



## Employment & Labor Law FLASHPOINTS June 2020

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### **Seventh Circuit: Jury, Not Judges, Must Decide Coach's Sex Discrimination Claim**

On March 4, 2020, the Seventh Circuit Court of Appeals reversed a lower court's dismissal of a sex discrimination claim under Title VII of the Civil Rights Act of 1964 (Title VII), Pub.L. No. 88-352, Title VII, 78 Stat. 253. In *Joll v. Valparaiso Community Schools*, 953 F.3d 923 (7th Cir. 2020), the court concluded that because a female coaching candidate presented evidence that would allow a reasonable jury to conclude a school district utilized hiring procedures that favored male applicants, applied sex-role stereotypes during the interview process, and manipulated hiring criteria in ways that favored male applicants, the decision as to whether unlawful sex discrimination truly occurred was a decision to be made by a jury, not a court.

#### *Background*

Plaintiff Molly Joll worked as a middle school teacher with defendant Valparaiso Community Schools for more than 25 years. While teaching, the plaintiff had significant experience coaching track and cross-country at the middle school, high school, and collegiate levels but ultimately resigned her position as middle school cross-country coach to better support her own children in their running careers.

In 2014, the plaintiff determined she now had the time to return to a coaching position and applied for an assistant coach vacancy with the high school girls' cross-country team. During the interview, the plaintiff was questioned about her prior resignation as middle school coach and whether her parenting duties would now allow her to devote sufficient time to the coaching position. Instead of selecting the plaintiff for the position, however, the school district hired a 40-year-old man who was not questioned during the interview regarding his family life. Additionally, the plaintiff's references had been contacted within days of her interview, whereas the male candidate's were checked only after the hiring decision was made (in line with the school district's ordinary hiring process). The plaintiff was informed the male candidate was selected because he had "more current experience working with high school age athletes." 953 F.3d at 926.

The plaintiff subsequently interviewed for an open assistant coach position with the boys' high school cross-country team. During the interview, the plaintiff was again questioned regarding her willingness to devote time to coaching in light of her family responsibilities. A 28-year-old man was selected for the job instead of the plaintiff, and like the earlier hiring process, her references were handled differently than his. This time, however, the plaintiff was told that the male applicant was chosen because he had a "better rapport with the boys." 953 F.3d at 927. Notable was that, unlike the other successful male candidate chosen over the plaintiff, this candidate did not have more recent professional experience coaching high school runners than the plaintiff.

The plaintiff brought suit against the school district in the Northern District of Indiana, alleging violations of Title VII and the Age Discrimination in Employment Act of 1967 (ADEA), Pub.L. No. 90-202, 81 Stat. 602. The court granted the school district's motion for summary judgment on both counts, and the plaintiff appealed, arguing that a reasonable jury could find she would have been

hired for the coaching position if she were male and everything else had remained the same.

### *Seventh Circuit's Reversal*

In reviewing the lower court's granting of summary judgment on behalf of the defendant, the court first noted that when assessing a motion for summary judgment, the reviewing court is not to weigh evidence nor make credibility determinations and is to draw all nonspeculative inferences in favor of the nonmovant (*i.e.*, plaintiff). Per the court, the plaintiff has the right to "the commonsense judgment of [her] community." 953 F.3d at 928.

When the defendant moved for summary judgment, it argued that both the plaintiff's age and sex discrimination claims were subject to the same standard under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 36 L.Ed.2d 668, 93 S.Ct. 1817 (1973), and that the plaintiff failed to satisfy said standard. (Under the *McDonnell Douglas* framework, a plaintiff must first establish a prima facie case of unlawful discrimination. Then, the burden is shifted to the employer to articulate a legitimate, nondiscriminatory reason for the decision. Once this is satisfied, the plaintiff can prevail only if he or she can prove that the employer's proffered reason is pretext for discrimination.) Instead of arguing in response to the motion that the Title VII and ADEA causation standards are not always the same because of the availability of "mixed-motive" claims under Title VII but not under the ADEA, the plaintiff did not distinguish between the two, instead arguing that evidence of sex stereotyping and pretextual justification presented triable issues under *McDonnell Douglas*. *Id.* As such, the court disposed of the plaintiff's ADEA claim and the Title VII claim under a "mixed-motive" standard but agreed with the plaintiff's argument that a reasonable jury could find she would have been hired as assistant coach if she were male and all else remained the same.

According to the court, "the sole question that matters" is causation, specifically whether a statutorily proscribed factor (*e.g.*, sex) caused the failure to hire. 953 F.3d at 929. The court noted that in order to make out a case of sex discrimination without resorting to the traditional *McDonnell Douglas* framework, a plaintiff is required to provide either direct or circumstantial evidence that supports an inference of intentional discrimination. The court has previously identified three broad types of circumstantial evidence that will support such an inference:

1. ambiguous or suggestive comments or conduct;
2. better treatment of people similarly situated but for the protected characteristic; and
3. dishonest employer justifications for disparate treatment. *Id.*

According to the court, the plaintiff offered some of each type of circumstantial evidence. Taken together, her evidence would permit a reasonable jury to infer "an overall likelihood of discrimination" that merits a trial. *Id.* Specifically, the court noted that a jury could reasonably find the school district "bent the rules" in favor of the male applicants and to the plaintiff's detriment, explaining the following facts supported such a theory:

1. The plaintiff's references were contacted sooner than ordinary, whereas references for the male candidates were contacted later (consistent with the school district's practice) or not at all.
2. The decision-makers/interviewers indulged in sex-role stereotypes during the interviews, questioning the plaintiff about her dedication and commitment to coaching, but "talk[ing] shop" with the male candidate who had also resigned from a similar coaching position. *Id.*
3. Decision-makers engaged in subsequent sex-role stereotyping when discounting two lengthy positive references in favor of an isolated comment that the plaintiff had a "dominant personality," from which it could be concluded the plaintiff was penalized for violating the "age-old stereotype that women are or ought to be submissive." 953 F.3d at 931.
4. The school district's stated reasons for making a hiring decision for nearly identical coaching jobs were inconsistent with each other. In each case, however, the shifting reasons ultimately favored the male applicant.

According to the court, the lower court erred when asking whether any particular piece of evidence proved the plaintiff's case by

itself, rather than aggregating the evidence to find an “overall likelihood of discrimination.” 953 F.3d at 933. Because there was at least one reasonable way to “tell the story” in favor of the plaintiff’s sex discrimination claim, a jury, rather than appellate judges, must decide. 953 F.3d at 935.

### *Takeaways*

The court’s decision highlights the importance of maintaining a legally compliant hiring process in order to limit exposure to Title VII discrimination claims from job applicants and candidates. Specifically, employers must keep in mind the following:

1. Hiring criteria for each position/classification should remain fixed and consistent.
2. Internal hiring processes and procedures should be applied equally to all candidates.
3. Interviewers must be trained on appropriate conduct and questioning during interviews, including coaching on what could be considered unlawful discrimination and/or sex-role stereotyping.
4. Interview questions and topics should, to the extent possible, be kept the same for all candidates for a particular position.

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