

Discrimination Paper

HRM320: *Employment Law*

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Your Name

Discrimination Paper

Laws have been the shield of the weak, i.e. they have been created to protect those treated unfairly. The Title VII of the Civil Rights Acts was enacted to prevent any harassment and discrimination at the workplace (Moran, 2014). The Act is a federal law that generally "prohibits discrimination by religion, color, sex or national origin" other laws have been enacted to protect employees from their employers.

Q1: "What must a person who is claiming they were harassed in the workplace allege in order to first state a case with the EEOC for each of the following types of harassment?"

Sexual harassment – quid pro quo.

The term "quid pro quo" is the Latin word denote giving something to get something. The victim is asked to offer sexual favors to their superiors or supervisors so as to receive benefits at the workplace these favors can be promotions, jobs. For the victims to present their

cases to EEOC they should fulfill the following six requirements; the victim should be part of the protected class, the cases should be gender related, the victim should not have been in agreement to the sexual advancements, the harassment should be sex related, the harassment should have occurred during the employment period and finally the act should have a detrimental effects on the victim's job (Moran, 2014).

Sexual harassment – hostile environment.

For an individual to seek for just in a case of the hostile environment, they have to prove that they are a victim of sexual harassment while subjected to intimidation or offensive sexual conduct by their colleagues or management (AVERY & FISK, 2010). In addition to the quid pro quo requirements, the act should be pervasive or severe hence the victim finding the environment abusive and cannot conduct their work function. The act of harassment should be persistent.

Religious harassment.

This kind of harassment can be sought justice after by individuals who have faced offensive or derogatory remarks by their religious leaning. The claimed should always be pervasive and severe in nature affecting the ability of the individual to work.

Racial harassment.

Racial harassment is categorized by an employee being subjected to frequent unwelcome racial slur, comments and behavior demeaning one's race hence creating a hostile environment. This harassment can be vertical i.e. from a supervisor or horizontal from a co-worker or organizational culture. The harassment should be first reported to the employer, in the case where the employer is not the perpetrator of the harassment. The employer would be

required by the law to take the necessary correctional action lest he/she is held liable for the harassment (Shickman, 1998).

Q2: "Explain the difference between sexual harassment, gender discrimination, and sexual orientation discrimination, as those terms are used legally."

Sexual harassment is when an individual is harassed by a co-worker, supervisor or a non-colleague making offensive remarks, using pictures distribution or asking sexual favors to a male or a female. The perpetrators will consistently ask for sex from the victims to the extent of obsession or blackmail. Gender discrimination is when one is subjected to prejudice based on the fact that they are male or female. Sexual orientation discrimination is when an individual is denied a work related chance like promotion, pay raise or even a job because of being gay.

Q3: "How does GINA protect a person whose mother died of breast cancer from employment discrimination?"

This is the Genetics Information Nondiscriminatory Act of 2008. The law was under the Title II of GINA, states that an employer may not discriminate against anyone in any job-related chances based on their genetic information. The EEOC states "family medical history is an inclusion in the definition of genetic information of an individual as it is medically used to determine if someone is at the risk of getting a disorder, disease or a given condition in the future" Employers are required not to discriminate against anyone whose family member has had breast cancer. The passing of the family member as a result of breast cancer does not affect the productivity of an individual.

Q4: "Provide one example of behavior that could be found to be both a hostile environment and quid pro quo forms of sexual harassment at the same time. Explain how a person could argue that this behavior at work was illegal."

This case can occur when a supervisor asks you on a date, and you refuse, and show no interest, but he/she constantly pesters you every day with the same request. The supervisor then decides to send for a business dinner, and you feel obliged to go as it is business. During the dinner, the supervisor informs you that the company will be restructuring and in case you want to continue having a job you have to go out with him and also know how to play your cards right. In the wake of all this, you become distressed but still holding your ground. Later after several unsuccessful attempts he/she decides to fire. The situation shows that it was severe and pervasive that the individual could not work as the environment was hostile. The situation was also a quid pro quo case as he/she asks for a date so that you can continue having your job.

Q5: "Give the main legal reason why every company should have a valid written policy against all forms of harassment (besides the fact it is the "right" thing to do.)"

A company having a valid written policy is for the purpose of minimizing liability and also for use to educate employees on the presence of the different kinds of harassments that can occur at the workplaces. All the employees are made aware of what kind of action they can take or cannot take in case of the harassment cases. They are also given the procedure to take in making a claim in the event of the occurrence of the harassment. If the employer can prove that there were prevention and remediation, then he will not be liable in case there is a case.

Q6: "Can an employer require that only females serve female customers, and only males serve male customers? Explain your answer using legal terms."

Under the Title VII of the Civil Rights Act, such a requirement would be violation of the gender discrimination laws. There should be no specifying of the gender preference in serving customers. All employees should be treated equally and perform the same tasks regardless of their gender unless it is a required occupational qualification that specifies that a given gender to perform a given task. Mostly the bona fide occupational qualification (BFOQ) operates as a defense in a case of discrimination in regards to national origin, religion, gender and age. For example, female attendants would be required in the female fitting room.

Q7: "How many employees must an employer/company employ to be subject to:"

The ADA. The American Disability Act states that an employer with 15 or more is liable to the Act.

Pregnancy Discrimination Act. The Pregnancy Discrimination Act has been amended from the Title VII of the Civil Right requiring an employer with 15 or more employees to be subjected to this law.

Title VII. Applies to employers with 15 or more employees who have been employed for 20 weeks or more in a calendar year.

IRCA. Immigration Reform and Control Act applies to employers with four or more employees.

GINA. Employees are subjected to this law when they are 15 or more.

Q8: "Assume you work for a company that has a sexual anti-harassment policy, but not a religious, sexual orientation, or racial anti-harassment policy. Write a one-two paragraph statement to your boss (the HR Director), as to why you believe it would make sense to revamp the policy to include other forms of harassment. Include one example of a real situation where a policy may have protected a company from liability or stopped

harassment from happening. (You will find case examples on the EEOC website). Cite that case/situation in your memo to your boss. Provide the amount of damages/fines the company in your example case had to pay as a result of failing to protect an employee from discrimination."

HRM department, I have come to the establishment that our company does not have the following policies religious, racial anti-harassment and sexual orientation policy. These other policies are equally important as the sexual anti-harassment policies. It would in the best interest of the company to compile such policies.

I reviewed some of the cases on the EEOC and came across the Taprite Fassco Company in San Antonio, Texas that was compelled to pay \$72500 to an employee for sex, disability and retaliation case. The company had subjected a female quality employee to sex-based wage discrimination, unlawful retaliation, and disability discrimination. The retaliation suit was because of raising her concerns about the wage disparity between the sexes. In the lawsuit, the company paid males over three dollars an hour than their female counterparts for the same job in the same location. The federal agency pointed out that the company retaliated when the employee raised concerns regarding these situations by demoting her to a less favorable job and lower pay. The suit showed that the company denied her request for reasonable accommodation for her disability due to rheumatoid arthritis and carpal tunnel syndrome.

Case Analysis

I have chosen case the Vance v. Ball State University to discuss here.

"Q1. Explain briefly, the statute(s) (law or act) in question in your case, the facts of the case, and why the parties were in court. What was each party asking the court to do?"

In the Maetta Vance vs. Ball State University, the complainant Ms. Vance, an African-American employee is instituting a legal proceeding due to racially hostile work environment, this was alleged slurs and threats of possible physical harm by Ms. Sandra Davis a Caucasian lady who is her supervisor.

"Q2. What did the court decide in your case and what will be the results of that decision? (i.e. who won, and was the win final or did the court send the case back to the lower court system to re-decide an issue?)"

The district court decided that there was no enough evidence to prove a hostile environment at the place of work and that Ms. Davis was not Ms. Vance's supervisor and was also not in a position to make "tangible employment decisions," like firing, hiring demoting or even disciplining, only simply the authority to direct and oversee an employee's work. Finally, the court decided that the university was not liable for the actions of workers. Ms. Vance appealed, but the court of appeal upheld the lower court's decision.

"Q3. In what way did this case create, change, or shape the employment landscape for employers as a result of the decision made? Did this change help employers or employees the most? Explain."

The case shaped the employment scene that same-sex can also be victims of sexual harassment and hostile workplace. Harassment does not necessarily mean that it should involve the male and the female, but it could be of similar genders. Employees and employers were made aware that sexual harassment could occur between people of the same sex. Employers were able to review and implement new anti-harassment policies to prevent cropping up of hostile work environment.

"Q4. Do you agree with the decision in the case you referenced? In other words, do you think that employment law was made better and stronger, or weaker and less effective as a result of this case? Write at least one full paragraph that supports your opinion."

The challenge made employment stronger and better, as sexual harassment left men and same sex out of the picture. The case showed that sexual harassment is not for the same sex but also men and women can be harassed sexually by the same sex. Consequently, men and women have now been covered by the Title VII of the Civil Rights Act. Changes in the society necessitate amendments in the laws to cover and protect everyone irrespective of sex or sexual orientation.

Legal Research: Pending Bill

"Q1: I have chosen Bill Healthy Families Act H.R.932 to discuss here."

This law was introduced to the 114th congress in the 2015-2016 period on 02/12/2015.

"Q2: Does the bill create new law or amend existing law?"

There is no state or federal laws that compel employers to give an employee paid sick time. The passing of the bill will create a new law that allows for a change in the paid off time throughout the country.

"Q3: How this bill will change current employment law? Be specific here and include enough detail so that someone reading your answer understanding the bill under consideration."

If the bill is passed, it will allow employees working in a certain company of more than 15 people each working for more than 20 weeks a year to be accorded an hour of paid sick leave for every 30 hours worked. Businesses with less than 15 employees may go for the alternative of 56 paid hours. The Healthy Family Act intends to provide employees with time to take care of their health or care for a family member during sickness while assuring the ability to take care of the bills. The paid sick off can be carried forward to the next year if unused. The employers are not allowed to sought for details of the sick time.

"Q4: State whether you agree or disagree with the bill. If you were a member of Congress would you vote for it? Explain why."

I am in agreement and would vote for the bill so as to make the private sector care for their employees. There are 43 million paid workers that cannot access this kind of comfort hence they usually end up in a deadlock to choose whether to take a sick off or lose wage. The bill allows one even to take care of their child and other family members. Some cities across the country have been able to pass their sick time laws.

Bibliography

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