

Discrimination: Larger Males Had To Restrain Psych Patients, Court Sees No Gender Bias.

In order for the male staff members to present a prima facie case of gender discrimination under Title VII, they must prove that they:

- (1) Are members of a protected class;***
- (2) Were performing their jobs to their employer's legitimate expectations;***
- (3) Suffered adverse employment action(s); and***
- (4) Were treated less favorably than at least one similarly-situated female colleague.***

There is no question that, as male caregivers, they are members of a protected class. They also were performing their jobs in accord with their employer's legitimate expectations.

However, they have failed to identify even one female colleague who was treated more favorably.

They have failed to demonstrate that men were required to respond to dangerous situations while women were spared such responsibilities. Perhaps if women were never called to respond to dangerous emergency situations and men were always called, these two men might have a case.

UNITED STATES DISTRICT COURT
INDIANA
July 22, 2009

Two male employees at a state mental hospital complained to management that they were being singled out to respond to emergencies involving bodily restraint of psychiatric patients.

One of the males, an LPN, is 6' 2" tall and weighs 310 lbs.; the other, a psychiatric attendant, is 6' 4" and 275 lbs.

They objected not only to being exposed to hazardous duty more frequently than their female coworkers but also to being required to come off their breaks immediately for emergencies requiring physical restraint, while female staff members were not necessarily required to come off their breaks for that purpose.

They sued for gender discrimination under Title VII of the US Civil Rights Act. The US District Court for the Southern District of Indiana ruled they did not have a case.

Male Caregivers Are Covered By Anti-Discrimination Laws

The laws against gender discrimination, originally enacted to combat discrimination against women, do apply to male caregivers in the healthcare field.

However, the evidence was lacking in this particular case that these employees were treated differently because of their male gender, all other things being equal.

That is, to prove their case they would have had to identify at least one female staff member whose job description, level of experience, physical strength and other relevant characteristics were basically the same as theirs who was not singled out for emergency-restraint duty, presumably only because of her female gender.

Retaliation Is A Separate Issue

The attendants also claimed retaliation because they complained to the US Equal Employment Opportunity Commission. Even if an employee's bias complaint is not valid, retaliation is strictly forbidden.

However, they also failed to convince the court that strict enforcement of certain workplace rules, before only laxly observed, was actually intended as retaliation. ***Keller v. Indiana Family and Social Services Admin.*, __ F. Supp. 2d __, 2009 WL 2222857 (S.D. Ind., July 22, 2009).**