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Fourth Circuit Recognizes That Sex Discrimination Claimants Need Not Always Prove Replacement By Someone Of Opposite Gender In Order To Establish A Prima Facie Case Under Title VII

By Lawrence Peikes

Where one manager terminates a Title VII claimant and another manager selects her replacement, a female plaintiff can meet the burden of establishing a prima facie case of sex discrimination even if her position was filled by another woman, so held the U.S. Court of Appeals for the Fourth Circuit in Miles v. Dell, Inc.

Kimberly Miles was employed by Dell as an account manager from January 1999 until her termination in June 2002. At the time of her dismissal, Miles was reporting to Regional Sales Manager James Glaze. In March 2001, Miles informed Glaze she was pregnant. According to Miles, Glaze thereafter reduced her sales territory, reassigned her key accounts to another employee, and increased her sales quotas in response. Glaze later requested permission to terminate Miles, claiming she displayed a lack of candor in discussions regarding a pending contract. The request, however, was denied.

Miles gave birth in June 2001 and returned to work after two weeks of maternity leave. Nine months later, at her next review, Glaze gave Miles an unsatisfactory rating and placed her on a performance improvement plan. Then, in May 2002, Glaze again requested permission to terminate Miles' employment, this time citing an e-mail from a disgruntled client. Dell's human resource department acted favorably on Glaze's recommendation, and he promptly proceeded to fire Miles. At the same time, Glaze proposed that a male colleague take over Miles' job, but his superiors insisted that the position be filled by a woman.

Miles responded to her termination by filing a charge of discrimination with the EEOC, and after exhausting the administrative process, she filed suit against Dell alleging claims for sex discrimination, pregnancy discrimination, and retaliation. The district court granted Dell's motion for summary judgment. In rejecting Miles' sex discrimination claim, the district court relied on the undisputed fact that Miles was replaced by a member of the same protected class. Miles appealed the grant of summary judgment to the U.S. Court of Appeals for the Fourth Circuit.

To establish a prima facie case of sex discrimination in the Fourth Circuit, a female plaintiff alleging discriminatory discharge must generally show, among other things, that she was replaced by a man. The requirement is not inflexible, though, and, the Fourth Circuit observed, is inapposite where the circumstances are such that a finding of discrimination would not necessarily be incompatible with the fact that the plaintiff and her replacement are of the same gender. By way of example, the Court of Appeals cited an employer who hires someone within the plaintiff's protected class to disguise previous discriminatory conduct.

Likewise, the Court concluded that when, as in this case, the firing and hiring decisions are made by different people, replacement from within the protected class does not give rise to an inference of non-discrimination. The Court concluded that because the decision to replace Miles with someone of the same gender was not made by Glaze, and in fact Glaze preferred a male candidate, the hiring of a woman to fill Miles' position was not at all probative on the ultimate issue of whether Glaze's decision to fire Miles was motivated by gender-based animus. Accordingly, the Court of Appeals vacated the summary judgment order and reinstated Miles' discrimination claim.

Miles v. Dell, Inc., No. 04-2500, 2005 WL 3111917 (4th Cir. Nov. 22, 2005).

Professional Pointer:

From a macro perspective, the Fourth Circuit's holding in Miles that a Title VII plaintiff need not always show replacement by someone outside the protected class to establish a prima facie case of discrimination is not novel, and indeed is fully consistent with the U.S. Supreme Court's directive that the elements of proof applicable to Title VII claims are not "rigid, mechanized, or ritualistic," but rather ought be modified as appropriate to the particular case. As a practical matter, however, hiring, firing, and other significant employment decisions are not ordinarily made just by one manager. It remains to be seen what the courts will do in the more typical case where the manager responsible for the challenged discharge decision is one of several employees involved in the process of hiring a replacement.

Miles is nevertheless highly instructive in its teaching that an employer will not always be immune from a sex discrimination claim just because the plaintiff and her replacement share the same gender. A contrary assumption could indeed give rise to serious unforeseen

consequences. For example, if Dell insisted that Miles' position be filled by a woman in order to short circuit a sex discrimination suit by Miles, not only did this tactic fail, it might also have opened the door to a reverse gender discrimination claim by the male candidate Glaze had recommended for the job. This further illustrates the importance of basing all employment decisions exclusively on legitimate business considerations, such as education, experience, skills, job performance and the like.

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