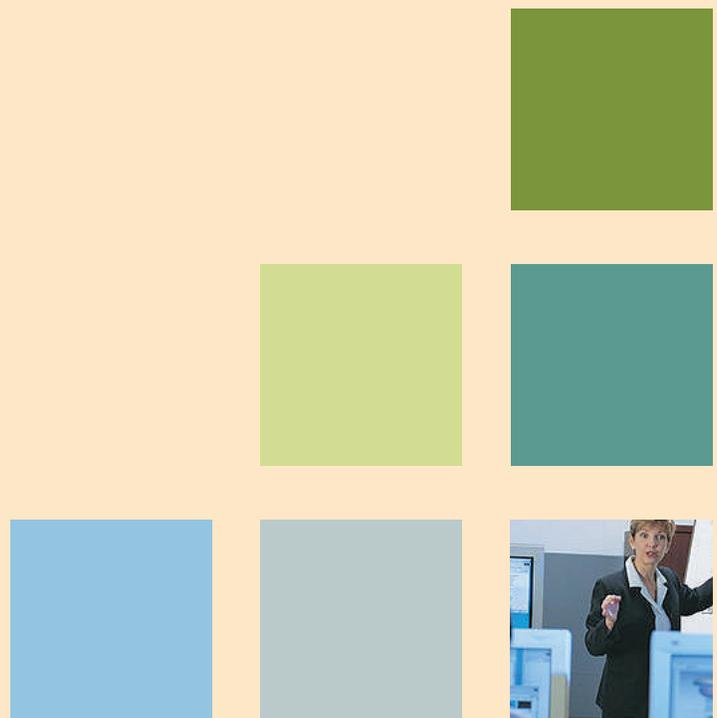




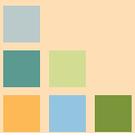
Discrimination in Employment: Understanding the Legalities

Dale J. Dwyer, Ph.D.

Instructor's Guide



EMPLOYMENT LAW



Learning Module Outline

This is a mock court on workplace discrimination. This PowerPoint presentation outlines the concepts of disparate impact and disparate treatment, followed by actual practice in presenting prima facie cases as a plaintiff and defending them as an employer. This module is designed for undergraduate students in a human resources or management course.

Required Reading(s)

Two cases are discussed during class.

Griggs v. Duke Power Co., 401 U.S. 424, 431-2 (1971).

<http://supreme.justia.com/us/401/424/>

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

<http://supreme.justia.com/us/411/792/index.html>

Suggested Reading(s)

HR-guide.com (2001). HR Guide to the Internet: EEO: Disparate Impact.

<http://www.hr-guide.com/data/G702.htm>.

HR-guide.com (1999). HR Guide to the Internet: EEO: Disparate Treatment.

<http://www.hr-guide.com/data/G701.htm>.

Lorber, Larry. (1992). The Civil Rights Act of 1991. SHRM white paper available at

http://www.shrm.org/hrresources/lrpt_published/CMS_000980.asp.

Students are strongly encouraged to search the SHRM web site, particularly the SHRM Legal Reports, to acquaint themselves with the basics of discrimination-related employment laws.

PowerPoint Slides

Thirteen (13) PowerPoint slides with teaching notes are included with the module.

Classroom Format

This course is 150 minutes. It is designed to be taught over two 75-minute periods; (it may be extended by one 75-minute period if desired).

Class 1

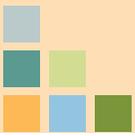
Students are introduced to the civil rights struggle and the language and concepts used in civil rights legislation. The means of presenting and defending disparate impact and disparate treatment claims are distinguished. At the end of the class, each student (or pair of students if it is a larger class) is assigned either as a plaintiff or a defendant in an actual case dealing with a discrimination issue (e.g., age, sex, religion, race, ethnicity, etc.).

Class 2

The plaintiff must present a valid and appropriate prima facie case (that is, a case that correctly sets up either disparate impact or disparate treatment). After hearing the complaint, the defendant must present a defense based on the case presented by the plaintiff. This exercise allows students to decide the prima facie or defense strategy that is most appropriate. The instructor acts as the judge, or a group of three students could act as the jury.

Teaching Notes

Specific teaching notes are included on the PowerPoint slides. The actual case summaries with accompanying discussion questions are in a separate file.



Learning Objectives

The goal of this lesson is twofold. First, students will become familiar with the types of behaviors that constitute chargeable offenses. Second, the students, as future HR practitioners, will learn which evidence and data are appropriate to maintain and provide if charged by the EEOC with discriminatory practices.

Additional Resources

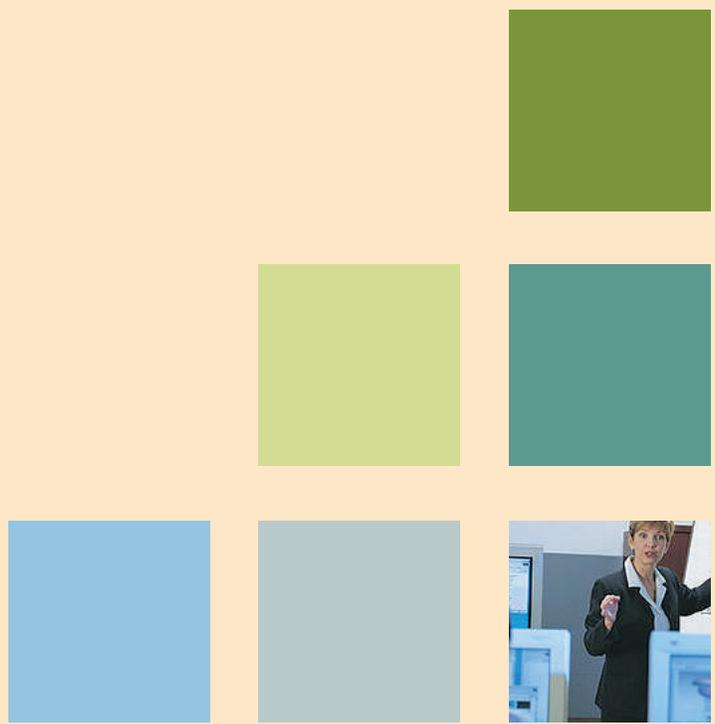
Students may refer to the EEOC and the Department of Labor web sites for additional explanation on employment discrimination and standards.



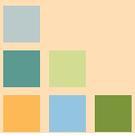
Case Studies— Discrimination in Employment

Dale J. Dwyer, Ph.D.

Instructor's Manual



EMPLOYMENT LAW



Introduction

Ten cases studies are provided to accompany the learning module, Discrimination in Employment. Each case description is accompanied by suggested discussion questions to guide classroom conversations. Sample answers to questions are provided, as well as the actual verdict of each case.

A separate Student Workbook accompanies the Instructor's Manual. The Student Workbook contains only the case information and the discussion questions for each case.

Kern v. Dynalectron Corp. 577 F.Supp.1196 (N.D. Tex 1983)

Wade Kern, a white, Baptist male, applied for a job as a helicopter pilot with Dynalectron. Under a contract with the Saudi Arabian government, Dynalectron was recruiting pilots to fly patrol missions along the pilgrimage route to Mecca. Because such flights entered the holy area around Mecca, and since Saudi law specifies beheading as the penalty for non-Muslims entering this area, a condition of employment was that pilots be Muslim.

Kern understood and accepted this condition and was hired. However, three months after formally converting from Baptist to Muslim, he changed his mind. Dynalectron offered him another position that would become available in four months. Kern declined that position and demanded that he be given another position immediately. The company refused. He brought suit, alleging religious discrimination in employment.

Questions

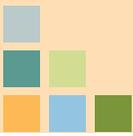
1. Is Kern (the plaintiff) charging disparate impact or disparate treatment?
2. What is the legal basis or provision for the discrimination that Kern is alleging?
3. What would be his prima facie case?
4. Based on your answer to the second question, what defense would Dynalectron (the defendant) use?
5. What information would Kern's attorneys ask for? Dynalectron's attorneys?

Answers

1. Disparate treatment.
2. Religious discrimination under Title VII.
3. He must establish the four criteria:
 - a. He was a member of a protected group (religious affiliation of Baptist).
 - b. He was qualified and applied for the job of helicopter pilot.
 - c. Although he was initially given the job, he was terminated from the job because of his religious affiliation.
 - d. The company did not make a reasonable effort to find him another job.
4. BFOQ (must be a Muslim) or business necessity (violation of the Saudi law would endanger the pilot).
5. Attorneys for both sides would need the written employment agreement acknowledging the responsibility of the plaintiff to become Muslim. Kern's attorney would also want documentation of Dynalectron's efforts to find Kern another position. Dynalectron's attorneys would want all the information about the process used to ensure that Kern understood the conditions and consequences of employment.

Result

The court held that being of Muslim religion was a BFOQ for this job because of the religious laws enforced in Saudi Arabia by beheading anyone flying over Mecca who is not a Muslim. The company did attempt to make a reasonable accommodation by offering him another job when one became available. An interesting note: Kern died before this case was settled, but his widow still pursued it and lost.



EEOC v. Carolina Freight Carriers Corp., 87 Civ. 6322 (SD Fla. 1989)

The plaintiff, a black male, filed suit alleging that he was not hired as a truck driver because he was a member of a protected group (minority race). The defendant (Carolina Freight Carriers Corporation) had a company policy of not hiring applicants who had been convicted of a felony. The plaintiff had served a prison sentence for larceny and had admitted as much on his employment application with the defendant.

The defendant presented evidence that they had incurred significant annual losses which management had determined was largely attributable to employee theft. The truck drivers worked without significant supervision and were responsible for trucks and cargoes worth a great deal of money.

Questions

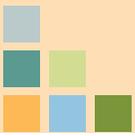
1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be his prima facie case?
4. Based on your answer to the second question, what defense would Carolina Freight (the defendant) use?
5. What information would the plaintiff's attorneys ask for? The defendant's attorneys?

Answers

1. Disparate impact.
2. Race discrimination under Title VII.
3. Proportionally more minorities are ex-felons, and therefore the policy of not hiring ex-felons had a disparate impact on them.
4. Business necessity (prevention of employee theft) or that there is not a disproportionate number of minorities who are ex-felons.
5. Attorneys for both sides would need the written employment application and the company policy. The plaintiff's attorney would want the statistical data showing disparate impact on minorities as felons. The defendant's attorney would want statistical data showing no disparate impact on minorities as felons, as well as documentation of losses attributable to employee theft.

Result

The court held that an employer can refuse to hire persons convicted of a felony even though such a policy has a disparate impact on minority members. The company was able to establish business necessity for protecting their cargoes and to have a reasonable case that ex-felons would pose an undue risk for employee theft.



Baker v. Emery Worldwide, 789 F. Supp. 667 (WD PA. 1991)

Baker, a woman, was hired by a predecessor of Emery Worldwide in 1986 as a courier to sort, load, and deliver overnight packages on a designated route. In March 1988, the company was purchased by Emery Worldwide. Along with 48 men and one other woman, Baker (the plaintiff) applied for a position with Emery. There were 28 positions open. Each applicant was interviewed and scored on a scale of “1” to “10.” The applicants were evaluated on flexibility, communication skills, energy level, work experience and sharpness. However, testimony from the plaintiff’s manager indicated that there was some uncertainty regarding how the five categories were weighed by the interviewers. With a total point score of “7”, the plaintiff was deemed unqualified and not among those hired, despite the fact that four of those hired (all males) had scores equal to or less than the plaintiff’s. The other woman, who had a special license that permitted her to operate a tractor trailer, was also hired.

Questions

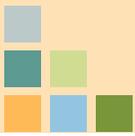
1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be Baker’s prima facie case?
4. Based on your answer to the second question, what defense would Emery Worldwide (the defendant) use?
5. What information would the plaintiff’s attorneys ask for? The defendant’s attorneys?

Answers

1. Disparate treatment.
2. Sex discrimination under Title VII.
3. She must establish the four criteria:
 - a. She was a member of a protected group (female sex).
 - b. She was qualified and applied for one of the position openings at Emery.
 - c. She was not hired.
 - d. Emery hired others (males) who were equally or less qualified than she was.
4. Provision of valid test data showing she was not qualified, was equally qualified, or was less qualified than other applicants who they did hire.
5. Attorneys for both sides would need the written evidence of the evaluation for all applicants. The plaintiff’s attorney would want the particular weightings and scores and how they were determined. The defendant’s attorney would want documentation showing how the other applicants who were hired were more or equally qualified.

Result

The court held that the evaluation process was inconsistent and awarded the decision to the plaintiff. This case underscores the importance of having reliable selection measures and training for the evaluators on the methods and process used in selection.



EEOC v. Insurance Company of North America, 49. F.3d 1418, 1420-21 (9th Cir. 1994)

The plaintiff filed a complaint with the EEOC that the defendant, Insurance Company of North America (INA), had rejected his application for a loss control inspector job on the basis of age discrimination. The defendant had advertised the position in a local paper. The ad read, “the ideal candidate will have a college degree and two years experience in loss control...” among other information. The company subsequently hired a 28-year-old college grad with no loss control experience. The plaintiff had 30 years of loss control experience and was over the age of 40. The company claimed that an employee with that much loss control experience would have been overqualified for the position and, in fact, would have delved too deeply into the insured’s affairs and claims.

Questions

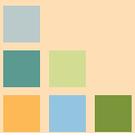
1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be his prima facie case?
4. Based on your answer to the second question, what defense would INA (the defendant) use?
5. What information would the plaintiff’s attorneys ask for? The defendant’s attorneys?

Answers

1. Disparate treatment.
2. Age discrimination under Title VII and the Age Discrimination in Employment Act of 1967.
3. He must establish the four steps:
 - a. He was a member of a protected group (40 or older).
 - b. He was qualified and applied for one of the positions of Loss Control Inspector.
 - c. He was not hired.
 - d. INA hired an individual who was less qualified than he was.
4. Provision of valid test data showing he was overqualified for the position and that INA, in the past, hired less qualified individuals for this particular position, despite their ages.
5. Attorneys for both sides would need the written evidence of the criteria for evaluating applicants. Plaintiff’s attorney would want to compare his or her client’s qualifications with those criteria and to make the Defendant justify Plaintiff’s rejection. Defendant’s attorney would want the documentation showing how the applicant who was hired was more appropriately qualified.

Result

The court held that the evaluation criteria were not a pretext for age discrimination and awarded the decision to the Defendant. The evidence shows that in this instance, and when it filled this lower-level position in the past, ICNA favored applicants with much less experience. This case points out that ADEA does not prohibit rejection of overqualified job applicants per se, as long as such a practice does not function as a proxy for age discrimination. Therefore, “overqualification” must be defined in terms of objective criteria.



Fisher v. Vassar College, 70 F.3d 1420 (2d Cir. 1996) 852 F. Supp. at 1219.

Cynthia Fisher, age 53, charged that Vassar College discriminated on the basis of marital status when they denied her request for tenure and promotion to associate professor of biology in 1985. Fisher presented numbers purporting to demonstrate that no married woman on the Vassar faculty had been granted tenure in the “hard” sciences in the three decades preceding the plaintiff’s denial of tenure. Testimony of former Vassar biology professors related the events of their careers at Vassar and expressed their belief that the Vassar biology department discriminated against married women. The plaintiff sponsored testimony by several experts in the biology field and voluminous documentation comparing her teaching and scholarly record to other Vassar biology professors who had received tenure and promotion. Part of the plaintiff’s claim of sex discrimination due to her marital status involved the fact that plaintiff had left formal academia for approximately eight years to raise a family.

Questions

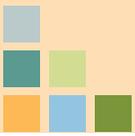
1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be her prima facie case?
4. Based on your answer to the second question, what defense would Vassar College (the defendant) use?
5. What information would the plaintiff’s attorneys ask for? The defendant’s attorneys?

Answers

1. Disparate impact.
2. Marital status and sex discrimination under Title VII.
3. She must establish statistical evidence supporting the overall lack of tenure and promotion at Vassar for married men and women (pure marital status) or for just married women (sex and marital status). She could also establish her case for just the “hard” sciences at Vassar.
4. Provision of stock or flow statistics rebutting Fisher’s statistics or provision of valid test data (e.g., teaching, publication, and service contributions) showing she was not qualified or was less qualified than other assistant professors who did receive tenure and were promoted.
5. Attorneys for both sides would need the written evidence of the criteria for evaluating tenure and promotion at Vassar and, particularly, in the biology department. The plaintiff’s attorney would want to compare their client’s qualifications with other married women’s qualifications who did and did not get tenure and with married and unmarried men who did and did not get tenure. The defendant’s attorney would want documentation showing how the tenure and promotion process was fairly and consistently enforced across all candidates at Vassar, as well as in the hard sciences.

Result

Vassar was able to show the absence of any record of discrimination on the basis of sex or on the basis of sex conjoined with marital status. Thus, the court held that the evaluation criteria were not a pretext for marital or sex discrimination and awarded the decision to the defendant.



Texas Commission on Human Rights v. Presbyterian Children's Home and Service Agency,
No. D-2170, 847 S.W.2d 227, Decision No. 75-186

This case involved a Jewish applicant whose application for employment at a Christian adoption agency was rejected due to her religion. The agency is a nonprofit Texas corporation founded by and affiliated with the Presbyterian Church; in 1988, at the time Georgette Speer applied for the position of senior adoption worker at the agency, it provided child care and adoption services to needy children. During a job interview, Speer identified herself as Jewish; an employee for the agency informed Speer that it had a policy of hiring only Christians. The day after the interview, Speer completed the agency's employment application, which included the following question: "Do you feel that you can serve without reservation in this agency, which is operated by the Presbyterian church, if you are not a Presbyterian?" Speer answered "Yes." On June 8, 1988, Speer was sent a rejection letter informing her that the agency hired only Christians.

Questions

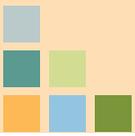
1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be her prima facie case?
4. Based on your answer to the second question, what defense would the agency (the defendant) use?
5. What information would the plaintiff's attorneys ask for? The defendant's attorneys?

Answers

1. Disparate treatment.
2. Religious discrimination under Title VII.
3. She must establish the four criteria:
 - a. She was a member of a protected group (Jewish religious affiliation).
 - b. She was qualified and applied for a position as a senior adoption agent.
 - c. She was not hired because she was Jewish.
 - d. The school continued their search to fill the position.
4. BFOQ to be a Christian.
5. Attorneys for both sides would need the written policy establishing the Christian criteria as a BFOQ. The plaintiff's attorney would want to establish the basis for the rejection by the agency and whether a non-Christian could function effectively as an adoption worker in the agency. The defendant's attorney would raise the issue of church-related exceptions to Title VII.

Result

The court held that religious organizations have the right to establish religious affiliation as a BFOQ if they can establish that they are religious corporations and that the work to be performed is connected with the performance of its religious activities. The district court rendered judgment for the defendant, holding that it fell under the statutory exception for religious organizations. The court of appeals affirmed the judgment of the trial court. Interestingly, however, the defendant abolished adoption services and thereby abolished the position sought by the plaintiff.



Weeks v. Southern Bell Telephone & Telegraph Co., 408 F.2d 228 (5th Cir. 1969)

Mrs. Weeks' bid for the job of switchman was denied by Southern Bell. The job went to the only other bidder for the job, a man with less seniority than Mrs. Weeks. Southern Bell regarded the position as one requiring "strenuous activity" for which women were not qualified. Primarily, this activity consisted of occasionally lifting objects between 30 and 40 pounds. Mrs. Weeks filed a complaint with the EEOC, but when the matter could not be resolved there, she filed suit.

Questions

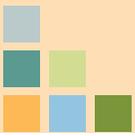
1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be her prima facie case?
4. Based on your answer to the second question, what defense would Southern Bell (the defendant) use?
5. What information would the plaintiff's attorneys ask for? Defendant's attorneys?

Answers

1. Disparate treatment.
2. Sex discrimination under Title VII.
3. She must establish the four criteria:
 - a. She was a member of a protected group (female sex).
 - b. She was qualified and applied for a position as a switchman.
 - c. She was not hired because she was a woman.
 - d. Southern Bell hired someone who was less qualified.
4. Provision of valid test data showing that women were not able to occasionally lift 30-40 pounds and engage in "strenuous activity."
5. Attorneys for both sides would need the job analysis data establishing the concept of "strenuous activity" and weight lifting requirements. The plaintiff's attorney would want to establish that the basis for the plaintiff's rejection was never established (i.e., she was never asked to lift 30-40 pounds). The defendant's attorney would ask for information that substantiated the inability for Mrs. Weeks to lift the weight or to sustain ongoing "strenuous activity."

Result

This was a serious misstep on Southern Bell's part. They never tested either applicant on their ability to lift 30-40 pounds. As it turned out, Ms. Weeks could lift that amount of weight occasionally, and so the court found in favor of the plaintiff.



Ginter, et al v. Hooters, Inc., et al, 1996 WL 164427, N.D. III, (No. 93 C 7709, 94 C 6338)

The plaintiffs claimed that they were the victims of gender discrimination because they were not hired by the defendant for “front of the house” positions (e.g., waitstaff, host, cashier). They asserted that the defendants implemented a policy refusing to hire men. Defendants asserted that customers primarily came to the restaurants to see scantily-clad women. Plaintiffs applied for positions as waiters but were not offered jobs, despite the fact that they all were experienced waiters. Women who applied (subsequent to the plaintiffs’ rejections) were hired.

Questions

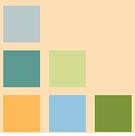
1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be their prima facie case?
4. Based on your answer to the second question, what defense would the restaurants (the defendants) use?
5. What information would the plaintiffs’ attorneys ask for? The defendants’ attorneys?

Answers

1. Disparate treatment.
2. Discrimination on the basis of sex.
3. They must establish the four criteria:
 - a. They were members of a protected group (male sex).
 - b. They were qualified and applied for the position of waiter.
 - c. They were not hired, despite their qualifications.
 - d. Women were hired after they were rejected.
4. Establish that sex (“female”) was a BFOQ for the positions in the “front of the house.”
5. Attorneys for both sides would want to see evidence that a written policy existed or, barring no written policy, evidence that only women were ever hired, despite allowing qualified male applicants to apply. The plaintiffs’ attorney would want to establish that the basis for the plaintiffs’ case rests on shaky ground (i.e., “customer preference”), as previously established in case law. The defendant’s attorney would ask for information that substantiated the “genuineness” of the Hooter’s image to establish that a gender BFOQ was necessary.

Result

The court found for the defendants that sex can, indeed, be a BFOQ and that “customer preference” can be considered in establishing that BFOQ. This case turned previous case law on its head, and it has been considered to be one of EEOC’s biggest defeats.



Furnco Construction Corp v. Waters, et al, 438 U.S. 567 (1978) (this is the appeal case)

Furnco Construction Corp., specializing in firebrick installation in steel mills, was charged with discrimination against blacks in its hiring of bricklayers. The company delegated hiring entirely to its supervisors, some of whom hired only people they knew to have the skills or people who had been recommended to them. The company did not hire people who applied at the gate. The applicants were fully qualified minority members who were turned down from applying at the gate. They said that the hiring policy unnecessarily cut the company off from black bricklayers.

The company responded that the policy was the best way to avoid the costly losses caused by incompetent work. They presented evidence from a union study that showed that 20 percent of the bricklayers hired by the company were black, while only 5.7 percent of the bricklayers in the relevant labor market were black.

Questions

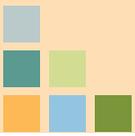
1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be the plaintiffs' prima facie case?
4. Based on your answer to the second question, what defense would Furnco (the defendant) use?
5. What information would the plaintiffs' attorneys ask for? The defendant's attorneys?

Answers

1. Disparate impact.
2. Race discrimination under Title VII.
3. They must establish that the application process is the discriminatory "test." Then, they must show that that process has a disparate impact on blacks. They can do this by pointing out that if the vast majority of supervisors are white, and they are hiring only people who were recommended to them or who they already knew, that process tends to exclude persons who are very different from their circle of family, friends, and acquaintances.
4. Provision of stock or flow statistics that show no disparate impact on black applicants.
5. Attorneys for both sides would need the statistical evidence of the selection statistics for black and white applicants. The plaintiff's attorney would want to establish the exclusionary application process and why no applicants were permitted to apply as walk-in applicants. The defendant's attorney would want the documentation showing hiring practices for all EEO race categories.

Result

The court held for the plaintiffs, even though the statistics were enough to establish no disparate impact for Furnco. The reasoning was that the practice, on its face, did presume that supervisors' affiliation with white applicants gave those applicants a decided edge and tended to exclude black applicants to a greater degree.



Acanfora v. Board of Education of Montgomery County, 359 F. Supp. 483 (U.S. D.C., Md. 1972)

A public high school teacher publicly proclaimed his homosexuality on television talk shows and in interviews with reporters. In these he noted that there was little factual basis for concern that homosexuals have an adverse effect on the children they teach. The school board dismissed him, claiming that the controversy was disruptive. The teacher filed suit, charging that the school board had violated his rights to due process and equal protection under the law by dismissing him because of his sexual orientation.

Questions

1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be his prima facie case?
4. Based on your answer to the second question, what defense would the school board (the defendant) use?
5. What information would the plaintiff's attorneys ask for? The defendant's attorneys?

Answers

1. At present, in many states homosexuals are not members of a protected group and, as such, they never fall under the federal Title VII umbrella unless they charge sexual harassment. However, in states that have made it illegal to discriminate on the basis of sexual orientation or preference, it could be considered a disparate treatment case. In other places, it would likely be considered a wrongful discharge case.
2. Discrimination (or wrongful discharge) on the basis of sexual orientation or sexual preference.
3. He must establish the four criteria:
 - a. He was a member of a protected group (sex discrimination).
 - b. He was qualified and had successfully performed his job as a high school teacher.
 - c. He was fired because he was gay.
 - d. The school board did not fire other homosexual teachers, nor did they prevent homosexuals from being hired as teachers in the district.
4. Provision of a valid nondiscriminatory reason for the firing ("controversy was disruptive").
5. Attorneys for both sides would need the job evaluations for the plaintiff's teaching performance over a period of time (three years most likely). The plaintiff's attorney would want to establish that the basis for the termination was a "but for" case of sexual orientation. This means that if it wasn't for his sexual orientation, he wouldn't have been fired. The plaintiff's attorney would also want to establish a violation of due process in following the stated practice of the school board in terminating teachers. The defendant's attorney would ask for information that substantiated the "disruptive" controversy.

Result

The court found for the plaintiff. The case rested on the issue of due process rather than on sexual orientation. In other words, the school board had not followed the stated process of termination of its teachers, and the infraction stated by the board was not held to be egregious enough for immediate termination.

SHRM

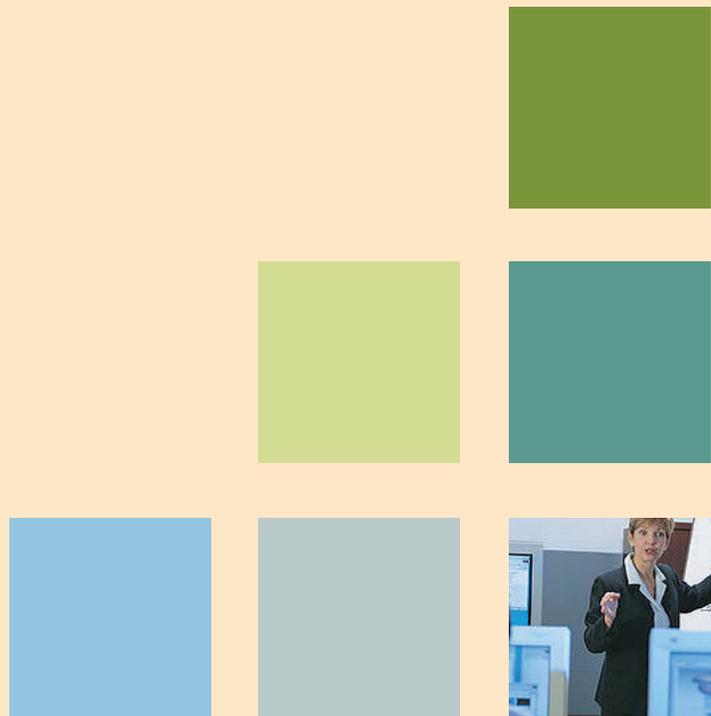
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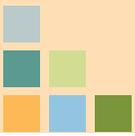
Case Studies— Discrimination in Employment

Dale J. Dwyer, Ph.D.

Student Workbook



EMPLOYMENT LAW



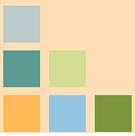
Kern v. Dynalectron Corp. 577 F. Supp.1196 (N.D. Tex 1983)

Wade Kern, a white, Baptist male, applied for a job as a helicopter pilot with Dynalectron. Under a contract with the Saudi Arabian government, Dynalectron was recruiting pilots to fly patrol missions along the pilgrimage route to Mecca. Because such flights entered the holy area around Mecca, and since Saudi law specifies beheading as the penalty for non-Muslims entering this area, a condition of employment was that pilots be Muslim.

Kern understood and accepted this condition and was hired. However, three months after formally converting from Baptist to Muslim, he changed his mind. Dynalectron offered him another position that would become available in four months. Kern declined that position and demanded that he be given another position immediately. The company refused. He brought suit, alleging religious discrimination in employment.

Questions

1. Is Kern (the plaintiff) charging disparate impact or disparate treatment?
2. What is the legal basis or provision for the discrimination that Kern is alleging?
3. What would be his prima facie case?
4. Based on your answer to the second question, what defense would Dynalectron (the defendant) use?
5. What information would Kern's attorneys ask for? Dynalectron's attorneys?



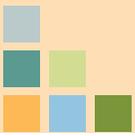
EEOC v. Carolina Freight Carriers Corp., 87 Civ. 6322 (SD Fla. 1989)

The plaintiff, a black male, filed suit alleging that he was not hired as a truck driver because he was a member of a protected group. The defendant (Carolina Freight Carriers Corporation) had a company policy of not hiring applicants who had been convicted of a felony. The plaintiff had served a prison sentence for larceny and had admitted as much on his employment application with the defendant.

The defendant presented evidence that they had incurred significant annual losses which management had determined was largely attributable to employee theft. The truck drivers worked without significant supervision and were responsible for trucks and cargoes worth a great deal of money.

Questions

1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be his prima facie case?
4. Based on your answer to the second question, what defense would Carolina Freight (the defendant) use?
5. What information would the plaintiff's attorneys ask for? The defendant's attorneys?

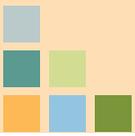


Baker v. Emery Worldwide, 789 F. Supp. 667 (WD PA. 1991)

Baker, a woman, was hired by a predecessor of Emery Worldwide in 1986 as a courier to sort, load, and deliver overnight packages on a designated route. In March 1988, the company was purchased by Emery Worldwide. Along with 48 men and one other woman, Baker (the plaintiff) applied for a position with Emery. There were 28 positions open. Each applicant was interviewed and scored on a scale of “1” to “10.” The applicants were evaluated on flexibility, communication skills, energy level, work experience and sharpness. However, testimony from the plaintiff’s manager indicated that there was some uncertainty regarding how the five categories were weighed by the interviewers. With a total point score of “7”, the plaintiff was deemed unqualified and not among those hired, despite the fact that four of those hired (all males) had scores equal to or less than the plaintiff’s. The other woman, who had a special license that permitted her to operate a tractor trailer, was also hired.

Questions

1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be Baker’s prima facie case?
4. Based on your answer to the second question, what defense would Emery Worldwide (the defendant) use?
5. What information would the plaintiff’s attorneys ask for? The defendant’s attorneys?

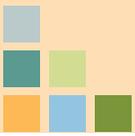


EEOC v. Insurance Company of North America, 49. F.3d 1418, 1420-21 (9th Cir. 1994)

The plaintiff filed a complaint with the EEOC that the defendant, Insurance Company of North America (INA), had rejected his application for a loss control inspector job on the basis of age discrimination. The defendant had advertised the position in a local paper. The ad read, “the ideal candidate will have a college degree and two years experience in loss control...” among other information. The company subsequently hired a 28-year-old college grad with no loss control experience. The plaintiff had 30 years of loss control experience and was over the age of 40. The company claimed that an employee with that much loss control experience would have been overqualified for the position and, in fact, would have delved too deeply into the insured’s affairs and claims.

Questions

1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be his prima facie case?
4. Based on your answer to the second question, what defense would INA (the defendant) use?
5. What information would the plaintiff’s attorneys ask for? The defendant’s attorneys?

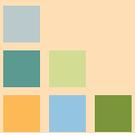


Fisher v. Vassar College, 70 F.3d 1420 (2d Cir. 1996) 852 F. Supp. at 1219.

Cynthia Fisher, age 53, charged that Vassar College discriminated on the basis of marital status when they denied her request for tenure and promotion to associate professor of biology in 1985. Fisher presented numbers purporting to demonstrate that no married woman on the Vassar faculty had been granted tenure in the “hard” sciences in the three decades preceding the plaintiff’s denial of tenure. Testimony of former Vassar biology professors related the events of their careers at Vassar and expressed their belief that the Vassar biology department discriminated against married women. The plaintiff sponsored testimony by several experts in the biology field and voluminous documentation comparing her teaching and scholarly record to other Vassar biology professors who had received tenure and promotion. Part of the plaintiff’s claim of sex discrimination due to her marital status involved the fact that plaintiff had left formal academia for approximately eight years to raise a family.

Questions

1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be her prima facie case?
4. Based on your answer to the second question, what defense would Vassar College (the defendant) use?
5. What information would the plaintiff’s attorneys ask for? The defendant’s attorneys?

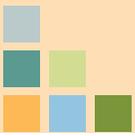


Texas Commission on Human Rights v. Presbyterian Children’s Home and Service Agency,
No. D-2170, 847 S.W.2d 227, Decision No. 75-186

This case involved a Jewish applicant whose application for employment at a Christian adoption agency was rejected due to her religion. The agency is a nonprofit Texas corporation founded by and affiliated with the Presbyterian Church; in 1988, at the time Georgette Speer applied for the position of senior adoption worker at the agency, it provided child care and adoption services to needy children. During a job interview, Speer identified herself as Jewish; an employee for the agency informed Speer that it had a policy of hiring only Christians. The day after the interview, Speer completed the agency’s employment application, which included the following question: “Do you feel that you can serve without reservation in this agency, which is operated by the Presbyterian church, if you are not a Presbyterian?” Speer answered “Yes.” On June 8, 1988, Speer was sent a rejection letter informing her that the agency hired only Christians.

Questions

1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be her prima facie case?
4. Based on your answer to the second question, what defense would the agency (the defendant) use?
5. What information would the plaintiff’s attorneys ask for? The defendant’s attorneys?

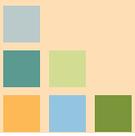


Weeks v. Southern Bell Telephone & Telegraph Co., 408 F.2d 228 (5th Cir. 1969)

Mrs. Weeks' bid for the job of switchman was denied by Southern Bell. The job went to the only other bidder for the job, a man with less seniority than Mrs. Weeks. Southern Bell regarded the position as one requiring "strenuous activity" for which women were not qualified. Primarily, this activity consisted of occasionally lifting objects between 30 and 40 pounds. Mrs. Weeks filed a complaint with the EEOC, but when the matter could not be resolved there, she filed suit.

Questions

1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be her prima facie case?
4. Based on your answer to the second question, what defense would Southern Bell (the defendant) use?
5. What information would the plaintiff's attorneys ask for? Defendant's attorneys?

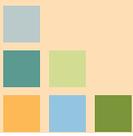


Ginter, et al v. Hooters, Inc., et al, 1996 WL 164427, N.D. III, (No. 93 C 7709, 94 C 6338)

The plaintiffs claimed that they were the victims of gender discrimination because they were not hired by the defendant for “front of the house” positions (e.g., waitstaff, host, cashier). They asserted that the defendants implemented a policy refusing to hire men. Defendants asserted that customers primarily came to the restaurants to see scantily-clad women. Plaintiffs applied for positions as waiters but were not offered jobs, despite the fact that they all were experienced waiters. Women who applied (subsequent to the plaintiffs’ rejections) were hired.

Questions

1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be their prima facie case?
4. Based on your answer to the second question, what defense would the restaurants (the defendants) use?
5. What information would the plaintiffs’ attorneys ask for? The defendants’ attorneys?



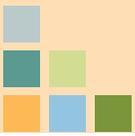
Furnco Construction Corp. v. Waters, et al, 438 U.S. 567 (1978) (this is the appeal case)

Furnco Construction Corp., specializing in firebrick installation in steel mills, was charged with discrimination against blacks in its hiring of bricklayers. The company delegated hiring entirely to its supervisors, some of whom hired only people they knew to have the skills or people who had been recommended to them. The company did not hire people who applied at the gate. The applicants were fully qualified minority members who were turned down from applying at the gate. They said that the hiring policy unnecessarily cut the company off from black bricklayers.

The company responded that the policy was the best way to avoid the costly losses caused by incompetent work. They presented evidence from a union study that showed that 20 percent of the bricklayers hired by the company were black, while only 5.7 percent of the bricklayers in the relevant labor market were black.

Questions

1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be the plaintiffs' prima facie case?
4. Based on your answer to the second question, what defense would Furnco (the defendant) use?
5. What information would the plaintiffs' attorneys ask for? The defendant's attorneys?



Acanfora v. Board of Education of Montgomery County, 359 F. Supp. 483 (U.S. D.C., Md. 1972)

A public high school teacher publicly proclaimed his homosexuality on television talk shows and in interviews with reporters. In these he noted that there was little factual basis for concern that homosexuals have an adverse effect on the children they teach. The school board dismissed him, claiming that the controversy was disruptive. The teacher filed suit, charging that the school board had violated his rights to due process and equal protection under the law by dismissing him because of his sexual orientation.

Questions

1. Is this case one of disparate impact or disparate treatment?
2. What is the legal basis or provision for the alleged discrimination?
3. What would be his prima facie case?
4. Based on your answer to the second question, what defense would the school board (the defendant) use?
5. What information would the plaintiff's attorneys ask for? The defendant's attorneys?