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May 16, 2022

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She had the skills, experience and training: So what happened?

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Senior center hit with disability suit

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Do equal titles mean equal pay?

Gender bias suit forced boss to explain why he promoted a man

The only woman who had a shot at the job wasn't in consideration

“I heard you’ve selected someone for the promotion,” Gina Waters said to supervisor Randy Shoemaker. “And it was NOT me.”

“No, we went with Todd,” Randy said. “I feel pretty good about it. I think he’s going to do a great job.”

“I’m sure he will,” Gina said. “And nothing against Todd, but I think I would do an even better job.”

“I don’t want to sound like I’m bragging but I have the skills, I have the experience and I have the training,” she said matter-of-factly.

Sensing Gina wasn’t finished, Randy just kept silent and listened.

Only woman

“What really bothers me is that you didn’t even make the time to interview me,” Gina said. “Especially since I am the only woman who had a shot at the job.”

“Oh c’mon, you know what that is,” Randy replied.

“We were at the tail end of the interview process when you decided to throw your hat into the ring. Why didn’t you let

*Please see **Bias suit ...** on Page 2*

Sharpen Your Judgment

Boss’s comments lead to age bias complaint

HR director Cindy Lopez got right to the point: “Did you tell your group that you gave Shelley a promotion because the department needed ‘some young blood at the top’?”

“I did say something like that,” Ron answered. “I mean, we’re trying to do more with our online stuff, so I meant that it would help to have someone like Shelley who has that kind of background.”

“And you told one of your employees that the promotion went to ‘the young chick’?”

Ron sheepishly nodded, “I did. But, you know, it was just talk between two guys.”

“OK,” Cindy said, “I see that. But the problem is that a friend of Jane’s overheard you.”

“Oh,” Ron groaned. “And now Jane thinks I didn’t

pick her for the promotion because she’s older?”

“She’s saying when you put the two comments together, it adds up to a case of age discrimination,” Cindy explained.

She’s better

“No way,” Ron protested. “Shelley has more education in important areas and lots more experience with an online operation. She got the job because she’s the better candidate.”

Jane refused to believe Ron and sued the company for age discrimination on the basis of his comments.

The company fought the suit by saying the comments were meaningless.

Did the company win?

Make your decision, then please turn to Page 4 for the court’s ruling.

This regular feature sharpens your thinking and helps keep both you and your firm out of trouble. It describes a real legal conflict and lets you judge the outcome.

Bias suit ...

(continued from Page 1)

me know sooner that you were interested?" he asked her.

"I didn't think you'd fill it so quickly," she said. "Especially without talking to me.

"I'd been working for months on that special project you needed completed.

"I was putting in lots of extra hours on it. I wasn't even sure I could find the time to properly apply and interview for it.

"And now I realize that working like a dog sure paid off for me," she said sarcastically.

"Well I must admit I didn't realize that," Randy said.

"I guess I was pretty focused on filling that slot quickly.

"I feel badly, but we did have that position posted for a while," he added.

"And both Todd and Henry jumped on it as soon as they heard about it."

Changed his mind

"Henry?" Gina said loudly.

"Henry was in the running for this promotion, too?"

"Sure," Randy said. "I actually offered Henry the job first, but he wasn't sure he really wanted it.

"Todd never hesitated and was

very eager, so that made him the easy choice.

Discrimination?

"I just can't believe this," Gina said. "I never thought my own company would discriminate against a woman like this."

"Discriminate? No way," Randy said. "How is this discrimination?"

"Don't you normally go back to the drawing board and look again at all the resumes when a candidate turns you down?" she asked.

"Usually yes," he said. "But we already knew Todd was our next pick."

"See, you could've given me a shot, but you didn't," she said.

Gina ended up suing her employer for gender bias.

She claimed the firm broke with its long-standing policy and rushed through its second selection so it wouldn't have to interview her.

The firm maintained it did

nothing illegal. It was familiar with both candidates and when the first turned down the offer, it selected the second.

Decision: The company won when a court dismissed the case.

The court acknowledged Gina was qualified for the position and could have done the job. But since a second choice had been identified already, the firm was not required to offer her the job.

Case: *Eason v. Del Monte Foods.*

What you need to know:

When you have an open position, what supervisor wouldn't want to fill it as quickly as possible with a qualified candidate?

Moving too quickly can lead to mistakes, and even legal problems. So be sure to take the time to:

- Communicate clearly from the outset, so that no one's confused about the requirements.
- As best as you can, stick with the procedures you normally follow when filling a position of this nature.
- Consider all your viable candidates, even if you think you may have found the winner right away.

TEST YOUR KNOWLEDGE

Interviewing still requires a sound legal approach

Everyone has positions to fill and many feel pressed to fill them quickly.

But don't let the pressure force you into a situation you might regret. To test your knowledge of the legal pitfalls to avoid when interviewing, respond *True* or *False* to the following:

1. Most company policies require supervisors and managers to treat employees and job applicants fairly. But as far as federal anti-discrimination law goes, fairness only matters when dealing with actual employees.
2. The most common topic of questioning that can lead to a discrimination claim is related to child care and child rearing.
3. If the applicant takes the interview into a legally dangerous area, you're not at any legal risk as long as you're not the one who brought up the topic.

ANSWERS

1. *False.* The same anti-discrimination laws apply whether the person is an employee or someone applying for work at your organization. Both should be treated fairly and equally. It's the law to avoid making decisions based on race, gender, and other protected categories.
2. *True.* The courts will pay attention to what you ask as much as why you asked it. So it's always wise to steer clear of questions about child care. That said, it's perfectly OK to ask questions about attendance and productivity.
3. *False.* Even if the applicant brings up an area that you should legally avoid discussing, it's still wise to not go there. Stick with your interviewing process and steer the conversation back. For example, you can explain your health care plan. But if the person wants to know whether it covers a certain ailment, discussing health history is a no-no.

Answers to the quiz:

Where other supervisors went wrong

News you can use to head off expensive lawsuits

This feature highlights violations of workplace laws. You can learn how other supervisors got off track, what the mistakes cost and how to avoid them.

Senior living center out \$115K for disability bias

What happened: Heart of CarDon, a senior living community in Bloomington, IN, determined an employee could no longer perform the essential functions of her certified nursing assistant job due to lifting restrictions resulting from a work injury.

Though the employee expressed interest in several jobs she could have performed without violating her lifting restrictions, Heart of CarDon refused to accommodate her by transferring her to a vacant position for which she was qualified.

Decision: Along with being ordered to pay \$115,000 to settle the disability discrimination lawsuit, CarDon also must assign a human resources manager to work with employees who can no longer perform their job duties because of a disability to evaluate transfer as a reasonable accommodation.

Cite: EEOC v. Heart of CarDon.

Leasing firm to pay \$85K to settle pregnancy case

What happened: Cassone Leasing, Inc., a Long Island, NY, firm that leases office trailers and containers, summarily dismissed an employee upon learning she was pregnant.

Cassone hired the employee in early 2018, when she was approximately 12 weeks pregnant. At that time, her pregnancy was not visible, and she did not disclose it to Cassone. When Cassone gave the employee her 30-day review, she was rated one point below “excellent.”

The following month, the employee disclosed her pregnancy to the company, and was fired the next day and replaced with a non-pregnant employee.

Decision: Along with paying \$85,000 to settle the claim, Cassone is required to provide anti-discrimination and harassment training and revise its EEO policies to include a more robust complaint and investigation procedure.

Cite: EEOC v. Cassone Leasing, Inc.

Hospital sued for bias against deaf job applicant

What happened: North Memorial Health, of Minneapolis, violated civil rights law when it failed to hire an applicant who is deaf because of her disability and failed to provide her a reasonable accommodation, the EEOC charged in a lawsuit filed in Minnesota.

The EEOC claims the job applicant applied for a greeter position, was qualified for the that position and could perform the essential functions of the job which included greeting visitors, communicating COVID-19 masking standards and policies, giving directions and keeping the area tidy.

The lawsuit alleges the hospital failed to hire the applicant because of her disability.

Decision: The case is awaiting adjudication in federal court in Minneapolis.

Cite: EEOC v. North Memorial Health.

STOP, LOOK, LISTEN ...

Inflation eating up raises: Do you do it again?

With annual inflation at 8.5%, paychecks aren't stretching the way they used to — and workers are looking to their employers to make up the difference.

The Bureau of Labor Statistics (BLS) released an inflation report recently, and numbers are looking grim for consumers. The biggest jumps occurred in gasoline, shelter and food.

The gasoline index rose more than 18%, and was the biggest contributor to the overall 8.5% increase.

This is the most inflation has risen in one year since 1981.

Numbers aren't adding up

Taking inflation into account, workers' wages have fallen 2.7%, and people are fed up.

New research found that most companies in the U.S. plan on raising salaries by 4% — however that's not going to cut it for most workers.

According to a survey conducted by Grant Thornton LLP, employees are expecting a higher increase than employers are prepared to give. Here are the raises people want:

- 6% increase or higher (40%)
- 8% increase or higher (31%), and
- 10% increase or higher (21%).

Employees are more than prepared to walk away if employers don't deliver. In fact, the top reason people are leaving their jobs right now is for higher pay.

Asking for more

Many workers have reached their breaking points where salary is concerned, according to a recent survey done by Robert Half.

A third reported they haven't had a raise in the past year. An additional 16% of workers received a raise, but the amount was lower than they'd expected.

Employers should be prepared for workers asking for more money, too — 62% are planning on it.

SUPERVISORS SCENARIO

Should equal titles add up to equal pay? Employee asks the courts to decide

Alleged violation of the Equal Pay Act lands boss in front of judge

“Bill, I appreciate your confidence in me,” Carol said. “I’d appreciate more money in my pay, too.”

Supervisor Bill Wygren had seen this coming and was ready with a response: “Carol, I understand what you’re saying: If I’m going to ‘promote’ you to lead trainer, you should get a raise, too.”

“Exactly,” Carol nodded. “When Sam got the same promotion last year, he brought in pizza for everyone in the group to celebrate his raise.”

“OK, let’s consider a few factors,” Bill replied. “First, Sam has been here two years longer than you. Second, he has more responsibility. He develops our procedures, as well as teaching them, like you. It’s all in his job description.”

“I guess you’re forgetting another factor,” Carol noted.

Man v. woman

“What’s that?” Bill asked.

“Sam’s a man, and I’m a woman,” she shot back.

“C’mon, Carol, you know that’s not how I operate,” Bill said. “I just told you: It’s strictly a question of experience and responsibility. We’ll revisit this sometime in the future to see if you’re up to Sam’s level. If you are, we’ll talk about a raise.”

Carol considered Bill’s offer for a moment, and then spoke: “It seems like all I ever hear is ‘wait, wait, wait.’ I’m tired of waiting. It’s time for action.”

With that, Carol filed a lawsuit against her employer for violating the Equal Pay Act. She argued that equal titles should result in equal salaries.

Decision: A judge ruled in favor of the company, noting that there’s nothing in the law that says equal titles must result in equal pay.

Key: The supervisor in the case clearly laid out the reasons for the differences in pay. And those differences – experience and responsibility – were valid and verifiable reasons for paying one employee more than another.

Case: EEOC v. Port Authority of NY and NJ.

What you need to know:

This case sends a warning to any supervisor who thinks a job description is just a piece of paper; it’s often the legal basis for pay and promotions.

When putting together your job descriptions:

- Make sure they accurately describe employee duties.
- Review them to ensure that major differences are reflected in pay.
- Go over them with HR to compare how you and other supervisors are putting together and using descriptions.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes, the company won.

A judge looked at the supervisor’s selection criteria for the job – education in relevant fields and experience with online work – and concluded that his choice matched the criteria.

And what about the two comments? Didn’t they show some bias on the part of the supervisor and his selection?

No, the judge said. The comments didn’t amount to conclusive evidence that the supervisor acted unfairly. Two main reasons for the ruling:

- The comments came after the selection was made, and were not part of the deliberations during the selection process.

- A loose mention of age – while never a good idea – isn’t necessarily proof that age entered into the decision.

Select your words carefully

Yes, the company won this one – based on the clear selection criteria and the supervisor’s following those criteria.

Still, the whole mess could have been avoided if the supervisor had used similar care in selecting his words.

The lesson: If it doesn’t need to be said, especially not in public, don’t say it. Let the documentation do the talking.

Case: King v. United States.

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