

Some Basic Advice As “March Madness” Begins

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Basketball

It's mid-March. That – as any fan of college basketball knows – means that the NCAA basketball tournament and “March Madness” are about to begin. As a result, a case that was handed down by the U.S Court of Appeals for the Third Circuit yesterday is timely. In *Covington v. International Association of Approved Basketball Officials*, No. 11-3096, 2013 WL 979067 (3d Cir. Mar. 14, 2013), a female referee alleged that the organization that supplies referees for high school basketball games in New Jersey's Hamilton Township School District discriminated against her in violation of Title VII. She believes that she was not selected to referee boys' games because of her sex. The organization moved to dismiss the case, arguing that the plaintiff had not alleged sufficient facts to suggest that it was her “employer” as the term is defined by Title VII. The district court dismissed the case, but the Third Circuit reversed.

The Third Circuit's analysis is not a novel one. But it is noteworthy for at least one reason. Male referees, I suspect, have always been assigned to referee boys' regular season high school basketball games in Hamilton Township. And the organization conceded that it had never assigned females to referee boys' post-season games. As a result, the Third Circuit may have been predisposed to allow the case to proceed. Its words suggest as much: “It is unlikely that any female will believe that there wasn't a trace of discrimination if only males were uniformly selected to referee the most desirable games.”

We often hear from our clients, “It's the way we've always done it.” Simply because you, as an employer, have always done something a particular way does not mean that what you have been doing is lawful. Consider that the next time an employee asks you to do something that seems logical on its face but differs from your normal practice. The extra consideration that you give such a request may keep you from getting sued.

Now back to basketball. Let the games begin!

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