

NEWS REPORT

Date:	3 December 2010
Expert:	Rikki Holtmaat
Title:	(Sexual) Harassment of Gay Employee
Country:	The Netherlands
<u>Context</u>	
Issue at stake:	(Sexual) Harassment of employee deemed discriminatory
Ground of discrimination:	Sexual Orientation
Source:	Equal Treatment Commission 6 September 2010; ETC Opinion 2010-135
Field:	Employment
Legislative provisions:	General Equal Treatment Act, Articles: 1, 1a(2) and (3), 5(1) sub c, 10

Content

Case Law: The Equal Treatment Commission (ETC) dealt with a clear case of (sexual) harassment on the ground of sexual orientation. A male employee of a firm selling kitchens encountered constant 'joking' of his assistant manager and fellow employees (all males) about his sexual orientation. Also, he complained that the assistant manager stroked over his leg while he stood very close to him at the Xerox machine. The ETC considered that harassment is covered under the equal treatment legislation and that in such cases there is a shift of the burden of proof. Some of the facts that were brought forward by the claimant were sufficiently counteracted by the defendants by means of testimonies to the contrary. However, it was well established by some witnesses that the assistant manager and the fellow workers had 'joked' about the sexual orientation of the claimant, *inter alia* by waving their hand in a very 'camp' way during a meeting. The ETC concluded that thereby the dignity of the claimant had been violated and that a disrespectful environment had been created. The acts of the assistant manager may directly be attributed to the employer, who is therefore accountable and responsible for this discrimination. Also, it was established that the employer had not fulfilled his duty to provide working conditions that are free from discrimination, especially by failing to protect the claimant against harassment/discrimination and by not taking



his complaints seriously. Instead, the employer did not prolong the temporary contract of the claimant. The ETC concluded that the complaints about (sexual) harassment contributed to this decision, and that therefore it was discriminatory as well.

Internet link source and additional information:

See www.cgb.nl , more specifically: <http://cgb.nl/oordeel/2010-135> (last accessed on 1 December 2010)