

Lateral transfer denied? Employee could sue

Generally, being denied a lateral transfer can't be the basis for a discrimination lawsuit because it isn't an adverse employment action.

However, sometimes employees try to make that case—and succeed. If the transfer would have provided other benefits that can't be directly measured in dollars and cents, a court may consider the case as one of a denied promotion.

Consider this recent case in which a woman was denied a transfer to a position that paid the same as her old job.

Recent case: Tina Lewallen worked as a police officer for Beaumont. She applied for a lateral transfer to one of two open detective positions, jobs that would have paid the same amount she was earning. There were four applicants, two men and two women. The police department chose the men.

Lewallen sued, alleging sex discrimination. First, the city argued that she hadn't suffered an adverse employment action because a transfer isn't a promotion.

But the jury disagreed, concluding that detective positions carry more prestige, allow better schedules and are more intellectually challenging. It didn't matter that the jobs paid the same.

The jury also concluded that Lewallen was objectively more qualified than the men who were selected. She has a college degree, no disciplinary problems and has received several awards for outstanding work. On the other hand, one of the men had a terrible disciplinary record and no degree or awards. Plus, Lewallen showed that sex discrimination was a common practice within the department.

The jury awarded her \$50,000 compensation plus attorneys' fees of more than \$400,000. The city appealed, but the 5th Circuit Court of Appeals refused to overturn the award. (*Lewallen v. City of Beaumont*, No. 09-40337, 5th Cir., 2010)