

THE "GLASS CEILING" - HAS IT PREVENTED EMPLOYMENT TO YOUR FULL POTENTIAL?

By: Nathan Davidovich

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Have you been the victim of artificial barriers in your employment which have prevented you from receiving the promotions and salary to which you are entitled? Have you felt that, as a woman, you have been allowed to advance only so far in your company, despite your proven abilities? Have you stood by, helplessly, and watched as male and other non-minority co-workers have been promoted past you? If your responses to these questions were affirmative, you are not alone.

WHAT IS A GLASS CEILING?

"Glass ceiling" is a term that describes the artificial plateau, beyond which women and other minorities are denied the opportunity to advance to upper levels of executive management in corporate America. It has become a routine practice to deny thousands of qualified women the top level jobs, merited by their performance. Department of Labor studies have found that women hold only a small percentage of senior management positions in Fortune 500 companies. Although women comprise 47% of the U.S. labor force, only 36% are corporate officers and executives. The "glass ceiling" barriers toward women are nothing but an insidious form of sex discrimination, in violation of law. The purpose of this article is to raise the consciousness of both women and corporate America to the prevalence of this practice, and to summarize the steps that should be taken by victims of this practice. **This article is not designed to provide legal advice or render legal opinions for specific situations. The law in other states may vary from Colorado on these issues. For specific legal questions, contact the attorney of your choice. If you wish to consult with the author on any matter relating to Colorado employment issues, you will be advised of the fee basis for such consultation.**

EFFORTS TO END JOB DISCRIMINATION

In its efforts to reduce employment barriers faced by women and other minorities, the United States Government has experimented with a number of different methods. Prior to the passage of the Civil Rights Act of 1964, the government relied on voluntary action by employers, with no evidence of any success. The major change wrought by the Civil Rights Act of 1964 was to allow private litigation. This was greatly expanded by the Civil Rights Act of 1991, amending the former act. These acts allowed every potential victim of discrimination to be both a monitor of employment practices and a means of enforcing compliance.

LARGE JURY VERDICTS MAY BE A DETERRENT

In recent years, where victims of discrimination have been able to prove the requisite intent to discriminate, they have obtained record settlements and judgments under Title VII of the Civil Rights Act of 1964. Such judgments demonstrate the concern by juries of the continuation of "glass ceilings" in American companies. Experience has shown that the most efficient method of changing unlawful employment practices is to make such practices cost-prohibitive. The 1991 Civil Rights Act is on the road toward accomplishing that objective through the collective voice of juries across the country.

WHAT IS SEXUAL HARASSMENT OR DISCRIMINATION?

Sexual discrimination is any harassment or other unequal treatment of an employee or group of employees that would not occur but for the sex of the employee or employees. If the treatment follows a sufficient and pervasive pattern, it may comprise an illegal condition of employment under Title VII. Contrary to the mistaken belief held by many people, sexual harassment, or other unequal treatment of an employee or group of employees that occurs because of the sex of an employee, need not take the form of sexual advances or of other instances with clearly sexual overtones, in order to constitute unlawful discrimination. In the "glass ceiling" context it takes the form of favoring advancement of males over females, when the qualifications are substantially equal.

There are two distinct types of sexual harassment prohibited by Title VII. One is quid pro quo harassment where one's employment benefits are conditioned upon engaging in sexual activity. The other is hostile environment sexual harassment. This involves conduct that on an objective basis, creates an abusive work environment. Examples would be a pervasive pattern of different treatment of women (often seen in the "glass ceiling" context), comments derogatory to women, or display of sexually oriented objects. In both cases the activity must be unwelcome and objectionable to be violative of Title VII. Claims of gender discrimination are evaluated in the context of the employment environment and whether the employee contributed to the problems of which complaint is made.

PROOF OF "GLASS CEILING" DISCRIMINATION

"Glass ceiling" cases are difficult to prove. It is equally difficult to establish the necessary pattern of discrimination. It is the rare plaintiff who will be able to prove, with corroboration, that a company executive has stated that a woman is not moving ahead because of her sex. Most cases are dependent on circumstantial evidence which examines a number of different factors, such as derogatory statements toward women or minority employees, which are pervasive, in the workplace, and comparison of qualifications between the non-promoted woman and the successful male candidate. You need to examine your job situation in light of the laws against sexual discrimination, and see if facts exist which raise questions in your mind as to whether "you have gone as far as you can go" only because you are a woman.

If you suspect that you have been a victim of "glass ceiling" discrimination it is critical that you promptly contact an experienced employment attorney for an opinion. There are serious time limits to bringing such actions, and valuable evidence may be lost with the passage of time.

PROCEDURAL STEPS TO PRESERVE YOUR TITLE VII CLAIM

In order to obtain the right to sue in Federal or state court you must first file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). That charge must be filed within 180 days of the alleged act of discrimination. Many states, such as Colorado, have a law which prohibits sex discrimination in employment and authorizes a state agency to grant relief. In such cases, the charge must be filed, with the EEOC, within 300 days of the last act of discrimination, or sooner in certain instances. If you do not file an EEOC charge within the required time period, you will probably be prevented from further pursuing your rights. A lawsuit on a sex discrimination claim must be filed within ninety days of receipt of a Right to Sue Letter from the EEOC. If the EEOC has not completed its investigation in the 6 month period following the filing of the charge, you may request a Right to Sue Letter. Failure to follow the required time periods may cause you to lose your rights to seek a remedy for sex discrimination under Title VII.

Because of the intricacies of the various time barriers, it is most important to consult with an experienced employment lawyer, who will be able to guide you through this maze. I make this recommendation despite the fact that you do not need a lawyer to file a charge with the EEOC. However, my experience has taught me that it may be a serious mistake to try to proceed on your own, even as to the initial filing of a charge. If you fail to include certain allegations, you may be prevented from bringing them up in a later lawsuit.

AMOUNT OF RECOVERY

Under Title VII, an employee who has been a victim of "glass ceiling" sex discrimination, may recover back wages and benefits, that would have been earned, but for the failure to promote, reinstatement to the position to which she should have been promoted, front pay, if reinstatement is not possible, compensatory damages for emotional trauma, and attendant physical suffering, punitive damages, attorney fees and court costs. Depending on your individual circumstances, you may be entitled to additional recoveries under state, rather than Federal, law.

CONCLUSION

There are many more intricacies involved with "glass ceiling" and sex discrimination cases than have been discussed in this article. Learn more about protecting your rights by selecting a competent lawyer to represent you.

[Nathan Davidovich](#) practices employment law in the state of Colorado, and either he, or one of his associates, is available for consultation on any matters arising in the state of Colorado. Please contact Nathan Davidovich by email at nathandavidovich@talk-law.com , by telephone at (303) TALK-LAW / (303)825-5529.

Nathan Davidovich, Attorney at Law, 219 S. Holly Street Denver, Colorado 80246
Phone: 303-825-5529 / (303) TALK-LAW