

IS IT SEX DISCRIMINATION? SOME REAL CASES FROM THE US BUSINESS ENVIRONMENT

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CASE DESCRIPTION

The primary subject matter of this case is sex discrimination, which is protected under title seven of the Civil Rights act of 1964. Historically speaking, sex equality is a somewhat recent phenomenon as it was established by the CRA of 1964; long after the industrial revolution. Until then, women faced discrimination in their private lives as well as their professional lives. Women were considered inferior and were therefore prevented from holding offices and pursuing various professions. Women were also prevented from rising to higher positions within their employing organizations. Hence, this case aims to educate about Sex discrimination by outlining real world examples based on potential violations of the CRA of 1964. This case has a difficulty level of three intended for an upper division undergraduate course. This case is designed to be taught in one class hour, and is expected to require two to three hours of outside preparation by students. Upon completion of this case assignment, students should be able to recognize and evaluate the circumstances which establish a discrimination case. Furthermore, students should learn to evaluate the potential harm and risks to the organization. Last students should be able to create company policy and manuals that aim to prevent such discrimination cases.

These cases lend themselves to role playing exercises which may increase student engagement.

CASE SYNOPSIS

This case begins with an explanation of The Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, with specific emphasis on sex discrimination as well as the Pregnancy Discrimination Act of 1978. This is followed by the description of three actual workplace situations that resulted in claims of sex discrimination. Students are asked to determine which of the cases is sex discrimination and which is not.

INTRODUCTION

Several federal laws protect against discrimination on the basis of sex. The first of these laws is the Equal pay act. Passed in 1963, this act prohibits companies from paying differential wages for men and women in the same job (The Equal Pay Act, 2011). Shortly after this was passed, congress passed the Civil Rights Act of 1964. Title Seven of this act addressed workplace discrimination, and broadly prohibited employment discrimination based on basis of race, color, religion, national origin, or sex. The act was not limited to wages, but was instead focused on a

variety of employment conditions, ranging from selection, placement, training, promotion, wages and benefits, work assignment and other terms and conditions of employment. (Title VII, 2011). In 1978, the Civil Rights Act was amended by the Pregnancy Discrimination Act. This law had the effect of extending sex discrimination law to include pregnancy and childbirth related conditions (The Pregnancy Discrimination Act, 2011). These laws, together, have the net effect of greatly restricting the ability of employers or their agents to discriminate based on sex. However, in spite of these laws, sex discrimination does still take place, requiring the intervention of the EEOC or the courts. In the following section, several actual cases are presented. Form the information in the case; you are to determine whether there is a legitimate case of discrimination.

CASES TO EXAMINE

You have recently been hired into an HR department at a major corporation. In order to teach you about sex discrimination, your company has given you three cases, each describing a situation that potentially could involve sex discrimination. Examine the following cases, and answer the questions that follow for each case.

Case 1:

Old Dominion freight line is a nationwide company involved in the hauling and delivery of packages. They employed a woman named Deborah Merritt as a long-haul, over the road truck driver. For several years, she worked as a long-haul (city to city) driver. She eventually expressed interest in a pickup and delivery position (within one city) so she could spend nights and weekends at home. When a position became available in her home city of Lynchburg, VA, she applied for it. The terminal manager claimed he did not have the authority to fill the position, but then hired a less experienced male driver. This happened again the next year. She was told that “it was decided and they could not let a woman have that position”, “the company did not really have women drivers in the city”, “the Regional VP was worried about hiring a female pickup and delivery driver because women were more injury prone and he was afraid a female would get hurt” and lastly that “the VP didn’t think a girl should have that position”. Finally, on her third attempt, a year later, Merritt was given a pick-up and delivery job. However, unlike male hires, she was put on a 90 day probationary period and informed that she could lose her job if performance problems arose. Her male counterparts were not held to this standard (Simon, 2010). More than two years after she had taken the pick-up and delivery position and performed it without problem, Ms. Merritt injured her ankle. Her doctor recommended light-duty work for a couple months then gave her a full approval to return to work. However, instead of allowing her to return to her job, the company required her to take a Physical Ability Test (PAT). Male employees were not required to take this test after injuries. She failed the test; however, reasons given included her inability to place a box on a shelf that was too high for her to reach. Ms. Merritt is 5’11”. On another test, she was hindered by people bumping into her while she attempted the test. During the case, it also was pointed out that Old Dominion had 3100 Pickup and delivery drivers. Six of them were female. (Searcy, 2010)

Questions

- 1) Is there a prima facie case of discrimination?
- 2) Do you think the employee has a winnable case of sex discrimination?
- 3) What could the company have done to eliminate sex discrimination problems if there are any?

Case 2:

On October 4, 2008 maximum security prisoner Joshua Duane Barnes escaped from the Potter County Detention Center in Amarillo, TX. (Gamm, 2010). Prison guard Ruth Martinez, a Hispanic female guard, was fired as a result of the breakout. She alleges that the firing was discriminatory. A second guard who was also on duty at the time, Wade McLaughlin (a white male), was suspended for one day and reprimanded, but did not lose his job (Gamm, 2010). The prisoner, Mr. Barnes, has a history of escaping from custody, with this being his second successful attempt (Pittman, 2010). However, the prison indicates that Ms. Martinez had improperly left her post without authorization; leaving Mr. Barnes unsupervised while he escaped. (Detention center, 2008). The county alleged that Martinez was a “marginal employee, who failed to closely monitor Barnes before he escaped from a jail recreation area (Gamm, 2010). While Martinez was on her “unauthorized break,” Barnes climbed up a corner to the roof, peeled back layers of sheet metal, and escaped through the hole he created (Netter, 2009). It was estimated that this breakout took approximately 30 minutes to accomplish (Gamm, 2010).

Questions

- 1) Is there a prima facie case of discrimination?
- 2) Do you think the employee has a winnable case of sex discrimination?
- 3) What could the company have done to eliminate sex discrimination problems if there are any?

Case 3:

In 1997 Randall Oakstone and Ramona Philbrook were in a romantic relationship while working together at the USPS. Not unlike many other relationships, theirs did not last. In fact, the break up was ugly. The bad blood between them during the break-up has even negatively affected their work environment. However, there was not much contact between the two employees in the aftermath of the break-up. Nevertheless, Ms. Philbrook’s EAP (Employee Assistance Program) counselor told her to stay away from Mr. Oakstone. Some time later, Mr. Oakstone began seeing other women and eventually got married to his current wife. When Ms. Philbrook found out, she cooled considerably.

In early 1999 Mr. Oakstone learned of a position at the Postal Service which recently opened up. Mr. Oakstone had been interested in such a position for some time, because it would provide overtime opportunities and a higher pay rate. The “Expeditor” position would have Oakstone’s work hours coincide with Ms. Philbrook’s. Consequently, Ms. Philbrook expressed

her objection against working alongside Mr. Oakstone. In the past, Mr. Oakstone had repeatedly requested training for such an expeditor position with the post office, but was denied due to the aforementioned problematic working relationship with Ms. Philbrook. However, Mr. Oakstone was promised some training in the inside expeditor position at the earliest opportunity. In this position, Mr. Oakstone would have had the opportunity to earn the desired overtime pay; a privilege withheld from other employees currently in this position. Mr. Oakstone was given a limited assignment to this position, although this required him to be in contact with Ms. Philbrook through a walkie-talkie. Ms. Philbrook subsequently expressed her opposition to Oakstone's assignment and informed her supervisor of their past romance and intimacy. Further, she had expressed this to the manager of distribution operations Mr. Smith. She became visibly upset and told the manager that Mr. Oakstone had been abusive and she was afraid of him. After this claim was investigated, the manager determined that this claim was a false claim.

Ms. Philbrook threatened the Postal Service to take the case to her lawyer and before the EEOC. Shortly thereafter, Mr. Smith held a meeting with Mr. Oakstone and Ms. Philbrook and pointed them toward the Employee Labor Manual, which expressed that employees must interact in a professional manner. Mr. Smith had meanwhile expressed to another manager that he felt that there was nothing that could be done and management needed to avoid having Oakstone and Philbrook work together. Hence, Mr. Oakstone was denied his requests to work in the "Expeditor" position. Concurrently with this dispute, increased automation in the package sorting department basically eliminated Mr. Oakstone's job.

Mr. Oakstone could have been reassigned but was not. Instead, he was given a lower level position. At the same time two women were trained in Oakstone's former position. One of them received training while Mr. Oakstone's request for training was pending. Mr. Clark, Mr. Smith's successor, denied Mr. Oakstone the requested training based on the spoiled relationship with Philbrook.

Questions

- 1) Could either party (Oakstone or Philbrook) establish a prima facie case of sex discrimination?
- 2) Did sexual harassment occur?
- 3) What, if anything, could the company have done prior to prevent this situation?
- 4) What, if anything, could the company have done to manage the situation better?

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