

Age Discrimination: Clinical Services Director's Lawsuit And Back-Pay Award Upheld.

For purposes of argument, the employer conceded there was a prima facie case of discrimination. There was no doubt the home health agency had fired the fifty-six year-old director of clinical services and replaced her with a thirty-one year-old individual. The only question was whether the employer had a legitimate, non-discriminatory justification for its actions.

The US Circuit Court of Appeals for the Fifth Circuit reviewed all the evidence and concluded the employer had no such justification. What the employer offered as justification was, in legal parlance, only a pretext. The ex-employee's prima facie case therefore would carry the day and warrant a jury verdict of \$25,000 as back pay for age discrimination.

Change in Management Style versus

Discriminatory Motive

The company's chief executive officer's twenty-two year-old son, himself an executive in the company, abruptly decided they needed a change in management style, which meant the much older clinical services director would have to go.

The court, however, heard he had been making derisive age-related comments about her behind her back.

The court conceded that people often talk behind their co-worker's backs. It becomes legally relevant when an employment decision-maker makes remarks that suggest biased attitudes that may have led to a discriminatory decision.

Objective Performance Appraisals

All the clinical services director's appraisals from supervisors familiar with her work had been very positive before the conflict arose, and were documented in writing in her personnel file.

She was also able to muster co-workers familiar with her work to testify objectively about her good work performance. The boss's son's subjective assessment was purely discriminatory, the court concluded. **Russell v. McKinney Hospital Venture**, 235 F. 3d 219 (5th Cir., 2000).

To win a lawsuit claiming that age discrimination was behind a firing decision, the victim must prove:

- 1. She was discharged;***
- 2. She was qualified for her position;***
- 3. She was replaced by someone not in the 40 to 70 year-old age bracket, or by someone in that age bracket who was younger than she;***
or
- 4. Another basis exists to find age discrimination.***

This only gives the ex-employee a prima facie case of discrimination. The employer still has the right to come forward with justification for its actions.

Then the ex-employee can come back and try to show the employer's alleged justification was no justification at all, just a pretext for discrimination.

This employer's justification was that the CEO's twenty-two year-old son thought a "change in management style" was in order, when he had the fifty-six year-old victim fired and replaced with someone thirty-one.

That was no justification, it was just a pretext.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT, 2000.

Religious Discrimination: Nurse's Case Dismissed.

The nursing home's director of nursing sued for religious discrimination after she was denied entry into the administrator-in-training program.

She had left the religious denomination with which the home was affiliated. The administrator still practiced the faith.

The nurse admitted, however, that she had no supervisory experience outside of nursing. State law requires supervisory experience in six specific areas of nursing home management to become a licensed nursing home administrator. The nursing home wanted to see that experience before it would train someone to become a licensed nursing home administrator.

The US Circuit Court of Appeals for the Sixth Circuit ruled that was legitimate, non-discriminatory and not a pretext for religious discrimination. **Roh v. Lakeshore Estates, Inc.**, 241 F. 3d 491 (6th Cir., 2001).

To win a lawsuit claiming that religious discrimination was behind a decision to deny a promotion, the victim must prove:

- 1. Her religious beliefs were different than the employer's or supervisor's;***
- 2. She was qualified for the promotion;***
- 3. She was rejected;***
- 4. The promotion went to someone with the same beliefs, or remained open.***

That only gives the employee a prima facie case. The employer still has the right to come forward with justification for its actions.

UNITED STATES COURT OF APPEALS,
SIXTH CIRCUIT, 2001.