

Denial of basic training opportunity doesn't rise to the level of sex discrimination

Employees who complain about some form of discrimination are protected from retaliation for doing so. However, not every negative thing that happens amounts to retaliation or discrimination. Employees have to show that any "punishment" they experienced significantly changed the conditions of employment.

Recent case: Helen worked in corrections. She had a long history of filing complaints. She was terminated once, but won reinstatement and back pay after a protracted legal fight.

Then, when a supervisor refused to approve her request to take a basic Microsoft class, she filed a lawsuit alleging sex discrimination.

The trial court allowed her to present testimony from four other female employees who alleged everything from harassment to rape. Their testimony was used to try to prove that an ethos of sex discrimination generally drove decisions that harmed women while male employees were unaffected.

The case went to a jury, which sided with Helen. It set damages at \$40,000, plus \$283,000 in attorneys' fees.

The employer appealed, arguing that being denied a minor training opportunity wasn't retaliation and that the other women should not have testified.

The 3rd Circuit Court of Appeals said the women's testimony was fine. However, it concluded that denying relatively basic training wasn't enough to constitute an adverse employment action. It overturned the jury award. (*Ford v. Hudson County*, 3rd Cir., 2018)

Final note: If you have a harassment problem, fix it now. Litigation, even when you win, carries a high price tag.