C.R.-C.L. L. REV. 109, 110 (1995).

non-discrimination policies that protect sexual orientation or gender identity by surveying employment attorneys who had personally handled such cases.[10] The attorneys reported that in all situations but one, the claims were settled before going to court, and in most situations were settled via letters and negotiation.

- LGBT people may not pursue claims for fear of outing themselves further in the workplace and their communities.[11] For example, in a study published in 2009 by the Transgender Law Center, only 15 percent of those who reported that they had experienced some form of discrimination had filed a complaint. Of those who did not, 26 percent were afraid they would lose their job and 13 percent were afraid to come out in order to file a complaint.[12]
- Perhaps most importantly, at least one-third of LGBT employees continue to be closeted at work, meaning that they avoid discrimination by hiding who they are. The 2008 Out & Equal survey reported that 36 percent of lesbians and gays were closeted at work.[13] A 2001 Kaiser Family Foundation study found almost exactly the same result, reporting that 37 percent of LGB employees were not open about

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[10] Roddrick A. Colvin & Norma M. Riccucci, *Employment Nondiscrimination Policies: Assessing Implementation and Measuring Effectiveness*, 25 INT'L. J. OF PUBLIC ADMIN. 95 (2002).

[11] *See*, for example, NATIONAL EDUCATION ASSOCIATION, *Report of the NEA Task Force on Sexual Orientation* 4 (Feb. 8, 2002), *available at* http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/225-1.pdf (Reprinted by GLSEN with permission from the National Education Association); Norma M. Riccucci & Charles W. Gossett, *Employment Discrimination in State and Local Government: The Lesbian and Gay Male Experience*, 26 AM. REV. OF PUBLIC ADMIN. 185 (1996); TRANSGENDER LAW CENTER, *State of Transgender California* (March 2009), *available at* http://www.transgenderlawcenter.org/pdf/StateofTransCAFINAL.pdf (last accessed September 20, 2009); MINNESOTA STATE BAR ASSOCIATION TASK FORCE ON DIVERSITY IN THE PROFESSION, *2005 Self-Audit for Gender and Minority Equity: A Research Study of Minnesota Law Firms, Non-Firm Employers and Individual Lawyers*, (September 2006), *available at* http://www2.mnbar.org/governance/assembly/Committees/GeneralPolicy/MSBA.Diversity.Report.Final.doc.

[12] *State of Transgender California*, *supra* note 11.

[13] HARRIS INTERACTIVE, OUT & EQUAL WORKPLACE ADVOCATES, *Out & Equal Workplace Culture Report: Survey of Workplace Attitudes 2002-2008* (2008), *available at* http://outandequal.org/documents/OE_workplace_culture_report.pdf

their sexual orientation to their bosses.[14] Levine and Leonard found that more than 60 percent of lesbians surveyed in their 1984 study worried that they would face adverse employment actions if they did not remain closeted on the job.[15] Eleven years later, Croteau and Lark found that 44 percent of LGB college student-affairs professionals anticipated the same.[16] As recently as 2005, 70 percent of closeted LGB respondents to the Lambda Legal and Deloitte Financial Advisory survey revealed that they had chosen not to disclose their sexual orientation because they feared risk to employment security or hostility and harassment in the workplace.[17] Of LGBT attorney respondents to the Minnesota State Bar Association survey in 2005, 70 percent stated that they had hidden their sexual orientation at some point in the course of their professional careers due to concern that revealing such would lead to adverse employment consequences.[18] In the same survey, 71 percent of LGBT respondents and 67 percent of heterosexual respondents agreed that it would be harder to get hired as an attorney if a person was thought to be gay or transgender.

Drawn from the 50 state reports that form the basis of this chapter, the following illustrate specific examples of experiences that might deter LGBT litigants from pursing employment discrimination complaints in court.

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[14] THE KAISER FAMILY FOUNDATION, *Inside-OUT A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation* (Nov. 2001), *available at* http://www.kff.org/kaiserpolls/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=13875.

[15] Martin P. Levine & Robin Leonard, *Discrimination Against Lesbians in The Work Force*, 9 JOURNAL OF WOMEN AND CULTURE 700 (1984).

[16] James M. Croteau & Julianne S. Lark, *On Being Lesbian, Gay or Bisexual in Student Affairs: A National Survey of Experiences on the Job*, 32 NASPA JOURNAL 189 (1995).

[17] LAMBDA LEGAL & DELOITTE FINANCIAL ADVISORY SERVICES LLP, *2005 Workplace Fairness Survey (*April 2006), *available at* http://data.lambdalegal.org/pdf/641.pdf.

[18] *2005 Self-Audit for Gender and Minority Equity: A Research Study of Minnesota Law Firms, Non-Firm Employers and Individual Lawyers*, *supra* note 11.

- In March of 2002, in response to a newspaper article on the expansion of rights to gay couples in other states, George County Justice Court Judge Connie Glen Wilkerson wrote a letter to *The George County Times* stating in part: "[I]n my opinion, gays and lesbians should be put in some type of mental institute instead of having a law like this passed for them."[19] The judge later repeated these views in a telephone interview stating, "[H]omosexuality is an 'illness' which merited treatment, rather than punishment."[20] When the judge was sued for violation of the Code of Judicial Conduct, the Mississippi Supreme Court ruled that the judge had not violated any cannon of judicial conduct,[21] and that any LGBT party before the judge had adequate protection through the recusal process.[22]
- In 1997, a complaint was filed against a Texas judge who dismissed a domestic violence case involving two lesbians, because in dismissing the case he said, "You all have these funny relationships – that's fine – I have nothing to do with it, but don't bring it in here for me to try to decide . . . I'm dismissing the case . . . It's too much for me. Don't bring it back – the next time you come back, I'll put somebody in jail.'[23]
- In 1994, the Dallas County Sheriff's Department suspended a bailiff after he was heard making derogatory remarks about a lesbian rape victim. The bailiff joked

[19] *Mississippi Comm'n on Judicial Performance v. Wilkerson*, 876 So. 2D 1006, 1008 (2004).
[20] *Id*.
[21] *Id*. at 1015.
[22] *Id*. at 1016. The current Mississippi Code of Judicial Conduct, promulgated on April 4, 2002, Cannon 3[5] states: "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to …sexual orientation." *In re Miss. Code of Jud. Conduct*, NO. 89-R-99013-SCT, 2002 Miss. LEXIS 124, 22 (Miss. 2002).
[23] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 48-49 (1997 ed.).

to the rapist's attorney that 'if it was me [on the jury], I'd only give him 30 days for raping a lesbian." A review board suspended the bailiff for 10 working days and ordered him to undergo sensitivity training and apologize in writing to the woman."[24]

- In 1992, a justice of the South Dakota Supreme Court wrote a concurring opinion in a case limiting visitation for a mother who was a lesbian.[25] In the opinion, he stated: "Until such time that she can establish, after years of therapy and demonstrated conduct, that she is no longer a lesbian living a life of abomination (*see* Leviticus 18:22), she should be totally estopped from contaminating these children. . . . There appears to be a transitory phenomenon on the American scene that homosexuality is okay. Not so. The Bible decries it. Even the pagan 'Egyptian Book of the Dead' bespoke against it. Kings could not become heavenly beings if they had lain with men. In other words, even the pagans, centuries ago, before the birth of Jesus Christ, looked upon it as total defilement."

The nearly 400 examples that follow include examples of discrimination against local employees as well as state employees. The Supreme Court has recognized "that evidence of constitutional violations on the part of non-state governmental actors is relevant to the § 5 inquiry,"[26] including discrimination by federal[27] and local

[24] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 70 (1994 ed.).
[25] *Chicoine v. Chicoine*, 479 N.W.2d 891 (1992).
[26] *Tennessee v. Lane*, 124 S.Ct. 1978, 1991 n.16 (2004).
[27] *Nevada Dep't of Human Resources v. Hibbs*, 123 S.Ct. 1972, 1980 (Rehnquist, C.J.)(relying on a study of federal employers to draw the conclusion that "where state law and policies were not facially discriminatory, they were applied in discriminatory ways."); *see also id*. at 1989 (Kennedy, J., dissenting)("A history of discrimination on the part of the Federal government may, in some situations, support an inference of similar conduct by the States . . . ."); *Tennessee v. Lane*, 124 S.Ct. 1978, 1991 n. 16

government[28] employers and the private sector.[29] As these examples make clear, as well as other evidence considered in this report, the patterns of discrimination by state employers and local employers are strikingly similar. The discrimination against those in educational institutions looks the same whether the employee is working for a state university or a high school; the discrimination against law enforcement personnel does not vary depending on whether the officer's badge is that of a state or a county.

The patterns of discrimination look so similar between state and local governments because they are not merely parallel, they are connected. Much of the discrimination by local employers is grounded in historical, as well as current, discriminatory state laws, policies and practices. For example, many of the local government examples deal with discrimination against teachers. Teachers in all states are licensed by the state governments, and most of the terminations described in the examples are based upon failing to comply with "moral fitness requirements" established

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(2004) ("Moreover, what THE CHIEF JUSTICE calls an 'extensive legislative record documenting States' gender discrimination in employment leave policies'' in *Nevada Dep't of Human Resources v. Hibbs*, in fact contained little specific evidence of a pattern of unconstitutional discrimination on the part of the States. Indeed, the evidence before the Congress that enacted the FMLA related primarily to the practices of private sector employers and the Federal Government")(citation omitted).

[28] *See, e.g., Tennessee v. Lane*, 124 S.Ct. at 1991 (2004) ("Congress itself heard testimony from persons with disabilities who described the physical inaccessibility of *local* courthouses … And its appointed task force heard numerous examples of the exclusion of persons with disabilities from state judicial services and programs, including exclusion of persons with visual impairments and hearing impairments from jury service, failure of state and *local* governments to provide interpretive services for the hearing impaired, failure to permit the testimony of adults with developmental disabilities in abuse cases, and failure to make courtrooms accessible to witnesses with physical disabilities.")(emphasis added); *see also id.* At 1991 n. 16 ("[M]uch of the evidence in *South Carolina v. Katzenbach*, 383 U.S. 301, 312– 315, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966), to which THE CHIEF JUSTICE favorably refers, *post*, at 2003, involved the conduct of county and city officials, rather than the States.").

[29] *See, e.g., Nevada Dept. of Human Resources v. Hibbs*, 123 S.Ct. at 1979 n. 3 and accompanying text ("While this and other material described leave polices in the private sector, a 50 state survey also before Congress demonstrated that 'The proportion and construction of leave policies available to public sector employers differs little from those offered private sector employers.'"); *see also Tennessee v. Lane*, *supra* note 27; *Nevada Dept' of Human Resources v. Hibbs,* 123 S.Ct. At 1987 (Kennedy, J., dissenting)("Congress's consideration of evidence of discrimination by private entities may be relevant for Section 5 analysis were discrimination in private sector is 'parallel' to discrimination by state governments.")

by state licensing requirements.[30] As long as sodomy laws were on the books, even a potential violation of those state laws was sufficient to find that a teacher was "immoral." This connection was sufficiently direct that a number of state supreme courts recognized it as the basis for standing in lawsuits brought by teachers and other licensed professionals, litigation that ultimately led to the courts declaring their state sodomy laws unconstitutional.[31] Further, there is a history of state purges of LGBT public employees

[30] See, for example, Rivera, *supra* note 8, at 1079:

> In all fifty states, a teaching certificate, granted by the state, must be obtained in order to teach in a public school system at the elementary or secondary level. The homosexuality of an individual teacher may be raised on application for the teaching certificate or on application for a particular teaching position. It can also become an issue as a cause for dismissal from a particular job and, more severely, as a cause for the revocation of the license to teach. The main legal issues confronting the homosexual teacher are dismissal from a current position and revocation of his or her teaching certificate. While dismissal from a current position is certainly injurious to the teacher, revocation of his or her teaching certificate is a personal catastrophe. Without proper credentials a teacher cannot be hired anywhere in that state and is thus essentially banned from his or her profession. All states have statutes that permit the revocation of teaching certificates (or credentials) for immorality, moral turpitude, or unprofessionalism. Homosexuality is considered to fall within all three categories. Dismissals of homosexual teachers, as differentiated from loss of credentials, have also usually been based on charges of "immorality."

[31] See, for example, *Jegley v. Picado*, 349 Ark. 600, 609 (Ark. 2002), in which plaintiffs "fear prosecution for violations of the statute and claim that such prosecution could result in their loss of jobs, professional licenses, housing, and child custody." In the case, one plaintiff had been hired as a school counselor, but when school administrators learned he was gay they refused to honor his contract. Appellee's Supplemental Abstract, Brief, and Supplemental Addendum at xv, *Jegley*, 349 Ark. 600 (No. 01-815). Another had to conceal her relationship because her lover was afraid she would be fired from her teaching job if her sexual orientation became known. Appellee's Supplemental Abstract, Brief, and Supplemental Addendum at xv, *Jegley*, 349 Ark. 600 (No. 01-815). *See also Doe v. Ventura*, No. MC 01-489, 2001 WL 543734 (Minn. Dist. Ct. May 15, 2001) ("Similarly…Mr. Roe, a licensed elementary school teacher, and Mr. Duran and Ms. Doe, licensed Minnesota lawyers, fear adverse licensure consequences from any disclosure, voluntary or other convicted of a felony" (which sodomy was under then-existing Minnesota law)); *Gryczan v. State*, 283 Mont. 433 (Mont. 1997) (referencing a teacher who had been licensed in the state for 25 years ("[Respondents] contend that the damage to their self-esteem and dignity and the fear that they will be prosecuted or will lose their livelihood or custody of their children create an emotional injury that gives them standing to challenge the statute. For example, two Respondents are employed or are seeking employment in positions requiring state licenses. Because they engage in conduct classified as a felony, they fear they could lose their professional licenses."); *Campbell v. Sundquist*, 926 S.W.2d 250, 253 n.1 (Tenn. Ct. App. 1996) (the court noted that the identity of one of the plaintiffs (John Doe) had been sealed "due to concern that he would be fired from his job if his violation of the [Homosexual Practices Act] became known to his employer." The court also notes that the plaintiffs "believe they are threatened with prosecution for violations of the statute, which could result in plaintiffs losing their jobs, professional licenses, and/or housing should they be convicted.")

that focused on state and local educational professionals,[32] state laws that explicitly barred LGBT people from teaching,[33] laws requiring that homosexuality not be taught in a positive manner,[34] and pronouncements by state officials that all LGBT teachers could be found to be "immoral" and fired from their positions—even after state sodomy laws have been repealed.[35]

Sodomy laws also have served as a linchpin in discriminatory policies directed against law enforcement officers. This has been true regardless of whether the individual

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[32] In his book, *Dishonorable Passions*, William Eskridge summarizes an extensive and organized purge of state and local public employees, primarily in public education, in Florida:

> [T]he Johns Committee engaged in a six-year campaign to remove homosexuals from state schools (1958-1964). The campaign identified suspected homosexuals who were high school teachers, college students and university professors. Most of the suspected homosexuals resigned or were dismissed. The committee also pressured the state board of education to revoke teachers' certificates, which the legislature seconded with a 1959 statute authorizing certificate revocation for "moral misconduct" and a 1961 statue setting forth expedited procedures for revocation. Near the end of its tenure, the Johns Committee announced that the board had revoked seventy-one teachers' certificates (with sixty-three more cases pending); fourteen professors had been removed from the state universities (nineteen pending); and thirty-seven federal employees had lost their jobs, while fourteen state employees faced removal in pending cases.

WILLIAM ESKRIDGE, DISHONORABLE PASSIONS 103. The Johns Committee also provided information to professional licensing boards about the individuals investigated for homosexuality, causing doctors, lawyers and others to lose their licenses. *Id*. At 104. Scholar Karen Graves recently published an extensive history of the Johns Committee documenting its impact on LGBT public employees in Florida. KAREN L. GRAVES, AND THEY WERE WONDERFUL TEACHERS: FLORIDA'S PURGE OF GAY AND LESBIAN TEACHERS (Univ. of IL Press, Urbana and Chicago 2009).

[33]For example, Oklahoma enacted a law that, by prohibiting "homosexual conduct" and defining that phrase to include advocacy of gay rights, barred openly gay teachers from Oklahoma schools. Most portions of the law were struck down by federal courts and the remainder of the law was repealed in 1990. *Nat'l Gay Task Force v. Bd. of Ed. of the City of Okla. City*, 729 F.2d 1270 (10th Cir. 1984).

[34] For example, in 2009, Alabama's education code continues to require that sex education in public schools include "[a]n emphasis…that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under the laws of the state." ALA. CODE §16-40A-2(C)(8) (2008).

[35]In 1983, the West Virginia Attorney General issued an opinion that gay and lesbian teachers could be fired by their districts under a state law that authorized school districts to fire teachers for "immorality." He opined that homosexuality was immoral in West Virginia even though the state had de-criminalized same-sex sexual behavior in 1976. While the Attorney General said homosexuality must be shown to affect the person's fitness to teach, that could be shown if the teacher was "publicly known to be homosexual" as opposed to "private, discreet, homosexuality." He also noted that there were some jobs where "even such publicized sexual deviation" might not interfere with employment in the public sector, such as "university drama teacher(s)" and "custodians." 60 W. Va. Op. Atty. Gen. 46, 1983 WL 180826 at * 1 (W.Va.A.G. February 24, 1983)(Sexual Offenses: *A county board of education may dismiss a teacher who engages in sexually deviant conduct if the teacher's conduct substantially adversely affects his fitness to teach.).*

worked for a state[36] or local[37] agency, or whether he served in a police precinct[38] or she was an attorney representing the state.[39] A deputy sheriff in Florida learned this lesson when she was fired after her boss learned that she was lesbian. A federal court dismissed her case challenging the firing, saying that equal protection guarantees did not avail when the conduct that defined the class could be criminalized, concluding that "[i]n the context of both military and law enforcement personnel, dismissal for homosexuality has been found rationally related to a permissible end."[40]

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[36] *Dawson v. State Law Enforcement Div.*, 1992 WL 208967 (D.S.C. Apr 6, 1992).

[37] *Woodward v. Gallagher*, No. S9-5776 (Orange Co., Fla. Cir. Ct., filed June 9, 1992) (discussed in 21 FORDHAM URB. L.J. 997, 1035 (1994) (In Florida, the Orange County Sheriff fired a deputy, despite his concededly "exemplary" record, when it was discovered that he was gay. The sheriff's office cited the existence of sodomy laws as a justification for the dismissal, noting that Florida prohibits oral or anal sex, and that deputies might have to work with agencies in other states that also have such laws. The court rejected these arguments and found that the anti-gay discrimination violated the state constitutional right to privacy.)

[38] *Childers v. Dallas Police Dep't*, 513 F. Supp. 134 (N.D. Tex. 1981). In *Childers*, the plaintiff was not hired for a position with the Dallas Police Department following his disclosure during his interview that he was gay. Among the reasons stated for the Department's refusal to hire Childers were that the interview took, from his statement that he was "married" to a man that he was a "habitual lawbreaker" because "his sexual practices violated state law." The interviewer also considered that he would be a security risk "because of the kind of contraband that the property room controls [which included sexual paraphernalia] and because Childers might warn other homosexuals of impending police raids." In upholding the Department's refusal to hire Childers against Childers's due process challenge, the court noted that he had admitted conduct that violated the Police Department Code of Conduct in a number of ways, including by violating Texas's sodomy laws and "cohabit[ing] with a sex pervert of the same sex." It also held that "tolerance of homosexual conduct might be construed as tacit approval, rendering the police department subject to approbation and causing interference with the effective performance of its function."

[39] *Shahar v. Bowers*, 114 F.3d 1097 (11th Cir. 1997). Shahar's offer to work at the Attorney General's office in Georgia was rescinded after she made comments to her coworkers about her upcoming wedding to her same-sex partner. The Attorney General's office revoked the offer because employing Shahar "would create the appearance of conflicting interpretations of Georgia law and affect public credibility about the Department's interpretations [and] . . . interfere with the Department's ability to enforce Georgia's sodomy law." In an *en banc* decision, the Eleventh Circuit accepted the Attorney General's arguments and held that the discrimination against Shahar was justified based in large part on the existence of sodomy laws in Georgia. For example, in rejecting Shahar's attempted analogy between her case and *Loving v. Virginia* as "not helpful," the court noted "concerns about public perceptions about whether a Staff Attorney in the Attorney General's office is engaged in an ongoing violation of criminal laws against homosexual sodomy--which laws the Supreme Court has said are valid." In addition, in referring to the U.S. Supreme Court's 1986 decision in *Bowers v. Hardwick* (in which the Georgia Attorney General was the defendant), the court noted that hiring Shahar would not only have raised issues of perception but also of morale, given that the lawyers in the department had worked hard to ensure that sodomy could still be constitutionally criminalized.

[40] *Todd v. Navarro*, 698 F. Supp. 871, 875 (S.D.Fla. 1988).

Lastly, classifications as between state and local governments vary from state to state for the same, not just similar, jobs. For example, in at least one state, Hawai'i, teachers are state employees.[41] Additionally, the Ninth Circuit has held that under California law, school districts are state agencies entitled to Eleventh Amendment immunity.[42] Further, sheriffs employed at the county level may nonetheless be treated as state employees for Eleventh Amendment purposes.[43]

For all these reasons, a full comprehension of discrimination based on sexual orientation and gender identity against state government employees requires consideration of the policies in effect in local government agencies as well.

Attached are nearly 400 examples of discrimination against state and local employees on the basis of their sexual orientation or gender identity.

[41] Hawaii Department of Education, Introduction, Organization, http://doe.k12.hi.us/about/intro_org.htm (last visited Sept. 21, 2009).
[42] *Belanger v. Madera Unif. Sch. Dist.*, 936 F.2d 248, 253 (9th Cir. 1992).
[43] *Manders v. Lee*, 338 F.3d 1304, 1328 (11th Cir. 2003)(county sheriff in Georgia "is an arm of the State, not Clinch County, in establishing use-of-force policy at the jail and in training and disciplining his deputies in that regard"), *cert. denied*, 540 U.S. 1107 (2004); *Lancaster v. Monroe County*, 116 F.3d 1419, 1429 (11th Cir. 1997) (county jailers in Alabama "are state officials entitled to Eleventh Amendment immunity when sued in their official capacities"); *see also Cromer v. Brown*, 88 F.3d 1315, 1332 (4th Cir. 1996) (sheriffs in South Carolina are arms of the State); *Wilkerson v. Hester*, 114 F. Supp. 2d 446, 464-465 (W.D.N.C. 2000) (sheriffs in North Carolina are arms of the State).

1. Alabama

- An employee of the University of Alabama's campus police department did not have his complaint of same-sex sexual harassment against his supervisor taken seriously and was fired for making the complaint. The 11th Circuit rejected a motion to dismiss and allowed his claim to proceed.[44]

- A receptionist at the Alabama Bureau of Tourism and Travel was the brunt of a sexually oriented joke and then fired based on a false accusation that he had made a homosexual advance. The accusation had been made by one of the coworkers who played the joke. He was later reinstated to his position by an Alabama appellate court.[45]

- In 2007, a city communication technician reported that she had experienced workplace harassment based on her gender identity when a new supervisor was hired.[46]

- A closeted gay teacher in an Alabama school district reported that he had been discharged because of his sexual orientation in 2002, after two successful years of teaching in the district. A United State District Court judge allowed his claim to proceed under a "John Doe" filing to protect him in from further discrimination in his new job teaching at a public school in Alabama.[47]

[44] *Downing v. Board of Trustees of the Univ. of Alabama*, 321 F.3d 1017 (11th Cir. 2003)
[45] *State Pers. Dep't v. Mays,* 624 So.2d 194 (Ala. Civ. App. 1993).
[46] E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).
[47] Lesbian & Gay L. Notes (June 2002), *available at* http://www.qrd.org/qrd/usa/legal/lgln/2002/06.02.

2. Alaska

- At public hearing in Anchorage in June 2009, a letter was submitted by a trans-gender woman who had been denied multiple state jobs because of her gender identity. She was a former Marine and had been told she was highly qualified for a position at the McLaughlin Youth Center. However, after she transitioned her repeated applications for a position there were rejected. She did get a job as a psychiatric nursing assistant at Alaska Psychiatric Institute, a state-run facility. However, she was fired after three weeks when a problem arose because of her social security number. She explained that her name change had caused the issue and then thought everything was fine. However, she was terminated without explanation a few days later with a letter that said her "services were no longer needed." Later, she heard that a co-worker had been going around calling her "he/she." After she was terminated she was unable to find work in any of the fields she had experience in: security, corrections, youth corrections, or mental health counselor. Instead she works as a cabdriver. She has over $100,000 in student loans for degrees she cannot use in her employment."[48]

- An African-American gay male inmate assigned to the Spring Creek Correctional Center worked for a nominal salary as a barber, cutting other inmates' hair. On August 4, 1997, he received a memo from his supervisor which read:

> This memorandum is to inform you that you have been fired as an

[48] Letter from Laura E. O'Lacy to Anchorage Assembly, June 2009, *available at* http://www.bentalaska.com/search/label/Testimony%20AO-64 (last visited Sept.16, 2009) (writing in support of Anchorage Ordinance 64).

> APS barber/rec worker. You are a lop, lame, sissy, cake-boy, and your girl is a mud-duck. You are in fact a no talented bum…In fact one of the brother's [sic] told me that you were white, and just had a really good tan. Maybe the kitchen is looking for a new pots and pans man![49]

After reading the memo as "containing racial and sexual slurs and as being intended to terminate his employment,"[50] he stopped reporting for work. Although he did not report the incident, he kept the memo, which was discovered when he was transferred to another facility; a departmental investigation resulted in his supervisor's termination. He subsequently sued the state, alleging intentional infliction of emotional distress and unlawful termination for racial or sexual reasons in violation of the Alaska Human Rights Act. The state made a settlement offer, which he rejected, and the trial jury returned a verdict for him for the unlawful termination.[51]

- The City of Soldotna paid $50,000 in 1995 to settle a sex discrimination claim brought by police officer that the police department discriminated against her because officials thought that she was in a same-sex relationship.[52]

- An applicant for a clerk-typist position with the Alaska State Troopers in 1984 was asked in her interview if she was a lesbian. When she said yes, the inter-

[49] *Jones v. State Dep't of Corr.*, 125 P.3d 343, 345 (Alaska, 2005). The plaintiff had explained that he understood "sissy" and "cake-boy" to be derogatory terms for homosexual, "mud-duck" as a reference to someone who engaged in anal sex, and that the remainder of the memo's content was racially offensive – an attack on his African-American cultural identity. *See id.* at 345 n.1.
[50] *Id.*
[51] *Id.* at 350.
[52] *State News*, ANCHORAGE DAILY NEWS, Oct. 2, 1995.

viewer told her that she was well-qualified for the position, and that she would consider her for it, if she agreed to stop going to any of the gay bars in town. When she did not agree, on the grounds that a gay bar was one of the few places where she could publicly socialize with her friends without fear of harassment, she was told she would not be considered further for the position. She said that she did not believe the interviewer would even have thought about placing a similar restriction on a non-gay employee who frequented heterosexual bars.[53]

- In 1984, a gay youth counselor for the State of Alaska, who had worked in his position since early 1981, was told he could not take the youth he counseled out on "pass" to go out to movies or to shop, in order to reward them for their good behavior. The counselor learned that he was considered a risk because had been the leader of a "militant homosexual group" in Fairbanks. The only organization he could think of that might have caused that concern was his position as a discussion group leader for a sexual identity support group composed of young gays and lesbians. His facility director told him there was no way he would be granted a pass for his counselees because he was gay. Eventually he learned that the Anchorage Police Department had reported to his facility that he had been seen in gay bars. After his complaints about the unfairness of the restriction were rejected, he ultimately resigned because the incident, and the denial of what he considered "an important treatment tool," had undermined his ability to do his job well.[54]

[53] MELISSA S. GREEN & JAY K. BRAUSE, IDENTITY REPORT: SEXUAL ORIENTATION BIAS IN ALASKA 53 (Identity Inc., 1989).
[54] *Id*.

- After she was seen celebrating following a softball tournament by one of her co-workers, a lesbian was terminated by the Alaska Marine Highway in 1981. She had been at a "non-gay" bar, on the weekend, dancing with her friends in a circle when seen by her co-worker, who stared at her throughout the night to such an extent she eventually left. When she came to work the following Monday, her co-workers would not make eye-contact or talk with her. She felt they behaved as if she had "leprosy." Just after lunch she was given a written note that she had been terminated on the grounds that she was not strong enough for the job. However, her co-workers had given her no previous indication that she was not 'pulling her weight' or that her job performance was less than adequate. She has performed much heavy physical work in subsequent jobs, and has never had any problems with it. When she contacted her union representative he told her that the union could provide her with no protection from discrimination on the basis of her sexual orientation. She was told that she could make a complaint of sex discrimination. Because she felt that she would further "out" herself if she made a complaint, she decided not to take any further action.[55]

- When a woman applied to be on the Alaska State Commission on the Status of Women in 1981 (now the Alaska Women's Commission), she became one of two finalists out of 80 applicants. The Commission met and voted that she should get the position, but as they were leaving one of the Commissioners mentioned that the woman was a lesbian. That night another one of the Commissioners called the

[55] *Id.*

chairperson at home to say that she had changed her vote to the other candidate. The woman says the Chair had already left a message for her to call on her answering machine; and had she called back immediately, the job would have been hers. As it happened, she did not return the call until after the chair permitted the vote change. She later learned about the vote alteration through another Commissioner. She went to an attorney, who advised her that she had a strong case and could potentially win both the job and money damages due to the Commission's inappropriate handling of the matter after an official adjournment. However, she did not feel up to a court battle. Instead she asked for an apology and a policy statement that the Commission would never again discriminate on the basis of sexual orientation. The Commission agreed to this compromise.[56]

3. Arizona

- In 2009, an Arizona crime scene investigator was fired on account of her sexual orientation.[57]

- In 2007, a lesbian employee of the state child support enforcement agency sought counsel after suffering prolonged harassment by co-workers who used epithets in speaking to her and spread false rumors about her, including that she was mentally ill, after she disclosed that she was a lesbian.[58]

[56] *Id*.
[57] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[58] E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

- In 2006, a transgender nurse was fired by an Arizona county hospital on account of her gender identity.[59]

- A male-to-female transsexual, who had legally changed her sex to female, filed suit against a community college claiming the college had violated Title VII's proscription against discrimination because of sex when it required her to use the men's restroom until such time as she provided proof that she did not have male genitalia, and subsequently terminated her upon her refusal to comply with this directive. The District Court allowed the plaintiff's suit to proceed, holding that an individual who fails to conform to sex stereotypes may state a claim for discrimination "because of" sex under 42 U.S.C. §2000(e) *et seq*. The court reasoned that "[t]he presence or absence of anatomy typically associated with a particular sex cannot itself form the basis of a legitimate employment decision unless the possession of that anatomy (as distinct from the person's sex) is a bona fide occupational qualification."[60]

- An undercover narcotics officer with the Mesa Police Department, who had been awarded the Bronze Star during military service in Vietnam and had a perfect record during his employment with the police department, was fired soon after disclosing to the police chief that he was gay. He was told that, as a homosexual, he was in violation of Arizona's law against sodomy, even though the law applied equally to heterosexuals and homosexuals. The officer filed a lawsuit against the

[59] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[60] *Kastl v. Maricopa County Community College Dist.*, F.Supp.2d, 2004 WL 2008954 (D. Ariz. 2004).

city, but the trial court ruled against him and an Arizona appellate court upheld the decision.[61]

4. Arkansas

- A counselor and eighth-grade teacher applied for teaching job and was told by the principal and assistant principal that they had heard he was gay. Despite assurances that he would be hired, he was not offered the job.[62]

- When the Supreme Court of Arkansas struck down that state's sodomy law in 2002,[63] it noted the impact of the state law on employment. The opinion discusses the fact that the plaintiffs "fear prosecution for violations of the statute and claim that such prosecution could result in their loss of jobs" and "professional licenses."[64] Three of the plaintiff/appellees brought up employment discrimination as they set forth the harms they had suffered because of the law.[65] One plaintiff/appellee had been hired as a school counselor, but when school administrators learned he was gay, they refused to honor his contract[66]; another had to conceal her relationship because her lover was afraid she would be fired from her teaching job if her sexual orientation became known[67]; and a third feared that if his sexual

[61] HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA'S WORKPLACES (2001), *available at* http://bit.ly/kThbS.
[62] *Id*.
[63] *Jegley v. Picado*, 349 Ark. 600, 608 (Supreme Court of Arkansas, 2002).
[64] *Id*. at 609.
[65] Appellee's Supplemental Abstract, Brief, and Supplemental Addendum at xv, *Jegley,* 349 Ark. 600 (No. 01-815).
[66] Aff. of Brian Manire, *Jegley,* 349 Ark. 600 (No. 01-815).
[67] Aff. of Charlotte Downey, *Jegley,* 349 Ark. 600 (No. 01-815).

orientation became known, he would be reported to the State Board of Nursing and lose his nursing license.[68]

5. California

- A captain in the Los Angeles Fire Department with 36 years of experience was retaliated against, and his career prematurely ended, because he reported sexually inappropriate comments and racial, sexual, and sexual orientation harassment aimed at a firefighter in the Department. A jury awarded the captain damages of $1,730,848 under the California Fair Employment and Housing Act, and the court of appeal affirmed the award.[69]

- An openly gay police officer was denied a promotion after he had been subjected to anti-gay comments by co-workers. In 2009, he brought suit against the police department for discrimination based on his sexual orientation. The court dismissed he claim, finding that he had been subjected to anti-gay comments but concluding that there was insufficient evidence to suggest that the workplace had been intolerably polluted.[70]

- In 2009, a Superior Court jury in Newport Beach ruled in favor of a veteran police officer who claimed he was denied promotions several times because he was incorrectly perceived by the police department as being gay. Despite his outstanding annual evaluations, the sergeant was stereotyped as being gay and denied promotion because he was single and physically fit. The jury ruled for the

[68] Aff. of George Townsend, *Jegley,* 349 Ark. 600 (No. 01-815).
[69] *Bressler v. City of Los Angeles,* 2009 WL 200242 (Jan. 29, 2009) (unpublished).
[70] *Smolinski v. City of Pacific Grove,* 2009 WL 3353327 (N.D. Cal. Oct. 16, 2009).

sergeant on claims of discrimination based on perceived sexual orientation and retaliation, and awarded $8,000 in past lost earnings, $592,000 in future earnings, and $600,000 for noneconomic losses, for a total verdict of $1.2 million.[71]

- A gay police officer for the city of Huntington Beach was subjected to disparaging and harassing comments and conduct regarding his sexuality, but no action was taken against the perpetrators in response to his complaints. In 2008, the city settled a discrimination suit brought by the officer, for a sum that reportedly could eventually reach $2.15 million, including a $150,000 lump sum payment to end the lawsuit, and a lifetime monthly disability entitlement of $4,000.[72]

- An employee of the Los Angeles Police Department (LAPD) filed a suit alleging that the LAPD discharged her in retaliation for her complaints about mistreatment due to her sexual orientation. In 2008, a superior court judge rejected a motion to dismiss the lawsuit.[73]

- In 2008, a new teacher in the Ravenswood City School District was pressured into quitting his job after revealing to students that he had been gay while instructing the students not to use derogatory language in reference to gay men. He filed a lawsuit and the School District settled the case, agreeing to pay the teacher a year's salary.[74]

- In 2008, two lesbian public school bus drivers reported being subjected to a

[71] LESBIAN & GAY L. NOTES (May 2009).
[72] LESBIAN & GAY L. NOTES (Summer 2008).
[73] LESBIAN & GAY L. NOTES (Mar. 2008).
[74] LESBIAN & GAY L. NOTES (Mar. 2008).

hostile work environment because of their sexual orientation.[75]

- In 2008, a lesbian corrections officer reported that she was subjected to a hostile work environment because of her sexual orientation.[76]

- In 2008, a deputy fire marshal passed test for the position of Battalion Chief, but was not promoted. He subsequently learned that the fire chief told another employee that he believed the deputy was not promotable due to his being gay. After the deputy filed an internal complaint, the work environment became progressively more hostile.[77]

- In 2007, a volleyball coach was awarded $5.85 million in damages in her discrimination suit against Fresno State University after the University refused to renew her contract. The coach had alleged that this was a result of her advocacy of gender equity and her perceived sexual orientation.[78]

- A California Highway Patrol Motor Carrier Inspector claimed differential treatment, retaliation and constructive transfer. Upon disclosure of the employee's sexual orientation during an internal investigation, the employee's government issued computer was taken, Department of Transportation overtime was halted, and the employee was interrogated. The case was closed because the complainant

[75] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).
[76] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).
[77] E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).
[78] LESBIAN & GAY L. NOTES (Summer 2007).

elected court action. A right to sue was issued.[79]

- In 2007, the head women's basketball coach and her domestic partner were unlawfully fired by San Diego Mesa College after the coach repeatedly advocated for equal treatment of female student-athletes and women coaches, and following publication in a local paper of an article identifying the two women as domestic partners.[80]

- In 2007, an African-American lesbian firefighter who sued the Los Angeles Fire Department on charges of racial and sexual orientation harassment was awarded $6.2 million in compensatory damages and $2,500 in punitive damages by a jury. Two other firefighters who filed lawsuits contending they suffered retaliation for supporting her also won a $1.7 million jury verdict and a $350,000 settlement, respectively.[81]

- In 2007, a police chief decided not to promote an officer to a position she was qualified for, and for which no other qualified person was found, and instead eliminated the position, because the officer was transgender.[82]

- In 2007, the San Jose Public School District fired two openly gay women claiming they violated the dress code, but they believed it was because they were

[79] Complaint of Discrimination under the Provisions of the California Fair Employment and Housing Act, [Redacted] v. California Highway Patrol, Department of Fair Employment and Housing, Case No. E2000607H0121-00-se (Aug. 10, 2007).
[80] Nat'l Center for Lesbian Rts., Employment Case Docket: *Sulpizio v. San Diego Mesa College*, http://bit.ly/LoLOt (last visited Sept. 5, 2009).
[81] LESBIAN & GAY L. NOTES (Summer 2007).
[82] E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

openly gay.[83]

- A police sergeant was transferred to South Lake Tahoe where she allegedly experienced a hostile environment due to her gender (female) and sexual orientation (homosexual). Allegedly, she was disciplined for conduct that male officers were not, and was forced to transfer to a clerical position in another office. The Department of Fair Employment and Housing (DFEH) case was closed because an immediate right to sue was requested.[84]

- An employee alleged wrongful termination by University of California Food Stamp Nutrition Education Program on the bases of sex (male), and sexual orientation (gay). He alleged that he was terminated after complaining about anti-gay material on a computer. The case was close by administrative decision and a right to sue was issued.[85]

- A conservationist in the California Conservation Corps alleged that after her sexual orientation was revealed after she had a friend spend the night with her at a camp, she received numerous reprimands damaging to her career and her ability to supervise was questioned. In addition, she alleged that the next week an investigation was conducted by senior supervisors, who spoke with other conservationists about how they felt about the lesbian conservationist having her "girlfriend" spend the night. A policy was then issued that no overnight guests

[83] *Id*.
[84] Complaint of Discrimination under the Provisions of the California Fair Employment and Housing Act, [Redacted] v. California Highway Patrol, Department of Fair Employment and Housing, Case No. E200708e0853-00-sc (Dec. 18, 2007).
[85] Complaint of Discrimination under the Provisions of the California Fair Employment and Housing Act, [Redacted] v. California Highway Patrol, Department of Fair Employment and Housing, Case No. E200708C014900b (Aug. 28, 2007).

were to be allowed. Previously, overnight guests had been allowed for heterosexual couples. The case was closed because the DFEH could not conclude there was a violation of the statute. A right to sue was issued.[86]

- A police officer was denied promotion, and an external candidate was selected in one of the few instances in the department's history. The officer alleged racial and sexual orientation discrimination. The Department of Fair Employment and Housing case was closed because an immediate right to sue was requested.[87]

- A Program Technician alleged retaliation and a hostile work environment by the California Department of Health Services based on sexual orientation (lesbian), marital status (domestic partner), and religion (Baptist) after putting up a Lavender Committee (Union) poster, which she was asked to remove because it was controversial. Allegedly, her supervisor made remarks like "God don't like the ugly," or "the Lesbian is here, let's go." The Department of Fair Employment and Housing case was closed by administrative decision and a right to sue was issued.[88]

- A University of California, Davis, police officer brought suit against the university for harassment based on his sexual orientation in 2005, alleging that when other officers discovered he was gay, they subjected him to harassment

[86]Complaint of Discrimination under the Provisions of the California Fair Employment and Housing Act, [Redacted] v. California Highway Patrol, Department of Fair Employment and Housing, Case No. E200607E0372-00 (Oct. 15, 2007).
[87] Complaint of Discrimination under the Provisions of the California Fair Employment and Housing Act, [Redacted] v. California Highway Patrol, Department of Fair Employment and Housing, Case No. E200607E0174-00-rc (July 28, 2006).
[88] Complaint of Discrimination under the Provisions of the California Fair Employment and Housing Act, [Redacted] v. California Highway Patrol, Department of Fair Employment and Housing, Case No. E200506E1408-00-b (Apr. 6, 2006).

including homophobic slurs and a death threat, and his supervisor referred to him as a "fucking faggot" and retaliated against him after he lodged complaints in response to the treatment from other officers. The University of California Regents settled the case in 2008 for $240,000.[89]

- A gay man working as a cook for the California Youth Authority was awarded one million dollars in non-economic damages after a jury and court found that he was subjected to severe sexual orientation harassment on a daily basis.[90] While at work he was called a number of names with the word "faggot" in it. He estimated that one coworker call him one term with "faggot" over 150 times. He was threatened a number of times at work, but his supervisors never helped him. He testified that his situation never improved: "It was like a bad dream that I couldn't wake up from . . . . I said I deserve to be here. They're not going to chase me out. I stuck it out. Somebody is going to listen to me one day. Things are going to get better. . . . [I]t was like one thing after another and it never got better. It just got worse and worse and worse but I hung in there."

- In 2005, a department supervisor at the University of California**,** Davis drew up a dress code specifically targeting one gay male employee prohibiting him from wearing mid-length pants. The supervisor also forbade him from bringing the Gay and Lesbian Yellow Pages into the office.[91]

- In 2004, the city of Los Angeles agreed to pay out $200,000 and $450,000 to

[89] *Former UC Davis Officer Sues Cops, University*, KCRA 3, http://bit.ly/vwA4u.
[90] *Hope v. California Youth Auth.*, 36 Cal. Rptr. 3d 154 (Cal. Ct. App. 2005).
[91] *Former UC Davis Officer Sues Cops, University*, KCRA 3, http://bit.ly/vwA4u.

settle sexual orientation discrimination claims by two police officers. Both claimed that they were harassed and suffered career setbacks due to homophobia in the police department. According to an Associated Press report on Dec. 27, 2004, these settlements added to others would total nearly $3 million paid out by the city to settle sexual orientation discrimination claims brought by eight different police officers in recent years.[92]

- In 2004, a lesbian teacher who did not fit traditional gender norms was repeatedly transferred from site to site and once thrown against the wall by a principal. The school district and the union refused to intervene.[93]

- In 2004, a gay man faced harassment and isolation at work in a county department, causing him stress-related health problems. Although he knew California law had sexual orientation protections, he was afraid that the county and union would not enforce the law.[94]

- A municipal worker who had been harassed based on other employees' perception that he was gay was discharged in connection with allegations that he had inappropriately sexually harassed volunteers in the department. He contested the allegations and the court determined that the city had violated his due process rights.[95]

- A state agency employee reported that he had tried to persuade the agency to

[92] LESBIAN & GAY L. NOTES (Jan. 2005), *available at* http://bit.ly/vwBVH.
[93] E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).
[94] *Id*.
[95] *Martinez v. Personnel Board of the City of Loma Linda*, 2003 WL 429505 (Cal. Ct. App. Feb. 24, 2003).

provide domestic partner benefits in 2002. This caused conflict with his boss and he was put on administrative leave and eventually terminated.[96]

- A police cadet for the City of Oakland was forced to resign after being harassed by training instructors because of his perceived sexual orientation. A jury returned a verdict in favor of the plaintiff on his discrimination and harassment claims in the amount of $500,000, and the appellate court affirmed the judgment.[97]

- In 2001, the Beverly Hills School Board paid a gay man formerly employed as the superintendent of schools $159,000 to settle his discrimination complaint against the school district. He was discharged as superintendent after allegations surfaced that he had misused a district credit card, but he claimed that story was a pretext for anti-gay discrimination, arguing that all the expenses incurred on the card were legitimate business expenses. After being discharged, he was hired as superintendent of a school district in Long Island, New York.[98]

- A lesbian employed by the San Jose Police Department alleged that when she objected to performing strip searches, she was referred to internal affairs rather than being provided with counseling and training, as would normally be the case. She also said her attempts to transfer to other units where she would not have to perform such searches were thwarted because of her sexual orientation. In 2001, she won a $935,000 jury verdict in her sexual orientation discrimination case

[96] E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).
[97] *Hoey-Custock v. City of Oakland*, 2002 Cal. App. pub. LEXIS 7692 (2002).
[98] LESBIAN & GAY L. NOTES (May 2001), *available at* http://bit.ly/41pXwR.

against the San Jose Police Department, but the superior court judge found that the verdict was not supported by the evidence and ordered a new trial.[99]

- Parents in the San Leandro Unified School District complained to the school board about a public high school English teacher who helped establish a Gay-Straight Alliance at the school to provide support and protect students from harassment. After the teacher discussed these events with his class, the school issued the teacher a letter of censure, and the school board adopted a new policy requiring that undefined "controversial issues" need to be cleared with the principal before they were broached in class.[100]

- An award-winning high school teacher experienced severe and continuing harassment and discrimination at Oceanside High School because of her sexual orientation. Administrative officials failed to investigate this harassment or take corrective action, refused to promote her because of disapproval of her lifestyle, and threatened retaliation if she pursued her complaints. After the Court of Appeal rejected the district's attempt to dismiss her discrimination claim, the district reached a settlement with the teacher under which she resigned and the district paid her $140,000 and provided annual sensitivity training to its employees of issues of sexual orientation discrimination.[101]

- In 2000, a lesbian high school teacher filed a complaint with the California Labor Commission against the Hemet Unified School District charging that

[99] LESBIAN & GAY L. NOTES (Dec. 2001), *available at* http://www.qrd.org/qrd/usa/legal/lgln/2001/12.01.
[100] *Debro v. San Leandro Unif. Sch. Dist.,* 2001 U.S. Dist. LEXIS 17388 (N.D. Cal. Oct. 11, 2001).
[101] *Murray v. Oceanside Unif. Sch. Dist.,* 79 Cal. App. 4th 1338, 95 Cal. Rptr. 2d 28 (Cal. App. 4th Dist., Div. 1 2000).

administrators had discriminated against her when they removed a female student from her class whose parents objected to their daughter being taught by a lesbian. The teacher had assigned students to talk about an important person in their lives, and she voluntarily discussed her same-sex partner as an example. The California Labor Commission ruled in favor of the teacher and the school board appealed that decision.[102]

- A gay teacher filed a discrimination claim with the California State Labor Department after the Rio Bravo-Greeley Union School District granted the requests of parents to remove students from his classes bases solely on their perception that the was gay. The Labor Commissioner ordered the district to stop removing students from the teacher's classes and to cease treating employees differently based on their sexual orientation. A settlement was then reached under which the district agreed to adopt a non-discrimination policy, to reject any parental request to transfer students based on the "ethnicity, race, national origin, age, sex, actual or perceived sexual orientation, disability, or political or religious beliefs of classroom teachers," and to make a public statement in support of the teacher.[103]

- A highway patrol officer was harassed by his co-workers for five years, including finding anti-gay pornographic cartoons taped to his mailbox, urine in his locker, and a ticket for “sex with dead animals” on his windshield. After he complained, the harassment continued and he resigned in 1993. In 1999, a state court jury

[102] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 96 (2000 ed.).
[103] LESBIAN & GAY L. NOTES (Apr. 1999), *available at* http://bit.ly/4EkQci.

awarded him $1.5 million in damages and legal fees for the harassment to which he was subjected by his co-workers, under the state statute prohibiting employment discrimination based on sexual orientation.[104]

- An elementary school teacher alleged that the school board failed to renew her contract because of "her relationship with a lesbian teacher at the school." After a closed hearing on the matter, a school board member told a local citizen on the street, "If you knew what I knew, you'd know that we made the right decision." The teacher sued for wrongful discharge and defamation.[105]

- A commander in the California National Guard, the state military force under control of the California governor, with a record of "outstanding performance" was pressured by his commanding officer "to communicate to members of [his] unit that [he] was not homosexual." As a result, he sent a letter to his commanding officer, in which he stated: "I am compelled to inform you that I am gay." His commanding officer instituted proceedings to withdraw his federal recognition as an officer with the United States Army National Guard, and he was terminated from the California National Guard.[106]

- When a teacher notified officials at Center High School that she was going to begin the process for gender reassignment surgery, the district distributed a letter to all district parents. After four parents complained, the school board voted to

[104] HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA'S WORKPLACES (2001), *available at* http://bit.ly/kThbS.
[105] *Songer v. Dake*, 1999 WL 603796 (Cal. Ct. App. July 29, 1999).\
[106] *Holmes v. Cal. Nat. Guard*, 124 F.3d 1126 (9th Cir. 1997), *reh'g, en banc denied*, 155 F.3d 1049 (9th Cir. 1998), *cert. denied*, 525 U.S. 1067 (1999).

fire the teacher, citing her "evident unfitness for service." The teacher filed a complaint with the state labor commissioner seeking to be reinstated to her teaching position, and later reached a settlement with the school board in which she agreed to resign.[107]

- A lesbian claimed she was constructively discharged by the West Contra Costa County Unified School District after she told her immediate supervisor that she was a lesbian. In 1997, a jury awarded her a $360,000 award in her sexual orientation discrimination suit against the District.[108]

- In the late 1990s, a Bay Area public school teacher was unable to secure a full-time teaching contract in any of the several school districts to which she applied after she had transitioned from male to female. She then applied for an entry-level federal job, and after two days and multiple hours of interviews and screening, she was turned down for the position immediately after she disclosed her transgender status on a comprehensive medical questionnaire.[109]

- In 1996, a controversy arose in Los Angeles about personally invasive questions to which a lesbian police officer was subjected when she filed claims about harassment on the job based on her gender and sexual orientation. The ACLU wrote to the city on her behalf, resulting in a City Attorney move to narrow the scope of questions asked "in areas involving personal relationships" and to train

[107] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 92 (2000 ed.).
[108] LESBIAN & GAY L. NOTES (Summer 1997), *available at* http://bit.ly/ZUFT3.
[109] SHANNON MINTER & CHRISTOPHER DALEY, TRANS REALITIES: A LEGAL NEEDS ASSESSMENT OF SAN FRANCISCO'S TRANSGENDER COMMUNITIES (Nat'l Center for Lesbian Rts. & Transgender L.Center 2003).

lawyers in the worker's compensation division on how to elicit relevant information without invading the privacy rights of claims applicants.[110]

- In 1995, a committee on teacher credentials recommended to the California Teacher Credentialing Commission that two San Francisco high school science teachers have their teaching credentials revoked as a result of a 1992 incident when a classroom speaker from Community United Against Violence, a gay anti-violence group, made sexually explicit comments to a class of eleventh graders during a discussion with the class. Parent complaints to the school administration about the incident were rebuffed on the ground that the teachers themselves had done nothing wrong. But the parents then filed charges with the credentialing commission. A spokesperson for the San Francisco Unified School District cited the good records of the teachers and urged that the commission "let them continue their careers."[111]

- In 1994, two Los Angeles police officers filed suit alleging physical and verbal harassment on the basis of sexual orientation. They alleged that the LAPD had done nothing to implement guidelines for treatment of gays and lesbians on the job that were adopted as part of the settlement of a previous lawsuit. One of the officers had experienced verbal and physical harassment, other officers refusing to speak or work with him, and a supervisor continually greeting him in an effeminate tone with a lisp. The other officer had been advised to conceal her homosexuality because the department was “not yet ready to accept gays” and she

[110] LESBIAN & GAY L. NOTES (Feb. 1996), *available at* http://bit.ly/hVma6.
[111] LESBIAN & GAY L. NOTES (Oct. 1995), *available at* http://bit.ly/1D2Hvo.

would not make it through the academy or probation if her sexual orientation were known. Although she followed this advice, she was subjected to frequent anti-gay harassment that escalated when she participated in an investigation of anti-gay harassment of a fellow officer, and she was later denied a promotion because of her sexual orientation. At a press conference announcing the suit, another officer alleged that in the past year five gay or lesbian police officers had been forced off the job, out of the department, or to sick leave status due to anti-gay harassment.[112]

- The first openly gay officer in the Los Angeles Police Department (LAPD), who had graduated from the Academy at the top of his class, experienced severe harassment and hostility on the basis of sexual orientation, including other officers refusing to back him up in life-threatening situations. After the department refused to investigate, he believed his life was in danger, and he left the department. He filed a sexual orientation employment discrimination lawsuit against the city of Los Angeles. In 1993, he settled the case, leading to his reinstatement to the force, but he then filed a second lawsuit, charging the city and numerous police staff with violating the settlement agreement, as well as his federal and state constitutional and state statutory rights. He also challenged the LAPD's decision to suspend him for "unauthorized recruiting" of lesbians and gay men to join the force, and for allegedly wearing his uniform without permission in a photo in a gay weekly, and at gay pride and AIDS-awareness events. The Court ordered the LAPD to rescind his suspension and pay him for

[112] LESBIAN & GAY L. NOTES (Sept. 1994), *available at* http://bit.ly/adQhm.

the time lost. This second lawsuit prompted the city to make widespread improvements in its sexual orientation employment policies. Settlement discussions to make further improvements to city and LAPD employment policies continued for years.[113]

- A lesbian who worked in the Los Angeles Police Department experienced ongoing harassment based on her sexual orientation after she was outed by her roommate to her classmates at the police academy. For example, it took nearly twice as long for backup to arrive as it should have when she responded to a burglary call. Several of her colleagues made comments about physically harming a gay speaker to her class at the academy, including comments such as placing bombs in bodily orifices and shutting "that fag up." As a result of the harassment she faced, she said that she wouldn't recommend law enforcement as a career. She suffered from ulcers, shingles, and high blood pressure and felt as though she had no other career options.[114]

- A videotape showing Simi Valley police officers ridiculing gays and other groups emerged as a lawsuit alleging discriminatory attitudes and practices was filed against the department. Although the tape's producers claimed it was intended as a joke for a departing officer, other officers say it revealed widespread intolerance. One scene in the video, which takes place in the police chief's office, suggests a male officer wants to return to work so that he can continue an affair

[113] Lambda Legal, All Cases: *Grobeson v. City of Los Angeles*, http://bit.ly/1mcZ82 (last visited Sept. 5, 2009); HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA'S WORKPLACES (2001), *available at* http://bit.ly/kThbS.

[114] ROBIN A. BUHRKE, A MATTER OF JUSTICE: LESBIANS AND GAY MEN IN LAW ENFORCEMENT 33-38 (Routledge 1996).

with a male police investigator. In it, one officer says "A lot of people don't want to work with a coke freak." Another responds, "Or a [homosexual]." Reportedly, an anti-gay slur was used repeatedly.[115]

- A gay man in a city police department in Southern California reported that instructors in the police academy made comments to his class about gay people, including "Did you did hear that they're actually letting fags on this department now? Isn't that disgusting? That's really sick." During a conversation about hate crimes, the Sergeant raised the example of someone being physically assaulted for being gay and that such an incident would be considered a hate crime. Several of the officers responded with comments such as "[t]hat's a matter of opinion" and "Oh, yeah. Cruelty to animals." He brought the comments to the attention of the sergeant in charge, who responded that he hadn't heard the comments.[116]

- A gay man who was placed with a more experienced teacher when he first began teaching in a public high school in Santa Clara was notified by the supervisor after only one day of teaching that things weren't working. The more experienced teacher stated that he was uncomfortable with the new teacher's "alternative lifestyle," which he said he picked up from the new teacher's mannerisms, and the experienced teacher "[didn't] want [the gay teacher] influencing his students."[117]

[115] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 113-114 (2000 ed.).
[116] ROBIN A. BUHRKE, A MATTER OF JUSTICE: LESBIANS AND GAY MEN IN LAW ENFORCEMENT 58-62 (Routledge 1996).
[117] WARREN J. BLUMENFELD, ONE TEACHER IN 10 58-64 (Kevin Jennings, ed., Alyson 1994).

6. Colorado

- In 2007, a professor at a Colorado state university was harassed on the job, denied promotion, and stripped of his courses because he was gay. The professor had been teaching for more than two decades and had long been open about being gay. He began to experience problems when the former provost of the university retired. Thereafter, the dean began making derogatory comments about him in meetings, including referring to him as a girl. He was then passed over as chair of his department in favor of a heterosexual woman with much less tenure, even though he previously had been the chair of a related department. The professor was also stripped of graduate courses that he taught for years and was given only undergraduate courses to teach, based on a false claim that he did not turn his lesson plans on time.[118]

- An employee of the Colorado Division of Youth Services was harassed by co-workers based on his perceived sexual orientation. The employee's co-workers subjected him to derogatory comments and gestures because they believed him to be a gay man. An internal investigation uncovered a pattern of inappropriate conduct towards the employee that precipitated a directive to cease all conversations regarding an employee's sexual orientation in the workplace. The court dismissed

[118] E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).

the employee's constitutional and Title VII claims after he was later terminated because he failed to exhaust administrative remedies on time and because the court found that his allegations that defendants had not adequately investigated and addressed his complaints was not supported by the record.[119]

- A gay public high school teacher testified during a school board meeting in 2000 that he was subjected to anti-gay taunts while teaching at Denver's high schools.[120]

- A female nurse employed by the Elbert County was discharged from her employment based upon her sexual orientation, age, race, sex and handicapped status, thereby violating her constitutionally protected rights of due process and equal protection. At trial, a jury returned a verdict for the nurse on her claim that the County had violated her due process rights by failing to provide her with an adequate opportunity to be heard, but not on any of her other counts and awarded attorneys fees to the county.[121] On appeal, the court reversed the judgment awarding attorney's fees to the defendants but affirmed in all other respects.

- A librarian at the University of Colorado Law School was forced out of her job after publishing an article about Amendment 2 in the newsletter of the American Association of Law Libraries. In 1994, the ACLU of Colorado announced that it settled the case. Under the settlement, the librarian received $25,000, the repri-

[119] *Doerr v. Colo. Div. of Youth Serv.*, 2004 WL 838197 (10th Cir. Apr. 20, 2004).
[120] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 123 (2000 ed.).
[121] *Langseth v. County of Elbert*, 916 P.2d 655 (Colo. App. 1996).

mand was removed from her file, and she received a favorable recommendation letter for use in her job search.[122]

- An employee of the Denver Department of Health and Hospitals was denied sick leave to care for his same-sex domestic partner. The Colorado Court of Appeals held that the denial of "family sick leave" did not violate the State Career Service Authority Rule 19-10(c) forbidding discrimination in state employment.[123]

- A lesbian police officer with a long and distinguished record of reliable service with the Denver Police Department struggled for more than four years to keep her job and withstand insults and constant surveillance. As a member of the department's school resource program, the officer taught public safety to local public school students. She was consistently praised by the schools where she taught and was promoted. One day in 1986, she bought a few books in a lesbian bookstore, and soon afterward, her supervisors transferred her to street patrol. They told her that they had "damaging information" about her that could impair her integrity on the job. During roll call, other police officers began to make disparaging comments about lesbians. While on street patrol, her calls for backup often went unanswered, leaving her in serious danger. When she reported these incidents to her supervisors, they responded by stationing unmarked police cars at her home and the homes of friends she visited. When she consulted outside agencies,

[122] LESBIAN & GAY L. NOTES (July/August 1994), *available at* http://www.qrd.org/qrd/usa/legal/lgln/1994/07.and.08.94.
[123] *Ross v. Denver Dept. of Health and Hospitals,* 883 P.2d 516, 18 Empl. Benefits Cases (BNA), 1434 (Colo. Ct. App. 1994); *reh'g denied*, May 12, 1994.

she was told that the law gave little protection against harassment based on sexual orientation and the local American Civil Liberties Union would not take her case. Finally, Denver enacted an anti-discrimination ordinance, and the police department approved new anti-discrimination and anti-harassment guidelines in 1990.[124]

7. Connecticut

- In 2009, a Connecticut public school teacher with excellent evaluations was dismissed shortly after mentioning in class when Connecticut began to allow same-sex couples to marry that Spain also allowed this. Although the school said the dismissal was based on poor performance, the teacher felt it was sexual orientation discrimination. The teacher filed a complaint with the Connecticut Commission of Human Rights & Opportunities.[125]

- In 2008, a gay man, working in the Connecticut State Maintenance Department, reported that he had been harassed by his coworkers for being gay. He was tied by his hands and feet and locked in a closet. He filed a complaint, and the department is investigating this incident as a possible hate crime. His assaulters were placed on administrative leave.[126]

- In 2008, a gay man reported that he had endured harassment and discrimination based on his sexual orientation while working for sixteen years in the State of Connecticut Department of Developmental Disabilities. In 1996, he was given a

[124] HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA'S WORKPLACES (2001), *available at* http://bit.ly/kThbS.
[125] E-mail from Lee Swislow, Executive Director, GLAD, to Brad Sears, Executive Director, the Williams Institute (Sept. 16, 2009 8:08:00 PST) (on file with the Williams Institute).
[126] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Sept. 9, 2008) (on file with GLAD).

promotion. Upon telling his new Program Supervisor that he was gay, he was immediately notified that the promotion was going to be given to another staff person instead. Additionally, on the same day he that put a rainbow sticker on his car, the employee overheard many inappropriate comments about his sexual orientation, such as "[t]hey put those on their cars so they can spot each other to have sex." In 2007, the employee was promoted and moved to new group home. As part of his job responsibilities, the employee was asked to shave a total care client. However, he was told that it was inappropriate for him to shave another male client because he was gay, and that if were to do that, he would be turned in for abuse. Other staff members, who are heterosexual, were not prohibited from shaving clients of a different-sex. The employee felt "totally isolated and helpless" and had trouble sleeping as a result of this work environment. His attempts to work with supervisors and human resource personnel have resulted in no difference in climate, and he was told to "keep my personal business to myself."[127]

- In 2008, an employee who had worked for the Connecticut Department of Developmental Services for just over one year reported that he had experienced discrimination and harassment based on his sexual orientation. The employee filed a complaint, and based upon the investigation, the State of Connecticut Department of Developmental Services Equal Employment Opportunity Division found sufficient evidence of harassment and discrimination to move forward.[128]

[127] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Feb. 12, 2009) (on file with GLAD).
[128] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Sept. 29, 2008) (on file with GLAD).

- In 2008, a gay teacher in a Connecticut public school reported that she was one of three gay teachers to be "treated badly" by her coworkers. She was singled out through selective enforcement of rules, such as taking down decorations in her classroom. The principal of the school told the teacher that she would only provide her with a letter of recommendation if she resigned.[129]

- In 2008, a transgender woman working for a Connecticut Police Training Academy reported that her supervisor harassed her based on her gender identity. He called her into a dorm room, lay down on a bed, and asked her personal questions about her family, their approval, and what she does in her free time. This lasted for more than two hours. After the incident, her supervisor cited her for taking too long to change ceiling tiles and stripping the floors, despite her having accomplished the task and receiving praise from others for doing a good job. She was also instructed to use the men's restroom. She filed a complaint, in which she disclosed her status as transgender. She noted that she felt afraid to be alone with her supervisor. After submitting this complaint, she was fired.[130]

- In 2005, a teacher brought federal and state claims against his former employer, the Norwalk Board of Education, accusing it of sexual orientation discrimination. The plaintiff taught math and science at one of the defendant's middle schools, and was also the program facilitator for the Connecticut Pre-Engineering Program. The principal told the plaintiff that the Program was primarily aimed at

[129] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (May 22, 2008) (on file with GLAD).
[130] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Aug. 27, 2008) (on file with GLAD).

African-American students and that those students should be given preference for admission. When the plaintiff refused to give such preferences, he was subject to various retaliatory actions. The principal gave him a negative job evaluation and insinuated that he had HIV/AIDS when he became ill as a result of the hostile environment he was encountering. When the teacher returned from medical leave, he was terminated. After receiving a release from the Connecticut Commission on Human Rights and Opportunities and a right to sue letter from the EEOC, he brought a lawsuit. His claims survived a motion to dismiss.[131]

- In 2005, a City of New Haven employee brought a lawsuit against the City accusing her supervisor of denying her equal terms and conditions of employment and harassing her based on her sexual orientation. The City moved to dismiss, which the Court denied, finding that the plaintiff had sufficiently alleged facts supporting her discrimination claim.[132] The parties filed a joint stipulation of dismissal on September 10, 2007, but our research was not able to ascertain the substantive terms of the stipulation.

- In 2003, a police department applicant filed a complaint with the Connecticut Commission on Human Rights and Opportunities accusing the town and several police department personnel of refusing to hire her because of her sexual orientation. The parties entered into settlement discussions and reached an agreement. Before the plaintiff signed the agreement, the defendants demanded that she sign a statement saying that she was not hired for legitimate non-discriminatory reasons.

[131] *DeMoss v. City of Norwalk Bd. of Educ.*, 2007 WL 3432986, at *1-3 (D. Conn. Nov. 14, 2007).
[132] *Marcisz v. City of New Haven*, 2005 WL 1475329, at *1-2 (D. Conn. June 22, 2005).

When the plaintiff refused to sign, the defendants filed suit seeking to enforce the settlement agreement. The Superior Court found that the plaintiff had never agreed to sign the statement and denied the motion to enforce. The Court added that "[i]t has not been demonstrated that plaintiff's sexual orientation is a relevant factor that the defendants could consider in her employment and [to do so] would be contrary to the public policy of the state."[133]

- In 2003, a transgender woman, working as a police officer in Hartford, reported that she suffered harassment as a result of her gender identity. She was denied career advancement despite being qualified. She approached her chief regarding the situation, but was "brushed off."[134]

- In 2001, a teacher brought a lawsuit against the New Britain Board of Education alleging, among other things, sexual orientation discrimination. The plaintiff, a lesbian, was employed as a special education teacher at a New Britain public school and accused the superintendent of transferring her to a lesser position based on her sexual orientation.[135] The Court denied the school board's motion to strike her right of privacy and intentional infliction of emotional distress actions, allowing her to proceed on those claims in addition to her sexual orientation discrimination claim.[136]

[133] *Skorzewski v. Town of Guilford*, 2007 WL 901822, at *1-2 (Conn. Super. Ct. Mar. 8, 2007).
[134] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (June 2, 2003) (on file with GLAD).
[135] *Kavy v. New Britain Bd. of Educ.*, 2001 WL 688622, at *1 (Conn. Super. Ct. May 21, 2001).
[136] *Kavy v. New Britain Bd. of Educ.*, 2003 WL 721565, at *1 (Conn. Super. Ct. Jan. 22, 2003).

- In a book published in 1996, one of the only openly lesbian state troopers in Connecticut recounted the harassment and discrimination she faced in her division. During her admittance exam, she was required to take a polygraph exam. Several of the questions asked about sexual practices, including whether she had ever had sex with someone of the same-sex. She approached her department about wearing her uniform in a gay rights parade. She was told that she could not wear her uniform, despite the fact that other officers had worn their uniforms in other parades, including a Jamaican/West Indies parade and a St. Patrick's Day parade. In response to writing an article about her experiences as an openly gay state trooper, she was reprimanded and a negative review was placed in her file. She contacted a legal rights organization, whose challenge brought about the removal of the negative review. However, several weeks later, she was transferred to another division.[137]

- In 1995, an employee of the City of Hartford brought sex, sexual orientation, and disability discrimination claims against the city, which had fired him after nine years of employment. The employee's disability claim was based on his gender identity.[138] Two years prior to his termination, the plaintiff had undergone a sex change operation.[139] His work environment was hostile from that point until he was terminated under the pretext of departmental downsizing.[140] Following his termination, he filed a complaint with the Connecticut Commission on Human

[137] ROBIN A. BUHRKE, A MATTER OF JUSTICE: LESBIANS AND GAY MEN IN LAW ENFORCEMENT 117-24 (Routledge 1996).
[138] *Conway v. City of Hartford*, 1997 WL 78585 (Conn. Super. Ct. Feb. 4, 1997).
[139] *Conway v. City of Hartford*, 760 A.2d 974, 975-77 (Conn. App. Ct. 2000).
[140] *Conway*, 1997 WL 78585.

Rights and Opportunities, and then a lawsuit in state court after receiving a release from the Connecticut Commission on Human Rights and Opportunities.[141] In 1997, the court denied the defendant's motion to strike his disability discrimination claim and his sexual orientation claim.[142] Subsequently, based on the plaintiff's failure to comply with discovery requests, the trial court entered a judgment of non-suit against the plaintiff, which the appellate court affirmed.[143]

- In 1995, after a police department applicant was denied a job, she filed a right to privacy action against a police official. She alleged that during her application for a job as a police officer, she was questioned about her "marital status and fidelity" and was asked the question, "What exactly are your sexual practices and preferences?" She argued that such inquiries were designed to "elicit information about her sexual orientation," and as such, they violated her right to privacy. The District Court held that such inquiries had, indeed, violated her right to privacy. However, the court held that the police official was entitled to qualified immunity. On appeal to the Second Circuit, the court affirmed, reasoning that public officials are not liable under section 1983 if "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Since the conduct at issue had occurred in 1995, a reasonable official would not have known the conduct was constitutionally proscribed.[144]

[141] *Id*.
[142] *Id*.
[143] *Conway*, 760 A.2d at 975-77.
[144] *Eglise v. Culpin*, 2000 WL 232798, at *1 (2d Cir. Feb. 28, 2000).

- An applicant to police department was denied employment despite exceptional test results. His background investigation was said to reveal issues regarding his "integrity" because the applicant was gay.[145]

- In October 1994, John Doe of North Haven took the Hamden Police Department qualifying exam and scored higher than any other applicant. He was in good physical condition and maintained a 3.5 grade point average in a graduate-level criminal justice program. Based on his outstanding record, Doe was offered "conditional employment" as a police officer in March 1995 — subject to the completion of psychological, medical and polygraph examinations. During the polygraph test, Doe was directly asked his sexual orientation. He responded that he was gay. After the revelation, the Hamden police chief told Doe that he was not the "best candidate for the job." "Let's get one thing straight. I'm not going to enter a dialogue with you," the police chief told Doe when he pressed the issue. "The interview process is over and you didn't get the job." Doe asked for a copy of his polygraph report through the state's freedom of information commission. The very first paragraph included the statement, "He is gay."[146]

8. Delaware

- In 2001, a Delaware public high school teacher alleged that the school principal forced her to remove a "Safe Space" rainbow triangle sticker from her classroom

[145] H.R. Hrg. 104-87, pp. 163–165, Prepared Testimony of Michael Proto, Hearing before the House Committee on Small Business, Subcommittee on Government Programs re: H.R. 1863: The Employment Non-Discrimination Act, Wed., Jul. 17, 1996, 104th Congress, 2nd Session, Referenced at 142 Cong. Rec. D 755, D 760. *See In the News*, FED. NEWS SERV., Jul. 17, 1996.

[146] HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA'S WORKPLACES (2001), *available at* http://bit.ly/kThbS.

door.[147] Although the school permitted the display of stickers of other clubs and organizations, the school district did not want to appear as an advocate of "Safe Space" associated with gay people.[148]

9. Florida

- In 2009, two years after she started working at a college, a transgender woman was forced to resign because of her gender identity. She received praise for her work and was given a letter stating that she was dependable, able to work independently, and a skilled technician. Approximately two months before she was fired, she notified her boss that she would be transitioning from male to female. In March 2009, she was called in on her day off to attend a staff meeting. She did not have a clean uniform to wear and told her boss that she would wear women's clothes, which she wore in her day-to-day life but not on the job, and he said it was fine. When she arrived on campus, members of the faculty and staff gave her hostile looks and she felt unsafe. She called a co-worker friend to ask for support, but he hung up on her. Her boss then accused her of harassing her co-worker because she had called him after he hung up and moved her to an unfavorable shift that her friend did not work. The new shift interfered with her medical appointments, which were crucial to her transition, and she was forced to resign.[149]

- In 2007, after she notified her supervisors that she planned to transition, a city manager in Largo was fired because of her gender identity. News of her decision

[147] "EMcG," *Tell Your Story*, TOWARD EQUALITY, http://bit.ly/zqBIU.
[148] *Id*.
[149] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

to transition leaked to the local media shortly after she discussed it with her supervisors. When the City Commission heard the news, it voted 5-2 to suspend her. During the suspension meeting, one of the Commissioners who voted in favor of the suspension stated: "His [sic] brain is the same today as it was last week. He [sic] may be even able to be a better city manager. But I sense that he's [sic] lost his [sic] standing as a leader among the employees of the city."[150] She declined to sue the city after she was terminated, saying that bringing suit against it would be "like suing my mother."[151]

- In 2007, a sheriff's department applicant was offered positions at two sheriff's offices which were then rescinded because they found out he was living with a man whom they assumed was his partner.[152]

- In 2007, a lesbian social worker at a county agency suddenly had problems at work upon disclosing her sexual orientation following ten years of employment without issue. When she disclosed her sexual orientation, her supervisor started giving her bad reviews, and stood in the bathroom with her while she urinated for a drug test which was not standard procedure at the agency.[153]

- An employee of the Escambia County Utilities Authority brought a claim under Title VII for the workplace harassment he endured because co-workers presumed him to be gay. The court granted summary judgment to the defendant because

[150] Lorri Helfand, *Commission Moves to Fire Stanton*, ST. PETERSBURG TIMES, Feb. 27, 2007.
[151] *Id.*; *See also* Jillian Todd Weiss, *The Law Covering Steve (Susan) Stanton, City Manager Dismissed In Largo, Florida*, STANTON LEGAL, http://bit.ly/186I3m.
[152] E-mail from Ming Wong, Nat'l Center for Lesbian Rts., to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).
[153] *Id*.

none of the scenarios established in *Oncale v. Sundowner Offshore Services, Inc.* were present.[154] In rejecting the claim, the court stated that "[the employee's] characteristics [that were targeted in the harassment] may reflect stereotypes associated with a homosexual lifestyle, but they are not stereotypes associated with a feminine gender."[155]

- In 2006, an employee of the Department of Children and Family Services was terminated after she was seen hugging a female on the premises. Her supervisor stated before she was terminated that there was a "rumor" that the two women were in a relationship.[156]

- In 2006, an applicant to the police department was accused of being "dishonest" when she informed them of her transgender status after completing her application.[157]

- In 2005, eight years after he had been hired by the Hillsborough County School District, a teacher protested the dismantling of a gay pride book display at the local public library. He was quoted in the local paper for saying that, as a gay man and a school librarian, he was upset that the book display had been taken down prematurely. The school superintendent saw that he was quoted in the paper and proceeded to have his behavior reviewed by the school district's Professional Standards Office. Though the teacher was not disciplined for discussing the book

[154] 523 U.S. 75 (1998) (claim of same-sex sexual harassment actionable under Title VII).
[155] *Mowery v. Escambia County Util. Auth.*, 2006 U.S. Dist. LEXIS 5304 (N.D. Fla. Feb. 10, 2006).
[156] *Sampson v. Dep't of Children and Family Servs.*, 2006 Fla. Div. Adm. Hear. Lexis 466 (Sept. 29, 2006).
[157] E-mail from Ming Wong, Nat'l Center for Lesbian Rts., to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

display with the paper, he was told that he was not to bring "the issue" into the workplace. This censorship has caused him a great deal of distress and he worries that his professionalism will be called into question repeatedly because he is gay.[158]

- In 2005, a gay employee of the Pinellas County Water Quality Department reported that he was terminated after the employee's neighbor disclosed his sexual orientation to his supervisor.[159]

- In 2004, an administrative hearing officer held that a post-operative transsexual woman employed by the Brevard County Sheriff's Department, had no claim based on sex or disability, but, on appeal, the Commission reversed as to the claim of sex discrimination. The administrative law judge concluded that transsexuality was not a disability under the Florida Civil Rights Act because it is not within the purview of the ADA or the Rehabilitation Act. The judge limited the holding in *Smith v. Jacksonville Correctional Institution,*[160] defining "disability" according to whether or not the employee had undergone sex reassignment surgery (Smith had not, while Fishbaugh had). As to the sex discrimination claim, the administrative law judge found that she was unable to claim sex discrimination because the employee had been discriminated against because she was transsexual, not because she was a woman, and that gender identity receives no protection under the Florida Civil Rights Act. On appeal, the Commission panel held that the employee

[158] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[159] E-mail from Ming Wong, Nat'l Center for Lesbian Rts., to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).
[160] *See Smith v. City of Jacksonville Corr. Inst.,*1991 WL 833882 (Fla. Div. Admin. Hrgs. 1991).

could bring a claim for sex discrimination because she was "perceived not to conform to sex stereotypes or because [she] has changed sex".[161]

- In 2004, a gay officer with the Tampa Police Department experienced harassment and was terminated when he disclosed his sexual orientation to his supervisors. He was also arrested for lewd and lascivious conduct for informing street youth about "safer sex."[162]

- In 2004, a Sarasota public school teacher who had agreed to let students use her classroom for "Gay-Straight Alliance" meetings was harassed by other teachers to such an extent that she felt she had to leave. After she resigned, the school refused to give her a positive recommendation.[163]

- In 2004, a Department of Corrections employee was compelled to resign by his supervisors when they discovered that he occasionally wore women's clothes outside the office.[164]

- In 2003, a transgender employee of the Pasco County Sheriff's Department reported instances of harassment to her supervisors, who allegedly forced her to resign. Co-workers intentionally used the "wrong" pronoun when she was out on patrol, hence outing her to officers on the receiving end of police calls. She com-

[161] *Fishbaugh v. Brevard County Sheriff's Dep't*, Fla. Comm'n on Human Rel. Order # 04-103 (F.C.H.R. Aug. 20, 2004).
[162] E-mail from Ming Wong, Nat'l Center for Lesbian Rts., to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).
[163] *Id*.
[164] *Id*.

plained to superiors, but the conduct continued. When co-workers started a rumor that she had posed topless online, she resigned.[165]

- In 2002, an applicant for a Florida nursing license was denied because of his sexual orientation. The applicant had already procured a nursing license in Indiana.[166]

- In 2002, a transgender public school employee experienced harassment by co-workers and superiors; she was called a "thing," and was taunted about which bathroom she should be permitted to use.[167]

- In 2002, an openly lesbian firefighter was repeatedly passed over for promotion in favor of less-qualified employees. She was eventually fired for "low test scores," even though her scores were consistently superior to those of other officers.[168]

- In 2002, a gay firefighter reported that he had been harassed when colleagues found his personal ad online and circulated it around the office. The firefighter's supervisor "wrote him up" for infractions which he later admitted were frivolous.[169]

- In 2002, a gay firefighter reported that he was discriminated against after disclosing his sexual orientation at work. Before he had disclosed his sexual orientation, the firefighter received excellent assessments and was, in fact, promoted. After he revealed his sexual orientation, however, he was told to either resign or accept a

[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id.*
[169] *Id.*

demotion. The firefighter accepted the demotion in an effort to retain his retirement benefits.[170]

- In 2001, an employee of the Florida Department of Agriculture reported that he had been the target of virulently anti-gay comments from a colleague. When he complained, he was reprimanded and told to drop the complaint. The employee refused and was terminated shortly thereafter.[171]

- In 2001, a supervisor at the Florida Department of Health said he would try to "rid" the department of gays. When an employee complained, the employee was reprimanded and eventually terminated after enduring an extended period of workplace harassment.[172]

- In 2001, employees in two separate state agencies – the Department of Agriculture and the Department of Health – were fired after complaining of anti-gay harassment.[173]

- In 2001, a transgender city public works department supervisor was fired on account of her gender identity.[174]

- In 2001, a city government employee was forced to resign when superiors learned the employee enjoyed dressing in women's clothes outside the office and threatened to publicly disclose such discovery.[175]

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[170] *Id*.
[171] *Id*.
[172] *Id*.
[173] *Id*.
[174] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

- In 2000, a lesbian firefighter was subjected to a hostile work environment on account of her sexual orientation.[176]

- In 1996, an employee of a county clerk's office was fired because of his sexual orientation.[177]

- In a book published in 1996, Pete Zecchini, a gay man, described his experience as a Miami Beach police officer as "miserable." When Zecchini inquired as to why his cases had been reassigned and his work schedule had been rearranged, his supervisor told Zecchini it was because of his homosexuality. When Zecchini complained to his chief about this supervisor, the supervisor flatly denied saying any such thing. At shooting practice, Zecchini overheard his coworkers saying, "faggot this," "faggot that," and "Miami Beach is turning into a bunch of faggots." Zecchini alleged that he was the only officer on the force denied a pay raise for using too many sick days.[178]

- In 1994, a U.S. District Court jury in Florida decided that the Sunrise, Florida, Police Department unlawfully discriminated against Darren Lupo, an unmarried lesbian patrolwoman, by requiring that she work a Christmas shift in place of a married policeman with children, but rejected her broader claim of a pattern of dis-

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[175] E-mail from Ming Wong, Nat'l Center for Lesbian Rts., to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).
[176] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[177] *Id*.
[178] ROBIN A. BUHRKE, A MATTER OF JUSTICE: LESBIANS AND GAY MEN IN LAW ENFORCEMENT 102-106 (Routledge 1996).

crimination based on her sex and sexual orientation. The jury awarded $56,250 in compensatory damages.[179]

- In 1992, an administrative hearing officer ordered reinstatement and back pay for a second grade teacher who had been fired because he had allegedly committed a crime involving moral turpitude. The teacher had been charged with battery for touching an undercover officer's clothing while flirting with the officer. The school became aware of the incident when an account of the arrest was published in the newspaper. The Hearing Officer noted that "for the most part, the negative comments about Mr. Madison involved not the criminal charge, but the homosexual nature of the event" and concluded that the school had impermissibly discriminated against him based on his lifestyle.[180]

- A deputy sheriff brought suit in 1992 after he was constructively terminated because of his sexual orientation. In the first portion of a bifurcated trial, the jury found that the sheriff was constructively terminated because he was gay. The court then found that the termination violated his constitutional right to privacy and, applying heightened scrutiny because of the plaintiff's sexual orientation, the Equal Protection Clause. The court found that the constructive termination violated the deputy sheriff's constitutional rights.[181]

- In 1991, an administrative judge held that a pre-operative female transsexual, who had been fired from her job as a corrections officer, could bring a claim against

[179] LESBIAN AND GAY L. NOTES (Oct. 1994) (citing FT. LAUDERDALE SUN-SENTINEL, Sept. 5 1994).
[180] *Sch. Bd. of Escambia County v. Madison*, 1992 Fla. Div. Adm. Hear. LEXIS 6879 (1992).
[181] *Woodard v. Gallagher*, 59 Emp. Prac. Dec. (CCH) ¶ 41, 652, 1992 WL 252279 (Fla. Cir. Ct. 1992).

her employer, the City of Jacksonville, based on disability discrimination. The plaintiff had found it necessary to conceal her gender identity in order to keep her job and suffered from severe physical reactions as a result. One night, while dressed in women's clothes, she was assisted by a passing patrolman when she stopped to change a tire on the side of the road. The patrolman ran a report on her driver's license and discovered that she was classified as a male. Thereafter, when the incident was relayed to her supervisors, she approached her supervisors to tell them that she planned to transition. When she refused to resign at their insistence, they terminated her. At the administrative hearing, the city asserted a BFOQ defense with the stated qualification being "absence of transsexuality." In rejecting the argument, the hearing officer stated, "Simply put, prejudice cannot be a basis for a BFOQ."[182]

- A deputy sheriff was fired after her boss learned that she was lesbian. She lost her case challenging the dismissal when the court ruled that "in the context of law enforcement personnel, dismissal for homosexuality has been found rationally related to a permissible end."[183]

- A lawyer was denied admission to the Florida Bar after he disclosed that the Military Selective Service assigned him to a classification indicating "physical problem or homosexuality." The Bar pressed the lawyer for details about his past sexual conduct, and though he said he preferred men, he declined to provide more detail. The Florida Supreme Court held that the Florida Board of Bar Examiners

[182] *Smith v. City of Jacksonville Corr. Inst.*, 1991 WL 833882 (Fla. Div. Admin. Hrgs. 1991).
[183] *Todd v. Navarro*, 698 F. Supp. 871 (S.D. Fla. 1988).

should be limited to inquiries which bear a rational relationship to an applicant's fitness to practice law, stating that "private noncommercial sex acts between consenting adults are not relevant to prove fitness to practice law."[184]

10. Georgia

- A Legislative Editor for the Georgia General Assembly's Office of Legislative Counsel was fired after she was diagnosed with Gender Identity Disorder and began appearing (upon a doctor's orders) at work as a woman prior to undergoing gender reassignment surgery. Since 2005, she had been responsible for editing proposed legislation and resolutions for the Georgia Assembly. In 2009, in rejecting the state's motion to dismiss, a U.S. District Court ruled that the editor's complaint "clearly states a claim for denial of equal protection" under the 14th Amendment on alternative theories of discrimination on the basis of sex and a medical condition.[185] The court summarized the grounds for termination as, "In the view of Glenn's employers, gender transition surgery and presentation as a woman in the workplace would be seen as immoral… and would make other employees uncomfortable."[186] The court the held that "Unequal treatment fails even the most deferential equal protection review when the disadvantage imposed is born of animosity toward the class of persons affected," quoting the Supreme Court's opinion in *Romer v. Evans*[187].[188]

[184] *Fla Bd. of Bar Exam'rs Re N.R.S.,* 403 So.2d 1315 (Fla. 1981).
[185] *Glenn v. Brumby*, 2009 U.S. Dist. LEXIS 54768 (N.D. Ga. 2009).
[186] *Id*.
[187] *Romer v. Evans*, 517 U.S. 620 (1996).
[188] *Glenn*, 2009 U.S. Dist. LEXIS 54768.

- In February, 2009, an openly gay University of Georgia, Athens, professor was accused by two Georgia state representatives of recruiting "young teenage gays" to accompany him on international trips, despite the fact that he is not involved with study abroad programs and teaches graduate level classes. The professor was cleared of any misconduct after an investigation. The state representatives also said they would pressure the University of Georgia in Athens, Georgia State University, and Kennesaw State University to terminate any professors who teach "queer theory" courses. The University of Georgia defended its course offerings and the professors. The legislators also called three other professors into the State Senate to defend their research on sexuality and the outbreak of HIV and AIDS.[189]

- A Georgia Division of Family and Child Services (DFCS) employee who reported in 2006 that after other employees complained about working with her because she was a lesbian, she was subjected to a humiliating and invasive four-hour interrogation during which she was asked if she was a lesbian, who looked after her children, who she lived with and who her friends were. She was then told not to tell anybody else about what happened during the interview. Two weeks later DFCS suspended her for "alleged misconduct."[190]

- In 2006, five years after a bus driver was hired by public school district in McDonough, Georgia, a co-worker found a personal ad he had posted six years earlier on a gay dating site. The co-worker printed the ad and distributed it at one of the

[189] *Pulpit Power: Does the Religious Right Still Control Georgia?*, SOUTHERN VOICE, Mar. 13, 2009; *Georgia Lawmakers Clash Over Queer Theory, Academic Freedom*, SOUTHERN VOICE, Feb. 11, 2009; *Sex Research Puts University of Georgia Professors in Hot Seat*, DIGITAL J., Febr. 23, 2009; *Professor cleared of allegations*, RED & BLACK, Feb. 17, 2009.

[190] E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

high schools in the district. Immediately after the posting was passed around, he was fired. When he asked for a reason, school officials told him it was "in the best interests of the school system" and that he already "knew the answer." He made a complaint to the Board of Education, but received no response. He has not been able to get another job at a school in the area since.[191]

- In 2005, a woman applied for a job as a Disease Investigator with the Fulton County Health Department. When she applied for the job, she was using a male name, but by the time they called her back, she had transitioned and had legally changed her name. The first month went well, but the supervisor at the department was showing increasing discomfort with her transition. He began to make her work life miserable and he forbade her from using the female restroom. Belcher complained to Human Resources, but they did nothing except repeat her complaint to the supervisor without her consent. In February 2006, she was fired without cause and replaced by an untrained and under-qualified employee. Without her job, she was unable to take care of herself and her children financially.[192]

- An attorney, prior to the Supreme Court's decision in *Lawrence v. Texas*, had her offer of employment withdrawn from the Georgia Attorney General's Office after she had participated in a wedding ceremony, recognized by her congregation, with her same-sex partner. The Attorney General withdrew the employment offer after concluding that the attorney's participation in the ceremony would interfere with the Department's ability to enforce Georgia's sodomy law, and in general, create

[191] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[192] *Id*.

difficulties maintaining a supportive working relationship among the office lawyers. In 1997, the Eleventh Circuit upheld a district court decision allowing the Georgia Attorney General to withdraw the offer of employment with three judges dissenting from the majority en banc decision.[193]

11. Hawaii

- When an openly gay teacher at the Nanakuli High and Intermediate School complained to the administration about harassment and homophobic gossip by students, the principal responded by barring him from tutoring students after class and forcing him to remove decorations and books not directly related to coursework from his classroom. Other students at the school circulated a petition "calling for an end to the discriminatory atmosphere on campus" and other teachers at the school agreed that he was being discriminated against on the basis of his sexual orientation.[194] In Hawai'i public school teachers are state employees.

12. Idaho

- In 1997, a Power County Probation Department employee was fired immediately after supervisors discovered her sexual orientation. She had been employed by the county for six months prior to her termination and had disclosed her sexual orientation only to one trusted co-worker. Two days prior to her termination, while accompanied off-duty by her female partner, she ran into a co-worker in a store. She introduced the co-worker to the woman as her partner. Following the

[193] *Shahar v. Bowers*, 114 F.3d 1097 (11th Cir. 1997).
[194] Leland Kim, *Nanakuli Students Rally Around an Openly-Gay Teacher*, KHNL NBC 8 HONOLULU (n.d.) *available at* http://www.khnl.com/Global/story.asp?S=7230012 (last visited Sept. 17, 2009).

interaction, three Power County Commissioners confronted her, telling her that they were "unhappy" and that she "could either quit or be fired." The officer refused to quit, and the Commissioners fired her.[195]

13. Illinois

- In 2008, a fire department paramedic reported that he had experienced harassment based on his sexual orientation. Co-workers made comments such as, "I wish all fags would die of AIDS." The fire chief said to him: "I want to give you some advice. You need to tone it down a bit." When the paramedic asked if he was being too loud, or if the chief meant he should "gay it down" and the chief responded, "I can't say that, but I'm going to tell you to tone it down." The chief added, "[a]ny other chief would find you unfit for duty" and told the paramedic to "change the way you are." In addition, the paramedic's bedding was removed from the firehouse sleeping quarters and his car window was broken in the department's parking lot. The harassment became so bad that he would sleep in the ambulance during his downtime to avoid his co-workers. He believed that he was being set up for termination through an investigation of a false positive drug test that would not have been handled as it was if he were not gay.[196]

- In 2008, a public school teacher reported that he was repeatedly harassed at work because he was perceived to be gay. Students wrote on the tables in his classroom that "[teacher's name] is a fag" and included similar derogatory phrases in text-

[195] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[196] E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).

books in his class, among other things. The teacher made complaints to the administration about this harassment, but received no response. The teacher is perceived to be gay but is heterosexual.[197]

- In 2008, a gay professor at an Illinois community college was subjected to a hostile environment because of his sexual orientation.[198]

- In 2008, a lesbian public school teacher was subjected to a hostile environment because of her sexual orientation.[199]

- In 2007, a corrections officer reported that he was being harassed at work based on his sexual orientation. A fellow officer repeatedly referred to him as a "motherfuckin' faggot" in front of other officers and inmates. The officer who did this was not suspended, even though two employees who had used the "N-word" around the same time had been immediately terminated. After the corrections officer commenced a union grievance, shift commanders told him to "leave it alone" and warned him that he was "playing with fire." Thereafter, even though he was qualified for a promotion, the position was awarded to a heterosexual candidate from outside of the department with much less experience than he had. The corrections officer eventually resigned because of the harassment.[200]

[197] *Id*.
[198] *Id*.
[199] *Id*.
[200] *Id*.

- In 2007, a transgender city agency chief naturalist was fired because of her gender identity.[201]

- An employee of the Illinois Gaming Board alleged that he was denied a promotion in 2004 because of his sexual orientation, thereby depriving him of his federally protected right to equal protection.[202] The plaintiff never disclosed his sexual orientation at work, and no one at work ever asked about it, but plaintiff cited several incidents which formed the basis of his belief that his employers were aware of his sexual orientation. In one incident, he had a conversation with a co-worker in which he asked if the co-worker knew whether shoes thrown over a telephone line outside a house meant that drugs were sold there, to which the co-worker responded: "I don't know. Do you know what a rainbow flag mean [sic] when it's on a bar window? … That means it's a gay bar." Finally, a co-worker referred to an openly gay actor from Star Trek as a "faggot." In another incident, a co-worker cut out an article in which a homosexual police applicant received a job, and wrote on the top of the article that the "good guys" were not going to get the job – implying that only homosexuals would receive consideration because of their sexual orientation. Further, he overheard someone saying, "Don't worry, help is on the way," which he interpreted as meaning he would soon be replaced. When applications were taken to fill the permanent position, another applicant was chosen, and plaintiff alleged that due to his sexual orientation, his competitor

[201] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[202] *Hamlin v. Tigera*, 2008 U.S. Dist. LEXIS 3926 (C.D. ILL 2008).

was "pushed through." The court denied relief on the ground that plaintiff had failed to establish that his homosexual orientation was known.

- A gay male administrator sued the Suburban Bus Division of the Regional Transportation Authority, claiming that he was subjected to adverse employment actions and hostile work environment due to his sexual orientation.[203] The court found that the evidence of homophobic comments and jokes was insufficient to avoid summary judgment, because it failed to show harassment that is sufficiently severe or pervasive. "First, the comments were few, and very far between. Paquet claims that there were between 18 and 36 total instances in which an offensive joke or comment was uttered, over the course of approximately twelve years. . . . More importantly, none of the jokes or comments were ever directed at Paquet personally." The court also found that plaintiff was not retaliated against, in violation of his First Amendment rights, when efforts were made to remove him from training session after he asked leader to comment on applicability to homosexuals of a city anti-discrimination ordinance.

- A former probationary city police officer brought action against the superintendent of the Chicago Police Department under the Illinois Human Rights Act and Chicago's human rights ordinance, alleging, among other claims, discrimination on the basis of sexual orientation.[204] Flynn was terminated after four days during the probationary period following his being hired as a police officer. The state circuit court granted the city's motion to dismiss. With regard to the claims re-

[203] *Paquet v. Pace*, 156 F.Supp.2d 761 (N.D. Ill. 2001).
[204] *Flynn v. Hillard*, 303 Ill.App.3d 119 (1999).

lated to sexual orientation, the appellate court affirmed the judgment on the basis that Chicago's Commission on Human Relations had exclusive jurisdiction over claims arising under the ordinance, and Flynn failed to exhaust his remedies under the ordinance before bringing the claim to the circuit court. Furthermore, the appellate court concluded that because nothing in the Human Rights Act at that time prohibited discrimination based on sexual orientation, the court lacked jurisdiction over that claim.

- Two 16-year-old twin brothers who were subject to "a relentless campaign of harassment by their male co-workers," sued a city as their employer, alleging intentional sex discrimination.[205] Although the district court granted summary judgment in favor of the defendants, holding that victims of same-sex sexual harassment may not claim discrimination because of sex under Title VII, the Seventh Circuit reached the opposite conclusion. The plaintiffs alleged that their harassment included being called "queer" and "fag," comments such as, "[a]re you a boy or a girl?" and talk of "being taken 'out to the woods'" for sexual purposes. One plaintiff wore an earring and was subject to more ridicule than his brother, the second plaintiff, who was overweight and was once asked whether his brother had passed a case of poison ivy to him through anal intercourse. The verbal taunting turned physical when a co-worker grabbed one of the plaintiffs' genitals to determine "if he was a girl or a boy." When the plaintiffs failed to return to work, supervisors terminated their employment. The Seventh Circuit noted that "a homophobic epithet like 'fag,'…may be as much of a disparagement of a man's per-

[205] *Doe v. City of Belleville*, 119 F.3d 563 (7th Cir. 1997), *vacated*, 523 U.S. 1001 (1998).

ceived effeminate qualities as it is of his perceived sexual orientation." The court found that a "because of" nexus between the allegedly proscribed conduct and the victim's gender could be inferred "from the harassers' evident belief that in wearing an earring, [the brother] did not conform to male standards." The U.S. Supreme Court vacated and remanded to the Seventh Circuit for further consideration in light of *Oncale v. Sundowner Offshore Services*[206].[207]

- James Shermer, an employee of the Illinois Department of Transportation, asserted that he had been subjected to sexually offensive remarks by his male supervisor, who perceived him as gay and ridiculed him for having sex with other men.[208] (Shermer did not state for the record whether he was in fact gay.) Shermer sued under Title VII, alleging sexual harassment that had the effect of creating a hostile environment. The court ruled for defendant, finding that "all the evidence suggests Plaintiff was harassed not because of his gender but because of his sexual orientation....[D]iscrimination based on sexual orientation, real or perceived, however, is simply not actionable under Title VII."

- Jeffrey Cash, a nurse's aide in the Murray Development Center, a home for developmentally disabled people in Centralia, Illinois, sued the state agency for discrimination suffered because he was perceived to be gay. In the summer of 1995, plaintiff invited a fellow employee, Donny Hodge, for a Saturday fishing trip on his boat. They spent the day fishing then returned to Hodge's house. Since Cash's

[206] *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 (1998) (holding that same-sex sexual harassment is actionable under Title VII).
[207] *Doe v. City of Belleville*, 119 F.3d 563 (7th Cir. 1997), *vacated*, 523 U.S. 1001 (1998).
[208] *Shermer v. Illinois Department of Transportation*, 937 F.Supp. 781 (C.D.Ill.,1996)

wife and children were away visiting grandparents for the weekend, Hodge invited Cash to stay overnight, and they continued their fishing trip on Sunday. Hodge is an openly gay man, and was known as being gay in their workplace. Cash began to take flak from a group of female co-workers about his perceived failure to emerge from the closet and embrace his homosexuality. Cash's tormentors made the next year of his life at work miserable. They laughed at Cash while simulating fellatio or male masturbation, called him a "he/she" or "the evil one," and bared their breasts and shook them at him while laughing. One woman even rubbed her bare breasts against Cash's arm following a union meeting. Over time, Cash became short-tempered, paranoid, and depressed. He eventually sought psychiatric counseling, which both he and his therapists say stemmed from his stressful working conditions. The court rejected plaintiff's hostile environment claim, finding that the harassment was insufficiently pervasive to state a Title VII claim, and that it was not directed at Cash "because of" sex.[209]

14. Indiana

- A gay special education aide in the Clark County Schools was hounded out of his job after teenage boys who crashed his Halloween party alleged that he tried to molest them. The aide sued the school district and various named defendants on various constitutional and tort theories, including defamation per se and intentional infliction of emotional distress. Ruling on various pretrial defense motions, the

[209] *Cash v. Ill. Div. of Mental Health*, 209 F.3d 695 (7th Cir. 2000).

court rejected his per se defamation claim but allowed the rest of his claims to proceed.[210]

- The State of Indiana denied employee Jana Cornell's request for bereavement leave so she could attend the funeral of her partner's father. Cornell sued the state arguing that the exclusion of same-sex partners from the bereavement leave policy violated the state constitution's protection of equality. Her claim was rejected on the ground that the discrimination was based on marriage rather than sexual orientation.[211]

- In 2000, an openly lesbian probation officer was not promoted by her employers, two Carroll County judges, because of her sexual orientation. The judges together decided against promoting her to chief probation officer. The officer requested the job and the superior court judge told her that they would not promote her because she was a lesbian. Further, the superior court judge told her that she was embarrassing the court by dating a woman, and that he had asked other court employees about her sexual orientation and personal life. A man with no prior probation experience was promoted to the position.[212]

[210] *Badger v. Greater Clark County Schools*, 2005 WL 645152 (S.D. Indiana Feb 15, 2005).
[211] *Cornell v. Hamilton*, 791 N.E.2d 214 (Ind. App. 2003).
[212] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 179 (2000 ed.).

- From 1997 through 2000, a gay public school principal and a gay public school teacher were subjected to a hostile work environment on account of their sexual orientation.[213]

15. Iowa

- A veteran of the Iowa National Guard was fired by an Iowa state university in 2002 after she informed her superiors that she was a transitioning.[214] Her supervisor, a surgeon for whom she conducted research, stopped coming to the lab after she told him about her plan to transition and her department administrator told her that her condition was such that they didn't feel that she "could give sufficient effort to the department."[215] She was fired on the spot.[216] Although she reported the firing to the university's affirmative action office, it did not order that she be reinstated and instead only suggested that she seek employment in a different department of the university.[217] After her efforts to do so failed, she ultimately left Iowa altogether.[218]

- An employee of a state-operated casino in Council Bluffs whose employers did not take appropriate action to stem rumors that she was a lesbian, subjected her to

[213] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[214] DEBORAH J. VAGINS, WORKING IN THE SHADOWS 19 (2007); *see also* HEARING BEFORE THE S. COMM. ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS, 110th Cong. (2008) (statement of Shannon Miller, Legal Director for the Nat. Center for Lesbian Rights).
[215] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[216] *Id*.
[217] DEBORAH J. VAGINS, WORKING IN THE SHADOWS 19 (2007); *see also* HEARING BEFORE THE S. COMM. ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS, 110th Cong. (2008) (statement of Shannon Miller, Legal Director for the Nat. Center for Lesbian Rights).
[218] *Id*.

harassment and emotional distress, and ultimately retaliated against her for complaining by denying her a promotion.[219] In 2000, she was awarded $54,493 by a federal district court jury.

- A worker at a tax-supported nursing home in Davenport was fired in 1996 because his employer wanted to "weed[] out employees who lack good moral character," including gay men and lesbians who he said were "not part of the Bible" and "not part of society." In an interview, the nursing home administrator commented, "When I first came here, there [were] probably at least three, excuse my French, faggots working here, and I had at least three dykes working here . . . . This isn't the kind of atmosphere that I want to project when a client or family member comes to my nurses' station and sees a 45-year-old-faggot that has got better skin than you and I, and is a man but presents itself more like a woman. This is no way to perceive my operation."[220] The state of Iowa did not take any action against the nursing home for this action.[221]

16. Kansas

- In 2004, a Topeka resident and employee of a state agency reported that when a newly appointed supervisor arrived in the office, he harassed the employee until he took a job with another state agency. Prior to the new supervisor's arrival, the employee had received three "Outstanding" employee evaluations, but the new

[219] *Montagne v. Iowa (D. Iowa*, Oct. 25, 2000).
[220] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 64-65 (1997 ed.).
[221] *See* Cedar Rapids Gay & Lesbian Resource Center, http://www.crglrc.org/aboutus.php (last visited Sept. 4, 2009).

supervisor constantly criticized his work. The employee then found the state discrimination office to be unreceptive to his complaint.[222]

- In 2003, the day after the Supreme Court issued the *Lawrence v. Texas* decision, members of the Topeka and Shawnee County public library staff ordered an employee who had been a longtime member of Parents, Families, and Friends of Lesbians and Gays to never again speak about the decision at work. In response to a letter from the ACLU, the library admitted that it cannot forbid one of its employees from talking about a Supreme Court decision while at work, and assured the ACLU that it would not restrict employees in that way.[223]

- In 1996, in *Miller v. Brungardt*, a school counselor brought suit against the school district, her school's superintendent, and its vice principal after the latter allegedly made sexually inappropriate comments that included accusing her "of engaging in a lesbian relationship" with a student's mother and other "sexually explicit comments concerning lesbian behavior." When the counselor reported the vice principal's actions to the school superintendent, she was reprimanded, and the superintendent failed to take remedial action. In addressing whether, when suing individual employees of a municipality (such as the school district) under the Kansas Tort Claims Act, the plaintiff must give them notice of suit prior to its commencement, the court found that notice must be provided to municipal employees only when "the employee's actions occurred within the scope of employment."

[222] RODDRICK COLVIN, THE EXTENT OF SEXUAL ORIENTATION DISCRIMINATION IN TOPEKA, KS 3 (2004), available at http://www.thetaskforce.org/downloads/reports/reports/TopekaDiscrimination.pdf (crediting the statement to "a gay Topeka resident").
[223] Press Release, ACLU, Kansas Public Library Concedes That it Can't Censor Employee for Discussing Historic Sodomy Ruling (Aug. 5, 2003), *available at* http://bit.ly/Kt0QP.

Taking plaintiff's allegations as true for the purposes of the motion, the court found that the vice-principal's harassment, characterized by school counselor as "threatening, intimidating and abusive," fell outside the scope of the vice-principal's employment. "`[S]exual harassment . . . is not within the job description of any supervisor or any other worker in any reputable business.'"[224]

- In 1995, an employee of the Kansas Air National Guard was harassed because she was perceived to be a lesbian. The first sixteen months of her employment passed without incident. Then her superiors and co-workers began harassing her. Her supervisor told her that "some people were wondering" about her sexual orientation," to which she responded, "No problem. Like Men." On another occasion, she alleged her co-worker was touching his genitals while he was looking at her. In another instance, she accidently brushed up against a co-worker while getting a cup of coffee, to which the co-worker responded, "Don't rub up against me. You're not going to come out of the closet that way." Finally, she alleged her supervisor stated, "I would like to see what you would do if O.J. Simpson asked you out on a date," to which she replied, "Well, he's not my type." Then the supervisor laughed and said, "You mean your type or your gender?" Later that day, the supervisor apologized for his comment.[225] In 1998, the court concluded that she had not stated a *prima facie* case of hostile work environment sexual harassment. Thus, the defendant's motion for summary judgment was granted.

[224]*Miller v. Brungardt*, 916 F.Supp. 1096 (D. Kan. 1996).
[225]*Wible v. Widnall*, 1998 U.S. Dist. LEXIS 7541 (D. Kan. 1998)

- In 1991, in *Jantz v. Muci*,[226] a federal district court in Kansas found that a Kansas school teacher did have an equal protection claim actionable under 42 U.S.C. § 1983[227] because he had been denied a teaching position because of a principal's perception that he had "homosexual tendencies."[228] The court further held that the principal was not entitled to a qualified immunity defense[229] and denied his motion for summary judgment. The Tenth Circuit reversed, finding that the principal was entitled to qualified immunity.[230]

- In 1987, in *In re Smith*,[231] the Supreme Court of Kansas disbarred an attorney, in part, because he had a misdemeanor conviction for consensual sodomy with an adult. In 2003, the United States Supreme Court held that it had been wrong in 1986 when it had decided, in *Bowers v. Hardwick*, that sodomy laws did not violate the due process clause of the U.S. Constitution.

- In 1987, a road patrol deputy for the Saline County Sheriff's Department was fired after rumors circulated that she was a lesbian and involved in a relationship with another employee. The deputy sued, alleging violation of her First Amendment right of association. The court held that the Sheriff's Department had not infringed the plaintiff's right of association when it discharged her. The court noted that "defendants acted to protect the public image of the Department and to maintain close working relationships internally and externally with the community.

[226] 759 F. Supp. 1543 (D. Kan. 1991).
[227] *Id*.
[228] *Id*. at 1545.
[229] *Id*. at 1552.
[230] 976 F.2d 623 (10th Cir. 1992). For a recitation of the relevant facts, see the summary of *Jantz v. Muci*, 759 F. Supp. 1543, 1543 (D. Kan. 1991).
[231] 757 P.2d 324 (Kan. 1988).

These are legitimate concerns and they provide sufficient justification for the action taken against the plaintiff."[232]

17. Kentucky

- In 2008, a gay public school administrator and a bisexual public school administrator reported being subjected to a hostile work environment and denied job-related travel funding on account of their sexual orientation.[233]

18. Louisiana

- In 2006, a gay man was hired as a faculty member and coordinator of the 4-H Program at Louisiana State University. He implemented successful youth programs in his position, was promoted in 2007, and received a Distinguished Service Award. At the meeting during a camp event supervised by the faculty member, the Human Resources Manager told him that the school had received an anonymous letter saying that the faculty member had a personal ad on a gay dating website. The faculty member was immediately put on administrative leave without even the opportunity to collect his belongings from the campsite—because he "could not interact with the youth anymore." He refused to quit so he was demoted from his supervisory position and all youth programs were taken away from him. His contract was not renewed for the 2009-2010 school year.[234]

[232] *Endsley v. Naes*, 673 F. Supp. 1032 (D. Kan. 1987).
[233] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).
[234] *Id*.

- In 2004, a lesbian bus driver for the Monroe School District reported that she had faced harassment for gender non-conformity and sexual orientation. She complained about the adverse treatment, but her grievance was deemed invalid.[235]

- A tenured teacher and coach for women's sports at Oak Hill High School was fired on suspicion of being a lesbian. The teacher was suspected of having an inappropriate relationship with a student, who was actually her cousin's daughter with whom she had a close familial relationship. After being discharged on a 5-4 vote, the teacher filed suit and the trial judge found in her favor. The appeals court affirmed the trial court's decision, finding that the charges against her "are replete with insinuations and innuendos" and " the Board's case is seriously lacking in evidence, much less the `substantial evidence' required to support the Board's actions. The court concluded that the School Board's decision "was arbitrary and an abuse of discretion," and assessed the School Board the full costs of the appeal.[236]

19. Maine

- A gay African-American male employee of the University of Maine, Augusta, reported in 2008 being called a "fagball" and "niggerball" and addressed in other demeaning ways by his immediate supervisor, a department dean. The employee filed a grievance with his head supervisor.[237]

[235] E-mail from Ming Wong, Nat'l Center for Lesbian Rts., to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).
[236] *Holt v. Rapides Parish Sch. Bd.*, 1996 WL 709720 (La. Ct. App. Dec. 11, 1996).
[237] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment

- A gay firefighter in 2008 reported that he had been harassed by his coworkers when his sexual orientation was disclosed at work. He was "outed" and then his coworkers made offensive and hostile comments. He met with department heads and expressed his discomfort several times, but allegedly the job environment has not changed.[238]

- In 2007, a gay employee of the Maine Department of Corrections reported that he had experienced harassment and discrimination based on his sexual orientation at work, causing him to go on medical leave. The employee reported that inmates treated him badly because of his perceived sexual orientation and that his supervisors did nothing to address this harassment. He filed a complaint with the Maine Human Rights Commission and was successful in his case.[239]

- The head coach of a high school varsity softball team alleges that in 2006 she was not rehired after twelve successful years of coaching because of her sexual orientation. In 2009, the Supreme Judicial Court of Maine reversed a lower court's grant of summary judgment for the defendant school district and superintendent, and remanded the case for trial.[240]

- In 2006, a staff member at a county recycling center reported being denied bereavement leave when her same-sex partner's father passed away. She knew that heterosexual coworkers, whose unmarried partner's relatives have passed away,

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Discrimination (Apr. 11, 2008) (on file with GLAD).
[238] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Feb. 19, 2008) (on file with GLAD).
[239] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Oct. 31, 2007) (on file with GLAD)
[240] Lesbian & Gay L. Notes (Summer 2009); *Cookson v. Brewer School District*, 2009 WL 1532949 (Me. June 2, 2009).

had been able to use bereavement time. For example, a coworker was permitted to take bereavement leave for the death of his girlfriend's father.[241]

- A gay police officer in Maine reported in 2002 that he was being harassed at work based on his sexual orientation. His was called a "fudgepacker" and a "faggot" by his coworkers.[242]

20. Maryland

- A correctional officer in a state prison alleged that she was harassed in the workplace by her co-officers, including being subjected to lewd comments, pornography, and sexual advances, and comments that all short haired female guards were lesbians. Her supervisor and co-workers regularly made comments regarding her own and other officers' sexual conduct, her appearance, the female anatomy, the unfitness of women to serve as police officers, the presumed lesbianism of female officers, prostitution, and other inappropriate sexual references and behaviors. In 2003, the officer was forced to work under a supervisor who demeaned her and ordered her and another female officer to shower together with "soap on a rope."[243] In dismissing her complaint against individual defendants in 2005, a United States District court stated that while unpleasant, the stereotyping comments were an example of "the sporadic use of abusive language, gender-related

[241] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Apr. 5, 2007) (on file with GLAD).
[242] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (May 16, 2002) (on file with GLAD).
[243] Complaint at 17, 18, 20, 26 & 30, *Ensko v. Howard County*, 423 F. Supp.2d 502 (D. Md. 2005) (No. 04 Civ. 03464).

jokes, and occasional teasing" that did not rise to the level of a Title VII action.[244] The court allowed her Title VII hostile environment claim against the county to proceed.[245]

- When the Maryland sodomy law was overturned in *Williams v. Glendening*, four of the plaintiffs who brought the suit were members of the Maryland bar, including one who wanted to be a judge.[246] For those plaintiffs, loss of state licensure was a real concern.[247] The court noted this effect of the law, and relied on the legitimacy of these fears as the basis for the plaintiffs' standing: "Since many of the plaintiffs are lawyers, they express anxiety that a conviction might jeopardize their licenses to practice law and thereby their means of earning a livelihood. . . . This court cannot say that the concerns of these plaintiffs are not real."[248] On the basis of these fears, the court held that "the Plaintiffs' concerns are real and that a justiciable issue, ripe for resolution, is presented."[249]

- In 1994, three female state police trooper candidates were not hired as state troopers because of alleged inconsistencies in their polygraph examination questions concerning sexual orientation.[250] Two of the officers had previously filed a complaint in state court requesting injunctive and declaratory relief for sexual orientation discrimination while they were at the Maryland State Police Academy. They

[244] *Ensko v. Howard County*, 2005 U.S. Dist. LEXIS 37602, at *12 (N.D. Md. 2005) (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)).
[245] *Id*. at *8.
[246] No. 9803 6031, 1998 WL 965992, at *1 (Md. Cir. Ct.).
[247] *Id.* at *1 ("Since all are members of the Maryland Bar, they contend that a conviction would affect their ability to continue to practice law.").
[248] *Id.* at *5.
[249] *Id*.
[250] GAY & LESBIAN L. NOTES (Dec. 1995), *available at* http://www.qrd.org/qrd/usa/legal/lgln/1995/12.95.

claimed their treatment at the Academy violated the Maryland Declaration of Rights, the equal protection clause, the due process clause, and a Governor's Executive Order banning sexual orientation discrimination by the state government. The state settled with the two women, agreeing to the injunctive relief requested and offering the positions sought. They then successfully completed their training at the Academy, but were then denied positions as state troopers, along with a third lesbian candidate.

- An inmate at a Maryland state prison alleged that he was denied a position in the prison's education department because a guard told the head of that department that he was gay and a rapist. Twice the 4th Circuit reversed dismissals of his case by a United States District Court. The first time the Court determined that the inmate had alleged facts constituting a potentially cognizable equal protection claim. The second time the Court held that the inmate had not been presented with adequate notice about presenting his case de novo to the district court after it had been dismissed by a magistrate.[251]

21. Massachusetts

- In 2009, worker at a state university for 26 years has been isolated from his fellow workers and he feels that his requests to remedy this have not been addressed because he is gay.[252]

[251] *Johnson v. Knable*, 934 F.2d 319 (4th Cir. 1991), 1988 WL 119136 (C.A.4 Md.).
[252] E-mail from Lee Swislow, Executive Director, GLAD, to Brad Sears, Executive Director, the Williams Institute (Sept. 16, 2009 8:08:00 PST) (on file with the Williams Institute).

- In 2009, a public school teacher reported that she was suspended four times due to her sexual orientation since 2003. She is the only "out" teacher in the district.[253]

- In 2008, a Massachusetts truck driver working for a town experienced harassment because she was a lesbian. People at work displayed pornographic images near her locker. She filed suit against the town for sexual orientation harassment and won a $2.1 million lawsuit.[254]

- In 2008, a police officer working at a state university in Massachusetts for four years reported that during training, his drill instructor would yell, "Are you looking at me, boy? Do you like me? Are you a faggot?" After several of his coworkers became aware that the police officer was a gay man, he received phone calls at home from his coworkers, including one who called him and said, "I need a blow job" and then hung up. He eventually left the university for a job with a city police department.[255]

- In 2008, a married lesbian working for the Massachusetts State Trial Court reported that she was demoted and her pay was cut as a result of her recent marriage to a woman. The employee took time off of work for an illness with a doctor's note, but she was called by her union steward to notify her that she had been suspended and that proceedings were under way to fire her.[256]

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[253] *Id*.
[254] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (June 13, 2008) (on file with GLAD).
[255] *Id* at 58-62.
[256] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Jan. 24, 2008) (on file with GLAD).

- In 2007, a police officer from Massachusetts testified about his experience of discrimination at a U.S. House of Representatives hearing on ENDA. The officer testified that he lost two-and-a-half years of employment fighting to get his job back because he is gay. The officer realized soon after graduating the police academy that because he was gay, his safety as a police officer and his future as a public servant were seriously jeopardized. He worried that if he were killed in the line of duty there would be no one to tell his partner what happened to him and his partner would learn about it on the news. Because Massachusetts has an anti-discrimination law that protects against sexual orientation discrimination he was eventually able to get his job back.[257]

- In 2007, a Massachusetts deputy sheriff, who is gay, experienced two years of harassment by his chief. The chief threatened to suspend him if he continued "to see two guys at one time" because it looked bad for the department. The chief also "outed" him to his coworkers. Due to the harassment he suffered, the deputy sheriff suffered a mild heart attack, and was placed on sick leave. During that time, he was fired for abandonment of post.[258]

- In 2007, a lesbian staff member with the Massachusetts Department of Transitional Assistance applied four times for a promotion and was denied each time, despite having obtained additional training. The employee also received good eval-

[257]Transcript of Statement by Michael Carney Regarding H.R. 2015 (Employment Non-Discrimination Act of 2007), H. Ed. & Labor Comm., Subcomm. on Health, Employ., Labor & Pensions Hearing, MASS. CONG. QUARTERLY,Sept. 5, 2007; Transcript of Statement by Mass. Rep. George Miller Regarding Mass. H.B. 13228 H. Ed. & Labor Comm., Subcomm. on Health, Employ., Labor & Pensions Hearing, MASS. CONG. QUARTERLY, Sept. 5, 2007.

[258] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (May 24, 2007) (on file with GLAD).

uations and received the Governor's Award for Outstanding Performance. She believed that she was denied advancement due to her sexual orientation. Another employee was, at the time the incident was reported, suing the department for discrimination based upon sexual orientation as well. That employee had already filed paperwork to start the complaint process.[259]

- In 2007, a public school teacher reported homophobic graffiti and harassment to her supervisor and then was harassed and terminated by the supervisor.[260]

- In 2007, a lesbian staff person working in a Massachusetts town's clerk office was fired after she and her partner filed a birth certificate, listing themselves as the parents of their child. She was made to feel incompetent and overworked, which resulted in her suffering a breakdown while at work. She was forced to sign a document indicating that she would not sue the town upon her termination.[261]

- In 2006, the Appeals Court of Massachusetts affirmed a trial court decision awarding a Suffolk County House of Correction officer over $620,000 in back pay and damages because his department failed to take adequate steps to remedy the harassment against him. The corrections officer had desired to keep his homosexuality private but a co-worker began spreading rumors, and he was thereafter shunned, harassed and subjected to lewd comments from co-workers. The harassment from his co-workers and supervisor included being called “fucking fag,”

[259] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Aug. 10, 2007) (on file with GLAD).
[260] E-mail from Lee Swislow, Executive Director, GLAD, to Brad Sears, Executive Director, the Williams Institute (Sept. 16, 2009 8:08:00 PST) (on file with the Williams Institute).
[261] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Mar. 20, 2007) (on file with GLAD).

and having children's toy blocks spelling "FAG" sent to his home.[262] Because of job-related stress, the officer attempted suicide by jumping off a bridge.[263] After the suicide attempt, he went out on medical leave never to return to work.[264] The superior court concluded that the plaintiff had been "subjected to unwelcome, severe, or pervasive conduct by the Defendant…based on sexual orientation that unreasonably interfered with the condition"[265] of his employment. The court further found that the department knew or had reason to know of the hostile environment but failed to take adequate steps to remedy it.

- In 2005, while working at the Massachusetts Department of Social Services, a transgender man experienced discrimination in his workplace. He met with his superiors and a civil rights officer to assist in his transition (from female to male) while at work. Despite discussing a plan for his transition, such as training sessions with fellow employees and name changing procedures, no action has been taken by his workplace. His request to formally change his name has been put on hold, and he was not invited to participate in weekly meetings.[266]

- In 2005, an English teacher reported that he had been harassed almost on a daily basis by a group of students at the high school where he teaches. The students called him derogatory names, such as "faggot," left lewd notes, drawings, and pictures on his desk or bulletin board, and signed the teacher up for gay pornographic websites using his school email address. The teacher complained to the principal,

[262] *Salvi v. Suffolk County Sheriff's Dep't*, 67 Mass App 596 (Mass. App. Ct. 2006).
[263] *Id*. at 597.
[264] *Id*.
[265] *Id.*
[266] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Apr. 20, 2005) (on file with GLAD).

who indicated that she would "handle it." However, after she had not addressed these issues, the teacher then sent a letter to the District Superintendent. Shortly thereafter, the teacher was notified that his position had been changed and that he was being terminated. The Superintendent told the teacher that in exchange for a signed agreement to not continue with any harassment complaints, she would offer him three weeks severance pay and allow him to collect unemployment benefits.[267]

- In 2005, a lesbian probation officer in the Suffolk County court system reported that she received a brochure in her work mailbox that touted a seminar discussing "cures for homosexuality" after she announced her marriage to her female partner. She and two other unmarried women in the department were the only employees to receive the brochure. Her union suggested that she contact the Commissioner of Probation. In response to her complaint, the Commissioner asked if she "expected the whole office to be turned upside down in order to find the culprit." He then suggested that she take up her grievance with someone else.[268]

- In 2005, a Boston police officer, who is a lesbian, overheard and was the target of harassing comments and slurs. After verbally complaining to her supervisors about these comments, no action was taken.[269]

[267] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Feb. 20, 2009) (on file with GLAD).
[268] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Aug. 31, 2005) (on file with GLAD).
[269] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Oct. 13, 2005) (on file with GLAD).

- In 2005, a gay nurse working in a prison as an employee of the Massachusetts Sheriff's Department reported working in a hostile work environment. His co-workers gave him a Christmas present, which included fishnet stockings and obscene gay sex cards. He was given a bag of peanuts by a coworker and told, "Eat my nuts." When he complained, he was told that "this [was] the way prisons work" and that he shouldn't complain. He filed a complaint with the Massachusetts Commission Against Discrimination.[270]

- In 2005, a Massachusetts deputy sheriff, who is gay, reported being discriminated against after working for more than thirteen years in law enforcement. His co-workers began targeting him with "usual locker room homo talk." He was then excluded from meetings and his responsibilities were slowly taken away until finally, he was transferred to an inferior, nonsupervisory position. He was then terminated. He also reported that one other openly gay person, a lesbian, in the department was also forced out after her sexual orientation was disclosed. He reported that he was in settlement negotiations with the Sheriff's Department, but they broke down.[271]

- In 2004, a lesbian teacher working in a Massachusetts public school reported that her contract was not renewed. The other lesbian teacher working at the school also did not have her contract renewed. When approached, the principal said that there were "differences in philosophies" and "overarching differences." The

[270] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Mar. 21, 2005) (on file with GLAD).
[271] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Oct. 13, 2005) (on file with GLAD).

teacher also claimed that several teachers had tried to start a gay-straight alliance at the school and had wanted to put up "safe zone" stickers, but they were told by the administration that they could not.[272]

- In 2004, a school psychologist working in a Massachusetts public school reported that despite positive performance reviews, his responsibilities were restricted as a result of his being gay. His office was moved and he no longer has any interactions with students. Administrators at the school told the psychologist that he should not tell students he is gay nor should he say that he is married (to a man). The principal also asked everyone to disclose their sexual orientations during a staff meeting. His union representative did not take any action and advised the psychologist to not take any further steps to address these issues.[273]

- In 2004, a staff member at the Massachusetts Department of Revenue reported being harassed by one of his co-workers because he was openly gay. This co-worker posted and distributed anti-gay news articles and made anti-gay remarks. The gay staff member complained to his supervisor about the harassment, but his supervisor took no steps to stop the harassment.[274]

- In 2003, a gay man, working for the Massachusetts Department of Revenue for nineteen years, reported that he had been sexually harassed at work. A supervisor called him "a loser" and a "fucking faggot" behind his back. After telling internal

[272] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (May 27, 2004) (on file with GLAD).
[273] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Aug. 13, 2004) (on file with GLAD).
[274] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (July 28, 2004) (on file with GLAD).

affairs that he did not wish to work in the same space as this particular supervisor, he was asked to move to another location. He filed a formal complaint with internal affairs.[275]

- In 2003, a lesbian direct care worker for the Massachusetts Department of Social Services reported that she was one of seven lesbians fired at the same time. The employee filed a complaint with the Massachusetts Commission Against Discrimination.[276]

- In 2003, one year after a public high school teacher in Medford, Massachusetts was hired, the school became aware that he was gay. When his three-year tenure position expired two years later, he was terminated. The only reason given by the superintendent was that he "shouldn't be known for [his] activities outside the classroom." He brought the situation to the attention of his union, which told him that the "discrimination would be very difficult to prove." Though the school eventually offered him tenure because of support from students and parents, school officials have continued to harass him. He has been in therapy since the incident because of the harassment he endures at work.[277]

- In 2003, a gay teacher working in a Massachusetts public school was forced to resign because of his sexual orientation. He was the target of several anti-gay remarks and vandalism. Someone keyed "Gay Faggot" into the paint of his car.

[275] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Apr. 28, 2003) (on file with GLAD).
[276] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Jan. 15, 2003) (on file with GLAD).
[277] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

The teacher brought these incidents to the attention of the school administration, which did nothing. The union representing the teacher was also made aware of these incidents but did nothing. Even after leaving his job, the teacher continues to receive harassing phone calls.[278]

- In 2003, a facilities employee in a Massachusetts public school district experienced regular harassment by his coworkers because he is gay. One co-worker called the facilities worker a "faggot." He reported that other co-workers drank on the job and then threatened him physically. One coworker pushed him. This incident was caught on video, but the school district now claims that they cannot locate the tape. He started having panic attacks as a result of the harassment and, at the time the incident was reported, was on leave from work. He filed a complaint with the school district and his union, but neither had taken steps to stop the harassment.[279]

- In 2002, a sixteen year veteran of the Massachusetts Highway Department was harassed by his immediate supervisor, his boss, and several co-workers. They asked him several questions, including "Are you gay?," "Do you swing both ways?," and "If a girl strapped on a dildo, would that get you excited?" He was offered a lateral transfer, however the harassment continued. As a result of the ha-

[278] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Feb. 6, 2003) (on file with GLAD).
[279] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (July 10, 2003) (on file with GLAD).

rassment, he was diagnosed with high blood pressure. He felt that he could not file a complaint with the union because his steward was one of the harassers.[280]

- In 2000, a lesbian working for a city department for sixteen years was harassed by one of her co-workers. The co-worker treated her differently than her co-workers and made comments including, "You just want to give me a hard time; you want a man; you want the forbidden fruit." She filed a grievance with her department and with the Massachusetts Commission Against Discrimination.[281]

- In 2000, a Boston firefighter was awarded $50,000 in damages by the Massachusetts Commission Against Discrimination for being harassed in the workplace, including being subjected to profanity and pornography and being taunted that "lesbians are not women."[282] Her co-workers also referred to her as "one way Wanda," referred to her female partner as "Pinky," and placed a picture of two women engaged in sexual relations in her sleeping bag.

- A book published in 1996 reports discrimination against and harassment of a prison kitchen guard working for the Massachusetts Department of Corrections. An employee began working for the Massachusetts Department of Corrections as a kitchen guard in 1990. His superiors and other officers began to harass him when he arrived to work with a pierced ear. The food service director ordered him to leave the earring at home, despite that it was not against the dress code and other

[280] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Aug. 8, 2002) (on file with GLAD).
[281] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (date unknown) (on file with GLAD).
[282] *Moore v. Boston Fire Dep't*, 22 MDLR 294 (2000).

officers wore them, saying, "I don't care what you do in private, being a fag or whatever, but you're going to leave it at home." Other officers made remarks about his taking a personal day to attend "the fag parade" and referred to his vitamins as "homo pills." One officer attached a picture of a woman's body with his face to his timecard. The employee recounts that homophobic banter quickly turned into severe harassment when one officer "was telling the inmates to whip their dicks out at [the employee]"-- the inmates complied. This practice was common in the kitchen, where inmates would lift their aprons to expose themselves to him when instructed to do so by another officer. When he reported the harassment to the food service director, he was accused of fondling the inmates. During a discussion of the 1992 presidential election, a lieutenant told him, "Perot doesn't like you fags," and proceeded to then grab his testicles in front of several other officers who all laughed along with the lieutenant. The lieutenant continued to grope him inappropriately thereafter. When he reported the lieutenant's behavior to the superintendent because he began to fear the inmates who no longer respected him, he was told that "this stuff happens all the time" and to "go back to work." Eventually he sought help from the Gay and Lesbian Alliance Against Defamation who confronted the superintendent. Some of the officers were then disciplined; others were not. Following an uninvestigated false accusation of harassment by an inmate after GLAAD's well publicized intervention, the superintendent attempted to transfer him involuntarily to Massachusetts Department of Corrections-Shirley— the facility "known for having a lot of gay people." The

employee refused to "be segregated" and then suffered a nervous breakdown as a result of the harassment.[283]

- A book published in 1994 records the story of a teacher in a Boston area high school who was discriminated against and harassed at work because he is gay. After appearing on the news while at a Boston Pride Parade, the teacher noticed that the students didn't react negatively, but some of his fellow teachers did. On the entrance to the women's restroom, someone wrote his name under the sign. A student told him that another teacher said that he was gay, asked why would anyone want to be in his class and shouted across the gym "If you take off your pants for [the teacher], he'll give you an A!" The teacher spoke with the principal of the school and said that he would be staying home from work until he could be assured a safe workplace. A hearing was arranged during which the teacher harassing him was represented by the teachers' union, whereas he had to represent himself. The teacher who harassed him was required to write a letter of apology and a negative review was placed in his file. His district also agreed to anti-homophobia training and issued anti-harassment guidelines.[284]

- In 1986, a professor who was a lesbian was hired as an assistant professor at the University of Massachusetts at Lowell. When she was hired, the dean acknowledged her credentials and accomplishments and promised to promote her within one year. But a student began threatening her life, carrying a gun onto the campus and saying the God had "ordained" him to "kill all homosexuals." Soon after-

[283] ROBIN A. BUHRKE, A MATTER OF JUSTICE: LESBIANS AND GAY MEN IN LAW ENFORCEMENT 156-159 (Routledge 1996).
[284] ARTHUR LIPKIN, ONE TEACHER IN TEN 39-49 (Kevin Jennings ed., 1994).

wards, the university notified her that the school no longer needed her courses or her services and that it was terminating her contract. But the university never canceled her courses after it terminated her. Instead, the university hired another professor, who had no background in the course subjects, to teach the same courses.[285]

22. Michigan

- In 2008, a gay police officer reported that he was forced to resign because of his sexual orientation.[286]

- In 2007, a professor filed suit against the University of Michigan Law School for unlawfully denying him tenure based on his sexual orientation. He alleged that he was the first openly gay professor to be considered for tenure at the University of Michigan Law School, and the first man in the history of that institution to be denied tenure. He was denied tenure by a faculty vote, which at 18-12 in favor of tenure, fell two votes short of the 2/3 majority required by the school's rules. He had been recommended for tenure with a 4-1 vote from the tenure committee. His complaint alleges breach of contract, predicated on representations of non-discrimination during pre-employment negotiations, as well as University policies and by-laws prohibiting discrimination on the basis of sexual orientation. Rather than building an affirmative case that no discrimination took place, the Universi-

[285] HUMAN RIGHTS CAMPAIGN, HRC PUBLICATION: DOCUMENTED CASES OF JOB DISCRIMINATION BASED ON SEXUAL ORIENTATION (1995).
[286] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).

ty's initial stance was to maintain that its by-laws and non-discrimination policies had no legal meaning and created no rights. The Law School filed motions for summary judgment were denied. The trial court ruled that the professor had established a legitimate claim of discrimination and that a trial on the merits was warranted.[287]

- In 2007, a lesbian corrections officer reported that she was forced to resign because of her sexual orientation.[288]

- In 2004, a public school teacher was terminated after telling students he was gay and had a partner. After the ACLU of Michigan wrote a letter to the school district demanding that the teacher be reinstated, the school district invited him back.[289]

- In 2002, in *Pettway v. Detroit Judicial Council*,[290] plaintiff, a court reporter, brought a lawsuit against his employer, supervisor, the Detroit Judicial Council and the City of Detroit alleging sexual orientation discrimination, retaliation, intentional infliction of emotional distress, and tortious interference with a business relationship.[291] The plaintiff brought this suit pursuant to the Detroit Human Rights Ordinance.[292] At trial, the trial court granted the employer's motion for summary judgment and held that the Human Rights Ordinance only applied to

[287] LESBIAN & GAY L. NOTES (Oct. 2007).
[288] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).
[289] *Docket: Discrimination*, ANNUAL UPDATE 39, 43(ACLU, 2004).
[290] No. 226616, 2002 WL 652125 (Mich. Ct. App. Apr. 19, 2002).
[291] *Id.* at *1.
[292] DETROIT CODE Ch. 27, Art. 3, §§ 3-1, 3-2.

employees and that the plaintiff was a contractor.[293] The Michigan Court of Appeals affirmed.

- In 2000, the Michigan Supreme Court issued an opinion dismissing the claims of a Detroit police officer who had been subjected to discrimination and harassment. She alleged that after she was assigned to the sex crimes unit, numerous male officers began hitting on her for sexual favors. She declined, stating that she was a lesbian. She then suffered further discrimination, including being assigned away from law enforcement to busy-work desk jobs. She also alleged that supervisors refused to handle her grievances because of her sexual orientation. Ultimately, she retired from the police force and filed a lawsuit. The officer alleged that she was harassed after she rebuffed the advances of a supervisor because she is a lesbian, and that the consequent harassment violated the city charter's ban on sexual orientation discrimination. The trial judge granted the city's motion to dismiss the claim, finding that the charter provision did not provide a private right of action, and that the officer's exclusive remedy was to file a discrimination complaint with the city's human rights agency. However, the Court held that she could still pursue a sex discrimination claim under the state's civil rights law.[294]

- In 1993 in *Barbour v. Department of Social Services,*[295] a Department of Social Services employee filed a lawsuit against his employer alleging sexual harassment and sex discrimination in violation of the Michigan Civil Rights Act. He alleged

[293] *Pettway*, No. 226616, 2002 WL 652125 at *1.
[294] *Mack v. City of Detroit*, 243 Mich. App. 132 (Mich. Ct. App. 2000).
[295] 497 N.W.2d 216 (Mich. Ct. App. 1993).

that throughout his employment his coworkers and the supervisor subjected him to unremitting verbal and nonverbal harassment based on his perceived sexual orientation.[296] Specifically, plaintiff alleged that the various forms of harassment were made by coworkers and supervisor to get him to "come out of the closet . . . and to engage in homosexual sex. . . ." At trial, the court determined, as an issue of first impression, that the Michigan Civil Rights Act's prohibition on sexual harassment does not include a proscription on discrimination or harassment "due to a person's sexual orientation or perceived sexual orientation."[297] On appeal, the Michigan Court of Appeals upheld the trial court's ruling;[298] however, it also held that the employee could bring a gender discrimination claim pursuant to the Michigan Civil Rights Act based on incidents of homosexual advances that directly related to his gender.[299] The court found that the supervisor's actions were directly related to plaintiff's status as a male, and thus rendered the act applicable.[300]

- In 1993, Byron Center High School hired a teacher to revive its floundering music program.[301] The teacher was a tenured music teacher described by many as one of the best teachers on staff and a good role model for students.[302] Two years later in 1995, after he successfully revitalized the Center's music program, he and

[296] *Id.* at 217.
[297] *Id.*
[298] MICH. COMP. LAWS 37.2101, *et seq*.
[299] *Id.*
[300] *Id.*
[301] Christine Yared, *Where Are the Civil Rights for Gay and Lesbian Teachers*, 24 Hum. Rts. 3 (ABA 1997), *available at* http://www.abnet.org/irr/hr/yared.html.
[302] *Id.*

his partner planned for a commitment ceremony.[303] Before the event took place, someone at the high school learned of the commitment ceremony and spread word to staff, parents and students. At a school board meeting, a few angry parents demanded that the music teacher be fired. The school board did not take immediate action, but issued a statement that said, "The board firmly believes that homosexuality violates the dominant moral standard of the district's community. Individuals who espouse homosexuality do not constitute proper role models as teachers for students in this district" and warned the teacher that they would "investigate and monitor" the situation.[304] In the months that followed the board meeting, many parents removed their children from the teacher's class and he became the center of media attention. After a school official released the names and addresses of his students, parents received antigay letters and videos. While he struggled to maintain his classroom for the remainder of the school year, he ultimately relented at the end of the school year and entered into a settlement agreement with the school district: he agreed not to sue or seek employment in the district in exchange for one year's salary, health benefits and a letter of reference to leave the school district.[305] Five months later, he collapsed, went into a coma and died days later at the age of thirty-two. A forensic pathologist concluded that his died from a congenital malfunctioning heart valve, adding that this condition was

[303] Jill Smolowe, et al., *The Unmarrying Kind*, TIME, Apr. 29, 1996, *available at* http://www.time.com/time/printout/0,8816,984469.00.html; Yared, *supra* at Note 255.
[304] Christine Yared, *Where Are the Civil Rights for Gay and Lesbian Teachers*, 24 Hum. Rts. 3 (ABA 1997), *available at* http://www.abnet.org/irr/hr/yared.html.
[305] *Id.*

typically not fatal, but the stress from his public struggle may have contributed to his death.[306]

23. Minnesota

- In 2007, a lesbian public school teacher was subjected to a hostile environment because of her sexual orientation.[307]

- A teacher was discriminated against by her principal based on sexual orientation.[308] In 2002, the Duluth School Board voted unanimously to approve a $30,000 settlement of the claim pending against the school before the Minnesota Department of Human Rights.

- When the Minnesota state sodomy law was invalidated in 2001 by a statewide class action suit,[309] the Minnesota Supreme Court used the possibility of adverse effects on the plaintiffs' employment to give them standing. The plaintiffs here represented a wide variety of professions--teachers and doctors joined lawyers in fighting the state sodomy law. These being licensed professions, the court notes that the "state-mandated application for a medical license requires applicants to swear under oath that they have 'not engaged in any of the acts prohibited by the statutes of Minnesota'" and that the lawyers must adhere to their rules of professional conduct, which dictates that all attorneys will "follow the requirements of

[306] *Id.*
[307] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[308] LESBIAN & GAY L. NOTES (Dec. 2002), *available at* http://www.qrd.org/qrd/usa/legal/lgln/2002/12.02.
[309] *Doe v. Ventura*, No. MC 01-489, 2001 WL 543734 (Minneapolis District Court, May 15, 2001).

the law."[310] The court then details these "collateral injur[ies]": "Dr. Krebs, who is now in her residency, faces the prospect of having to state under oath, as part of her application later this year for a physician license from the Minnesota Board of Medical Practice, that she has 'not engaged in any of the acts prohibited by the statutes of Minnesota.' Similarly…Mr. Roe, [311] a licensed elementary school teacher, and Mr. Duran and Ms. Doe, licensed Minnesota lawyers, fear adverse licensure consequences from any disclosure, voluntary or otherwise, of their past and future violations" of the state sodomy statute.[312]

- An academic counselor at the University of Minnesota sued the university alleging discrimination based on his sexual orientation. The university settled with him during the trial for $80,000.[313] The counselor had been working with various athletes since 1984. The university forbade him from rooming with anyone when he traveled with the teams on road trips, and forbade him from participating in athletes' academic meetings held in school locker rooms, both of which he contends were discriminatory measures. In his lawsuit, the counselor contended that he was denied fair pay and subjected to working in a hostile environment because of his sexual orientation, and his suit alleged that "homophobic attitudes of administrators at Minnesota deprived him of advancement."[314]

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[310] *Id.* at *1.
[311] It should be noted that in the case of Mr. Roe, the adverse effect on employment could not be linked to his sexual orientation--he is a heterosexual, married man, and therefore outside the class of plaintiffs who make up the focus of this memorandum.
[312] *Id.* at *4.
[313] LESBIAN & GAY L. NOTES (Table of Cases 2000), *available at* http://www.qrd.org/qrd/usa/legal/lgln/case.table-2000 (citing STARTRIBUNE, June 28, 2000).
[314] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 159-

- A transgender middle school teacher resigned facing mounting pressure from her school and the surrounding community. The teacher, a male who planned to undergo gender reassignment surgery, was living as a woman when she interviewed for the teaching position at Roosevelt Middle School. After an open house for parents at Roosevelt, one parent asked the school principal about the teacher's gender. The principal then contacted the teacher, and upon learning that she was transitioning, immediately placed her on two months' administrative leave while school officials devised a way for her to "come out" to parents, students, and school staff. In November, the school held a meeting for her and school administrators to meet with teachers and a handful of parents and explain the process she was undergoing. A second meeting drew 400 parents. Some parents excoriated the school for permitting a transgendered teacher to work with children, while others objected to the intolerant vilification of the teacher. She resigned in February 1999, citing pressure from a parents' group.[315]

- A transsexual Minneapolis police trainee was denied appropriate restroom and shower facilities,[316] even though the training program required use of the shower facilities.[317] The trainee filed a discrimination suit against the Department and city claiming unlawful discrimination. The city ultimately won on summary judgment

160 (1999 ed.).
[315] *Id*. at 157-58.
[316] Rosalind Bentley, *Transgendered Worker Sues Minneapolis Police*, STAR TRIBUNE, Jan. 21, 1999.
[317] *Id*.

on the grounds that the city was entitled to vicarious official immunity.[318] As such, no determination was made as to the veracity of the complaint's allegations.

- A Minneapolis police officer, according to Senator Paul Wellstone in 1997, said this about the sexual orientation discrimination in her workplace: "I seem to represent everything that the old boys hate in this department -- female, black and gay. The thing that makes it worst of all is I'm a good cop. When I first came to this shift, my sergeant was like, 'When I saw your name on my list, I tried everything I could to get you the hell out of my precinct. I didn't want you here. I've heard all those bad things about you. You were a trouble maker and you brought the morale down. I'm glad I got you because there's not one person on this shift that won't work with you.'"[319]

24. Mississippi

- A social worker at a state-funded center for mentally retarded children near Jackson was fired after she put photos of her family on her desk. When the social worker, an African-American lesbian, interviewed for the position, an official said, "We will not tolerate discrimination based on race, sex or sexual orientation." She responded, "I'm a lesbian; I have a white lover, and I don't think you'll have any problems with discrimination from me." Two days later, she got the job. At the center, she continually saw photos of co-workers' families. When a coworker asked to see photos of her partner, she brought in an album of pictures

[318] *Doe v. City of Minneapolis*, 2002 WL 31819236 (Minn. App. Dec. 17, 2002).
[319] S. Hrg. 105-279, p. 17, Senator Paul Wellstone, Hearing before the Senate Committee on Labor and Human Resources re: S.869: The Employment Non-Discrimination Act of 1997, Thurs., Oct. 23, 1997, 105th Congress, 1st Session. Reprinted in Federal News Service, In the News, Thurs., Oct. 23, 1997.

of herself, her partner and her two dogs. She was discreet with the photos and showed them only to those who asked. But while she was away from her desk, several co-workers looked at the photo album. Some expressed discomfort that she was in a mixed-race relationship, and one complained to management about the photos. Her boss asked her not to bring them to work. She agreed but suggested it was unfair that she was the only one not allowed to bring in family photos. She was fired 10 days later. The manager praised her work, however, saying she was one of the center's best employees. He claimed he took the step because she brought in photos of her partner, not because she was gay. He alleged that some were obscene, although he had never seen them.[320]

25. Missouri

- In 2008, a public school physical education teacher reported that she did not have her contract renewed because of her sexual orientation. During the time that she was still employed by the school, she overheard one of the school board members say that, had he known she was a "dyke," he would never have hired her in the first place.[321]

- In 2008, a teacher reported that he was not hired by a public school because the administration perceived him to be gay.[322]

[320] HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA'S WORKPLACES (2001), *available at* http://bit.ly/kThbS.
[321] E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).
[322] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).

- In 2008, an applicant for a prosecutor position reported that he had his job offer revoked because he was gay.[323]

- In 2007, two sheriff's office kitchen workers reported that they were fired because they were lesbians.[324]

- In *Counce v. Kenna*,[325] an inmate claimed he was not promoted in the prison's kitchen to a higher-paying position as a cook because he was homosexual. In an unreported opinion, the Court granted the defendant's motion for summary judgment because the inmate had not established that the "denial of prison jobs to homosexuals because of their sexual orientation is a violation of the United States Constitution."

- Kelley, a gay inmate employee at a correctional facility in Missouri, brought a lawsuit alleging discrimination in violation of the equal protection clause and Title VII when he was terminated from his facility bakery job because of his sexual orientation.[326] The court, in deciding whether Kelley was entitled to unconditional leave to proceed *in forma pauperis*, found that his claim alleging discrimination on the basis of his sexual orientation when he was removed from his job as a bakery worker was not frivolous under the equal protection clause.

- In 1994, a high school history teacher in Mehlville was reprimanded after he informed his students that he was gay. In a class on the Holocaust, the teacher ex-

[323] *Id*.
[324] *Id*.
[325] *Counce v. Kemna*, 2005 WL 579588 (W.D. Mo. 2005) (unreported).
[326] *Kelley v. Vaughn*, 760 F.Supp. 161 (W.D. Mo. 1991).

plained that if he had lived during World War II, he could have been persecuted for being gay. Though the students were supportive, several other teachers expressed dismay, and the gay teacher received a memorandum from the assistant superintendent and a school district lawyer informing him that the district "considers it inappropriate conduct for a teacher to discuss facets and beliefs of a personal nature . . . in the classroom." Though the memo did not specifically mention homosexuality, the school's principal requested that the teacher not bring up the topic of homosexuality again in class unless it was relevant to the existing curriculum. Two months later, the teacher received a letter from the school district's law firm reiterating that "Mehlville School District considers your classroom conduct of March 22, 1994 to be inappropriate…" No further action was taken, but another teacher warned, "next year, he'd better watch his step because they may be looking to nab him on some pretense."[327]

26. Montana

- A transgender applicant for a position in the Montana state attorney general's office was not hired on account of her gender identity in 2008.[328]

- In 1997, the Montana Supreme Court recognized the combined impact that the state's sodomy law and licensing requirements had on LGBT employees with professional licenses. The issue of employment discrimination came via arguments for standing to challenge the sodomy law statute: "[Respondents] contend that the

[327] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 51 (1994 ed.).
[328] E-mail from Ken Choe, Senior Staff Attorney, ACLU, to Brad Sears, Executive Director, the Williams Institute (Sept. 22, 2009 11:08:00 PST).

damage to their self-esteem and dignity and the fear that they will be prosecuted or will lose their livelihood or custody of their children create an emotional injury that gives them standing to challenge the statute. For example, two Respondents are employed or are seeking employment in positions requiring state licenses. Because they engage in conduct classified as a felony, they fear they could lose their professional licenses."[329] The specifics of the respondents' fears were laid out with greater detail in the filings leading up to the opinion. The two respondents who needed to be licensed by the state were a high school history teacher with more than 25 years experience, and a midwife seeking certification. Neither of these respondents could attain licensure if they were convicted of a felony (which sodomy was under then-existing Montana law).[330] Not only would they have been unable to attain licensure were they prosecuted and convicted under the statute, but they could have had their licensure revoked at any time, even without prosecution: "[C]ertification in both professions requires that the individual be 'of good moral and professional character.'"[331] "Even if they are never prosecuted, the statute could be used to support a finding that they are engaged in immoral conduct."[332]

27. Nebraska

- An openly gay and HIV-positive man was recently terminated from his position as a volunteer firefighter when a city employee learned of his HIV status and sexual

[329] *Id.* at 441.
[330] Br. of Resp't at 7, *Gryczan v. State*, 283 Mont. 433, No. 96-202 (Supreme Court of Montana, 1997).
[331] *Id.* at 8.
[332] *Id.*

orientation. He was eventually reinstated after ACLU Nebraska contacted the city.[333] The firefighter later decided to run for office in city government and won.[334]

- An academic advisor in 2002 sued Metropolitan Community College ("Metro"), alleging that he had suffered harassment because he was gay.[335] According to the advisor, he began to receive anonymous harassing correspondence after he attended a staff meeting during which he came out to other staff members. He reported the situation to his supervisors, who responded by investigating his claims and disciplining a specific employee who had made fun of him. Nonetheless, the harassment continued, so the advisor resigned. He filed suit, claiming that Metro violated his substantive due process rights, since no state law prohibited sexual orientation discrimination. The court granted summary judgment to Metro, finding that the harassment did not "shock the conscience" as would be required for a substantive due process violation and that Metro had done enough to address it.[336]

28. Nevada

- In 2008, a transgender public school teacher was fired because of her gender identity.[337]

[333] *See* ACLU Nebraska Legal Program, GLBT Rights, http://www.aclunebraska.org/glbt.htm (last visited Sept. 4, 2009).
[334] *See id.*
[335] *Cracolice v. Metropolitan Community College*, No. 8:01CV3240, 2002 WL 31548706 (D. Neb. Nov. 15, 2002).
[336] *Id.* at 4.
[337] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).

29. New Hampshire

- In 2009, a transgender public school teacher began to transition and was fired because the principal said that "things were not working out." She had received no complaints or warnings prior to being let go.[338]

- In 2009, a teacher, working at the school for nineteen years, was terminated when a new superintendent and principal were hired who said disparaging things about his being gay.[339]

- In 2008, a teacher was being considered for tenure at a public school. He had favorable reviews and compliments from his co-workers. The principal said it wasn't the "right fit" and he was denied tenure.[340]

- In 2007, a nurse at a public school in New Hampshire was harassed by the principal at her school because of her sexual orientation. The principal asked several coworkers about the nurse and her partner, who is a special education teacher at the school. Specifically, the principal asked about their sexual orientation and the nature of their relationship. The principal told a coworker that if they were lesbians, they must be doing something inappropriate behind closed doors. The principal also noted that she didn't understand why they "had to hire" lesbians. The nurse complained to her union and to the human resource staff at the school, but she was told to "make nice."[341]

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[338] E-mail from Lee Swislow, Executive Director, GLAD, to Brad Sears, Executive Director, the Williams Institute (Sept. 16, 2009 8:08:00 PST) (on file with the Williams Institute).
[339] *Id*.
[340] *Id*.
[341] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment

- In 2007, a transgender correctional officer resigned after she endured three years of harassment and physical abuse based on her gender identity. Her immediate supervisor harassed her, saying "[y]our tits are growing" and "[y]ou look gay when you walk." Other coworkers then began physically assaulting her - kicking her, snapping her in the breasts, and threatening to handcuff her to a flagpole and take off her clothes. One officer grabbed her and slammed her into a concrete wall while her coworkers watched. No one reported this event. She was later placed on a shift with the abusive officer. She resigned as a result of the harassment she faced.[342]

- In 2007, a corrections department applicant reported that she was discriminated against based on her sexual orientation. In applying for a position with a corrections department, she was required to take a polygraph test. During the test, she was asked twice about her marital status, through which she disclosed that she was a lesbian. She was then not hired for the job.[343]

- In 1995, Penny Culliton, a high school English teacher in New Ipswich, was fired for "gross insubordination" for using three novels with gay themes as optional reading in her classes after the principal had ordered her not to.. The books in question were selected by a school board committee that included school board members, parents, students and community members and were purchased by Culliton with money from a grant from the Respect for All Youth Fund. According

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Discrimination (Mar. 19, 2007) (on file with GLAD).
[342] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Nov. 26, 2007) (on file with GLAD).
[343] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Oct. 15, 2002) (on file with GLAD).

to Culliton, the principal informed her after the books had been purchased that the school board did not want books with gay and lesbian characters in the classroom. At that time, Culliton questioned the principal, the superintendent, and the school board chair with little response. Later in the school year, when they were scheduled to be read, she decided to use them as planned. The books had already been distributed to students by the time the school board ordered their recall. At the next board meeting, students and community members accused the board of censorship and presented a petition in protest. Subsequently, the superintendent recommended that Culliton be dismissed. The board agreed with that recommendation following a public dismissal hearing. Approximately 40 students walked out of class to protest her firing; they were suspended.[344]

30. New Jersey

- In 2009, former police officer Robert Colle received a $415,000 settlement against his New Jersey town after he was discriminated against by the force because of his sexual orientation. Colle was ridiculed by his chief and other officers because of his sexual orientation and was refused back-up when a woman he was apprehending bit his finger to the bone.[345]

[344] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 79-80 (1995 ed.).
[345] Negotiated Settlement and General Release, Colle v. City of Millville, D. Conn., Civil Action No. 07-5834.

- In 2009, a transgender public school teacher in New Jersey was censored from expressing pro-LGBT viewpoints.[346]

- In 2008, the town of Dover agreed to settle a discrimination claim brought by a lesbian former police sergeant for $750,000, according to an announcement on July 31 by the Civil Service Commission. Sharon Whitmore was to receive compensation for salary, pension and promotional pay dating back to her suspension from duty in 2004, which she challenged first in an administrative hearing and then a lawsuit in Superior Court, Morris County. Whitmore, described in a report by the Newark Star-Ledger as an openly gay woman who was the only female member of the Dover police force, alleged that she had been subjected to "discriminatory, retaliatory or harassing conduct" by the male town supervisor, the police chief, and other department officials. Under the terms of the settlement, she was to be reinstated to the active payroll of the department as a sergeant for nine months, during which she was to be actively seeking work, as her pay would terminate when she found a new job or by the end of the nine months, whichever came first. Whitmore was a twelve-year veteran of the department.[347]

- In 2008, a gay public school bus driver reported that he was subjected to a hostile work environment and was fired because of his sexual orientation.[348]

[346] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 16, 2009, 5:11:00 PST) (on file with the Williams Institute).
[347] LESBIAN & GAY L. NOTES (Sept. 2008).
[348] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).

- In 2007, the borough of Haledon and Sergeant James Len reached a settlement of Len's sexual orientation discrimination case while it was pending in Superior Court. Len, who had worked for the department since 1986, came out to his family as gay in 2002. Len claimed that soon after word spread about his being gay, he began to suffer on-the-job harassment and discrimination at the hands of various co-workers and local government officials, including the mayor and a city council member. Under the terms of the settlement, Len received $450,000 and was entitled to be considered for promotion without discrimination.[349]

- In 2006, an employee of a New Jersey State Department reported that she was demoted and made to do menial tasks below her skill level because she was a lesbian.[350]

- In 2005, a lesbian employee of the New Jersey Department of Youth and Family Services Office of Revenue Development brought suit after being subjected to harassment by her co-workers because of her sexual orientation. Co-workers referred to her as a "dyke" and a "nazi dyke" and said they would not work for a "dyke supervisor". After complaining to supervisors, she was reassigned to a position that required her to do menial tasks and all of her supervisory responsibilities were taken away. Co-workers continued to make comments about her sexual orientation. The trial court granted summary judgment to the defendants because

[349] LESBIAN AND GAY L. NOTES (Feb. 2007).
[350] E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

the employee had failed to file within the 2 year statute of limitations period, thus the merits of the case were never reached.[351]

- A gay high school Spanish teacher who was "outed" by one of his students sued the Collingswood Board of Education for violating the Family & Medical Leave Act (FMLA) by refusing to allow him to return to work after taking a medical leave of absence.[352] The plaintiff, Daniel Curcio, was harassed by students and fellow teachers once rumors of his homosexuality began to circulate throughout the school. In response to a question from a student, Curcio disclosed his sexual orientation to the class and proceeded to inform each of his classes that he was gay. Rather than ending the rumors, these frank discussions exacerbated the problem. The school issued Curcio a formal reprimand for discussing his homosexuality during class time, and he was put on administrative leave. At the start of the following school year, Curcio again informed his students that he was gay, and again he was issued a reprimand. Although Curcio stated that he did nothing more than state that he was gay, the school determined that he was misusing class time by discussing his sexuality with students. The school's continued hostility and student harassment caused Curcio to suffer from a severe anxiety disorder and several stress-induced panic attacks, which required him to take a doctor-recommended medical leave of absence. When Curcio was medically cleared to return to work, the school refused to reinstate him unless he presented written medical reports indicating his diagnosis and fitness for duty. In addition, the

[351] *Stahl v. State of New Jersey Department of Human Services*, 2009 WL 3429795 (Wash. Ct. App. Feb. 12, 2009).
[352] *Curcio v. Collingswood Bd. of Educ.*, 2006 WL 1806455 (D.N.J. Jun 18, 2006).

Board reserved the right to conduct its own evaluation of Curcio's fitness for duty. Based on his prior dealings with the school, Curcio determined that the Board was attempting to bar him from returning based on his sexual orientation. The District Court found that his leave of absence qualified under the FMLA and that, therefore, the Board interfered with his FMLA rights by refusing to allow him to return to work. The Court found that a genuine issue of material fact existed regarding Curcio's claim of retaliation under the FMLA.

- DePiano, a corrections officer since 1987, brought an action against the County of Atlantic and Gary Merline, Warden of the Atlantic County Justice Facility ("ACJF"). DePiano alleged, *inter alia*, that Merline showed pictures of him in women's clothes to other employees, and circulated rumors that he was a cross-dresser. In allowing a sex stereotyping harassment claim to proceed, the court specifically that "the LAD prohibits discrimination, including harassing conduct, on the basis of gender stereotyping. From the record, one could conclude that Merline and his staff harbored negative perceptions of DePiano as a male who did not conform to the male stereotype because he wore women's clothes." The court also found that "the record in this case permits the conclusion that DePiano was subjected to severe and pervasive harassment because of his cross-dressing. DePiano was taunted throughout the facility by numerous officers. Furthermore, the inmates also knew of DePiano's cross-dressing and subjected him to their own taunts. Though Defendants do not acknowledge that the taunts of prisoners may create a hostile working environment, there appears no more effective a way to engender horrible working conditions for a prison guard than to reveal one of his

embarrassing secrets to the general population. The cumulative effects of the frequent taunting endured by DePiano may have created a hostile work environment. For that reason, the Court will deny Defendants' motion for summary judgment on this claim."[353]

- Karen Caggiano, an Essex County Sheriff's officer who is a lesbian, filed suit under the New Jersey Law Against Discrimination, claiming harassment and discrimination based on gender and sexual orientation.[354] A jury awarded her nearly $3 million in 2004.[355] Her complaint detailed various incidents in which she was verbally and sexually harassed based relating to her gender and sexual orientation. All but the last of the incidents on which she based her hostile environment claim occurred prior to the cut-off date set by the two-year statute of limitations, and the Superior Court dismissed the hostile environment claim, finding it could only consider the last incident which, by itself, was insufficient to sustain a hostile environment claim. The appellate court found, in line with the U.S. Supreme Court's reasoning under Title VII, that a sensible interpretation of the statute would allow the claim to relate back to all the conduct contributing to the hostile environment, so long as at least some of that conduct occurred within the time limit.[356]

- In 1997, fifteen years after he was hired by the New Jersey State Police, a trooper was attacked by other troopers while on assignment because of his sexual orientation. The troopers were to join Schmitt in a sting operation, but instead headed

[353] *DePiano v. Atlantic County*, 2005 WL 2143972 (D.N.J. 2005).
[354] *Caggiano v. Fontoura*, 2002 WL 1677472 (July 25, 2002).
[355] *Caggiano v. County of Essex*, No. L-1608-00, 42 (2084) G.E.R.R. (BNA) 1106 (N.J. Super. Verdict 11/15/04).
[356] *Caggiano*, 2002 WL 1677472.

straight for him when they arrived and began beating him with their batons. They knocked him to the ground and continued to beat and kick him while shouting anti-gay slurs. The incident made Schmitt fear for his safety and he suffered depression as a result of the hostility he faced at work.[357]

- George DeCarlo, a former substitute teacher frequently harassed by students based on his perceived sexual orientation, sued Watchung Hills Regional High School District. In June 1994, he received a letter approving him to be a substitute in the district for the following school year. However, in September, he never received a request to teach. In January 1995, he was informed that he never should have been approved to teach in the 1994-95 school year, and that his services were no longer needed by the district. DeCarlo filed a complaint with the State Division on Civil Rights. The agency found: "It is reasonable to conclude that complainant was denied reappointment as a substitute because of his sexual orientation and as an act of reprisal." DeCarlo then filed the sexual orientation discrimination lawsuit against the district. In February, the court ruled that DeCarlo could not seek punitive damages from the school district, but that he could seek lost and future wages and compensation for emotional distress.[358]

- A heterosexual pilot filed a lawsuit in a county court alleging that he had been the victim of anti-gay harassment by staff at the New Jersey Air National Guard and that his complaints about that had been ignored. Maj. Robert Scott sued four of-

[357] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[358] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 88 (1997) .

ficers in the 177th Fighter Wing in March, saying he had been harassed by his peers who assumed he was gay because he was not married, did not have a girlfriend, and lived with female flight attendants. Scott claimed that fellow enlistees suggested he had a boyfriend and that his supervisor had retaliated against Scott for complaining by issuing a written reprimand about his relationship with an unmarried woman. A spokesperson said that the Air National Guard had completed its own investigation into the allegations but did not make public its findings. The court denied the state's motion to dismiss Scott's claim and rejected the state's argument that this was an internal military matter that should not be handled in the courts.[359]

31. New Mexico

- In 2008, a gay employee of a state university was constructively discharged due to his sexual orientation.[360]

- In 2007, the *Santa Fe New Mexican* featured a story about Thomas Williams, a school counselor in Santa Fe who had filed a lawsuit against the New Mexico Public Education Department in state court. Williams claimed that he was discriminated against by two female supervisors because he was gay. In his complaint, Williams alleged that before he "came out," one supervisor said that "[g]ays

[359] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 238 (2000) .
[360] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

would be better off if they stayed in the closet. . .[C]oming out only makes life more difficult." Another supervisor commented that it would be hard for her to work with a gay counselor because "they are a negative example for kids." After Williams came out, he noticed that his supervisors became "openly hostile," deriding him with epithets like "you're nothing but a sick faggot," and "gays should go to hell because they are sinful." One supervisor also told Williams, "I can't stand working with men, especially gay men like you." In May of 2006, supervisors told Williams that his contract would not be renewed because of "performance concerns" even though his most recent evaluation indicated that he met or exceeded expectations in 31 out of 32 performance categories.[361] The case is currently pending.

- On November 16, 2006, a state of New Mexico employee filed an administrative complaint with the Human Rights Division of the New Mexico Department of Labor alleging that he had been discriminated against on the basis of his sexual orientation.[362] The employee had been continuously employed by the state from 1994 through the filing date. His supervisor failed to promote him in favor of a less qualified candidate six months after a colleague disclosed to the Office of the Secretary that the employee was gay.[363] The State of New Mexico settled with

[361] Tom Sharpe, *School Counselor Sues, Says He Was Fired For Being Gay*, SANTA FE NEW MEXICAN, Dec. 29, 2007, at C1; *see also Williams v. N.M. Public Educ. Dep't* (D. N.M. Dec. 21, 2007).
[362] In a second complaint submitted to the agency, the employee alleged that he had also been discriminated against because of his race (white), sex (male), and age (58). Charge of Discrimination, [Redacted] v. State of New Mexico, Department of Human Services, New Mexico Department of Labor, Human Rights Division, Charge No. 06-10-16-0579 (Nov. 16, 2006).
[363] Charge of Discrimination, [Redacted] v. State of New Mexico, Department of Human Services, New Mexico Department of Labor, Human Rights Division, Charge No. 06-10-16-0579 (Nov. 16, 2006).

the employee, granting him a ten percent pay increase and requiring diversity training for management and line staff in exchange for a promise not to sue.[364]

- On March 2, 2006, a state of New Mexico employee filed an administrative complaint with the Human Rights Division of the New Mexico Department of Labor alleging that she had been discriminated against on the basis of her sexual orientation. The woman, who had been an employee of the state for six years at the time of filing, reported that she had been harassed at work because she was a lesbian. She was put on administrative leave following an unsubstantiated charge that she had assaulted a co-worker.[365] The state of New Mexico settled with the employee, agreeing to allow her to remain in the position she held before the administrative leave was imposed, to change a rating on an employee evaluation form, and to reissue 68 hours of administrative leave that she was denied while on medical leave, in exchange for a promise not to sue.[366]

- On January 31, 2006, a manager at the State of New Mexico Taxation & Revenue Department filed an administrative complaint with the Human Rights Division of the New Mexico Department of Labor alleging that she had been discriminated against on the basis of her sexual orientation. At the time of filing, the manager had been employed by the Taxation & Revenue Department for thirteen years and was passed over for the position of Bureau Chief on numerous occasions because

[364] Settlement Agreement, [Redacted] v. State of New Mexico, Department of Human Services, New Mexico Department of Labor, Human Rights Division, HRD No. 06-10-16-0579 (Jan. 1, 2007).
[365] Charge of Discrimination, [Redacted] v. State of New Mexico Department of Motor Vehicles, New Mexico Department of Labor, Human Rights Division, Charge No. 06-03-02-0103 (Mar. 2, 2006).
[366] Settlement Agreement, [Redacted] v. State of New Mexico Department of Motor Vehicles, New Mexico Department of Labor, Human Rights Division, HRD Nos. 06-03-02-0103 & 06-04-13-0177 (June 22, 2006).

she was a lesbian. She filed a complaint after a male candidate was promoted despite the fact that she and another female (who later declined the interview) were the only candidates chosen for interviews based on their qualifications.[367] On August 20, 2006, the Human Rights Division determined, based on its own investigation, that the there was probable cause to support the woman's charge. The Division determined that she was the most qualified candidate, had received excellent marks on her employee evaluations, and that, although the Department had set forth non-discriminatory reasons for choosing the male candidate, she should have been promoted before he was.[368]

- On July 18, 2005, a patrolman and canine handler with the State Police Division filed an administrative complaint with the Human Rights Division of the New Mexico Department of Labor, alleging that he had been discriminated against based on his sexual orientation. When the employee transferred to a new location after five years with the department, his new training supervisor began to harass him by making insinuations about his personal life. The employee, after being taunted for seven months, told the supervisor he was gay. The supervisor did not speak to the employee for a month after the revelation, and the employee was undeservedly disciplined at work on several occasions. The supervisor encouraged a police lieutenant to file false charges against him regarding a traffic stop he had made, in which the police lieutenant claimed that the employee had accused the traffic offender of being a drug smuggler. Another false charge was filed against

[367] Charge of Discrimination, [Redacted] v. State of New Mexico Taxation & Revenue, New Mexico Department of Labor, Human Rights Division, Charge No. 06-02-01-0055 (Jan. 31, 2006).
[368] Determination of Probable Cause, [Redacted] v. State of New Mexico Taxation & Revenue Department, New Mexico Department of Labor, Human Rights Division, HRD No. 06-02-01-0055 (Aug. 30, 2006).

the employee, stating that he had failed to respond to a call. The employee believed these actions were taken in an effort to set him up for termination.[369] The state of New Mexico settled with the employee, agreeing to transfer him to a precinct not under the control of the offending supervisor, training as the employee requests and as feasible, and $400.00, in exchange for a promise not to sue.[370]

- In 2006, the ACLU of New Mexico reported that it was representing an employee of the Bernalillo County Assessor's office who was subjected to threatening comments by coworkers and other discriminatory work conditions related to his sexual orientation. In April of 2005, the employee filed an internal complaint; in retaliation, the Assessor's office discharged him. The affiliate sent a demand letter seeking reinstatement of the employee and back pay.[371]

- An employee of the New Mexico Juvenile Justice Division alleged that she was continually harassed, especially by her supervisor, after it became known that she was a lesbian. The employee alleged that she was falsely accused of misconduct, profanity and insubordination. She was also known in the workplace as a "dyke bitch," was accused of "carpet munching in the control room," and co-her supervisor commented about how she "didn't know if she was a man or a woman." In July of 2004, the employee was placed on administrative leave, pending an investigation of the supervisor's alleged conduct. On August 30, 2004, she received

[369] Charge of Discrimination, [Redacted] v. State of New Mexico Department of Public Safety- State Police Division, New Mexico Department of Labor, Human Rights Division, Charge No. 05-07-28-0434 (July 18, 2005).
[370] Settlement Agreement, [Redacted] v. State of New Mexico Department of Public Safety- State Police Division, New Mexico Department of Labor, Human Rights Division, HRD No. 05-07-28-0434 (Nov. 12, 2005).
[371] *Docket: Discrimination*, ANNUAL UPDATE 50, 54(ACLU 2006).

notice that her employment had been terminated. She requested a waiver of her right to an administrative hearing.[372]

32. New York

- In 2010, a judge ordered the New York State Thruway Authority to pay a transgender woman $55,000 in damages for fostering a hostile work environment. Her co-workers called her a "drag queen" and a "freak" and used state-owned computers to view information about her after they discovered that she was transgender.[373]

- The Associated Press ran a story on July 16, 2009 of a transgender woman who had been fired from her job as a mailroom clerk with the New York City Department of Parks and Recreation because she had transitioned. The 27-year-old Harlem resident was also made fun of and called vulgar names by co-workers because of her gender change. At the time of press, she had filed a discrimination suit in Manhattan.[374]

- An employee of the New York State courts settled his claim of sexual orientation discrimination in the promotion process. He later challenged the validity of a

[372] Charge of Discrimination, [Redacted] v. State of New Mexico Juvenile Justice Division, New Mexico Department of Labor, Human Rights Division, HRD No. 04-09-22-0519 (Sept. 17, 2004).
[373] Michelle Garcia, *Judge Awards $55K to Harassed Trans Worker*, Jan. 14, 2010, *available at* http://www.advocate.com/News/Daily_News/2010/01/14/Judge_Awards_55K_to_Harassed_Trans_Worker/.
[374] Associated Press, *Transsexual Sues NYC Parks Department over Firing*, July 16, 2009, *available at* http://www.silive.com/news/index.ssf/2009/07/transsexual_sues_new_york_city.html (last visited Sept. 8, 2009).

verbal settlement of his case. The court held that the verbal agreement was binding.[375]

- A lesbian corrections officer employed by the New York State Department of Correctional Services alleged discrimination based both on her gender and sexual orientation. The Division of Human Rights found that her supervisor had engaged in unlawful discrimination and retaliation against her. The woman was subjected to a fellow officer's obscene language and offensive conduct. The co-worker persistently and relentlessly demeaned the woman, scrawled sexually explicit graffiti in her workplace, and filed a baseless internal complaint against her. While the Department promptly processed the co-workers claim against the woman, even though they admitted it was "bogus," they failed to take any steps towards remedying her grievances. Despite her numerous complaints, the Department did not discipline the co-worker and instead retaliated against the woman for complaining. Due to the harassment, the woman suffered from increased stress, sleeping and eating difficulties, nosebleeds, and she was diagnosed with "adjustment disorder with depressive features." A unanimous five-judge panel of the New York Appellate Division affirmed, but reduced her damages from $850,000 to $200,000, finding them disproportionate compared to awards based on similar claims.[376]

[375] *Aguiar v. State of N.Y.*, 2008 WL 4386761 (S.D.N.Y. Sept. 25, 2008).
[376] *New York State Dep't of Corr. Servs. v. New York State Div. of Human Rights*, 2008 WL 2682073 (July 10, 2008).

- In 2008, two lesbian police officers were subjected to hostile work environments because of their sexual orientation.[377]

- An NYPD police officer brought an action against the City of New York claiming he was discriminated against based on his perceived sexual orientation.[378] He was denied his application to transfer to the NYPD Office of Community Affairs' Youth Services Section ("YSS") because he was incorrectly perceived to be a child molester due to his perceived sexual orientation, and was retaliated against after filing an internal complaint against a police officer with the NYPD's Office of Equal Employment Opportunity.[379] The jury's verdict was in favor of plaintiff finding that CITY/NYPD had discriminated against him based upon his "perceived sexual orientation and CITY/NYPD employees retaliated against him for engaging in protected activity resulting in emotional damages."[380] The court determined the jury was "able to assess the long term effects of [defendant's] harmful stereotyping of [plaintiff] and discriminatory denial of [plaintiff's] career opportunity with YSS has had on his mental and emotional state and which was compounded by CITY/NYPD employees' ongoing retaliatory acts of 'abuse, intimidation and humiliation.'"[381]

- A railroad ticket agent sued the Long Island Railroad and one of its managers for constitutional and statutory sexual orientation harassment. The court denied the

[377] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[378] *Sorrenti v. City of N.Y.*, 17 Misc.3d 1102(A), 851 N.Y.S.2d 61, 2007 WL 2772308 at *1 (N.Y. Sup. 2007).
[379] *Id.* at *1.
[380] *Id.* at *7.
[381] *Id.* at *8.

defendant's summary judgment motion, relying on the U.S. Supreme Court's 1996 decision, *Romer v. Evans*,[382] and found that adverse differential treatment of a gay employee in the absence of any legitimate policy justification would violate the Equal Protection Clause.[383] The harassment began in 1996 when the ticket agent's supervisor began making derogatory comments related to his sexual orientation. The ticket agent was referred to by several people in the office, including his supervisor, as a "fucking faggot" and "a queer." The ticket agent reported the harassment to his manager, and though the manager decided to send the supervisor to sensitivity training classes, she never followed through. Later, the same supervisor continued to harass him in retaliation, and the ticket agent's complaints about the supervisor's conduct were never addressed.

- In 2005, the plaintiff, a bisexual man, sued the Suffolk County Police Department alleging that he was subjected to harassment based on sexual orientation. A federal jury awarded the plaintiff $260,000 in damages. Post-verdict, an attorney for the Department indicated that its policies had been under review since the election of Suffolk County Executive Steve Levy, a Democrat whose predecessor had a much less supportive record on lesbian and gay rights. The attorney said that the goal of the "review" was to "avoid any of these lawsuits in the future." She also noted that the jury verdict related solely to workplace harassment, and did not find

[382] 517 U.S. 620 (1996).
[383] *Pugliese v. Long Island Rail Road Co.*, 2006 WL 2689600 (Sept. 29, 2006 E.D.N.Y.).

that the plaintiff was discharged because of his sexual orientation or as retaliation for complaining about the harassment.[384]

- On August 23, 2005, an employee of the Department of Correctional Services filed an administrative complaint with the State Division of Human Rights alleging that he had been harassed because of his sexual orientation. The employee was a Head Cook at a state correctional facility where, at the time of filing, he had been employed for seven years. The employee's co-workers began to harass him because of his sexual orientation approximately one year before the complaint was filed. They posted pictures in the Department that had been altered to make it look as though the employee was engaging in sexual intercourse with the inmates. Comments such as, "No more head cooks in the pc unit ha-ha how do you like that fag boy," were written on the employee bathroom walls and co-workers made lewd comments in the presence of other employees and inmates about the employee's sexual activity, including an accusation "that [the employee] was screwing [a female co-worker] because she was tighter than his boyfriend." The employee reported the harassment to two supervisors, but no corrective action was taken and the harassment continued. Thereafter, the employee had to take medical leave due to the effects of the harassment.[385] The Division investigated the matter and determined that there was probable cause to support the employee's

[384] LESBIAN & GAY L. NOTES (Mar. 2005).
[385] Verified Complaint, [Redacted] v. New York State Department of Correctional Services, State Division of Human Rights, Case No. 10107432 (Aug. 23, 2005).

charge. The state of New York settled the matter privately with the employee in exchange for discontinuing the proceeding.[386]

- On March 5, 2007, the employee described above filed a second complaint with the State Division of Human Rights alleging that he had been retaliated against based on his complaint of August 23, 2005. After the settlement was reached in that matter, he was passed over for overtime and was made to perform tasks outside of his job description, and was unfairly issued notices of discipline on multiple occasions.[387] Again, the Division's investigation revealed probable cause to support the employee's charge. Again, the parties entered into a private settlement.[388]

- A former art teacher who brought an action against a school district based on allegations that she was subjected to a hostile work environment because of her sexual orientation.[389] She also alleged the school district retaliated against her for speaking out against such discrimination.[390] She alleged a number of incidents involving students harassing her on the basis of her sexual orientation.[391] One student told her she was "disgusting." Another asked her if she was a "dyke." A third student, when reprimanded by Lovell, called her a racist and a man-hater. The teacher's complaints to the school administration were not addressed. The

[386] Consent to Discontinuance, [Redacted] v. New York State Department of Correctional Services, State Division of Human Rights, Case No. 10107432 (Jan. 28, 2008).
[387] Verified Complaint, [Redacted] v. New York State Department of Correctional Services, State Division of Human Rights, Case No. 10116813 (Mar. 5, 2007).
[388] Consent to Discontinuance, [Redacted] v. New York State Department of Correctional Services, State Division of Human Rights, Case No. 10116813 (Jan. 28, 2008).
[389] *Lovell v. Comsewogue Sch. Dist*., 2005 WL 1398102 at *1 (E.D.N.Y. 2005).
[390] *Id.* at *1.
[391] *Id.* at *1-3.

teacher also found graffiti in her classroom that read, "Lovell is a stupid dyke." As a result, she had to request a catastrophic leave after a psychiatric evaluation determined that her condition was of a "mixed anxiety and depressed mood."[392] The court held that the school teacher successfully alleged sexual orientation discrimination, thereby defeating defendant's summary judgment motion arguing that the principal and other school officials had acted reasonably under the circumstances. The court determined that a jury could find defendant condoned and enabled a "continuous campaign of harassment by some students against [Lovell] on the basis of her sexual orientation."[393] Further, the court determined that "even if [defendant] did not know in 2001 that he had to protect [Lovell] against the students' discrimination, he is presumed to have known of his obligation not to engage in such discrimination himself."[394]

- A white Jewish gay male and a former administrative law judge for the State Department of Motor Vehicles brought an action claiming racial, religious and sexual orientation discrimination. The court found he could proceed with his hostile environment claim, mainly based on the anti-Semitic comments that he was subjected to in the workplace repeatedly. Since the New York State Human Rights Law also prohibited sexual orientation discrimination he was allowed to include anti-gay harassment in his hostile environment claim, as well as racist harassment. He contended that hostile attitudes toward homosexual persons pervaded the office—that the words "fag" or "faggot" were used in his presence at least three

[392] *Id.* at *4.
[393] *Id.* at *9.
[394] *Id.* at *10.

times, that he was advised not to be "openly gay," and that another employee made at least three hostile references to his sexual orientation. In addition, he alleged that after he was terminated, he learned that a clerk referred to him as "that faggot judge" in the public area of the office.[395]

- In 2002, an openly-gay highway employee was suspended from work for three and a half days for wearing a baseball hat embroidered with a symbol of a half-red, half-rainbow-colored ribbon symbolizing the fight against AIDS. The *Rochester Democrat and Chronicle* reported that the employee's foreman had asked the gay man three years earlier not to wear a cap with a rainbow pride flag logo, which the employee said he had agreed not to wear. The suspension was rescinded after the employee's union argued that town rules make no mention of hats whatsoever. The man was reimbursed for lost wages and the suspension was removed from his personnel file. The man also received an apology from the town, a promise of no future retribution, and a monetary settlement to assist with lawyer fees.[396]

- A police officer employed by the Port Authority of New York & New Jersey alleged that harassment by co-workers due to his perceived homosexuality or failure to conform to "traditional male stereotypes" eventually led superiors to terminate his employment in violation of the Equal Protection Clause. The court denied the Port Authority's summary judgment motion, holding that sexual orientation is a viable basis for an equal protection claim, even if the police officer him-

[395] *Feingold v. State*, 366 F.3d 138, 150 (2d Cir. 2004).
[396] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 198-99 (2002 ed).

self was not a homosexual. Specifically, the officer alleged that his co-workers disseminated "computer-altered pictures" of his face on figures posed in a variety "of homosexual and/or deviant sexual practices" and put them in his locker. In addition, co-workers affixed a pair of women's panties and a condom to his locker. The plaintiff also discovered a "Pee-Wee Herman" doll, representing him, "in a sexually provocative pose." Upon complaining to a superior, the superior joked about the incidents before an audience of the plaintiff's co-workers.[397]

- A principal at a public school in New York sued the school district and teachers' union upon termination of her employment and denial of her tenure appointment, claiming sexual orientation discrimination and discrimination on the basis of sex under Title VII. She settled her claims with the school district for an undisclosed amount. The court granted summary judgment in favor of the teacher's union holding, in part, that Title VII does not provide protection against discrimination on the basis of sexual orientation.[398]

- A correctional officer for the New York State Department of Correctional Services alleged his fellow employees routinely called him names such as "faggot, pervert, homo, queer, fucking faggot, cock-sucker, fudge-packer, and you gay bastard." They also left sexually explicit photos at the officer's work area, on restroom walls, and in his mailbox. One co-worker grabbed his own nipple, remarking to the officer, "like what you see?" He also alleged that he experienced physical assaults by co-workers and reported incidents to supervisors and the un-

[397] *Emblen v. Port Auth. of N.Y/N.J.*, 2002 WL 498634 (S.D.N.Y. 2002).
[398] *Byars v. Jamestown Teachers Assoc.*, 195 F. Supp. 2d 401 (W.D.N.Y. 2002).

ion, who failed to properly address the issue.[399] He brought a sex stereotyping claim under 42 U.S.C. § 1985, Title VII, and the New York State Human Rights Law.[400] The court found that the officer failed to assert evidence that he was discriminated against based on his perceived lack of masculinity, and that he was seeking to "bootstrap" a claim of discrimination based on sexual orientation under Title VII (which is not cognizable) to a sexual stereotyping claim (which is cognizable). However, as to his union which ignored his complaints, the court found that it is possible for an employee to state a retaliation claim based on the union's reaction to his complaints, even if Title VII would not cover the underlying discrimination claims.[401] The court determined that he failed to establish a prima facie case for the 42 U.S.C. § 1985 claim, since homosexuality did not fall under a suspect classification such as race, national origin, or sex.[402] Later in the case, a court granted summary judgment in favor of the defendants.

- In 2001, after she had been employed as a planner with the City of Buffalo for fourteen years, a transgender woman was forced to resign because of hostile workplace treatment that began immediately after she began to transition. By 2001, she had a distinguished career and received a county-wide civic award for her improvement of a federal program that sought to reduce homelessness among people living with HIV/AIDS. In 2001, she informed the Mayor of Buffalo that she would be transitioning from male to female. After she transitioned she was demoted. Though she had an unblemished record when she presented as a man,

[399] *Martin v. New York State Dep't of Corr. Servs.*, 224 F. Supp. 2d 434 (N.D.N.Y. 2002).
[400] *Martin v. New York State Dep't of Corr. Servs*., 115 F.Supp.2d 307 (N.D.N.Y. 2000).
[401] *Id.* at 315-16.
[402] *Id.* at 316.

she received unwarranted criticism and faced workplace hostility immediately after she transitioned. One "casual Friday" she wore a gay pride t-shirt to work. When she refused to change after she was told that the shirt made a co-worker uncomfortable, she was charged with insubordination and harassment. She was required to attend an informal hearing as a result of the charge, where she was told that the charges would be dropped if she agreed not to sue for any past grievances. She refused to sign and the harassment and hostility increased. She was unable to sleep and was diagnosed with depression. Eventually, worn down by stress and mistreatment, she resigned.[403]

- A lesbian police officer brought an action against the NYPD alleging claims of employment discrimination, hostile work environment, and retaliation on the basis of her sexual orientation under 42 U.S.C. § 1983, 42 U.S.C. § 1985, and the N.Y.C. Human Rights Law.[404] She alleged fellow employees made derogatory comments concerning her sexual orientation.[405] The court concluded defendants were motivated by their "invidious and discriminatory animus towards homosexuals," and that they conspired to discriminate against the plaintiff solely on the basis of her sexual orientation.[406] The court also concluded that the defendants permitted the practice of discrimination to continue for a long enough period of time so as to warrant the application of the continuing violation doctrine.[407]

[403] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[404] *Salgado v. City of N.Y.*, 2001 WL 290051, at *1 (S.D.N.Y. 2001).
[405] *Id.*
[406] *Id.* at *4.
[407] *Id.* at *7.

- An employee of the New York Transit Authority alleged that he had been discriminated against based on his sexual orientation. The court granted the defendants' summary judgment motion, finding that the employee's claim for sexual orientation discrimination under Title VII was not cognizable because the statute does not prohibit discrimination on that basis and his suit appeared to be based largely on offensive comments made to him by a co-worker, which the court characterized as isolated and not actionable.[408]

- In 2000, two years after he was hired, an English teacher at a New York public school was forced to resign. During his tenure, he intentionally disclosed his sexual orientation to only a few colleagues, but believed that the school principal knew he was gay. In April 2000, he was called into a meeting with the assistant principal. The assistant principal commended him for his hard work and conscientiousness, but told him that he would not be returning to work the following year because of "classroom management issues." The assistant principal told the teacher that he would "do [him] a favor" and let him resign. If he did not agree to resign, he was told that he would receive and unfavorable evaluation. His union representative discouraged him from taking up his grievance. Two days after the meeting, his class room was vandalized and the word "faggot" was written across the chalkboard. Fearing that he would be terminated, he felt he had no option other than to resign.[409]

[408] *Trigg v. New York City Transit Auth.*, 2001 WL 868336 (E.D.N.Y. July 26, 2001).
[409] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

- In 2000, a corrections officer with the Nassau County Sheriff's Department brought equal protection and Section 1983 claims based on anti-gay harassment in the workplace. A federal jury awarded him $1.5 million, finding the harassment at the county jail so widespread that it constituted a "custom and practice" to discriminate against gay men. He presented evidence demonstrating that he encountered almost daily harassment from his co-workers for almost four years, including being called offensive names and the display of pornographic images depicting him as a pedophile, a transsexual and someone who engaged in bestiality. The plaintiff repeatedly complained to his superiors about the harassment, but they ignored him. Ultimately, a fellow corrections officer attacked him with a chair and injured his knee. The officer left work and later went on disability leave. A doctor certified that he suffered from post-traumatic stress disorder.[410]

- In 1999, a Saratoga Springs police officer, who alleges he was derided and harassed because he was perceived to be gay, sued the city and several fellow officers for slander and sexual harassment. The officer, an eight-year veteran of the Saratoga Springs force, asserted that he became the target of anti-gay harassment by his colleagues after he was honored for his involvement in a robbery investigation in 1992. According to the officer, harassment consisted of references to him as "queenie," and to his friends as his "boyfriends." Other officers allegedly ridiculed him by blowing kisses to him derisively over the police radio, stalking him, and telling members of the community that he was gay. He claims that the ha-

[410] HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA'S WORKPLACES (2001), *available at* http://bit.ly/kThbS.

rassment irreparably tarnished his reputation in the community and caused him "enormous emotional distress." He also asserts that a city employee told a youth organization with which he was involved that he was "light in the loafers" and therefore "should not be considered as a chaperone for a camping trip the organization was having."[411]

- A lesbian police officer sued the NYPD for harassment based on her sexual orientation for over two years. She ultimately settled the case for $50,000 and was permitted to resign. She alleged that the harassment began after her same-sex marriage ceremony in Central Park to a fellow officer. She claimed that obscene pictures of women with her face pasted on them were hung in her Bronx precinct house, that other officers refused to ride with her on patrols, and that she was assigned to cleaning duties in the precinct. She also claimed that one co-worker assaulted her and that officers repeatedly taunted her with derogatory names. "When I complained, everyone turned their backs on me," she said, adding that her commanding officer told her, "No one wants to ride with a dyke." She maintained that the abuse, which continued for over a year, worsened after it was reported, and that the police department had not taken proper action to address the harassment and unequal treatment.[412] She was also reassigned to another location.

- A former Nassau County police officer claimed that his fellow officers and supervisors "embarked on a vicious campaign of harassment against him because of his

[411] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 183-84 (1999 ed.).
[412] *Bryant v. City of N.Y.*, 2000 WL 1523284 (S.D.N.Y. Oct. 11, 2000).

sexual orientation." In 1999, a jury awarded him $380,000. The jury found that members and supervisors committed discriminatory acts demonstrating an ongoing policy or practice of sexual orientation discrimination against him; that such acts were condoned by his supervisors; that in the Nassau County Police Department there was a custom, policy or decision to permit sexual orientation harassment; and that the unwelcome harassment against the plaintiff was severe or pervasive. The court upheld the jury award and denied the dismissal motions to all but one defendant. It was demonstrated in the trial that the plaintiff initially kept his sexual orientation hidden from his colleagues, but it eventually was revealed when an arrestee told officers that he was gay. This began nine years of harassment. Fellow police officers hung pornographic pictures and doctored records on the stationhouse bulletin board, portraying the police officer as a child molester and a sadomasochist. At least nineteen of the pictures were produced at trial. They hid his uniform, put rocks in his hubcaps and once placed a nightstick—labeled "P.O. Quinn's Dildo"—in his squad car. His supervisor admitted to seeing the posted pictures and, according to another sergeant in the precinct, engaged in the harassment by referring to him as "dick smoker." The precinct Lieutenant admitted at trial that he had seen pictures depicting him unfavorably, but not those presented at trial. He stated, though, that had he seen them, he would not have felt obligated to remove them because he did not view them as offensive.[413]

- In 1999, two New York police officers filed a lawsuit for sexual harassment and violations of their civil rights. One of the officers, a thirteen-year veteran, had

[413] *Quinn v. Nassau Police Dep't*, 75 F. Supp. 2d 74 (E.D.N.Y. 1999).

joined East Harlem's 23rd Precinct in 1989 and was allegedly the target of relentless harassment because he was gay. He asserted that he was the victim of verbal anti-gay harassment and that he was repeatedly forced into his own locker. In addition, he asserts that on two occasions he was handcuffed and hung from a coat rack in the precinct lunchroom where he was subject to the ridicule of his co-workers and other officers once tried to physically force him to simulate an oral sex act with another officer. The second officer, who was not gay, asserted that he was nonetheless the victim of sexual harassment by other officers simply because he was willing to work with the first officer. According to the second officer, other officers called him "Camacho homo," drew pictures depicting him engaged in sex acts with the first officer on precinct walls, and wrote graffiti on police station walls that read, "Camacho is a butt pirate."[414]

- A gay physician and former intern at Coney Island Hospital brought suit alleging sexual orientation discrimination. The court, ruling on cross summary judgment motions, ruled that he was entitled to pursue his sexual orientation discrimination against his employee pursuant to New York City's human rights law. He had not disclosed his sexual orientation when he was hired as an intern under a one-year contract. Midway through the contract, he received an offer of employment at another hospital. In seeking permission from his supervisor to terminate his internship early in order to take the other position, he disclosed his sexual orientation and asserted that in the other hospital, he would be able to be more open about being gay. The supervisor's response was allegedly to characterize him as

[414] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 179 (1999 ed.).

"ungrateful" and deny his request. The physician attributed the various faults in his subsequent performance, to the extent they existed, to depression over having lost the opportunity with the other hospital, and alleges that the change in his evaluations and his treatment by his supervisor all post-dated his revealing his sexual orientation. Within a few months, his performance so deteriorated that he was pressured to quit or be fired and was subsequently terminated in a hospital proceeding.[415]

- A former police officer alleged that he was constructively discharged by the New York City Police Department because he is gay. The harassment included the marking of his locker with graffiti, the placement of garbage cans in front of his locker, and the protest of a fellow officer to his sleeping in the officers' lounge area between shifts, even though such practice was customary. He reported the harassment to his supervisor who did nothing. Following his complaint, he arrived at work to find his locker broken into and a handwritten note left for him which read "Testa Blood Guts" and depicted skull and crossbones. Again, his reports of harassment went unanswered. After disparaging graffiti about the plaintiff was found on the bathroom wall, he was involuntarily transferred to another precinct where the harassment still continued. His new locker was broken and the words "coward" and "fag" were written on it. He eventually told his captain that he did not want to resign, but was under enormous stress and fear due to the harassment. As a result, he was demoted to an unarmed position. In denying the police department's motion to dismiss in part, the court held that there was an is-

[415] *Sussman v. N.Y.C. Health & Hosps. Corp*, 1997 WL 334964 (S.D.N.Y. June 16, 1997).

sue of fact as to whether the police department maintained a policy of discrimination against homosexuals, noting that, as alleged, the plaintiff's working conditions, which were imposed on the basis of his sexual orientation, were made so unpleasant as to effectively force him to resign.[416]

- In 1996, the Public Employees Federation, a union representing employees of the State Law Department, filed an unfair practice charge against the Department, asserting that a change in policy, which omitted "sexual orientation" from the executive order governing discrimination law in the Department, violated the Department's duty to bargain over changes in terms of employment. The change was made after Dennis C. Vacco was elected Attorney General of the State of New York in 1994 in a campaign where some of his supporters attacked his opponent, Karen Burstein, because she was a lesbian. Shortly after taking office, Vacco replaced his predecessor's executive order governing discrimination policy. Subsequently, several openly lesbian or gay employees of the Department were fired in the course of a purported reorganization of the Department that generally downgraded civil rights enforcement functions.[417]Two women, a lieutenant and a detective in the New York City Police Department, have filed a $5 million lawsuit against the city, the Police Department, Police Chief Raymond Abruzzi and Commissioner William Bratton, charging their male coworkers with sexist and homophobic harassment. The officers in their Queens precinct allegedly hung a sign that said "NLA" for "No Lesbians Allowed," spread rumors that the two women were lovers, referred to the Police Women's Endowment Association as

[416] *Tester v. City of New York*, 1997 WL 81662 (S.D.N.Y. Feb. 25, 1997).
[417] *Public Employees Fed'n v. State of N.Y.*, PERB Case No. U-16702 (1996).

"Lesbians R Us" and called the lieutenant's phone "the lesbian hotline." Both the lieutenant, who commanded the precinct detective squad for nearly two years, and the detective were transferred by Chief Abruzzi after several male officers asked to be transferred because of the women.[418]

- In 1995, Justice Sotomayor, while a judge for the Southern District of New York, denied a motion to dismiss a case where the plaintiff had been fired from his job as a prison kitchen worker because he was gay. Criticizing the defendants' argument that removing the plaintiff was rationally related to preserving mess hall security, the court stated that a "person's sexual orientation, standing alone, does not reasonably, rationally or self-evidently implicate mess hall security." Justice Sotomayor denied the defendants' motion to dismiss stating that the pro se plaintiff could use the services of a lawyer "to explore fully the substantial questions raised by this case" and that the Supreme Court's then-pending decision in *Romer v. Evans*[419] would provide further guidance on the scope of equal protection rights afforded to lesbians and gay men. The court also rejected the defendants' qualified immunity defense, stating that the "constitutional right not to be discriminated against for any reason, including sexual orientation, without a rational basis is an established proposition of law."[420]

[418] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 83 (1995 ed.).
[419] 517 U.S. 620 (1996).
[420] *Holmes v. Artuz*, 1995 WL 634995 (S.D.N.Y. Oct. 27, 1995).

33. North Carolina

- In *Hensley v. Johnston*, a case pending before the United States District Court for the Eastern District of North Carolina, a public school teacher brought suit against the Johnston County Board of Education after she was transferred from her position following complaints by a student's parents regarding her perceived "antagonism toward a Christian belief system, her 'alternative life views'" and her perceived sexual orientation.[421] The teacher alleges that "she was the 'target' of discriminatory animus because she 'did not deny that her religious beliefs did not include a view that homosexuality was a sin.'"[422]

- Anne Marie Clukey had worked for the City of Charlotte at a maintenance facility for two years before she was fired in December 2006. Clukey, who was born a male and underwent gender reassignment surgery in May 2001, claims that she was fired "because she did not conform to her supervisor's 'gender stereotype'."[423] City Attorney Mac McCarley stated that "transgendered individuals do not have any rights under federal employment discrimination laws."[424]

- John Peter Bradley, who described himself as a whistle-blower who reported official corruption while working for law enforcement in various capacities, claimed that one government official had written a letter identifying Bradley as a bisexual, and that ultimately the letter was used to harm him when he had obtained em-

[421] *Hensley v. Johnston County Bd. of Educ*., 2007 WL 4717527, Trial Motion, Memorandum and Affidavit (E.D.N.C. Aug. 21, 2007).
[422] *Id*.
[423] Franco Ordonez & Maria David, *Ex-City Worker Says She Was Fired for Sex Change*, CHARLOTTE OBS., Feb. 12, 2009, *available at*: http://bit.ly/rEfNo.
[424] Matt Comer, *Transgender Worker Sues Charlotte for Job Discrimination*, Q-NOTES, Feb. 12, 2009, http://bit.ly/Oe2jA.

ployment as police chief in Woodfin, North Carolina. Ruling on motions to dismiss by various defendants, the court ruled that Bradley may pursue his constitutional claims against certain named government officials sued in their individual capacities, despite Eleventh Amendment immunity, since he was seeking prospective injunctive relief. However, his claims for compensation would be barred by immunity,[425]

- In 1991, a gay North Carolina county deputy planning director was fired because of his sexual orientation.[426]

34. North Dakota

35. Ohio

- In 2008, a lesbian employee of a state department reported that she faced daily harassment including threats and intimidation because of her sexual orientation.[427]

- In 2006, a transgender electrician was not hired by an Ohio state university because of her gender identity.[428]

- A lesbian teacher was fired after she had preliminarily decided to include materials related to anti-gay bias in the readings for a unit on civil rights, despite the

[425] *Bradley v. North Carolina Dept. of Transp.*, 286 F. Supp. 2D 697 (W.D.N.C. 2003).
[426] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[427] E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).
[428] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

fact that she had shown them in advance to the principal and withdrew them from her teaching plans after he objected.[429]

- A court ruled that a Cincinnati police officer had a viable claim of sex stereotype discrimination based on the harassment she suffered after telling supervisors that she was transgender and would soon be transitioning. She was fired on the ground that she "lacked command presence."[430] A jury awarded the officer $320,511 on her discrimination and harassment claims. Further, the court awarded the officer $527,888 in attorneys' fees and $25,837 in costs.[431]

- A firefighter in Salem, Ohio, sued on the ground of sex discrimination for sex stereotype discrimination after he informed his supervisors that he was a pre-operative transsexual. As a result, he was forced to undergo multiple psychological examinations. A federal court ruled that he could sue based on sex stereotype discrimination.[432]

- A gay male teacher was fired because of a false rumor that he was holding hands with another man at a holiday party.[433] He sued in federal court and won an award of over $70,000 for back pay and damages.[434]

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[429] *Beall v. London City School District Board of Education*, No. 2:04-cv-290, 2006 WL 1582447 (S.D. Ohio June 8, 2006).
[430] *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005).
[431] *Id*. at 733.
[432] *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004).
[433] *Glover v. Williamsburg Local School District Board of Education*, 20 F. Supp. 2d 1160 (S.D. Ohio 1998).
[434] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 188 (1999 ed.).

36. Oklahoma

- In 2008, a municipal police officer transitioned from male to female while on the job. Thereafter, she experienced severe harassment based on her gender identity. After her transition, the police department also insisted that she undergo psychological evaluations. They transferred her to an unfavorable position.[435]

- In 2007, a gay electronics technician who worked out of a city firehouse reported, after another employee learned that he was gay, that he began to experience harassment from co-workers. He was called a "cocksucker," was whistled at, was told that "[q]ueers are just shit; people like you float," was lectured about same-sex attraction being "against the Bible," and was told that gay people are "an abomination to god." When a new employee complained about having to clean the showers at the firehouse, the technician commented that they were so filthy that he wouldn't take a shower there. The new employee replied that, according to what he had heard from others, he had thought that "you'd like that [implying a shower with other men]." One coworker repeatedly screamed at the technician, physically intimidated him, and twice threatened to kill him. When the individual complained, his shift was changed against his wishes so that he would not work the same time as that co-worker. The department administrator refused to give him a copy of the employer's policy vis-à-vis sexual harassment and nondiscrimination.[436]

[435] E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).
[436] *Id*.

- In 2004, Oklahoma City reached a settlement with a transgender police officer who was harassed and fired because of her gender identity. The officer, a decorated army veteran, was fired even though she had received an award from the Department of Justice for her service as a police officer. In *Schonauer v. City of Oklahoma, ex. rel. Oklahoma City Police Department*,[437] the plaintiff sued the Oklahoma Police Department and the City of Oklahoma, her employer of more than ten (10) years, for gender discrimination, hostile work environment and disparate treatment, based on gender.[438] When Schonauer was first hired by the police department in 1992, she was male; in 2001, she underwent gender reassignment surgery.[439] After the surgery, she faced constant harassment from her coworkers, which she alleged interfered with her ability to do her job.[440] However, she continued performing her job and even improved relations between the police department and the Asian, Hispanic, and gay and lesbian communities.[441] Despite this achievement, and her exceptional performance prior to 2001,[442] the police department removed her from patrol duties, gave her an interim clerical position, and then placed her on paid administrative leave.[443]

[437] Case No. CIV-05-104-W (W.D. Okla. 2005).
[438] Memorandum from the City of Oklahoma City Office of the Municipal Counselor to Mayor and Council (Sept. 27, 2005), http://bit.ly/3IVVNk (last visited Sept. 6, 2009).
[439] Richard Green, *Transgender Officer Sues Police in OKC*, TULSA WORLD, Dec. 29, 2004, at A15.
[440] Reuters, *Sex-Change Oklahoma Officer Files Harassment Suit*, EXP. INDIA, Dec. 29, 2004, http://bit.ly/aW3mM (last visited Sept. 6, 2009).
[441] Oklahoma Office of Personnel Management Affirmative Action Plan, http://bit.ly/sKEIp (last visited Sept. 6, 2009).
[442] *See* Chad Graham, *Gays in the Red States*, ADVOCATE, Feb. 15, 2005, *available at* http://bit.ly/NFRP1 (stating that Ms. Schonauer received an award from the Department of Justice for her performance as an Oklahoma police officer).
[443] Oklahoma Office of Personnel Management Affirmative Action, *supra* note 441.

- In 2004, a librarian, employed at the Oklahoma City Branch of Langston University—Oklahoma's only historically black college and university—for approximately three years, began the process of transitioning from male to female. After she returned from a professional conference, she discovered that a student had circulated over 100 copies of a hate-filled petition calling for her removal from campus and had posted flyers to the same effect around the campus. Every reason cited in support of the librarian's removal was related to her gender identity. When the librarian confronted the library director about the situation, he told the librarian that the student had a right to freedom of speech and that he would not do anything. When other students complained to the library director about the flyers, he supported the student who had passed them out. The student then printed a second flyer stating that "God wished [her] dead" and that he hoped she would die. When she confronted administrators about the second flyer, she was told her concerns were unwarranted and she was the one creating problems. The following semester, her schedule was changed so that she would have to leave the building at 10:00PM—long after other staff and faculty had gone home. Fearing that she would be unsafe on campus at that hour, she had no choice but to resign.[444]

- In *Lankford v. City of Hobart*,[445] two female dispatchers for the Hobart City police station in Oklahoma brought suit against the City and their supervisor, the former police chief, alleging that the police chief had violated their privacy rights and

[444] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[445] 27 F.3d 477 (10th Cir. 1994).

created a hostile and abusive work environment by sexually harassing them.[446] One of the plaintiffs alleged that after she spurned the supervisor's advances, he became angry and spread rumors that she was a lesbian.[447] He then used his position as police chief to gain access to her medical records in order to verify his claim.[448]

37. Oregon

- A housing and nuisance inspector for the Bureau of Development Services of Portland filed a suit based on sexual orientation and sex stereotyping harassment and settled for $150,000 after her Title VII claim survived summary judgment in a U.S. District Court.[449] The inspector's co-workers were aware she was a lesbian because she had disclosed that she had a female domestic partner. At work, she did not wear makeup, had short hair and wore men's clothing. Her supervisors made remarks such as that her shirt looked "like something her father would wear" and "are you tired of people treating you like a bull dyke[?]" On another occasion her supervisor stated: "I'm a man, you are a woman. I'm the man. I don't have to listen to anything you say. You are a woman. You don't know anything." She also alleged her co-workers harassed her, calling her a "bitch," saying loudly that they were "surrounded by all these fags at work," that she "just needed to get some dick and she wouldn't be gay anymore," and asking her "would a woman wear a man's shoes?" In holding for the inspector, the court noted that, for the

[446] *Id.*
[447] *Id.*
[448] *Id.*
[449] LESBIAN & GAY L. NOTES (Dec. 2004), *available at* http://www.qrd.org/qrd/usa/legal/lgln/12.04.

purpose of Title VII analysis, it was irrelevant whether or not the harassers were motivated by the plaintiff's sexual orientation, as sexual orientation, alone, is not actionable under Title VII. However, the court held that gender stereotyping "constitutes actionable harassment."[450]

- A firefighter was harassed for incorrectly being presumed to be gay. In 2003, Senator Ted Kennedy, when speaking about the Employment Non-Discrimination Act in the Senate, recounted the discrimination and harassment faced by this fire-fighter because of his perceived sexual orientation: "His co-workers saw him on the local news protesting an antigay initiative, and incorrectly assumed he was gay himself. He began to lose workplace responsibilities and was the victim of harassment, including hate mail. After a long administrative proceeding, the trumped-up charges were removed from his record, and he was transferred to another fire station."[451]

- From 1980 to 1996, a transgender woman worked for the Josephine County Sheriff's Office in Grant's Pass, Oregon. She received numerous commendations for her work—including praise for rescuing a person from a burning vehicle and delivering a baby on the side of the road. During a leave following an on-duty injury, her storage unit was broken into and several items of women's clothing were stolen. Within a week of the break in, her supervisor called her into the Sheriff's Office for a meeting. She was taken to an interrogation room where she was informed that her stolen clothes, along with identifying photographs, had been dis-

[450] *Fischer v. City of Portland*, 2004 U.S. Dist. LEXIS 20453 (D. Or. 2004).
[451] Statements by U.S. Sen. Ted Kennedy, 149 CONG REC. §§ 12377, 12382 (Oct. 2, 2003).

covered alongside the railroad tracks. At that point, her supervisor told her that the sheriff believed she would no longer be able to perform her duties because she dressed as a woman. She was told that it would be "a big mistake to return to work." When she attempted to return to work, she was forced to undergo a psychiatric examination. She appeared in front of a panel of doctors selected by the Sheriff's Office who determined that she was unfit for duty. She was told that the Office attorney was in the process of putting together a settlement package in exchange for her resignation.[452]

- A police captain filed a federal lawsuit against the City of Portland claiming that the mayor and police chief discriminated against him because he was gay. Prior to his demotion, the officer, a 21-year decorated veteran of the Portland police force, was put on leave and investigated on charges that he had solicited male prostitutes. In August 1996, a Multnomah County grand jury refused to indict him on the charges. He was then permitted to work, but he was demoted in early 1997. According to the officer, his police chief forbade him to call the chief at home because the officer was gay, and the chief told the officer he was not his "special friend." He also alleged that during an internal affairs investigation the officer was interrogated, "in a manner calculated to greatly embarrass and humiliate" him, about his sex life, including his sexual positions and the names of his partners. He also alleged that his safety was jeopardized when he was issued a

[452] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

squad car lacking a police radio, emergency lights and a siren, and that he was publicly humiliated by the police chief.[453]

- A coordinator of Umatilla County's commission on children and families was terminated after being asked if he was gay. The coordinator was hired on a temporary basis in January 1993 by the Umatilla County Board of Commissioners to coordinate the commission. In June 1993, after securing additional grant money to fund the commission, the board interviewed him again before granting him the position on a permanent basis. After official questioning had finished, one of the commissioners asked him if he was gay. Presuming the question to be illegal, an attorney interceded to block the coordinator's response. The board rehired him fulltime. Over the next several months, he worked to improve the quality of services and the integrity of the commission's grant-making process, and won praise from around the state, including from the commission's executive director. In March 1994, he received a pay raise. In May, at the insistence of one of the commissioners, the board ordered an evaluation of his performance. In the review, he received ratings from satisfactory to excellent. In no category was his work rated "unacceptable." Despite this positive review, the board fired him ten days later.[454]

[453] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 194 (1999 ed.).
[454] HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA'S WORKPLACES (2001), http://bit.ly/kThbS (last visited Sept. 6, 2009).

38. Pennsylvania

- In 2010, the State of Pennsylvania settled a case brought by a state prison guard who was discriminated against because he was perceived to be gay.[455] Other guards subjected the victim to rumors, innuendo, and other ill treatment based on their perception of his sexual orientation.

- In 2008, a transgender applicant for a state agency database analyst position was not hired because of his gender identity.[456]

- In 2006, an employee of the Philadelphia Police Department filed a complaint with the City of Philadelphia alleging that he had been discriminated against on the basis of his sexual orientation.[457] The city settled with the employee.[458]

- A former policeman for the town of Walnutport alleged that borough officials violated his free speech rights by retaliating against him when he complained about attempts to pry into his sexual orientation and off-duty conduct in response to a demand by a city council member. The claim was settled for $5,000.[459]

- On January 31, 2003, an employee of the Free Library of Philadelphia filed a complaint with the Pennsylvania Human Rights Commission alleging that she had been discriminated against on the basis of gender identity. The employee was ha-

[455] *Pa. Prison Guard Settles Sex Perception Bias Suit*, CBS3, May 6, 2010, http://cbs3.com/wireapnewspa/Western.Pa.prison.2.1678589.html (last visited May 12, 2010).
[456] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).
[457] Complaint, [Redacted] v. Philadelphia Police Department, Philadelphia Human Relations Commission, Complaint No. SGEN-6NQLXT (Apr. 10, 2006).
[458] Letter from Christopher R. DiFusco, Divisional Deputy City Solicitor, City of Philadelphia Law Dep't, to Christy Mallory, the Williams Institute (July 6, 2009) (on file with the Williams Institute).
[459] LESBIAN & GAY L. NOTES (Feb. 2005), *available at* http://www.qrd.org/qrd/www/legal/lgln/02.2005.pdf.

rassed after she began to transition from male to female and was involuntarily transferred to an undesirable worksite.[460] The Commission found probable cause to support the charge.[461] On July 8, 2003, the employee filed a second complaint against the Free Library of Philadelphia alleging that that the library continued to discriminate against her and her co-workers continued to harass her, despite her previous complaint. She also alleged that the library was treating her badly in retaliation for filing the previous complaint.[462] Again, the Commission found that there was probable cause to support the charge.[463] On May 7, 2004, the employee filed a third complaint against the Free Library of Philadelphia alleging continued discrimination on the basis of sexual orientation and further retaliation based on her previous complaints.[464] For the third time, the Commission determined that there was probable cause to support her charge.[465]

- In *Bianchi v. City of Philadelphia I*, a male firefighter brought a § 1983 action against the city asserting claims under Title VII, the Pennsylvania Human Rights Act ("PHRA"), and the state and federal constitutions.[466] Bianchi had been subjected to a pattern of gross and abusive harassment (including used condoms in his desk, urine or feces in his gear, and threatening letters), which he alleged was

[460] Complaint, [Redacted] v. Free Library of Philadelphia, Philadelphia Human Relations Commission, Complaint No. PWIS-5JBKJJ (Jan. 31, 2003).
[461] Letter from Christopher R. DiFusco, Divisional Deputy City Solicitor, City of Philadelphia Law Department, to Christy Mallory, the Williams Institute (July 6, 2009) (on file with the Williams Institute).
[462] Complaint, [Redacted] v. Free Library of Philadelphia, Philadelphia Human Relations Commission, Complaint No. MCOL-5P8LUH (July 8, 2003).
[463] Letter from Christopher R. DiFusco, Divisional Deputy City Solicitor, City of Philadelphia Law Department, to Christy Mallory, the Williams Institute (July 6, 2009) (on file with the Williams Institute).
[464] Complaint, [Redacted] v. Free Library of Philadelphia, Philadelphia Human Relations Commission, Complaint No. MCOL-5YMHDX (May 7, 2004).
[465] Letter from Christopher R. DiFusco, Divisional Deputy City Solicitor, City of Philadelphia Law Dep't, to Christy Mallory, the Williams Institute (July 6, 2009) (on file with the Williams Institute).
[466] *Bianchi v. City of Philadelphia*, 183 F.Supp.2d 726 (2002).

rooted in a belief that he was homosexual. While the Court recognized that the actions taken against Bianchi "constituted harassment," the court held that the conduct was not actionable as sex discrimination under Title VII or the PHRA. However, the due process and First Amendment claims survived summary judgment and furnished the basis for an award of more than $1 million in damages, which was upheld by the U.S. Court of Appeals for the Third Circuit in *Bianchi v. City of Philadelphia II*.[467]

- In *Taylor v. City of Philadelphia*,[468] an employee of the City of Philadelphia Free Library alleged discrimination based on his sexual orientation. The District Court dismissed intentional infliction of emotional distress and punitive damages claims against the City. However, it is unclear from the opinion whether other claims were allowed to go forward, and no further opinions or rulings were available online. Before bringing suit, the plaintiff had filed a complaint in 1999 with the Philadelphia Human Relations Commission alleging that he had been discriminated against on the basis of his sexual orientation. The Commission determined that there was probable cause to support the charge.[469] In 2000, the employee filed a second complaint against the Free Library of Philadelphia for discrimination on the basis of sexual orientation and for retaliation in response to his pre-

[467] *Bianchi v. City of Philadelphia*, 2003 WL 22490388 (3d Cir., Nov. 4, 2003).
[468] *Taylor v. City of Philadelphia*, 2001 WL 1251454 (E.D. Pa., Sept. 24, 2001).
[469] Letter from Christopher R. DiFusco, Divisional Deputy City Solicitor, City of Philadelphia Law Dep't, to Christy Mallory, the Williams Institute (July 6, 2009) (on file with the Williams Institute).

vious filing. Again, the Commission determined that there was probable cause to support the charge.[470]

- In 1996, a gay nurse at an adult health services center was subjected to a hostile work environment because of his sexual orientation.[471]

- Although not involving the state as an employer, in 1995 a state appellate court ruled that it was not against the public policy of the state for a private sector employer to specify in its employment contract that homosexuality was a ground for termination of employment.[472]

- A plaintiff filed suit alleging that he was denied a proper pre-termination hearing on the same-sex sexual harassment charges filed against him at a community college. A jury awarded the plaintiff reinstatement of his tenured teaching position and $134,081 back pay, but denied relief on his claims of emotional and reputational harm. The plaintiff filed a motion for a new trial, pointing to defense counsel's summation, which included statements that he actually may have committed the sexual harassment for which he was terminated. The court denied the motion, ruling that these statements did not require a new trial since they were not materially prejudicial as they were part of the evidence and were somewhat relevant.[473]

39. Rhode Island

[470] *Id*.
[471] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[472] *DeMuth v. Miller*, 438 Pa. Super. 437 (1995).
[473] *McDaniels v. Delaware County Cmty. Coll.*, 1994 WL 675292 (E.D. Pa. Nov. 21, 1994).

- A teacher alleged that the Cranston Public Schools unlawfully discriminated against her based on sexual orientation in violation of Rhode Island's anti-discrimination law. The Rhode Island Commission for Human Rights found probable cause to believe that the teacher had been unlawfully discriminated against before the case was transferred to the Superior Court. The teacher was denied family medical leave when she took time off work to care for her ill same-sex partner. The Superintendent stated that family medical leave could only be granted where there is an "illness in the family" and not for "non-related individuals living in the household."[474] The hearing on the teacher's motion for summary judgment was scheduled for March 3, 2009.[475]

- In 2007, a gay man working for the State of Rhode Island Department of Corrections reported having problems at work because of his sexual orientation. He was called "gay cop," "cum swallowing pig," and other derogatory names in front of inmates by his coworkers.[476]

- A gay male public employee was terminated from his job as a beach manager after three years. His employer publicly informed him that he was under investigation for sexual harassment, due to a complaint made by a male ex-employee. In the past, his employer had referred to homosexuals as "fags." The employee

[474] *See* Plaintiff's Memorandum of Points and Authorities In Support of Motion for Summary Judgment, *D'Amico v. Cranston Sch. Comm.,* P.C.C.A. No. 06-5997 (R.I. Super. Ct. 2009).
[475] Charge of Discrimination Form, R.I. Comm'n on Human Rts. (May 26, 2004) (on file with the Williams Institute).
[476] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Mar. 22, 2007) (on file with GLAD).

stated that similarly situated heterosexuals were not accused of sexual harassment.[477]

- In 2004, a Rhode Island State Trooper, who was a lesbian, reported that she was harassed and ultimately fired because of her sexual orientation. The trooper was concerned that if she filed a complaint, she would not be able to get another job in law enforcement in the state.[478]

- A lesbian public employee was terminated from her job as a certified nursing assistant. Her employer's stated reason for her termination was that her sexual orientation made other employees uncomfortable.[479]

- In 2003, a woman working for a state agency overheard a conversation in the cafeteria at work in which an employee made derogatory comments about gay people, such as "homosexuals are pedophiles." She complained to her supervisor, who scheduled a mediation session. However, the person who made the comment refused to participate, and the matter was dropped. She feared retaliation if she filed another complaint.[480]

[477] Charge of Discrimination Form, R.I. Comm'n on Human Rts. (Aug. 16, 2006, as amended) (on file with the Williams Institute).
[478] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Mar. 18, 2004) (on file with GLAD).
[479] Charge of Discrimination Form, R.I. Comm'n on Human Rts. (Nov. 1, 2004) (on file with the Williams Institute).
[480] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (July 17, 2003) (on file with GLAD).

- In 2002, a science teacher came out to his colleagues and his principal began to harass him. As the harassment continued, the teacher became more depressed and anxious and began to stay out of school and then was fired.[481]

- In 2002, a teacher at a Rhode Island public school, who was gay, reported that several of his coworkers made anti-gay comments to him, such as "What, are you a homo?" "Where are your wife and kids?" and "We can't deal with this gay and lesbian shit." In response to his complaints, the teacher's classroom and teaching schedule were changed without notice, he was screamed at, and he was warned to "not get into a pissing match" with them. The teacher reported that he felt intimidated and was treated differently and passed over for other work opportunities because of his sexual orientation. After filing a complaint with his union and the school district, union officials and the principal wrote the teacher up for insubordination. The teacher spoke to someone in the Rhode Island Department of Education, but he feared that if he filed an official complaint, the Department of Education would take the school's side.[482]

- A lesbian public employee was harassed and subjected to discriminatory terms and conditions of employment by her supervisor. Since her supervisor learned of her sexual orientation, she has been treated in a demeaning and harassing manner.

[481] E-mail from Lee Swislow, Executive Director, GLAD, to Brad Sears, Executive Director, the Williams Institute (Sept. 16, 2009 8:08:00 PST) (on file with the Williams Institute).
[482] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Oct. 30, 2002) (on file with GLAD).

She was constantly questioned about time, work assignments, and her manner of dress and was the only employee not allowed to wear jeans to work.[483]

- A lesbian public employee was subjected to discriminatory terms and conditions of employment. The employee stated that her supervisor was jealous of her relationship with a female coworker and so harassed her and issued inappropriate disciplinary actions. The supervisor also harassed her outside of work, following her home and to her partner's house on numerous occasions.[484]

- A public employee was terminated and her supervisor stated that the reason for termination was that employee threw a snack at a patient. However, prior to termination, her supervisor told her that she would not tolerate the employee's homosexuality.[485]

40. South Carolina

- A lesbian police officer who reported in 2007 that when she applied to a police department in South Carolina, she underwent a routine polygraph exam and was asked if she was a lesbian. She responded truthfully that the answer was "yes." She thereafter was not selected for the position. She learned from references she had given that they had not been contacted.[486] She had quit the state police acad-

[483]Charge of Discrimination Form, R.I. Comm'n on Human Rts. (June 1, 1999) (on file with the Williams Institute).
[484] Charge of Discrimination Form, R.I. Comm'n on Human Rts. (Dec. 1, 1997) (on file with the Williams Institute).
[485] Charge of Discrimination Form, R.I. Comm'n on Human Rts. (Oct. 18, 1997) (on file with the Williams Institute).
[486] E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).

emy in another state to move to South Carolina, received a good reference from her former employer, and had a clean background and a degree.

- In 2006, a gay emergency medical technician was fired by a county department because of his sexual orientation.[487]

- In 1996, a junior high school teacher in Union County was suspended and put on probation for showing the Oscar-winning film *Philadelphia*, about a gay man with AIDS, to seventh and eighth graders. Parents and a local pastor complained that the film was vulgar and promoted homosexuality. The school superintendent criticized the teacher for not getting permission from the principal, the health committee, or the school board to show the film, but he did not agree that the teacher was trying to promote homosexuality. One of the parents who complained said she had not wanted the teacher suspended. "We felt like she owed an apology to those students and those parents," she said, stating that she will be satisfied if the school district prevents the showing of such films in the future.[488]

- An employee of the State Law Enforcement Division ("SLED") alleged that he was constructively discharged because of his perceived sexual orientation -- after allegations that he had slept with a co-worker's husband and was then harassing her at work.[489] The employee denied the allegations, but the court found that the truth or falsity of the basis upon which the employee was discharged "neither en-

[487] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[488] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 96 (1995 ed.).
[489] *Dawson v. State Law Enforcement Div.*, 1992 WL 208967, at *1-2 (D.S.C. April 6, 1992).

hances nor diminishes" his claim because he was gay.[490] The Court stated that it was not willing to extend the right of privacy to include the conduct at issue in this case, because such "activity clearly bears no relationship to marriage, procreation, or family life"[491] and held that homosexual conduct is not protected under the due process clause of the Fourteenth Amendment.[492] The Court also stated that "the constitutional right of privacy and free association do not preclude a law enforcement agency from inquiring into an officer's off-duty same-sex relationships."[493] Further, it stated that the employee's equal protection rights had not been violated because, in discharging the employee based on his perceived engagement in homosexual activity, SLED had the "legitimate purpose of maintaining its order, discipline and mutual trust."[494]

41. South Dakota

- A teacher was terminated after twenty-nine years of service because he answered a question about same-sex sexual activity during an annual question and answer session, which he was asked to lead by his school for over fifteen years, following a sex education video.[495] The South Dakota Supreme Court reversed the termination as arbitrary. Since 1980, the Faith School Board had made it a practice to contract with the community health nurse to provide sex education for elementary students. Following the sex education presentation, the boys then went to the

[490] *Dawson v. State Law Enforcement Div.*, 1992 WL 208967, at *5.
[491] *Dawson v. State Law Enforcement Div.*, 1992 WL 208967, at *6.
[492] *Dawson v. State Law Enforcement Div.*, 1992 WL 208967, at *1-2.
[493] *Dawson v. State Law Enforcement Div.*, 1992 WL 208967, at *5, *citing Walls v. Petersburg*, 895 F.2d 188 (4th Cir.1990).
[494] *Dawson v. State Law Enforcement Div.*, 1992 WL 208967, at *6.
[495] *Collins v. Faith Sch. Dist.*, 574 N.W.2d 889 (1998).

classroom for a question and answer session led by the teacher, as requested by the health nurse. The teacher was instructed to answer the boys' questions as honestly as possible and he continued to carry out what had been an established practice for fifteen years. During the session in 1995, one of the boys related that he had heard that two men could have sex and asked how this was possible. The teacher preceded his explanation with the disclaimers that this type of conduct is frowned upon, most people do not believe in it, and the boys would find it gross. He then described oral and anal sex in explicit language. In response to complaints by parents, a termination hearing was held and the teacher was terminated. The Supreme Court reversed, indicating that it was arbitrary for the Board to ignore the teacher's twenty-nine years of faithful service purely based on his indiscreet answer.

42. Tennessee

- In 2007, an employee of a state-supported women and children's center came out to colleagues as lesbian after she witnessed them ridiculing a lesbian client. They then started harassing her, including questioning her religious beliefs. She was later terminated.[496]

- Paul Scarbrough, a director/superintendent of schools for the Morgan County School Board, was not selected to continue in his position because of the public outrage that resulted after he was invited to speak at a church with predominantly gay and lesbian members. In early 2000, Scarbrough was asked by a friend to

[496] E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

speak at a convention held by a church. At the time, Scarbrough was unaware that the church had a predominately gay and lesbian congregation. Scarbrough agreed to consider the request, but ultimately was unable to accept the invitation and so declined. However, approximately a month later, a newspaper published an article announcing—incorrectly—that Scarbrough would be a speaker at the convention, which was sponsored by the church. After this article ran, school board members began receiving criticisms and concerns regarding Scarbrough continuing on as superintendent. The board members also questioned Scarbrough's judgment and thought the article undermined public confidence in Scarbrough. In response, Scarbrough provided written statements to two newspapers explaining the inaccuracies of the article and noting that while he did not endorse homosexuality, he would not refuse to associate with gay people. When Scarbrough was then not selected by the school board to continue as Superintendent/Director, he sued and won a judgment from the U.S. Court of Appeals for the Sixth Circuit.[497]

- The impact of Tennessee's state sodomy law on employment was mentioned several times in the state court case striking it down. In the opinion, the Tennessee Court of Appeals noted that the identity of one of the plaintiffs had been sealed "due to concern that he would be fired from his job if his violation of the [Homosexual Practices Act] became known to his employer."[498] Next, the court noted that the plaintiffs "believe they are threatened with prosecution for violations of

[497] *Scarbrough v. Morgan County Bd of Educ.*, 470 F.3d 250 (6th Cir. 2007).
[498] *Campbell v. Sundquist*, 926 S.W.2d 250, 253 n.1 (Court of Appeals of Tennessee, 1996).

the statute, which could result in plaintiffs losing their jobs, professional licenses, and/or housing should they be convicted."[499]

- Ray Bush, an inmate employee at a state facility, brought suit alleging discrimination based on his actual or perceived sexual orientation. Bush alleged that he was fired from his job in the facility kitchen because he was perceived to be homosexual, and that defendants subjected him to verbal abuse and slander, and placed him in fear of sexual assault because they believed him to be gay.[500] The Sixth Circuit upheld the trial court's dismissal of his claim for lack of a basis in law, stating that "[i]nmates have no constitutional right to a particular prison job and verbal abuse does not constitute punishment which is subject to Eighth Amendment scrutiny" and "mere defamation does not invoke the guarantee of procedural due process."

43. Texas

- In 2009, a lesbian public school teacher was subjected to a hostile work environment because of her sexual orientation.[501]

- In 2009, a public school teacher was censored for expressing pro-LGBT viewpoints.[502]

[499] *Id.* at 253.
[500] *Bush v. Potter*, 875 F. 2d 862 (6th Cir. 1989).
[501] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[502] *Id*.

- In 2009, a lesbian public school guidance counselor was subjected to a hostile work environment because of her sexual orientation and was censored for expressing pro-LGBT viewpoints.[503]

- In April 2008, the head of the Collin County's teen court program resigned under pressure after it was revealed that he was gay during his campaign for Plano City Council.[504]

- A federal court ruled that a transgender employee of a state agency could bring an employment discrimination claim alleging a hostile work environment by utilizing sex discrimination law.[505]

- Since 2007, a teacher at Keller Learning Center has been experiencing harassment based on his sexual orientation at his workplace. Approximately one year after he began teaching at Keller in 2006, a student asked him if he was gay. He truthfully answered "yes." The assistant principal, having heard about the conversation between him and the student, implored him to keep his sexual orientation a secret because his job would be in danger if he were "out" at work and he might also be in physical danger. In response, he wrote a letter stating that he felt it would be disingenuous and would work a disservice to the students if he acted like there was something shameful about being gay. Thereafter, three students were allowed to transfer out of his class and his request to conduct a diversity training was de-

[503] *Id*.
[504] Justin Nichols lost his race for City Council. Although he does not believe this loss was a result of his sexual orientation, the campaign against him and his supporters did at times focus on this fact. *See* John Wright, *Attack E-mail Implies Gay Candidate is Child Molester*, DALLAS VOICE, Mar. 28, 2008, *available at* http://www.dallasvoice.com/artman/publish/article_8481.php.
[505] *Trevino v. Center for Health Care Services*, 2008 WL 4449939 (W.D.Tex., Sept. 29, 2008).

nied. The discrimination makes him feel isolated at work and unable to interact with his colleagues.[506]

- In 2007, a code compliance inspector reported that after she designated her same-sex partner as a beneficiary for certain employment benefits, the officer administrator told everyone that she was a lesbian, after which she became a target for harassment and other negative treatment on the job.[507]

- In December 2004, the women's high school basketball coach in Bloomburg, who been named both "Teacher of the Year" in 2004 and "Coach of the Year" was placed on administrative leave and later dismissed after rumors started spreading around the town regarding her sexual orientation.[508]

- In 1997, two former employees of the Texas governor's office in Austin filed a lawsuit alleging that their former supervisor used hostile language to describe victims' assistance programs for homosexuals. The women were fired from the governor's Criminal Justice Division after complaining about abusive language and attitudes towards gays and lesbians by the division's executive director.[509]

- In a 1994 report, it was reported that the Dallas County Sheriff's Department suspended a bailiff after he was heard making derogatory remarks about a lesbian rape victim. The bailiff joked to the rapist's attorney that 'if it was me [on the

[506] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[507] E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, The Williams Institute (Feb. 11, 2009) (on file with The Williams Institute).
[508] NCLR, Employment Case Docket: *Stephens v. Bloomburg School District*, http://www.nclrights.org/site/PageServer?pagename=issue_caseDocket_stephens.
[509] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 100-101 (1997 ed.).

jury], I'd only give him 30 days for raping a lesbian.' A review board suspended the bailiff for ten working days and ordered him to undergo sensitivity training and apologize in writing to the woman.[510]

- Dallas police officers have twice sued the department alleging anti-gay discrimination. In both instances, in 1981[511] and 1993,[512] the police department asserted that state's sodomy law permitted it to discriminate based on sexual orientation.

44. Utah

- A bus driver employee of the Utah Transit Authority was terminated for being transsexual. Despite her spotless employment record, the bus driver was fired after she began living as a woman and using women's restrooms while on the job. The Transit Authority claimed that they terminated her because they were concerned that her continued employment could expose them to liability from other employees based on the plaintiff's restroom usage; however, no complaints had been made regarding her restroom usage. The transit authority told her that she would be eligible for rehire only after undergoing sex reassignment surgery. The bus driver filed suit in federal court, but the court rejected her argument that Title

[510] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 70 (1994 ed.).
[511] *Childers v. Dallas Police Dep't*, 513 F. Supp. 134 (N.D. Tex. 1981).
[512] *City of Dallas v. England*, 846 S.W.2d 957 (Tex. App. 1993).

VII sex discrimination claims could apply to transsexuals, construing the term "sex" to equate to biological sex at birth "and nothing more."[513]

- In 2007, a gay deputy sheriff was subjected to a hostile work environment based on his sexual orientation.[514]

- A tenured public school teacher and volleyball coach was removed from her coaching position by the school after she admitted to a player, in response to a direct and unsolicited question, that she was gay. When the player refused to play on the team, claiming discomfort because of the teacher's sexual orientation, the teacher was removed from her coaching position and informed that if she discussed her sexual orientation with anyone else, whether on or off-duty, she would face disciplinary action or termination with regard to her teaching position. The teacher sued, alleging discrimination and violation of her First Amendment rights. The court held that the school district had no rationally related basis for the plaintiff's dismissal, because outdated prejudices and vague claims of disruption without any evidence of actual disruption (aside from one student) did not constitute a rational basis under the Equal Protection Clause. The court ordered the District to rescind its gag order, remove certain letters from the teacher's file, pay her the $1,500 she would have been paid had she coached the team in the year in question, and appoint her to coach for the 1999-2000 school year. Following the federal court's decision, a local citizens' group calling itself "Citizens of Nebo School District for Moral and Legal Values" filed a lawsuit against the state seeking revo-

[513] *Etsitty v. Utah Trans. Auth.*, 502 F.3d 1215 (10th Cir. 2007).
[514] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

cation of her teaching license on grounds of moral unfitness. The plaintiffs alleged, in part, that the teacher violated the state's sodomy law and the certification requirement that teachers and psychologists possess good moral character. The Utah Supreme Court threw the case out of court because the plaintiffs raised no justiciable controversy.[515]

45. Vermont

- In 2008, a public school teacher who works with autistic children was harassed and ultimately terminated because he was gay. He filed a complaint with the attorney general's office.[516]

- In 2008, a teacher came out to a colleague and after this perceived a hostile work environment. The teacher tried to get the union to intercede on his behalf, but the union refused.[517]

- In 2003, a lesbian employee of the Vermont State Department of Corrections reported that a co-worker used derogatory language about her and another co-worker in regards to their sexual orientation. The employee filed a formal complaint, however there was no investigation.[518]

[515] *Weaver v. Nebo Sch. Dist.*, 29 F. Supp. 2d 1279 (D. Utah 1998); *Miller v. Weaver*, 66 P.3d 592 (Apr. 4, 2003).
[516] E-mail from Lee Swislow, Executive Director, GLAD, to Brad Sears, Executive Director, the Williams Institute (Sept. 16, 2009 8:08:00 PST) (on file with the Williams Institute).
[517] *Id*
[518] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Feb. 12, 2009) (on file with GLAD).

- In 2002, a transgender officer was told that the police chief was being pressured to run him off the force because he was transgender.[519] The officer began working at the Hardwick Municipal Police Department in April 2002. Shortly after he began employment, town officials doing an internet search on him found a website that described him as "transsexual." Based on the information, town officials presumed his inability to do the job. Following the dissemination of the information to senior police department personnel, he was subjected to a continuous pattern of harassment and inferior work conditions that became so severe he had to leave his job. In issuing its probable cause ruling, the Attorney General credited testimony of a former police chief that a town official had directed him to make the transgender officer so uncomfortable that he would leave the force. The Town of Hardwick settled the claim.[520]

- A judicial law clerk alleged that she was told, *inter alia*, that she may not wear buttons or affix bumper stickers to her car tending to indicate her sexual orientation, use her residence as a "safe home" for lesbians or gay men needing shelter, or write articles for a monthly newspaper serving Vermont's lesbian and gay population, because doing so violated Canon 6 which provides that "a law clerk should refrain from inappropriate political activity." She also alleged she was reprimanded for these activities, and that she was told that one or more violations would result in immediate dismissal. The Vermont Supreme Court dismissed her claim that Canon 6 was unconstitutional because the action should have first been

[519] GLAD Hotline Intake Form, Gay & Lesbian Advocates & Defenders, Report of Employment Discrimination (Sept. 9, 2002) (on file with GLAD).
[520] Press Release, GLAD, Vermont Attorney General Issues Landmark Ruling Prohibiting Discrimination of Transgender Employees (Apr. 23, 2004), *available at* http://bit.ly/1LIrql.

filed as a grievance under procedures designed to serve state employees and then been commenced in superior court.[521]

46. Virginia

- An employee of the Virginia Museum of Natural History, a state agency, was forced to resign because of his sexual orientation in 2009 shortly after receiving a positive evaluation that otherwise would have resulted in a raise. The Executive Director of the Museum expressed concerns that the employee's sexual orientation would jeopardize donations to the museum. A Virginia appellate court dismissed his sexual orientation employment discrimination claim because of the Virginia Attorney General's Opinion that the governor's executive order prohibiting such discrimination order did not create a private right of action. [522]

- In 2009, a lesbian public school teacher was subjected to a hostile work environment on account of her sexual orientation.[523]

- In 2009, a Virginia state agency retaliated against an employee for supporting a claim of discrimination based on sexual orientation by a gay employee.[524]

- A police officer reported in 2008 that she was harassed by her captain and made to work long shifts without breaks because of her sexual orientation. When she tried

[521] *Aranoff v. Bryan*, 153 Vt. 59 (1989).
[522] Va. Dept. of Hum. Res. Mgmt. O.E.E.S, Priv. Ltr. Rul. 0107-038 (Jan. 7, 2009); Final Order, *Moore v. Virginia Museum of Natural History*, No. 690CL09000035-00 (Va. Cir, June 15, 2009).
[523] E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).
[524] E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 16, 2009, 5:11:00 PST) (on file with the Williams Institute).

to leave and apply for another job, the captain accosted her future employer in a restaurant and announced that she was a lesbian.[525]

- In 2008, a Virginia state corrections psychologist, who was a lesbian, was subjected to a hostile work environment because of her sexual orientation.[526]

- In 2008, an athletic trainer at a Virginia state military academy was subjected to a hostile work environment on account of her association with lesbians.[527]

- In 2007, a gay public school teacher was subjected to a hostile work environment on account of his sexual orientation.[528]

- In 2006, a transgender scientist was not hired by a Virginia state agency on account of her gender identity.[529]

- An administrator of the City of Petersburg's Community Diversion Incentive Program was fired in 1986 for refusing to answer questions about her sexual orientation as part of a city background check. She had already been in her position for three years when she was asked to complete a questionnaire for the background check. When she initially refused, she was suspended without pay but then reinstated with back pay by the City Manager because he determined that her position did not require a background check. However, at the same time he changed city policy to require her to have a background check. When she again refused to an-

[525]E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).
[526] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[527] *Id*.
[528] *Id*.
[529] *Id*.

swer the question about whether she had had sex with someone of the same sex, she was terminated. In 1990, analyzing her claim under the United States constitutional right to privacy, with respect to the question about same-sex behavior, the 4th Circuit relied upon *Bowers v. Hardwick* in holding that she had no right to privacy with respect to this information although it did note that the relevance of this information was "uncertain."[530] In 2003, the United States Supreme Court held that *Bowers v. Hardwick* was wrong when it was decided in 1986.[531]

47. Washington

- In *Smith*, a 2008 complaint to the Washington State Human Rights Commission, a gay male alleged employment discrimination based on sexual orientation. An employee of WorkSource Thurston County, a state agency that provides resources to job-seekers, alleged that his supervisor had treated him differently ever since she became aware of his sexual orientation. This supervisor allegedly restricted his work hours and deprived him of support staff. Smith also alleged that another co-worker had made derogatory comments about his sexuality. The public employee alleged that he was asked if he had "personal relationships" with any of the customers that he served. The employee felt that he was being accused of soliciting sex from customers. He also alleged that he was being investigated for ethics violations concerning his partner's interview at this workplace, even though he took

[530] *Walls v. City of Petersburg*, 895 F.2d 188 (4th Cir. 1990).
[531] *Lawrence v. Texas*, 539 U.S. 558 (2003).

no part in the selection process. The administrative disposition of this case was unavailable.[532]

- In *Spring*, a 2008 complaint to the Washington State Human Rights Commission, a transgender female alleged employment discrimination and harassment based on sexual orientation and gender identity. An employee of the Washington Department of Social & Health Services, she alleged that in a new employee orientation, her supervisor asked "what's your real name? Robert or Roberta?" She also alleged that her supervisor did nothing when she reported that she was being harassed by other employees. When she went home because of illness one day, her supervisor allegedly yelled: "I'm sick of your excuses. Get off the island." The administrative disposition of this case was unavailable.[533]

- In a court case decided in 2008, an employee of the Snohomish County Center for Battered Women sued alleging that her supervisor created a hostile work environment by making racist and homophobic comments in violation of the state anti-discrimination law. The employee alleged that her supervisor once asked aloud why the domestic violence movement attracted so many lesbians and commented that she did not understand why "they" (the lesbians) "all had tattoos and dressed so poorly." This supervisor later transferred one lesbian woman from her position, stating that she dressed poorly. The Court of Appeals held that no hostile work environment existed, noting that "the supervisor's allegedly discriminatory

[532] Wash. State Hum. Rights Comm'n Complaint, *Smith v. WorkSource Thurston County*, No. 34Ex-0238-08-9 (Sept. 3, 2008).
[533] Wash. State Hum. Rights Comm'n Complaint, Spring v. Wash. State Dep't of Social & Health Svc's , Washington State Human Rights Commission, No. 27EX-0186-08-9 (Aug. 22, 2008).

comments were not sufficiently severe and pervasive to alter the terms and conditions of Pedersen's employment."[534]

- In *Collins*, a 2007 complaint to the Washington State Human Rights Commission, an employee of the Washington Department of Corrections alleged employment discrimination based on sex and sexual orientation. She alleged that she was subjected to hostile treatment by subordinate staff and colleagues because of her sexual orientation. She alleged that a colleague told other staff that she was a lesbian who "hated men" and that male members of her staff would not get ahead working for her. When she complained about this colleague's comments, she was told to "pick her battles wisely" and "take the high road." She also alleged that one supervisor suggested that she use the men's restroom instead of the women's and another challenged her ability to manage her subordinates.[535]

- In *Day*, a 2007 complaint to the Washington State Human Rights Commission, a lesbian cook and driver who worked at the Economic Opportunity Commission alleged discrimination based on sexual orientation. She alleged that after she questioned her supervisor about pay discrepancies in the workplace, her supervisor said "don't you make enough money for (name of her female partner)"? She alleged that she was treated differently by supervisors after this conversation. She

[534] *Pedersen v. Snohomish County Ctr. for Battered Women*, 2008 Wash. App. LEXIS 1040 (Wash. Ct. App. May 5, 2008).
[535] Wash. State Hum. Rights Comm'n Complaint, Collins v. Wash. State Dep't of Corr., Washington State Human Rights Commission, No. 34ESX-0319-07-8 (Oct. 20, 2007).

was moved to a different worksite, avoided by supervisors, and not given timely updates about trainings.[536]

- In *McGlumphy*, a 2007 complaint to the Washington State Human Rights Commission, a lesbian truck driver employed by the Washington Department of Social and Health Services alleged employment discrimination based on sex and sexual orientation. She alleged offensive and hostile environment in which employees were allowed to participate in making inappropriate comments about gays and lesbians. Her shift supervisor used the term "homo" and other employees made offensive jokes about a man stereotyped to be "gay." Her employment was terminated on January 5, 2007.[537]

- In *Hayes*, a 2007 complaint to the Washington State Human Rights Commission, a lesbian operations assistant for the City of Tieton alleged employment discrimination based on sexual orientation. She alleged that when the Mayor of Tieton discovered she was a lesbian, the Mayor forbade her from going to City Hall to collect mail, making copies, and also was forbade from meter reading. Her request for a pay raise was also denied. She was the fired on August 23, 2006 and the official reason given was that she lied about requesting time off.[538]

- In *Miller*, a 2006 complaint to the Washington State Human Rights Commission, an openly gay public safety officer at Washington University Harborview Medical

[536] Wash. State Hum. Rights Comm'n Complaint, Day v. Economic Opp. Comm'n, Washington State Human Rights Commission, No. 06EX-0647-06-7 (Feb. 26, 2007).
[537] Wash. State Hum. Rights Comm'n Complaint, McGlumphy v. Wash. State Dep't of Social & Health Svc's, Washington State Human Rights Commission, No. 27ESX-0610-06-7 (Feb. 9, 2007).
[538]Wash. State Hum. Rights Comm'n Complaint, Hayes v. City of Tieton, Washington State Human Rights Commission, No. 39EX-0365-06-7 (Oct. 30, 2006).

Center alleged employment discrimination and retaliation based on sex and sexual orientation. The officer was subjected to constant verbal harassment by an administrator. He was called a "faggot" and other demeaning remarks related to his sexual preference. He alleged that the administrator made several attempts to sabotage his employment. He lodged an internal complaint, but the administrator continued to supervise him.[539]

- In a case decided in 2005, one member of a couple who were volunteer firefighters brought suit when his application to be a full-time firefighter was rejected. The couple began living together in early 2003 and was married in Canada in 2004. He filed his claim not as a sexual orientation discrimination claim, but a claim that he had suffered sex discrimination in violation of Title VII. A United States District Court did not accept his argument, finding that any discrimination based on the relationship of the two men would be sexual orientation discrimination, which is not actionable under Title VII.[540]

- In 2001, a lesbian brought an action against her former employer, a public hospital district, for wrongful termination based on sexual orientation under 42 U.S.C. section 1983 and the federal equal protection clause. The plaintiff, Davis, and her co-plaintiff and her immediate supervisor, Nan Miguel, were both terminated for opposing the hospital's discriminatory treatment of Davis. The director of the radiology department at the hospital where Davis worked made several derogatory comments to her throughout the course of her employment. On a number of oc-

[539] Wash. State Hum. Rights Comm'n Complaint, Miller v. Univ. of Wash./Harbor View Med. Ctr., Washington State Human Rights Commission, No. 17EXZ-0876-06-7 (May 29, 2007).
[540] *Haladay v. Thurston County Fire Dist. No. 1*, 2005 WL 3320861 (W.D.Wash., Dec 7, 2005).

casions, he called her a "fucking faggot," a "fucking dyke," and a "queer." He also said "I don't think that fucking faggot should be doing vaginal exams and I'm not working with her." One time when she did not come to work, her department director remarked that it was gay pride week and "she was probably off marching somewhere." When her supervisor sent a memo to an administrator objecting to the department director's behavior, the hospital responded by reducing her hours to three-quarters time. She later filed a grievance against the hospital and copied information from patient files to show that her reduction in hours was the result of the department director's animus toward her. The hospital later fired her and Miguel. The Washington Court of Appeals held that she had raised material issues of fact with respect to whether the hospital and the doctor were "state actors" under section 1983 and remanded the case for trial on Davis's 1983 claims. The court refused to find, however, that her discharge violated a clear mandate of Washington public policy, which at that time did not have a state law prohibiting sexual orientation discrimination.[541] The hospital eventually settled with Davis for $75,000.[542]

- In 1997, a gay man brought an action against his employer alleging that he was unlawfully terminated based on his sexual orientation in violation of public policy and Seattle Municipal Code section 14.04.[543] He had been employed by Puget Sound Broadcasting Company as a radio host. On one occasion, the Company

[541] *Miguel v. Guess*, 112 Wn. App. 536, (Wash. Ct. App. 2002); *Miguel v. Guess*, 51 P.3d 89 (Wash. Ct. App. 2002).
[542] ACLU, *Following ACLU Lawsuit, Lesbian Illegally Fired from Washington Hospital Received Generous Settlement* (Oct. 8, 2003), http://www.aclu.org/lgbt/discrim/12359prs20031008.html.
[543] § 14.04 of the Seattle Municipal Code declares that it is the policy of the city of Seattle to "assure equal opportunity to all persons, free from restrictions because of ... sexual orientation ...." SEATTLE MUN. CODE § 14.04.

accused him of airing an abundance of shows with "gay themes" before they terminated him. The Washington Court of Appeals held for the Broadcasting Company, noting that the radio show host "did not cite any constitutional, statutory, or regulatory provision establishing that discharging an employee based on his sexual orientation contravened a clear mandate of public policy."[544]

- In 1996, a county firefighter was subjected to a hostile work environment based on his sexual orientation.[545]

48. West Virginia

- In 2009, a state employee was not allowed to use his sick leave to attend his partner's surgery because they were not legally married.[546] The West Virginia Public Employees Grievance Board denied his claim of sexual orientation discrimination, citing the "very specific" personnel regulations that provide that sick leave cannot be approved for an employee to attend to another person's medical care except for those family members listed in the policy.[547]

- A police officer for the Pineville City Police Department reported his harassment, physical assault, and termination in a 1996 book. When the officer's coworkers became suspicious about his sexual orientation, he was sent on calls without any backup. After he was tricked into disclosing his sexual orientation to a coworker, the coworker proceeded to hit him across the face with a night stick, breaking his

[544] *Webb v. Puget Sound Broad. Co.*, 138 Lab. Cas. (CCH) P58, 612 (Wash. Ct. App. Dec. 28, 1998).
[545] Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).
[546] West Virginia Grievance Board Database, http://www.state.wv.us/admin/grievance/Database (last visited Sept. 3, 2009).
[547] *Id.*

glasses and cutting his eye. When the officer asked him why he was being attacked, the co-worker responded, "You're a faggot." The next day, the officer was asked for his resignation, and when he refused, he was fired. The officer then filed a grievance against the city, which he won.[548]

- In 1983, the West Virginia Attorney General issued an opinion[549] that gay and lesbian teachers could be fired by their districts under a state law that authorized school districts to fire teachers for "immorality."[550] The Attorney General opined that homosexuality was immoral in West Virginia even though the state decriminalized same-sex sexual behavior in 1976. While the Attorney General said homosexuality must be shown to affect the person's fitness to teach, that could be shown if the teacher was "publicly known to be homosexual" as opposed to engaging in "private, discreet, homosexuality." He also noted that there were some jobs where "even such publicized sexual deviation" might not interfere with employment in the public sector, such as "university drama teacher(s)" and "custodians."

- A school teacher brought a discrimination suit against her school board in 1986 after she resigned under duress. Her resignation came after years of public and internal scrutiny following a rumor that she had been romantically involved with another female teacher and complaints from the community that her manner of dress was "too masculine." The school board asked her to appear and explain her

[548] ROBIN A. BUHRKE, A MATTER OF JUSTICE: LESBIANS AND GAY MEN IN LAW ENFORCEMENT 93-97 (Routledge 1996).
[549] 60 W. Va. Op. Atty. Gen. 46, 1983 WL 180826 *1 (W.Va.A.G.), Office of the A. G.,W. Va. (Feb. 24, 1983) ("Sexual Offenses: *A county board of education may dismiss a teacher who engages in sexually deviant conduct if the teacher's conduct substantially adversely affects his fitness to teach.*")
[550] CODE OF W. VA., Ch. 18A, Art. 2, § 8 (1931).

personal situation involving the other female teacher. She did, and assured them that she was not involved in any inappropriate behavior. Later, she was given an improvement plan that called for her to change her style of dress to something more feminine, something that the kindergarten students would "be comfortable with." Just prior to her resignation, approximately 400 people appeared to protest her continued presence in the classroom. According to the court, the public outcry arose because of the West Virginia Attorney General opinion which stated that a school board could use public reputation in the community to establish a teacher's homosexuality and could dismiss a "reputed homosexual teacher" for immorality. A trial jury was held and the jury returned a verdict for the board on Conway's claim of duress. The court of appeals affirmed.[551]

49. Wisconsin

- On March 23, 2005, an employee of the State of Wisconsin Department of Corrections filed an administrative complaint with the Department of Workforce Development (DWD) alleging that she had been discriminated against on the basis of her sexual orientation. The state settled with the employee in a private settlement with undisclosed terms.[552] The employee began to experience hostile treatment from an office mate when she joined the Psychological Services Unit at the Oshkosh correctional facility. The co-worker would abruptly leave the office when the employee would enter the office. After the pattern had persisted for several

[551] *Conway v. Hampshire County Bd of Educ.*, 352 S.E.2d 739 (W. Va. 1986).
[552] Order of Dismissal-Private Settlement-Confidential Terms, [Redacted] v. State of Wisconsin Department of Corrections, Wisconsin Department of Workforce Development, Equal Rights Division, ERD No. CR200500985 (May 3, 2006).

months, the co-worker approached the employee and told her that "something had been bothering [her] about [the employee]." She proceeded to tell her that the fact that the employee was in a relationship with another female made her "extremely uncomfortable" and she could not work around her. The co-worker began to treat the employee differently than the other employees, making it difficult for the employee to work in the office. The employee reported the co-worker's behavior to her supervisor, who agreed to handle the matter formally. However, the employee's complaint was never addressed. The co-worker's harassing behavior did not stop and the employee eventually suffered a breakdown for which she had to be placed on medical leave for nearly a month. Though the employee again requested that the matter be handled formally, a warden urged her to mediate instead. The mediation failed and no further action was taken by the employer.[553]

- On July 23, 2004, an employee of the State of Wisconsin Department of Health & Family Services filed an administrative complaint with the DWD alleging that he had been discriminated against on the basis of his sexual orientation. The state of Wisconsin settled with the employee, agreeing to let him tender a letter of resignation in lieu of termination and pay his legal fees in exchange for his promise not to sue.[554] At the time of filing, the employee had been a Public Health Educator for the HIV/AIDS program for two years. One co-worker made the employee's

[553] Discrimination Complaint, [Redacted] v. State of Wisconsin Department of Corrections, Wisconsin Department of Workforce Development, Equal Rights Division, ERD No. CR200500985 (Mar. 23, 2005).
[554] Settlement Agreement and Release, [Redacted] v. Wisconsin Department of Health & Family Services, Wisconsin Department of Workforce Development, Equal Rights Division, ERD No. CR 200403028 (Mar. 7, 2006).

work environment particularly difficult, often making derogatory comments to and about the employee, including calling him a "fag," "punk ass," "punk bitch," and "bitch." The co-worker also lodged complaints about the employee's work performance which were later found by a supervisor to be unsubstantiated. Co-workers complained that it was inappropriate for the employee to have a book about anal sex on his desk, which the employee was using to prepare for a work-related presentation about HIV transmission. The employee also was forced to take down a desk calendar of men in fitness clothes, while another male employee had a calendar of women in swimming suits at his desk and was not confronted. The Department ultimately terminated the employee alleging that he had been "disrespectful" to a co-worker during a meeting in which he voted against an event she proposed.[555]

- A heterosexual male professor at University of Wisconsin-Whitewater filed suit under Title VII, claiming he had suffered retaliation for complaining about sex discrimination, and claiming that as a heterosexual he suffered discrimination at the hands of the lesbians who were running his department. He also claimed that two straight women in the department were denied tenure because they were friendly with him. He asserted that the lesbians gave him a low merit pay raise and refused to allow him to teach some summer classes that he had taught in the past. University officials denied discrimination or retaliation, but the jury ruled

[555] Discrimination Complaint, [Redacted] v. Wisconsin Department of Health & Family Services, Department of Workforce Development, Equal Rights Division, ERD No. CR 200403028 (July 23, 2004). *Brown v. Wis. Dep't of Health & Family Serv.*, ERD Case No. CR200403028, EEOC Case No. 26GA401756.

for Albrechtsen on his retaliation charge, awarding him $250,000 for emotional distress, $43,840 for lost income, and $150,000 for legal fees.[556]

- In *Racine Unified School District v. Labor and Industry Review Commission*,[557] decided in 1991, the Racine school board enacted a policy that "excluded" all HIV-positive staff from regular attendance at work.[558] The DWD administrative law judge determined that the policy had a disparate impact on gay employees because: (a) seventy-three percent of persons with AIDS are homosexual and bisexual males; (b) one school board member was quoted in a local newspaper as saying he voted for the policy because "he did not believe that homosexuals should be allowed to teach in the school district"; and (c) no other school official attempted to retract that statement.[559] An appeals court reversed that holding[560] but found that the policy discriminated based on handicap.[561]

- A teacher filed a federal lawsuit against the Hamilton School District for failing to respond to severe harassment based on his sexual orientation from students, parents, fellow teachers and administrative staff during his tenure at the school from 1992 to 1995. He alleged that such harassment eventually resulted in a nervous breakdown that led to his termination. The middle school teacher said that he reported the harassment – including a death threat from a student – and sought to have the district's anti-discrimination policies enforced, but no action was taken. The incidents began soon after he disclosed to a few faculty members that he was

[556] LESBIAN & GAY L. NOTES (Summer 2001), *available at* http://bit.ly/1OELhH.
[557] 476 N.W. 2d 707 (Wis. Ct. App. 1991).
[558] *Racine*, 476 N.W.2d 707, 712 (Wis. App. 1991).
[559] *Racine*, 476 N.W.2d at 718.
[560] *Racine*, 476 N.W.2d at 719.
[561] *Racine*, 476 N.W.2d at 722-723.

gay. According to the lawsuit, constant verbal harassment with slurs like "faggot" and "queer" soon followed. The teacher said he began to seek professional help and repeatedly requested a transfer to another school, but "each request was either ignored or denied." The teacher further asserted that when he reported that a student threatened to kill him because he was gay, the associate principal told him that "[W]e can't stop middle school students from talking. Boys will be boys." The teacher accepted a transfer to an elementary school in 1996 despite his concerns that younger siblings of the same students attend the school. After the transfer, the harassment continued until he ultimately suffered a breakdown and resigned. Upon his resignation, the teacher filed a lawsuit alleging that the school district had violated his right to equal protection by failing to take reasonable measures to prevent further harassment after he reported such conduct to his supervisors. On summary judgment, the District Court held that he failed to raise a genuine issue of material fact and granted the motion in favor of the defendants. On appeal to the Seventh Circuit, the teacher argued that the defendants had "failed to address his complaints in the same manner that they handled complaints of harassment based on race or gender." The Seventh Circuit disagreed, finding that the evidence on record demonstrated that the school had actually made an effort despite limited resources. As such, Court of Appeals affirmed the summary judgment ruling in favor of the defendants.[562]

50. Wyoming

[562] *Schroeder v. Hamilton Sch. Dist.*, 282 F.3d 946 (7th Cir. 2002).

- Two lesbian school administrators from the Sheridan County School District were terminated after a student complained that they had been seen "holding hands and walking into a Victoria's Secret store."[563] The superintendent then spoke to the women individually about the allegations, angrily stating that he "knew all about" them. The women were known to be a couple. The following year the school underwent reorganization and both of their positions were eliminated. The women then applied to several job openings but were not selected for any of them. They filed suit alleging violation of their equal protection rights on the basis of sexual orientation. Following a trial on the merits, the jury found that the school superintendent had unconstitutionally discriminated against the women, awarding them $160,515 in damages. On appeal, the Tenth Circuit held that the superintendent was not the final policymaker for the district and, thus, the district could not be liable for his actions. The Tenth Circuit court further concluded that in 2003 discrimination on the basis of sexual orientation was not clearly established to be unconstitutional - as *Bowers v. Hardwick*[564] had not been overturned - and, therefore, qualified immunity protected the superintendent from personal liability.

- An employee of the Wyoming Department of Family Services alleged gender discrimination based on comments made by a supervisor about her perceived lesbianism. She originally framed her claim as one of discrimination and retaliation under Title VII of the Civil Rights Act, alleging that she was subjected to a hostile work environment because of her supervisors' misapprehension that she was gay. She subsequently altered her claim to allege that she was discriminated against

[563] *Milligan-Hitt v. Bd. of Tr. of Sheridan County Sch. Dist. No. 2*, 523 F.3d 1219 (10th Cir. 2008).
[564] 478 U.S. 186 (1986).

"because her personal characteristics did not conform to those that her supervisors believed to be appropriate for a woman in society."[565] The District Court granted summary judgment to defendants, holding that "[s]exual orientation is conspicuously and intentionally absent from the list of protected categories under Title VII," and that "[r]ecasting allegations of homophobia as 'sex stereotyping' does not of itself bring the action under the purview of the Civil Rights Act."[566] The Tenth Circuit affirmed the decision, and the U.S. Supreme Court denied the employee's writ of *certiorari*.[567]

51. Puerto Rico

- In 2009, a longtime municipal co-worker in San German brought suit against the town after being mercilessly harassed by co-workers based on his sexual orientation. When he first complained of the treatment several years earlier, his supervisors transferred him to an inferior position where he was subject to further harassment by other co-workers and began to suffer from panic attacks and anxiety. The town's mayor, who worked with the supervisor to reassign the employee, stated at the time of the transfer that the employee's sexual orientation was the real problem—not those responsible for the harassment. When he brought suit against the town, the federal district court dismissed his case because discrimination based on sexual orientation is not federally prohibited. The court further determined that, even though the employee alleged sex discrimination, he failed to

[565] *Brockman v. Wyoming*, No. 00-cv-0087-B, slip. op. (D. Wyo. May 9, 2001).
[566] *Id.*
[567] *Brockman v. Wyoming*, 342 F.3d 1159, 1169 (10th Cir. 2003), *cert. denied*, 540 U.S. 1219 (2004); *Brockman v. Wyoming Dep't of Family Serv.,* 478 U.S. 186 (1986).

state a claim because he offered only evidence that the discrimination was based on his sexual orientation rather than evidence of sex stereotyping.[568]

- The First Circuit upheld the District Court decision to declare unconstitutional a police department regulation barring officers from associating with homosexuals. The First Circuit noted in its decision that the policy had a chilling effect on First Amendment rights even if, as the Commonwealth claimed, it was an unenforced policy. The court cast doubt on the Commonwealth's assertion that the policy was a dead letter, observing that the case history revealed a bitter fight on part of the Commonwealth to maintain the policy, including an offer to rewrite the regulation to prohibit association with "persons of dubious reputation."[569]

[568] *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009).
[569] *Gay Officers Action League v. Puerto Rico*, 247 F.3d 288 (1st Cir. 2001).