

## Recent and Noteworthy FRD Cases

A pregnant woman was terminated shortly after beginning her employment. Her employer said it was because she often arrived late and failed to communicate with her superiors. The employee alleged that her hours were flexible and that she had never received any warnings prior to announcing she was pregnant. She alleged she was terminated because her supervisor didn't approve of her pregnancy plans. She said that her supervisor (1) made several comments to her reflecting his belief that appellant would not return following maternity leave; (2) informed her that he would not have hired her had he known that she would be taking maternity leave so soon; and (3) suggested that she use the company's phones to look for a new job. The lower court had granted summary judgment for the employer, but the appellate court reversed. The appellate court found enough evidence to create a prima facie case and also enough evidence to create a credibility question over the real reason for termination. *Frederickson v. Noble Venture*, 2006 Minn. App. Unpub. LEXIS 252 (Minn. Ct. App. 2006).

A housekeeping employee who was pregnant was terminated for violating the no call/no show policy when others who were not pregnant were not terminated for violating the policy. The employer did not proffer a legitimate nondiscriminatory reason for the termination, and the court granted the employee's motion for summary judgment. *Garcia v. Monument Mgt Group*, 2006 U.S. Dist. LEXIS 32218 (D. Neb. 2006).

A sales manager sued her employer, alleging failure to promote based on family responsibilities discrimination. Plaintiff's supervisor admitted that although she was qualified, he did not consider her for the promotion because she had children and he assumed she did not want to relocate her family. When she asked why she was not promoted, the supervisor allegedly stated, "because you have kids." She was awarded over a million dollars in damages, later reduced. *Lust v. Sealy, Inc.*, 277 F. Supp. 2d 973(W.D. Wis. 2003), aff'd, 383 F.3d 580 (7<sup>th</sup> Cir. 2004).

A car salesperson who was married with four children sued her employer, alleging sexual harassment and retaliation based on her family responsibilities. She alleged that her supervisor was very antagonistic toward her, scheduled her for erratic work hours instead of a set schedule, and made comments about how his wife did not have childcare problems. He also allegedly kept notes on her "offenses," which he did not do with other employees. She had a doctor's appointment on her day off and was ordered to come in afterward; she was then yelled at for coming in "late" on her day off and the supervisor said she should "do the right thing" and stay home with her children. He allegedly added that as a woman with a family, she would always be at a disadvantage at the dealership. The case survived summary judgment and settled for an undisclosed amount immediately thereafter. *Plaetzer v. Borton Automotive, Inc.*, 2004 WL 2066770 (D. Minn. 2004).

A school psychologist who had received outstanding performance reviews until she became a mother alleged that she was denied tenure because of her family responsibilities. Supervisors allegedly made comments to her such as it was "not possible for [her] to be a good mother and have this job," and stated they "did not know how she could perform her job with little ones." The Court held that use of stereotypical assumptions about a mother's commitment to her job, standing alone, constitutes sex discrimination in violation of Title VII. *Back v. Hastings on Hudson Union Free School District*, 365 F.3d 107 (2d Cir. 2004).

A top sales person with outstanding reviews sued her employer alleged that she experienced hostility from her supervisor when she returned from maternity leave, including scrutiny of her work hours when no other employee's hours were scrutinized, refusal to allow her to leave to pick up her sick child from daycare, and throwing a phone book at her with a direction to find a pediatrician who was open after hours. Plaintiff was awarded \$625,000 in damages, and the verdict was upheld on appeal. *Walsh v. National Computer System, Inc.*, 332 F.3d 1150 (8<sup>th</sup> Cir. 2003).

A male maintenance worker who had been employed for more than 25 years, sued his employer alleging interference with FMLA leave and retaliation. Plaintiff was responsible for the care of his father who suffered from Alzheimer's and his sick mother, who later died. While Plaintiff was on intermittent FMLA leave to care for his parents, the employer instituted a policy of grading employees based on the amount of work completed in a set period of time. Plaintiff alleged that the new policy was designed to create grounds for terminating him. The employee won \$11.65 million verdict; the case later settled before an appeal for an undisclosed amount. *Schultz v. Advocate Health and Hospitals Corp.*, No. 01 C 0702 (N.D. Ill. 2002).

A male state trooper sued his employer after he was denied family medical leave to care for his newborn child and wife, who had had a difficult delivery. Plaintiff alleged that a supervisor told him that "God made women to have babies," and that his wife would have to be "dead or in a coma" before he could be considered a primary caregiver and get family medical leave. Plaintiff was awarded \$665,000 in damages, later reduced. *Knussman v. Maryland*, 272 F.3d 625 (4<sup>th</sup> Cir. 2001)(FMLA).

A high-level executive sued her employer alleging that she was terminated because her employer learned that she planned to have more children. Plaintiff prevailed based on evidence that managers had repeatedly asked her how her husband was managing since she was not home to cook for him, and whether she could perform her job effectively after having a second child. Other evidence in plaintiff's favor included a company employment profile that excluded married women and women with children. A vice-president allegedly told her the profile was "nothing against you," but that he preferred unmarried, childless women because they would "give 150% to the job." Additionally, a company director allegedly stated that his secretary had stopped working late after having children, and that's what happens when a company "hires females in the child-bearing years." The executive was fired, allegedly for poor performance, including lack of commitment. The trial court granted summary judgment to the employer, but the appellate court reversed, finding the comments to be evidence of discrimination. *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46 (1st Cir. 2000).

A male schoolteacher, sued his employer alleging family responsibilities discrimination, after he was denied a one-year child-rearing leave. A one-year leave for child rearing was available to female employees in the form of sick leave. The court held that requiring males, but not females, to demonstrate that they were disabled before qualifying for the leave for child rearing violated Title VII. *Shafer v. Board of Public Education*, 903 F.2d 243 (3d Cir. 1990)(Title VII).

An attorney and mother of two young children claimed that her employer failed to consider her for a promotion because she was a mother. Despite her consistently excellent job evaluations, the higher position was offered to less qualified men with children, who turned it down, and to a woman without children. The attorney was told that she was not considered for the promotion because it would require extensive traveling, in which she presumably would not be interested because of her family. In addition, the senior vice-president of her company complained to her about the "incompetence and laziness of women who are also working mothers." He also noted that women are not good planners, especially women with kids. The general counsel of the legal department in which she worked stated that working mothers cannot be both good mothers and good workers, saying, "I don't see how you can do either job well." The court also considered that only seven of the forty-six managing attorneys were females and that none of them were mothers with school age children, whereas many of the male managing attorneys were fathers. The employer's motion to dismiss was denied and the case later settled. *Trezza v. Hartford, Inc.*, No. 98 Civ. 2205, 1998 WL 912101 (S.D.N.Y. Dec. 30, 1998).