

# THERE OUGHT TO BE A LAW!

## The Intolerable Reality of Day-To-Day Workplace Discrimination Against Lesbian, Gay, Bisexual and Transgender Americans

The following summarizes just a few of the egregious situations presented in sexual orientation employment discrimination cases that failed due to lack of availability of a law to protect LGBT people in the workplace. In each of these cases, the court held that the gay employee had no legal claim under Title VII, the federal law that forbids employment discrimination nationwide based on race, sex, national origin and religion. Shocking as it is to many, only a minority of states in America today have laws clearly outlawing the outrageous abuses reported in these cases. The early dismissal of each of these cases means that the employees were denied the right to tell a jury their stories. Also, these examples are drawn from court decisions, which resulted only because these workers were able to find lawyers to help them seek some measure of fairness through legal action. The Help Desks in our five offices collectively receive over 1,000 calls annually from people with employment-related problems, a great many of whom cannot find any legal representation because federal law is so grossly inadequate. As you review these summaries and shake your head in disgust, you'll probably agree: There oughtta be a law!

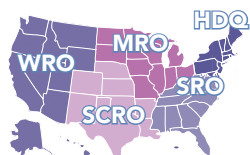
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### Christopher Vickers

Christopher Vickers worked as a private police officer at the Fairfield Medical Center in Lancaster, Ohio. *Vickers v. Fairfield Medical Center*, 453 F.3d 757, 759 (6th Cir. 2006).

He was subject to daily harassment for a ten-month period. *Id.* The harassment included “impressing the word ‘FAG’ on the second page of Vickers’ report forms, frequent derogatory comments regarding Vickers’ sexual preferences and activities, frequently calling Vickers a ‘fag,’ ‘gay,’ and other derogatory names, playing tape-recorded conversations in the office during which Vickers was ridiculed for being homosexual, subjecting Vickers to vulgar gestures, placing irritants and chemicals in Vickers’ food and other personal property, using the nickname ‘Kiss’ for Vickers, and making lewd remarks suggesting that Vickers provide them with sexual favors.” *Id.*

When Vickers and another officer were conducting handcuff training, a third officer handcuffed Vickers and then simulated sex with Vickers while Vickers’ supervisor photographed this incident. *Id.* at 759. The wife of one of the officers faxed the picture to Vickers’ place of work, where several people saw it. *Id.* at 760. “On other occasions, Vickers’ co-workers repeatedly touched his crotch with a tape measure, grabbed Vickers’ chest while making derogatory comments, tried to shove a sanitary napkin in Vickers’ face, and simulated sex with a stuffed animal and then tried to push the stuffed animal into Vickers’ crotch.” *Id.*

### Harry Kay

Harry Kay worked for over seven years as an analyst for Independent Blue Cross in eastern Pennsylvania. *Kay v. Independence Blue Cross*, 2003 WL 21197289 \*\*1-2, 91 Fair Empl.Prac.Cas. (BNA) 1559 (E.D. Pa. 2003). He experienced harassment from many of his fellow employees. One co-worker stated, “Did you see that fag that moved up on the floor yesterday?” *Kay v. Independence Blue Cross*, 142 Fed. Appx. 48, 50 (3d Cir. 2005). Another co-worker said, “You are just so gay,” expressing happiness that there were “real men” on the floor. *Id.* at 50-51. Co-workers circulated a petition stating: “If you want this queer off the floor, sign here.” *Id.* at 51. Kay received a note stating: “Stop staring at me, you faggot;” and a flyer for a gay sex phonenumber which included the phrases: “GAY! GAY! GAY!” and “A real man in the corporate world would not come to work with an earring in his ear. But I guess you will never be a ‘real man’!!!!!!” *Id.* Lastly, the voice messages that Kay received included the terms, “faggot,” “fem,” and “ass wipe.” *Id.* While the Third Circuit expressed shock at what Kay endured, the court stated that its hands were tied by the limitations of Title VII: “[T]he conduct Kay alleges is nothing short of reprehensible and we would hope that no employer would knowingly tolerate the work environment that Kay claims he had to endure. However, our reach is limited by the scope of Title VII.” *Kay*, 142 Fed. Appx. at 51 n.4.

## Edison Spearman

Edison Spearman, a black gay man, worked at a Chicago Heights Ford plant for seven years before encountering relentless harassment from coworkers. Spearman v. Ford Motor Co., 231 F.3d 1080, 1082 (7th Cir. 2000). It began when one co-worker called Spearman a “little bitch,” told him that he hated his “gay ass,” and threatened to go to Spearman’s residence in Indiana and “f--- [his] gay faggot ass up.” Id. Spearman discovered graffiti on the bulletin board that stated: “Aids kills faggots dead •• RuPaul, RuSpearman.” Id. at 1083. Another co-worker said to Spearman, “You f---ing jack-off, pussy-ass,” and saluted Spearman with his middle finger. Id. Spearman discovered more graffiti outside a portable toilet that stated: “Ed Sperman [sic] is a fag and has AIDS” and “Edison Sperman [sic] is gay.” Id. Also, the instructor at a department meeting about sexual harassment, gave the following hypothetical portraying Spearman as a sexual aggressor: “Say for instance, Greg and Ed are in the back bringing in a coil, and Ed touches Greg in a way that made him feel uncomfortable, that can be a charge of sexual harassment.” Id.

## Dwayne Simonton

Dwayne Simonton was a postal worker in Farmingdale, New York for twelve years, receiving satisfactory to excellent performance reviews. Simonton v. Runyon, 232 F.3d 33, 34 (2d Cir. 2000). The court hesitated to detail “the appalling persecution” at issue in the case for “sake of decency and judicial propriety,” but did set forth “some, but not all” of Simonton’s contentions. Id. at 35. Simonton’s co-workers repeatedly said to him, “go fuck yourself, fag,” “suck my dick,” and “so you like it up the ass?” Id. Notes were placed on the wall in the employees’ bathroom with Simonton’s name and the name of celebrities who had died of AIDS. Id. Pornographic photographs were taped to his work area, male dolls were placed in his vehicle, and copies of Playgirl magazine were sent to his home. Id. Pictures of an erect penis were posted in his work place, as were posters stating that Simonton suffered from mental illness as a result of “bung hole disorder.” Id. There were repeated statements that Simonton was a “fucking faggot.” Id. The court said that, although “[t]here can be no doubt that the conduct allegedly engaged in by Simonton’s co-workers is morally reprehensible whenever and in whatever context it occurs, particularly in the modern workplace. . . . Title VII does not prohibit

harassment or discrimination because of sexual orientation.” Id.

## John Bibby

John Bibby had been working for Coca-Cola for 15 years in Philadelphia when he was assaulted in a locker room by a co-worker. Bibby v. Philadelphia Coca Cola Bottling Co., 260 F.3d 257, 259 (3d Cir. 2001). The co-worker “told Bibby to get out of the locker room, shook his fist in Bibby’s face, grabbed Bibby by the shirt collar, and threw him up against the lockers.” Id. On another occasion, Bibby was at the top of a set of steps working at a machine when the same co-worker slammed the load of pallets under the stairs, blocking Bibby’s exit from the platform on which he was standing. Id. The co-worker refused to remove the pallets even when ordered by a supervisor. Id. The co-worker called Bibby a “sissy” and repeatedly yelled at Bibby that “everybody knows you’re gay as a three dollar bill,” “everybody knows you’re a faggot,” and “everybody knows you take it up the ass.” Id. at 259-60. The court apologized for having to repeat “such gratuitously crude language in our opinions.” Id. at 260 n.3. The court said that, while “[h]arassment on the basis of sexual orientation has no place in our society, . . . there was no cause of action under Title VII.” Id. at 265.

## Robert E. Higgins

Robert E. Higgins worked for ten years on the production line at the New Balance shoe factory in Norridgewock, Maine, receiving generally positive reviews. Higgins v. New Balance Athletic Shoe, Inc., 194 F.3d 252, 257 (1st Cir. 1999). “Co-workers would constantly holler, swear, and otherwise verbally demean him.” Higgins v. New Balance Athletic Shoe, Inc., 21 F. Supp. 2d 66, 69 (D. Me. 1998). A co-worker, on numerous occasions, addressed Higgins with statements such as “You eat the shit out of men’s ass-holes,” “You faggot,” and “You fag.” Id. That co-worker also placed a sign on Higgins’ desk that read “Blow jobs. 25 cents.” Id. Another co-worker often referred to Higgins as “faggot,” “you dumb fuck,” and “you stupid fuck.” Id. Other employees expressed distaste for working with Higgins with comments like “he’ll give us AIDS.” Id. One day, while Higgins stood at a urinal in the restroom, a different co-worker came up behind him, shook him violently, and said “I’ll kill you.” Id. Many of these incidents occurred either in the presence of, or within earshot of, Higgins’ production team

supervisor. Id. Higgins repeatedly reported these incidents to the supervisor and to the Human Resources Office, but no action was ever taken despite the existence of an internal corporate anti-harassment policy prohibiting harassment based on sexual orientation. Id.

“The record makes manifest that the appellant toiled in a wretchedly hostile environment. That is not enough, however, to make his employer liable under Title VII.” 194 F.3d at 258. “We hold no brief for harassment because of sexual orientation; it is a noxious practice, deserving of censure and opprobrium, . . . [but] Title VII does not proscribe harassment simply because of sexual orientation.” Id. at 259.

## Ernest Dillon

Ernest Dillon worked as a mail handler at the Bulk Mail Center at Allen Park, Michigan for eight years. Dillon v. Frank, 952 F.2d 403 (Table), 1992 WL 5436 \*1, 58 Fair Empl. Prac.Cas. (BNA) 144 (6th Cir. 1992). A co-worker began calling Dillon “fag,” and saying that “Dillon sucks dicks.” Id. This co-worker continued to harass Dillon “for five months, culminating in a physical assault . . . in which Dillon suffered numerous injuries.” Id. Although this co-worker was fired, “[w]hat had begun as a one-man band expanded into a full orchestral assault of verbal abuse.” Id. The court stated, “Graffiti, the last refuge of the courageous, appeared on conveyor belts and Dillon’s loading trucks informing the mail center that ‘Dillon sucks dicks’ and ‘Dillon gives head.’” Id. Dillon endured these circumstances for three years before he finally resigned in 1988 upon advice from his psychiatrist. Id. Dillon complained to eight different supervisors, and two union representatives. Id. “Management allegedly did nothing more than admonish the harassers, and hold meetings detailing the policy against sexual harassment in place at the center. Dillon alleges that management finally threw up their hands in despair, telling Dillon not to waste their time with his complaints and to fight back when taunted.” Id.

Fairness and equal opportunity in employment are fundamental American principles and they should apply to all Americans. It’s important for Congress to act now to approve the federal Employment NonDiscrimination Act to make clear that people should not be discriminated against in the workplace based on sexual orientation or gender identity.

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