

The case of detention discrimination

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The Case of Detention Discrimination Virginia Blackstone Kaplan University

The Case of Detention Discrimination In this case, the Milwaukee County Juvenile Detention Center started a new policy requiring each unit of the facility to be staffed at all times by at least one officer of the same gender as the detainees housed at a unit. The purpose of the policy was to reduce the likelihood of sexual abuse of juveniles by officers of the opposite gender. Due to the makeup of the force, the policy had the effect of reducing the number of shifts for female officers and increasing the number of shifts for men. Two female officers sued for gender discrimination. The district court held for the county, finding that the policy of assignment was based on a bona fide occupational qualification (BFOQ) and so it was not illegal gender discrimination. The female officers appealed. What would be evidence that the county had a valid BFOQ? In order to answer these question, we will need to discuss and define gender discrimination and discuss the elements of Bona Fide Occupational Qualifications (BFOQ). Gender discrimination is when an employer discriminates against a person based upon whether they are male or female. This discrimination can be done in the form of classifying a job as either a male only or female only job; advertising in help-wanted columns for a male or female; keeping separate seniority lists based on gender; promoting someone based solely on their gender; etc. Under Title VII of the Civil Rights Act of 1964, as well as under other federal acts, employers are forbidden to discriminate based on gender, unless, they can prove that the applicant's gender is essential to the job. The Equal Pay Act of 1963 prohibits employers from gender-based wage discrimination and require equal pay for equal work. In this type of suit, the court will review the

primary duties of the two jobs and determine whether the difference in wages is based on any factor other than gender. If so, then there is no violation of the act. The Pregnancy Discrimination Act of 1978, added pregnancy to the definition of gender discrimination (i. e. if a woman is affected by pregnancy, childbirth, or related medical conditions she must be treated the same as any person " not so affected but similar in ability to work" (Miller, 2012). It can be difficult for a plaintiff to succeed in a suit for gender discrimination as he or she must prove that gender was a determining factor in the employer's decision to hire, fire, or promote him/her. There are several defenses to discrimination. The defense of bona fide occupational qualification (BFOQ) applies when discrimination against a protected class is essential to a job. The qualification should be considered necessary for operation of the business and relate to an essential job duty. For example, Chippendale's has a BFOQ to hire men, as they are in the business of providing male dancing services to women. This rule also applies to jobs based on race, sex, age and national origin. This defense is an exception and complete defense to Title VII of the Civil Rights Act of 1964 which protects employees from discrimination based on religion, sex, age, national origin and color at the workplace. In order to use this defense, the employer has to prove that " this requirement is necessary to the success of the business and that a definable group or class of employees would be unable to perform the job safely and efficiently" (US Legal, 2012). Some examples of BFOQ's are: mandatory retirement ages for bus drivers or airline pilots; churches requiring members of its clergy to be of a certain denomination; the use of models and actors for the purpose of authenticity

or genuineness; or, the requirement of emergency personnel to be bilingual, to name a few. In the above case, the Milwaukee County Juvenile Detention Center would have to prove that the defense of BFOQ is legitimate by showing that only female guards can supervise female inmates and that only male guards can supervise male inmates and to do otherwise would significantly increase the sexual abuse of juveniles by officers of the opposite sex. They would have to provide sufficient research to support this supposition and not mere intuition. If they were unable to do so, then there is no reason why a female guard cannot supervise a male inmate and vice versa. References Blackwell, Any Hackney. (2004). The Essential Dictionary of Law. Barnes & Noble Books. Miller and Jentz. (2010). Fundamentals of Business Law: Summarized Cases. 8th ed. Mason, OH: South-Western Cengage Learning. US Legal. (2012). Bona Fide Occupational Qualification. Retrieved June 6, 2012 from <http://definitions.uslegal.com/b/bona-fide-occupational-qualification>