

CLIENT ALERT: First Circuit Revives Claim of Discrimination Based on Family Responsibility Stereotype

A recent decision from the U.S. Court of Appeals for the First Circuit, *Chadwick v. Wellpoint, Inc.*, demonstrates the care managers must exercise when communicating with employees about their personal and family lives.

Plaintiff, the mother of an eleven year old and six year old triplets, alleged that she failed to receive a promotion due to sex stereotyping. At the time of applying for the promotion, plaintiff had worked for defendant for eight years and had an excellent record. She was a finalist for the promotion along with another female employee who was the mother of two children, ages fourteen and nine. This other finalist had less seniority and lower, albeit still good, scores on her evaluations.

A panel of three female managers interviewed the finalists and chose the other candidate because of her better performance in the interviews. However, the panel member with final authority to make the decision told the plaintiff: "It was nothing you did or didn't do. It was just that you're going to school, you have the kids and you just have a lot on your plate right now."

The panel member also told plaintiff that the three panel members would feel overwhelmed if they were in plaintiff's position and that "there would be something better down the road." This individual later testified in her deposition that this explanation was an ill-advised attempt to soften the blow.

In reversing summary judgment awarded to the defendant by the lower court, the court also relied on an e-mail sent to plaintiff two months earlier when the decision maker first became aware that plaintiff was the mother of triplets. She wrote, "Oh my - I did not know you had triplets. Bless you." While acknowledging that the e-mail was susceptible to various interpretations, the court held that a jury could reasonably find that the author felt badly for plaintiff because her life must have been so difficult as the mother of three young children.

Based upon this e-mail, the explanation given to plaintiff for not receiving the promotion, and her stellar record with defendant, the court held that a jury might reasonably conclude that plaintiff was passed over for promotion because of sex-based stereotypes, namely that she would be unlikely to perform well on the job she was seeking because of her family obligations. The court held it was irrelevant that the successful candidate was the mother of two children. The court made no comment about the fact that the decision makers allegedly harboring these unlawful sexual stereotypes were female.

The decision is an instructive one for emphasizing some important reminders for managers:

1. Tell the truth when advising employees of the reasons for any decision;
2. Don't sugar coat or attempt to soften the blow of an adverse decision;
3. Be clear in all your communications with employees, even when sending what you believe to be an innocuous e-mail; if you are unclear, creative lawyers will be able to offer alternative

explanations for your ambiguous communications; and

4. Remember that e-mails have the same evidentiary value as any other written documents. You should exercise appropriate care when utilizing this and any other means of communication. For more information please see MBJ's June 13, 2007 Client Alert entitled, "[EEOC Issues Guidance on Unlawful Treatment of Workers With Caregiving Responsibilities](#)," and contact your MBJ attorney.

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