

Indiana Plaintiff Defeats Legitimate Nondiscriminatory Reason Defense

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A usually reliable defense in federal court employment cases is the legitimate, nondiscriminatory reason, but recently, that defense turned out not to be enough in a sex discrimination claim.

As a refresher, an employee who believes she was not selected for a given position because of her race or sex – or any other protected characteristic, for that matter – can establish a *prima facie* case of discrimination at the summary judgment stage using the commonly used *McDonnell Douglas* method. To do so, she must demonstrate that (1) she is a member of a protected class, (2) she was qualified for an open position, (3) she was not selected for the position, and (4) someone who is not a member of her protected class was selected for the position even though he had similar or lesser qualifications than her.

Employers frequently argue that the plaintiff's case should be dismissed because one of those four elements cannot be established. But, companies also rely on "fallback arguments." In these arguments, employers suggest that summary judgment should be entered in their favor – even if the employee is able to establish a *prima facie* case – because the company had legitimate nondiscriminatory reasons for its actions. For example, an employer might explain that it selected a male candidate for a job transfer over a equally qualified female candidate because the female candidate was so good at her old job that production would suffer if she were to be transferred to another position.

Legitimate nondiscriminatory reason arguments are usually an effective way of winning summary judgment. This is so because, once an employer has made such an argument, it is up to the employee to demonstrate that the employer's stated reason for choosing another candidate over her is pretextual, and this is frequently difficult to do.

Recently, however, in a case before the U.S. District Court for the Southern District of Indiana, an employee was able to avoid summary judgment by suggesting pretext. In *Vallee v. State of Indiana/Department of Transportation*, the defendant argued that it had a legitimate nondiscriminatory reason for choosing a male candidate for a field job over a female candidate. It explained that the male candidate had "an expressed desire for the type of work involved" whereas the female candidate "wanted a desk job."

This argument might have been a winner. But, the district court rejected it – largely because it appears it was not sufficiently developed. As a result, the plaintiff survived summary judgment. *Vallee* demonstrates that, while it may be difficult for plaintiffs to defeat legitimate nondiscriminatory reason arguments, it is not impossible – particularly if those arguments are not as thoroughly developed as they might be. And, in order to full develop the defense in court, employers are well-advised to make sure they can articulate the reasons for the decisions at the time they are made.

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