

Title VII sex discrimination can include marital status

Title VII does not specifically list marital status as the grounds for a sex discrimination lawsuit. But that doesn't mean marriage cannot play a role in Title VII sex discrimination cases.

There is a case category generally referred to as "sex-plus discrimination" that can include discrimination based on a combination of the sex of the employee/applicant, plus another factor. Thus, if an employer treats married women differently than married men, the sex treated less favorably may have a sex-plus marital-status case.

Here's how that played out in a recent 3rd Circuit Court of Appeals case.

Recent case: Charles is part-owner of an adult entertainment business, Adult World. Kimberley, who was a single mother of four when she met Charles, first worked for him as a house cleaner. During that time, they developed a personal friendship, which culminated in their having sex. After that one-time incident, the two remained on good terms for a while.

Kimberley and Charles began discussing whether she could come to work at Adult World as a district manager. Charles finally agreed to hire her, although he expressed serious reservations about doing so because her commute would be about an hour and a half.

Kimberley then met with the company's controller and filled out paperwork, received the employee handbook and read that she would serve a three-month evaluation period.

She began work on Nov. 9. What happened over the next 11 days gave rise to her eventual lawsuit.

The controller said Kimberley played on her personal computer during work hours and refused to attend training in New York. Kimberley denied any of that happened. Instead, she testified that she flew to Las Vegas on Sunday, Nov. 15 and got married. Four days later, on Nov. 19, she sent Charles a text message breaking the news of her new marriage.

The next day, the controller terminated her. But first, she sent a text to Charles inquiring whether she would have use of a company car for the scheduled New York training. He responded that there had been a "change of plans" and told her to call the controller, who explained that she "wasn't working out." She sent Charles more texts, and he responded that "Ur just not working out and I gave the other girl another chance.... U have ... a new husband."

Kimberley sued, alleging sex discrimination under Title VII and the Pennsylvania Human Relations Act.

During discovery, Charles testified that she was fired because "she just got married." He said, "She's not my problem. It's not my job to support that girl. Let him take care of her."

The trial court, believing that this was a case of marital-status discrimination not covered by Title VII, dismissed the case.

On appeal, the 3rd Circuit reinstated Kymberley's lawsuit. It reasoned that this was not just a marital status case, but a sex-plus case. Kymberley, the court reasoned, wasn't fired because she got married, but because she was a woman who got married. Adult World didn't treat men who got married the same way, it reasoned.

Her case will now go to trial. (*Rosencrans v. Quixote Enterprises d/b/a Adult World, et al.*, 3rd Cir., 2018)