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DISCRIMINATION

Employee not qualified to bring her discrimination claim

by Jacob Monty
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An element of employment discrimination claims that has traditionally been glossed over is now in the spotlight. Employees must show that they were "qualified for the position" to bring a discrimination lawsuit. A recent case demonstrates how this element can be knocked out.

Facts

Darla Lackey, a Caucasian woman, filed suit against her employer after being discharged, alleging race and national origin discrimination. Lackey, a benefits manager, was terminated for instructing an employee to misrepresent her part-time status to obtain benefits. Lackey alleged that she was treated differently from a Hispanic employee who allegedly wrongly obtained benefits and that she was replaced after her termination by a Hispanic employee.

Lackey's public employer does not waive its governmental immunity from suit unless an employee can demonstrate a *prima facie* (minimally sufficient) case of discrimination. A seldom-attacked element of a *prima facie* case is that the employee must be qualified for her position. The employer argued under case law from the U.S. 5th Circuit Court of Appeals (whose rulings apply to all Texas employers) that in order to be qualified for her position, Lackey must have been performing her job in a way that met its legitimate expectations.

Lackey, in addition to instructing an employee to misrepresent her part-time status to obtain benefits, had failed to make millions of dollars in payments to the Employee Retirement System of Texas. As benefits manager, Lackey was directly responsible for making those payments. Other performance issues, such as failing to respond to e-mails and accurately completing tasks, were demonstrated by her employer. The trial court dismissed Lackey's claims with prejudice (permanently).

In a memorandum opinion (which is used when the court believes the issues are settled), the Texas Court of Appeals, 9th District, affirmed, concluding that the evidence demonstrated that Lackey was not performing her job at a level that met her employer's legitimate expectations, and thus she was not qualified for her job. Because she was not qualified, she failed to demonstrate a *prima facie* case and her employer's immunity from suit was not waived. *Lackey v. Lone Star Coll. Sys.*, 09-15-00399-CV, 2016 WL 6110700 (Tex. App.—Beaumont, Oct. 20, 2016, no. pet.)

Bottom line

This element is rarely attacked in the 5th Circuit, and even more rarely in Texas. However, employers should remember this defense when being sued: If an employee was not meeting the employer's legitimate expectations, she is not qualified and cannot demonstrate a *prima facie* case.

Jacob M. Monty of Monty & Ramirez, LLP practices at the intersection of immigration and labor law. He is the managing partner and can be reached at jmonty@montyramirezlaw.com or 281-493-5529. Lone Star College System was represented by Daniel N. Ramirez and Brittany G. Mortimer of Monty & Ramirez, LLP. ✤