



Discrimination Update

Libby Callan

PUMP / PWFA: Refresher

PUMP (Providing Urgent Maternal Protections for Nursing Mothers Act):

Requires employers to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express.

Requires employers to provide “reasonable break time” to pump for up to one year after the birth of their child

PWFA (Pregnant Workers Fairness Act): The PWFA includes the obligation to provide reasonable accommodations as long as they do not impose an undue hardship.



U.S. Equal Employment
Opportunity Commission

Press Release

02-22-2024

EEOC Sues Gracious Bakery for Pregnancy Discrimination

New Orleans-based Bakery Fired Employee Because of Medical Condition Related to Her Pregnancy, Federal Agency Charges

NEW ORLEANS – Gracious, LLC, a company based in New Orleans and doing business as Gracious Bakery + Café, violated federal law when it fired an employee because of a medical condition related to her pregnancy, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit filed February 16, 2024.



U.S. Equal Employment
Opportunity Commission

Press Release

08-29-2023

EEOC Sues Intertwined Real Estate Companies for Pregnancy Discrimination

Defendants Fired Property Manager Shortly After They Learned of Her Pregnancy

NEW YORK – St. Charles Housing, LP, Menowitz Management Corp., and Rental Assistance II, Inc., doing business as Apartment Corp., interrelated companies that own and manage residential and commercial properties throughout the country, fired a female property manager just days after she told her supervisor she was pregnant, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit filed today.

“It is long past the day when employers can force female workers to choose between motherhood and employment..The EEOC is committed to enforcing all federal laws prohibiting pregnancy discrimination in employment, including the Pregnancy Discrimination Act and the recently-enacted Pregnant Workers Fairness Act (PWFA).”

**-Timothy Riera, acting director of the
New York District Office**



U.S. Equal Employment
Opportunity Commission

Press Release

02-23-2024

Bako Pays \$50,000 to Settle EEOC Pregnancy Discrimination Lawsuit

Medical Laboratory Resolves Federal Lawsuit Charging That It Fired Employee Because of Her Pregnancy and Complaints of Pregnancy Discrimination

ATLANTA – Bakotic Pathology Associates, LLC (Bako), a pathology laboratory headquartered in Alpharetta, Georgia, will pay \$50,000 and furnish other relief to settle a sex discrimination and retaliation lawsuit, the U.S. Equal Employment Opportunity Commission (EEOC) announced today.

EEOC v. Bakotic Pathology Associates, LLC (U.S. District Court for the Northern District of Georgia) Feb. 2024:

- \$75,000 in monetary relief.
- **Under the two year consent decree resolving the lawsuit:**
 - ✓ Provide employees with specialized training on Title VII's prohibitions against sex discrimination and retaliation.
 - ✓ Circulate Title VII policies and the internal complaint reporting procedures to employees.
 - ✓ Report complaints of pregnancy discrimination to the EEOC during the term of the consent decree.
 - ✓ Post a notice which sets forth the general requirements of Title VII at each of its facilities.

EEOC v. Bakotic Pathology Associates, LLC (U.S. District Court for the Northern District of Georgia, Atlanta Division) Feb. 2024:

“The EEOC remains steadfast in its commitment to the enforcement of laws that protect women from unlawful discrimination..The EEOC will use all tools at its disposal to root out pregnancy discrimination, including the federal Pregnant Worker Fairness Act (PWFA), which was enacted last year.”

-Atlanta Office District Director Darrell Graham

Pregnancy Discrimination

- **Harassment**: asking questions / making comments related to a pregnancy.
- **Discrimination**:
 - Demoting an employee when she announces pregnancy or is out on leave.
 - Passing over an employee for a promotion once learning of the pregnancy.
 - RIF: overly-inclusive of pregnant or recently pregnant employees.
- **Expectation**: treat pregnant / recently pregnant employees similar / same to employees who are not and have not been pregnant.

Discrimination and Documentation

- Gender Based Claims Rising
- Documentation
- Perception v. Reality
- Fundamentals



On Fundamentals

“Winners don’t just learn the fundamentals, they master them. You have to monitor your fundamentals constantly because the only thing that changes will be your attention to them.”

-Michael Jordan

Google Hit With \$1.2M Gender Discrimination Verdict

New York (October 20, 2023)

A Manhattan federal jury found Friday that Google owes \$1.2 million for discriminating against a female Cloud executive...

Jurors deliberated for six hours before ruling that Google treated a technical director on Google Cloud's financial services team less well because of her gender and engaged in retaliation in violation of both the New York City Human Rights Law and New York Labor.



Rowe v. Google LLC: six-day trial

Employee testified: she earns less than her male colleagues, she was stuck a pay level below her male colleagues in Google's internal hierarchy because she *"wasn't in the old boys' network."*

Google supervisor testified: her male colleagues had more technical skills coming from companies like Spotify, General Electric Co. and Intel Corp. Google argued these men were paid more because they could make an *"immediate impact"* at Google. She *"needed to learn some of the fundamentals...It's not a criticism of her. It's just a fact."*

Rowe v. Google LLC

Google Cloud's Chief Technology Officer:

while she has consistently received *exceeds expectations* performance ratings, she hasn't made significant engineering contributions to her team.



But what does “honesty” look like?

- Following progressive discipline policy
- Using language from job description
- Using consistent language / concepts from employee to employee
- Getting painfully specific
- Collaborating with managers / HR



What does it look like to you and your organization?



Muldrow v. City of St. Louis (SCOTUS)

- What is an “adverse employment action”?
- Previously required a showing that the action resulted in material harm or significant disadvantage to the employee.

Muldrow v. City of St. Louis (cont'd)

- Female St. Louis police sergeant laterally transferred—no economic harm / kept same title.
- Former role filled by a male officer.
- She filed suit -- alleged the position was less prestigious / affected her work schedule, pay structure and work attire.

Muldrow v. City of St. Louis (cont'd)

“Muldrow need show only some injury respecting her employment terms or conditions...The transfer must have left her worse off, but need not have left her significantly so.”

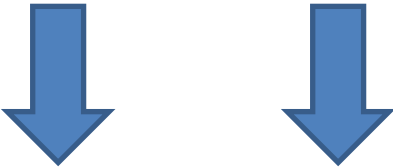
Duvall v. Novant Health, Inc. (2024 verdict)

FILED
CHARLOTTE, NC
OCT 26 2021
US DISTRICT COURT
WESTERN DISTRICT OF NC

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:19-CV-624-DSC

DAVID DUVALL,)
)
 Plaintiff,)
)
 v.)
)
 NOVANT HEALTH, INC.,)
)
 Defendant.)

VERDICT FORM



1. Has Plaintiff David Duvall proven that his race (Caucasian) and/or his sex (male) was a motivating factor in Novant Health's decision to terminate him?

Answer Yes or No

LABOR LAW

Court affirms verdict for white man discriminated against based on race/gender

The Fourth Circuit Court of Appeals last week affirmed a lower court's finding that Novant Health discriminated against David Duvall, a white man, when it terminated him and replaced him with a black female.

The court upheld the award of front and back pay, but set aside the award of punitive damages.



KAREN MICHAEL

According to the case, Duvall worked as the Senior Vice President of Marketing and Communications with a record of strong performance reviews and a stellar reputation. In July 2018, he was terminated despite no record of documented criticism of his performance.

Immediately after his termination, Novant elevated two of his deputies, a white woman and a black woman, to take over his duties, and then hired a black woman to permanently replace him.

Duvall claimed he was terminated "merely to achieve racial and gender diversity, or more specifically, to hit certain diversity 'targets' within its leadership."

Duvall sued under Title VII of the Civil Rights Act, which prohibits discrimination based on race, gender, national origin, color or religion.

Three years prior to his termination, Novant developed a Diversity and Inclusion Strategic Plan with three phases. Phase 1, ("Learn and Engage") was to assess the culture. According to the case, "Phase 2 ('Develop and Influence') would set goals to 'embed diversity and inclusion' in three to five years, with a commitment to 'adding additional dimensions of diversity to the executive and senior leadership teams' and establishing 'a system wide decision making process that includes a diversity and inclusion lens.'" The final phase would "evaluate the progress toward embedding D&I" and "implement strategies and tactics to close identified gaps."

Duvall served on the D&I Council. In May 2018 the Council reviewed the demographic data of the workforce, including the lower representation of women and people of color among leaders. Following Duvall's termination, D&I Council meeting minutes reflect the philosophy that "leadership should reflect our team members." It referred to "targets" set by the company, noting they were not quotas.

In 2019, the D&I committee lauded its progress in the first two phases of the plan, noting it made "progress" increasing black representation in leadership roles but that it still had a gap in black leadership compared to industry benchmarks. The report recommended a "3-4

percent increase" in black leaders over the next three years.

Later that year a D&I report lauded a 3.9% decrease in the white workforce and 5.6% decline in white leaders with a 2% increase in the black workforce, .9% increase in black leaders and a 21.1% increase in female leaders.

When Duvall was terminated, his manager (a black man) told him that the company was "going in a different direction." Despite no documentation, Duvall's manager testified at the trial that Duvall was terminated because Duvall lacked "engagement" and "support from the executive team." Duvall's evidence directly contradicted this assertion.

Duvall presented evidence that his manager actually spoke highly of him to a recruiter from Johns Hopkins following Duvall's termination stating that his termination was due to changes in the organization and a desire to bring in new leaders for a "different point of view." The manager said Duvall's termination was not a reflection of him doing a bad job and that he would hire Duvall again.

The black woman who replaced Duvall was the top candidate among the only other two finalists, both black women.

Another white male was also terminated around the same time and replaced by a black male.

Notably, Duvall's manager's direct reports went from seven

white male direct reports in 2018 to two in 2019 to one in 2020 to zero at the time of trial in 2021.

The jury found that Duvall's race and/or sex were a "motivating factor" in his termination. The appeals court agreed in part due to the manager's "shifting, conflicting, and unsubstantiated explanations for Duvall's termination" which indicated a pretext for unlawful discrimination.

The court also explained the mixed motive was due in part to the D&I initiative and that there was "more than sufficient evidence for a reasonable jury to determine that Duvall's race, sex, or both motivated Novant Health's decision to fire him."

The court presented a footnote, "To be clear, employers may, if they so choose, utilize D&I type programs. What they cannot do is take adverse employment actions against employees based on their race or gender to implement such a program."

Employers should review D&I programs and initiatives to make sure that they do not have the appearance or reality of discrimination against, or preference for, any person based on a protected characteristic.

Karen Michael is an attorney and the president of Richmond-based Karen Michael PLC. Email her at stayhired@stayhired.net.

KEY RATES

	Rate	1 day ago	1 wk ago
Prime Lending	8.50	8.50	8.50
Discount Rate	6.00	6.00	6.00
Fed Funds	5.25-5.505.25-5.505.25-5.50		

TREASURIES

	Rate	1 day ago	1 wk ago
1 Month T-bill	5.39	5.39	5.38
3 Month T-bill	5.39	5.39	5.37
6 Month T-bill	5.34	5.34	5.31
2 Year T-note	4.73	4.69	4.56
10 Year T-note	4.31	4.29	4.14
30 Year T-bond	4.43	4.44	4.28

CONSUMER RATES

Virginia averages	Rate	1 mo ago	6 mos ago
\$10,000-min money market account	0.90	0.70	0.64
6-month CD	2.29	2.29	2.18
2-year CD	2.61	2.61	2.64
60-mo. new car loan	7.48	7.70	7.42
\$30K home equity			

Mortgages	Rate	1 mo ago	6 mos ago
30-year fixed	7.07	7.27	7.54
15-year fixed	6.58	6.60	6.82
1-year ARM	6.33	6.29	6.50

Source: Bankrate.com

Duvall v. Novant Health, Inc. (4th Cir. 2024)

- White Senior V.P. Marketing and Communications, strong performance review, stellar reputation.
- July 2018: terminated despite no record of documented performance issues.
- Manager told him Novant was “*going in a different direction.*”
- Black woman hired to permanently replace him.

Duvall v. Novant Health, Inc. (cont'd)

- Three years prior to the termination, Novant developed a D/I Strategic Plan with three phases.
- As implementation proceeded, company report: 3.9% decrease in the white workforce and 5.6% decline in white leaders with 2% increase in black workforce and .9% increase in black leaders, 21.1% increase in female leaders.
- Sued under Title VII: *claiming he was terminated merely to achieve racial diversity...to hit certain diversity 'targets' within leadership.*

Duvall v. Novant Health, Inc. (cont'd)

- *“..shifting, conflicting, and unsubstantiated explanation for termination” = **PRETEXT**.*
- *"To be clear, employers may, if they so choose, utilize D&I type programs. What they cannot do is take adverse employment actions against employees based on their race or gender to implement such a program."*

Fundamentals

- Follow progressive discipline
- Use language from job description
- Use consistent language / concepts from employee to employee
- Be painfully specific in documentation
- Collaborate with managers / HR



U.S. Equal Employment
Opportunity Commission

Press Release

10-11-2023

Lilly to Pay \$2.4 Million to Settle Nationwide EEOC Age Discrimination Lawsuit

Settles Federal Charges Company Failed to Hire Older Pharmaceutical Sales Representatives

INDIANAPOLIS – Lilly USA, LLC, a pharmaceutical corporation based in Indianapolis, Indiana, and its parent company, Eli Lilly and Company, will pay \$2.4 million and provide other equitable relief to settle a nationwide class age discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

Questions?

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Thank You