

## **Employment Law: Anti-discrimination Case Studies**

### **DISCRIMINATION LAW -- CASES**

#### **CASE 1:**

Betty Sikes worked for Northmeadows Hospital since 1998 as a pharmacy technician. In 2000 Sikes learned she was pregnant and immediately notified her supervisor of the pregnancy. Over the next two months, Sikes missed approximately 12 days of work due to pregnancy-related illness and near-miscarriages. After Sikes missed parts of three days during January 2001, she was discharged. Northmeadows listed as the reasons for Sikes' termination "unsatisfactory performance due to sickness and absenteeism." Northmeadows Hospital had an employee sick leave policy, which did not specifically refer to pregnancy. The policy also stated that employees could use sick time for personal illnesses, doctor appointments, and the like. Sikes had accumulated sufficient sick leave to cover all of her absences.

1. Sikes sued Northmeadows Hospital claiming pregnancy discrimination. What specific law and specific issues of the law apply here?
2. What evidence would Northmeadows have to provide to show it was not discriminating?

*Case adapted from: Byrd v Lakeshore Hospital 30F.3d 1380 (11<sup>th</sup> Cir. 1994)*

#### **CASE 2:**

Southmark Hospital fired pregnant home health care nurse, Kelly File, when she refused to treat a patient who was HIV-positive. File had recently learned that she was pregnant when she was informed that an HIV-positive patient diagnosed with cryptococcal meningitis was to be assigned to her. The patient had problems with nausea and vomiting. His medical needs would have required File to provide five hours of care to him each day, including drawing his blood for lab work. The hospital provided special bags for contaminated material and sharps containers for used needles. Furthermore, the hospital followed "universal precautions," infection control procedures designed to minimize the risk of infection.

File voiced two concerns about working with the HIV patient. First, she argued that the HIV virus causes a patient to be more susceptible to various opportunistic diseases, such as meningitis. She felt her first trimester fetus was particularly vulnerable to those diseases. Second, she felt at risk due to her own gestational diabetes, a form of diabetes occurring only during pregnancy, which can weaken a woman's immune system. The hospital's policy and procedure manual clearly required all nurses to treat all patients or be subject to termination. (Two employees had been terminated under the policy previously -- one was pregnant, one was not). The nurse sued the hospital claiming discrimination.

1. Does the Pregnancy Discrimination Act afford the nurse preferential treatment?
2. What would File have to prove/show in order to claim "unequal treatment"?
3. What would File have to prove/show to claim "unequal impact."
4. What other discrimination law might she look to for a defense?

*Case adapted from: Armstrong v Flowers Hospital., Inc., 33F. 3d 1308, 1314 (11<sup>th</sup> Cir. 1994)*

### **CASE 3:**

A former staff pharmacist of a chain pharmacy files suit against the pharmacy claiming she was discriminated against on the basis of a disability, alcoholism.

Tina Larson was terminated for "unsatisfactory performance including excessive prescription errors, excessive tardiness, excessive unexplained absenteeism."

Larson did not deny she was an alcoholic. She claimed she never used alcohol while at work and was never intoxicated at work.

1. Does the evidence indicate that Larson can perform the functions of the job?
2. Assuming her problems are due to alcoholism, does a reasonable accommodation exist for her to perform the job?
3. Does the ADA protect Larson?

*Case adapted from: Little v FBI, 1F.3d 255 (4<sup>th</sup> Cir. 1993)*

### **CASE 4:**

Ben Stride, a 65-year-old retired executive from a large chain pharmacy, opened his own small chain of community pharmacies. Ben was successful. He had 30 employees. The employees were mostly older women (50+).

Ben prefers hiring older employees because he feels our society is too youth oriented. He feels strongly that older employees tend to be more diligent, appreciate the chance to continue to work and tend to have a greater work ethic.

Ben has focused on hiring women, believing that they have "more business intuition in their little finger than men do" and that they are more "caring."

1. What forms of unlawful discrimination are possibly occurring here?
2. What law(s) apply?

**CASE 5:**

A female job candidate applied for a position as Director of Pharmacy in the Veterans Administration Hospital in Netherland County AZ. She was interviewed for that position by the Hospital Director and the Veterans Affairs Committee for the county. Before entering the interview, she heard one of the committee members comment that he would not consider a woman for the job. During the interview, that same committee member asked her about her plans for having a family and whether her husband would object to her being around so many "male veterans." She objected to the questions but answered them. Subsequently, a male was hired for the position.

1. Could the interviewing questions be considered unlawful?
2. If so, which discrimination law applies?
3. Do the questions apply to a bonafide occupational qualification?
4. What advice could you give for responding to uncomfortable questions?

*Case adapted from: Barbano v Madison County, 922 F.2d 139 (2d Cir. 1990)*