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Job bias persists

Illegal for 40 years, workplace discrimination is common here

By Ben Rand  
*Democrat and Chronicle*



AIMEE K. WILES

Marion Heinemann, at her home in Rochester, remains unemployed as she wages a discrimination suit against money management company Howe & Rusling. She worked there as a portfolio manager until August 2001, when she was fired. [[Day in Photos](#)]

(January 12, 2003) — The stockbroker stiffened at the words, frozen to her chair in disbelief and rage.

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Had she really heard what she thought she heard?

Her boss had just told her that he liked to check whether clients had a "problem" working with a female portfolio manager.

"Of course, I always ask," Marion Heinemann recalls him saying.

And she recalls her response: "What if I were black? Or in a wheelchair? You can't do that."

He later apologized and promised to stop. But according to Heinemann's federal lawsuit against her employer, Howe & Rusling Inc., this would not be the last time the 57-year-old would feel the sting of discrimination at the Rochester company.

Heinemann, of Rochester, claims that her bosses purposely gave her less lucrative accounts, assigned her almost exclusively to female clients, belittled her for complaining and paid her less than male counterparts, according to court papers. In August 2001, Howe & Rusling fired her.

It was a painful loss of innocence for the broker, who says she knew discrimination existed but figured "it was in the past."

On the contrary. Workplace discrimination of all sorts -- race, sex, disability, age and more -- remains a potent force at companies across the six-county region, almost 40 years after Congress first made it illegal.

Such cases are generating an escalating -- and often hidden -- cost for companies, their employees and society, according to an ongoing investigation by the Democrat and Chronicle.

Discrimination forces businesses to spend small fortunes on legal fees and internal investigations, liability insurance, anti-harassment and diversity training, increased turnover, lost productivity, lost sales and more.

The total costs may be incalculable, experts say. But here's one small barometer: Over the past decade, the Equal Employment Opportunity Commission has persuaded U.S. companies to pay \$1.7 billion to settle nearly 900,000 complaints of discrimination. Rochester's share: \$3 million to resolve 143 complaints involving 510 people.

Employees victimized by discrimination report increased stress and other emotional problems

and mounting financial difficulties. Their colleagues and alleged perpetrators also face on-the-job distractions and potential damage to their reputations.

The struggle to curb discrimination could get even tougher with the economy mired in a three-year slump. During times of economic weakness, there are fewer jobs to fill, fewer promotions to make and less money for diversity and anti-harassment training.

The *Democrat and Chronicle* began looking into the prevalence of discrimination after workers at Kodak and Xerox Corp. -- Rochester's largest and third-largest employers, respectively -- made a series of alarming complaints about racial and sexual harassment in the workplace.

The newspaper's investigation coincided with a historic expansion of New York's anti-discrimination laws. Gov. George Pataki last month signed a bill that makes it illegal for employers and others to discriminate on the basis of someone's sexual orientation.

After conducting more than two dozen interviews and reviewing statistics, court documents, sociological studies and other information, the newspaper also found that:

- Women and minorities here stand a good chance of losing out on job opportunities simply because of who they are. About one-third of businesses in the Rochester region

discriminate against women; two-fifths are biased against minorities, according to a Rutgers University study. Both rates are among the highest in New York and above the national average.

- Complaints of discrimination are on the rise. In 2001, employees in the Rochester region filed 319 charges of discrimination with the EEOC, up 251 percent in 10 years. Statewide, complaints increased 89 percent; nationwide, 39 percent.
- Minority employment in Rochester grew 16 percent between 1991 and 2000, a slower rate than other parts of the country. Minority employment statewide grew 21 percent; nationwide, 31 percent.
- Senior-level positions remain largely unreachable for minorities here. White people in the Rochester region control about 90 percent of jobs as officials, managers and professionals, the highest-paid job categories monitored by the EEOC. In New York and the nation as a whole, the number is 78 percent.
- Companies, particularly the largest employers, are getting more aggressive about rooting out bigotry and creating an environment that encourages employees to come forth with complaints. For example, Kodak Chief Executive Officer Dan Carp has vowed to make an equitable workplace as fundamental to Kodak as the ability to manufacture film.

Such efforts to diversify, however, are sometimes met by a backlash from white workers who believe that they are now being discriminated against. That backlash compounds the problem of discrimination in the local work force -- which is "pervasive," says the Rev. Norvel Goff, president of the Rochester chapter of the National Association for the Advancement of Colored People.

"What you have are individuals who support the status quo," Goff said. "It's, 'We've always done

it this way. We don't need to rock the boat.' This is not restricted to any color or another or gender or another.'"

**Pervasive problem** No single statistic or report or study fully describes how pervasive the problem is, either locally or nationwide. But many hint at it.

In the last 10 years, an estimated 2,000 people in the Rochester region filed complaints with the EEOC. That's about 6 percent of the state's total.

The list of employers named in complaints also illustrates the scope. Start with Kodak, Xerox and Bausch & Lomb. From there, the list grows: Bath National Bank, Canandaigua Wine, the Strathallan Hotel, Ultralife Batteries, Rochester Telephone, the American Red Cross, the Catholic Diocese of Rochester, Schlegel Corp., Bryant and Stratton, Hickey Freeman Co., the city of Rochester, Coopervision Inc., Irondequoit Dodge, the Democrat and Chronicle -- and many more.

Only a small percentage of complaints survives the scrutiny of companies, lawyers and judges. But the mere fact that they exist creates problems for employees, businesses and society.

Heinemann and her lawyer argue that her experiences at Howe & Rusling made it hard for her to do her best possible work as a portfolio manager.

Howe & Rusling, one of the area's first money management firms, denies that it discriminated against her. The company said it could not comment further because the case is pending.

Heinemann moved from Texas to join Howe & Rusling in 1999 after about a decade there as a stockbroker. She later learned she was the first female hired into the firm's professional staff, which includes portfolio managers.

It went OK for a few months, until she had that disturbing conversation with her boss. She

complained but says she got an unsatisfactory, almost sarcastic response. The company's executive committee "agreed not to tell plaintiff in the future that clients did not like working with women," according to her lawsuit.

But the screening didn't stop, according to the lawsuit. Heinemann says she later heard similar stories from a client.

Since her firing, Heinemann says, she has supported herself by liquidating her retirement savings. The single woman has also put her Rochester home up for sale.

Heinemann says she has struggled to figure out why the company would hire her, only to turn around and immediately start to mistreat her. "I think they had a definite idea about the role a female in finance could play," she said. "It was just so 1950s."

Other claims of discrimination are about more hostile behavior.

Two women who used to work in marketing for Frontier Corp., later purchased by Global Crossing Ltd., are accusing a supervisor of making explicit sexual remarks and touching them inappropriately. In one instance, the women claim, the manager unzipped the dress of an employee, exposing her undergarments to the office. The case is pending. Global Crossing declined to comment on specifics.

And a group of Kodak employees has complained about racially hostile acts, such as a Confederate flag hung in a part of Kodak Park heavily populated by African Americans, racial slurs painted on the wall, and a drawing of a noose appearing to show the hanging of a person of color.

Employees making such complaints talk of experiencing enormous stress, both in the workplace and at home. Darrick Adams, a manufacturing worker at Kodak, said he was going home angry and taking it out on his family. He later

went on leave to be treated for depression. The company eventually fired him in a dispute over paperwork asking for family and medical leave, a move he says was in retaliation for his initial complaints.

Adams remains out of work and trying to make sense of a career derailed. He sued Kodak in the fall of 2001; that case was settled last month for an undisclosed amount.

Kodak declined to comment on this or other cases.

Adams rejected a prior settlement offer when he was still working for the company because it would have required him to resign -- an added insult, he says. "For taking a stand against discrimination, the company was asking us to leave."

The local examples are part of a larger problem that extends to companies nationwide. Coca-Cola Co. and Texaco Corp., for instance, each have paid African-American workers close to \$200 million over the past five years to settle lawsuits alleging unfair pay and promotion policies.

In the past year, the EEOC has either filed lawsuits or settled cases against well-known companies such as General Electric Co., Wal-Mart Inc., Kraft Foods North America, Alamo Car Rental, Honeywell, Foot Locker and others.

### **Uphill battles**

The biggest obstacle to workplace equality remains getting in the door. Women, African Americans, Hispanics, Asians and Native Americans face an uphill battle trying to get hired in the six-county Rochester region, according to the Rutgers University study.

An estimated 30 percent of local companies discriminated against women; 42 percent did so against minorities, the study showed.

Those findings are based on a complex statistical

analysis of employment data supplied to the EEOC in 1999.

The Rutgers study, *Intentional Job Discrimination in Metropolitan America*, compared the racial and gender makeup of about 6,000 U.S. employers to averages for their individual industries and geographic areas. An estimated 800 Rochester companies were included.

With those comparisons in hand, the authors then applied a statistical test established by the U.S. Supreme Court in 1977. The court holds that a company is guilty of illegal discrimination when it employs minorities or women at a below-average rate -- so far below there is little chance it happened by accident, said Alfred Blumrosen, a Rutgers professor and former EEOC official who co-authored the study with his wife, Ruth. The study was funded by the Ford Foundation.

The study's methodology has drawn fire. Critics say that statistics alone cannot show intent. In trying to use numbers in that way, the study presumes companies are guilty without additional evidence of discriminatory acts.

Blumrosen's response: His findings are not meant to suggest that companies are acting with evil intent -- only that the statistics are so far off the norm they couldn't have gotten that way accidentally.

The largest local employers say that they do not discriminate intentionally and that they are committed to change. Kodak, Xerox and B&L, for instance, all have programs designed to diversify their companies, provide fair chances at promotions, investigate complaints and weed out and punish bigots.

Xerox maintains an executive diversity council designed to promote employment fairness companywide. It also encourages so-called "caucus" lobbying groups for minorities and women, and it operates minority supplier and scholarship programs.

“We believe that without full representation, without the best and the brightest, we cannot achieve our business goals and objectives,” said Patricia M. Nazemetz, Xerox’s vice president of human resources. The company “vehemently” denies any “pervasive or systemic discrimination” in Rochester or any other location.

The EEOC has a different view. It has found credible evidence to suggest that Xerox discriminated against African Americans in the Cincinnati region. Efforts at conciliation continue. The company says it never had the chance to respond before employees took their complaints to the EEOC. Xerox did its own investigation and denies the allegations.

Kodak has a similar set of programs, including one that may be state-of-the-art among U.S. companies. It recently began allowing workers to submit most employment disputes to an independent manager or peer/management panel for review.

The manager or panel will hear both sides and issue a decision that is binding on the company. The mandate: to determine whether the company acted in line with its policies. Employees can also pursue mediation if they wish.

Chief Diversity Officer May Snowden pushed to create the program, known as resolution support services, when she joined Kodak three years ago. It has been used in about 50 cases since March.

If employees are unhappy with the results, they can appeal to an outside arbitrator to try to resolve the dispute short of litigation.

The company doesn’t pretend that its hiring, promotion and dispute resolution policies will make all employees happy. What the company promises is that it will give every complaint a fair hearing, said Robert Berman, human resources vice president.

Humphrey Wong, a senior research scientist at Kodak, believes the company is doing right by minorities and women.

He says he's never sensed that his status as a Chinese American was preventing him from pursuing his goals or enjoying his work. Wong said he would have left Kodak a long time ago if he had. "To work for a company whose ideals aren't consistent with mine -- that would be torture," he said.

Goff and Julio Vasquez, director of the Ibero-American Action League, say local companies are doing better in seeking to eradicate bias.

But, says Vasquez, "Discrimination still happens, and it needs to be dealt with."

### **Price of prejudice**

When it occurs, workplace discrimination exacts a staggering toll on individuals, their employers, the economy and society in general, social scientists say.

The costs are so huge that it's almost impossible to conceive of a way to calculate them, said Joe Feagin, a professor of sociology at the University of Florida.

Start with the individual. Discrimination leads to increased stress, anger and energy loss, which translates into lost productivity for the company and society, Feagin says.

The costs mount from there. If minorities and women leave or are forced out of the work force or become discouraged, they cannot fully contribute, Feagin said.

And some of those people start heading in the wrong directions.

"Think about all the African Americans who because of racism haven't been able to get a good

education or get good jobs and end up in unemployment-related crime,” said Feagin, who has been studying the costs of discrimination for a quarter-century.

The discrimination also doesn’t have to be vile, or even illegal, to create problems. Even subtle bigotry hurts, he said.

”Consider a group of whites not thinking to ask you to go have a beer after work. It’s not overt. You’re just not part of the good old boy group,” Feagin said.

The debate over discrimination often merges into a discussion of political correctness, a local lawyer says. That’s unfortunate because the negative aspects for the economy and society are just so clear, said Nelson Thomas, a partner in the firm of Dolin, Thomas and Solomon, which handles only employment-related cases.

”If a company mistreats its people,” Thomas said, “that’s a cost. It hurts the company’s profits. It’s a cost to employees and their physical and mental well-being. It’s a cost to their families.

”For all those reasons, discrimination is a bad idea. Everybody would be better off if it didn’t happen.”

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### **Worker's rights and recourse**

Under U.S. law, employers cannot fire you or make any decision affecting your job on the basis of race, sex, religion, national origin, disability or age (but only if you're over 40 years old). They also may not retaliate against you for complaining, or for taking family or medical leave.

State anti-discrimination laws offer the same protections and add three categories: sexual orientation, marital status and workers over 18.

### **Making the complaint**

If you feel you have been discriminated against, you can take one of the following steps:

- File a charge with the Equal Employment Opportunity Commission, which enforces federal anti-discrimination laws. You may do this in person, by mail or by telephone by contacting the nearest EEOC office (in Buffalo, 716-551-4441). You can also call toll free at (800) 669-4000 or (800) 669-6820 (TDD). Generally speaking, you have 300 days from the date of the offense to file.
- File a charge with the state Division of Human Rights, essentially New York's version of the EEOC. Contact the nearest regional office (in Rochester, 585-238-8250). You don't have to file at both levels. The division will, if you choose, forward your complaint to the EEOC.
- Consult a private lawyer. In some circumstances, you may be able to proceed to court without first filing a charge with the EEOC or division.

**The next step**

- The EEOC or division will investigate your complaint to determine "reasonable" or "probable" cause.
- The agencies will then try conciliation or mediation.
- If that fails, the agencies will move to more official proceedings; the EEOC with a suit in federal court; the state with a hearing before an administrative law judge.
- If the agencies find no probable cause, the complaints are dismissed. Complainants are then free to pursue their cases through an attorney.

**For more information**

<http://www.eeoc.gov/facts/overview.html>: The

EEOC's frequently asked questions about discrimination.

[www.nysdhr.com/faq.html](http://www.nysdhr.com/faq.html): The State Division of Human Rights explains its processes and practices.

<http://www.eeo1.com/1999--NR/1999--nr.html>: *The Reality of Intentional Job Discrimination in Metropolitan America -- 1999*, a Rutgers University study.

*Class Action: The Story of Lois Jenson and the Landmark Case That Changed Sexual Harassment Law*, by Clara Bingham and Laura Leedy Gansler, Doubleday, 2002.

*Employment Law for Business*, by Laura Pincus-Hartman and Dawn Bennett-Alexander, McGraw-Hill/Irwin, 2000.

*Invisible Man*, by Ralph Ellison, 1952, second edition published in 1995. Vintage Books.

*Their Eyes Were Watching God*, by Zora Neale Hurston, McGraw Hill, 2000.



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