

EXERCISE 3.1: ZIMPFER V. PALM BEACH COUNTY

Overview

Chapter 3 presents a variety of laws affecting HRM. One of those laws is the Age Discrimination in Employment Act (ADEA). The following case requires you to apply your understanding of the ADEA to provide some recommendations for Palm Beach County.

Learning Objectives

After completing this exercise, you should be able to

1. Identify the critical issues associated with age discrimination cases.
2. Provide recommendations for a plaintiff filing an age discrimination case and for the employer in defending EEO practices.
3. Outline policies that organizations should adopt to reduce the probability of age discrimination or claims of age discrimination.

Procedure

Part A: Individual Analysis

- Step 1. Read the background material on Palm Beach County provided in Exhibit 3.1.1 and the information pertinent to the case in the remaining exhibits (Exhibits 3.1.2 to 3.1.4).
- Step 2. Assume the role of the HR director and respond to the issues described below. Answer each question on Form 3.1.1.

Part B: Group Analysis

- Step 1. In groups, attempt to reach consensus on the five questions. Each student should review each other student's Form 3.1.1 before the discussion.
- Step 2. The instructor will designate one or more representatives to present each group's consensus position.

Exhibit 3.1.1

Background Material for Palm Beach County

Palm Beach County has requested your opinion regarding an alleged violation of the Age Discrimination in Employment Act. Mr. **Bryce Zimpfer**, age 52, has been an employee of the county for 16 years in the employee relations area. The Department of Human Resources posted a job vacancy for employee relations manager (see Exhibit 3.1.2), and Mr. Zimpfer applied for the position. The department filled the position with Mr. **Brad Merriman**, age 33, an outside applicant with less experience in employee relations than Mr. Zimpfer.

After filing a timely complaint with the EEOC, Mr. Zimpfer retained Ms. Lynn Szymoniak, an attorney who is now attempting to reach a settlement with the division's legal staff. In preparation for these negotiations, the attorney asked an industrial psychologist, Dr. **Marcy Josephs**, to examine the résumés of the job applicants and submit a report as to whether Mr. Zimpfer was more qualified for the position than Mr. Merriman. Dr. Josephs submitted a report and concluded that on the basis of her résumé analysis, Mr. Zimpfer was more qualified for the position than Mr. Merriman (see Exhibit 3.1.3).

Exhibit 3.1.2

Job Vacancy

Position Description: Employee Relations Manager

NATURE OF WORK

This is professional personnel and labor relations work developing and managing programs and activities to enhance relationships between management and employees; to promote employee satisfaction, well-being, and quality of work life; to develop greater productivity in the workforce; and to achieve sound labor/management working relationships. Work is of a highly responsible nature, requiring considerable independent judgment and decision-making. Work is performed under the direction of the Director, Employee Relations and Personnel, and is reviewed through conferences, reports, and results achieved.

EXAMPLES OF WORK

Initiates and manages programs that aim to improve communication and participation. These may be employee orientation meetings, committees, attitude surveys, suggestion boxes, awards programs, newsletters, newspapers, handbooks, benefits brochures, and other media such as posters or payroll stuffers that communicate policies and practices to employees.

Develops programs that monitor and detect employees' dissatisfactions with policies or working conditions. These include adequate complaint and grievance procedures, communication of these to employees, and adequate follow-up with management to resolve problems.

Initiates procedures for reviewing adverse actions taken by supervisors to ensure that such actions are fair. Investigates the facts of the case and determines whether any disciplinary action is appropriate. Directs and trains supervisors in discipline and discharge procedures.

Develops and monitors performance review systems, employee assistance programs, incentive/awards programs, quality circles, and others whose purpose is to motivate workers toward greater productivity.

Initiates programs to improve the quality of supervision, primarily training programs to improve knowledge of effective supervisory practices. May develop and present training programs for supervisors. May write and disseminate supervisors' handbooks or manuals.

Assists the Director in interpreting the provisions of labor contracts to supervisors. May conduct supervisory training sessions in contract administration. Reviews and recommends policy and benefit changes to the Director that are needed to enhance employee/management relations.

Audits and approves personnel actions when applicable to ensure compliance with policies.

May supervise counselors or specialists in carrying out these employee relations activities.

Performs related work as required.

REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES

- Thorough working knowledge of federal and state laws affecting public personnel administration and labor relations.
- Thorough knowledge of merit system principles and policies.
- Knowledge of organization and functions.
- Knowledge of the principles of management and supervision.
- Ability to organize work and supervise professional staff.
- Ability to write and interpret correspondence and reports.
- Ability to speak to a wide variety of groups and present ideas effectively.
- Ability to deal tactfully and persuasively with staff, employees, supervisors, administrators, and union officials.
- Ability to conduct personal and investigative interviews.
- Ability to interpret complex legal cases and documents.
- Ability to conduct independent research and analysis.

MINIMUM ENTRANCE REQUIREMENTS

Graduation from an accredited college or university with major course work in Human Resources Management, Industrial Relations, or Labor Relations, or closely related field; considerable progressively responsible experience in employee or labor relations; or any equivalent combination of related training and experience.

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MARK A. CULLEN

October 25

LYNN E. SZYMONIAK

Marcy M. Josephs, Ph.D.
10475 Northwest Michigan Avenue
Birmingham, Michigan 48275

Dear Dr. Josephs:

I am very pleased that you are available to assist us with the Bryce Zimpfer case. Please find enclosed the following documents:

1. The job announcement, announcing the position of Employee Relations Manager;
2. A job description for the position of Employee Relations Manager;
3. Copies of the newspaper ads announcing this position;
4. A Referral List listing the candidates chosen for an interview for the position of Employee Relations Manager;
5. The resumes, cover letters, and applications of the applicants listed on the referral list; and
6. The application and resume of Bryce Zimpfer.

Based on your review of the above documents, please advise me:

1. Whether Mr. Zimpfer's qualifications equalled or exceeded the qualifications of the applicants selected for an interview; and
2. In particular, whether Bryce Zimpfer's qualifications equalled or exceeded the qualifications of J. Brad Merriman—the candidate ultimately selected for the position. The experts' reports are to be exchanged on this case on November 12. Thank you again for your assistance.

Yours truly,

LYNN E. SZYMONIAK, ESQ.
Enclosures

Exhibit 3.1.4

MARCY MILLER JOSEPHS, PH.D.
INDUSTRIAL PSYCHOLOGIST
10475 NORTHWEST MICHIGAN AVENUE
BIRMINGHAM, MICHIGAN 48275

November 13

Lynn E. Szymoniak, Esq.
Cullen & Szymoniak, P.A.
1030 Lake Avenue
Lake Worth, FL 33460

Dear Ms. Szymoniak:

The purpose of this letter is to respond to your request for expert opinion in matters related to Bryce Zimpfer. In your letter of October 25, you requested that I render an opinion regarding the following:

1. Whether Mr. Zimpfer's qualifications equalled or exceeded the qualifications of the applicants selected for an interview; and
2. In particular, whether Bryce Zimpfer's qualifications equalled or exceeded the qualifications of J. Brad Merriman—the candidate ultimately selected for the position.

In rendering my opinion, I have reviewed the following documents:

1. The job announcement from Palm Beach County announcing the position of Employee Relations Manager;
2. A job description for the position of Employee Relations Manager;
3. Copies of the newspaper ads announcing this position;
4. A Referral List prepared, listing the candidates chosen for an interview for the position of Employee Relations Manager;
5. The resumes, cover letters, and applications of the applicants listed on the referral list; and
6. The application and resume of Bryce Zimpfer.

Based on my review of the aforementioned documents, I have the following opinions:

1. Mr. Zimpfer's qualifications equalled or exceeded the qualifications of several of the applicants selected for an interview; and
2. Mr. Zimpfer's qualifications exceeded the qualifications of Mr. J. Brad Merriman.

Exhibit 3.1.4 (Continued)

Exercise 3.1 / Zimpfer v. Palm Beach County

The following is a description of the procedure I followed to arrive at these opinions:

1. Based on a reading of the job announcement, the job description and the newspaper ad, I constructed three applicant/work requirement matrices for purposes of assessing applicant qualifications with regard to program/activities, work examples, and required knowledge, skills, and abilities (KSAs). See Figures 1, 2, and 3. The first column of each matrix represents the critical work requirements of the job as reflected in the job announcement, and job description.
2. I read each resume and recorded those work requirements with which each applicant had experience or requisite KSAs. I performed this task on three occasions (for the three matrices), each time evaluating the resumes in random order.
3. I performed the identical task described in Step 2 five days later with no reference to the completed matrices from Step 2. Thus, I made two independent evaluations of each of the three work requirement matrices.
4. I examined the discrepancies in the applicant/requirement cells of each matrix from the Step 2 and Step 3 evaluations and reviewed the resumes for purposes of reconciling the disagreements. The totals in the last row of Figures 1, 2, and 3 reflect the final evaluations I have made of each candidate after reconciling the few discrepancies between the Step 2 and Step 3 evaluations.
5. The opinions rendered above with regard to Mr. Zimpfer are based on the final evaluations of the three matrices.

The matrix analysis on which I have based my opinions represents a content-valid and objective approach to the evaluation of applicant resumes. It is far superior in terms of validity and reliability to a nonquantitative evaluation procedure which calls for a global evaluation of the applicants in terms of suitability for a multifaceted job.

Sincerely,

Marcy M. Josephs, Ph.D.

MMJ:im

Exhibit 3.1.4 (Continued)

FIGURE 1

PROGRAMS AND ACTIVITIES ANALYSIS

Programs/Activities	Zimpfer (52)	Atkinson (28)	Bender (40)	Bledsoe	Merriman (33)	Schwab
Performance appraisals	X	X	X	X	X	X
Employee assistance	X	X	X	X	X	X
Employee benefits	X		X		X	
Employee publications	X			X	X	
Counseling and discipline	X		X	X		
Grievance procedures	X				X	
Attendance and leave policy	X					
Layoff policy	X				X	
Unemployment compensation	X	X	X	X		
Contract administration	X					
Totals	9	3	5	5	6	2

Ages (where available) are in parentheses.

FIGURE 2

WORK SAMPLE ANALYSIS

Examples of Work	Zimpfer	Atkinson	Bender	Bledsoe	Merriman	Schwab
Employee orientation	X		X			X
Attitude surveys	X		X			
Suggestion boxes					X	
Awards program			X			
Newsletters	X		X			
Handbooks						
Benefits brochure	X	X				
Grievance procedures	X		X	X		
Disciplinary action			X	X		
Supervisory training	X	X	X	X		X
Interpreting labor contracts	X	X				X
Policy and benefits	X	X	X	X	X	X
Audits and approves personal actions					X	
Totals	8	4	8	5	3	5

FIGURE 3

KNOWLEDGE, SKILLS, AND ABILITIES ANALYSIS

	Zimpfer	Atkinson	Bender	Bledsoe	Merriman	Schwab
State and federal law	X	X	X	X	X	X
Ability to speak to variety of groups			X	X	X	X
Conduct interviews	X	X	X	X	X	X
Interpret complex legal cases and documents			X		X	X
Conduct independent research	X					X
Totals	3	3	4	2	2	5

Name _____

Group _____

FORM 3.1.1

1. Was Mr. Zimpfer a victim of illegal age discrimination according to the ADEA and case law? Explain your position. Cite relevant court cases to justify your position. If you are undecided, explain why.

2. What (if any) further evidence should be ascertained before the county fully understands the legal implications of its actions?

FORM 3.1.1 (Continued)

Group _____

Name _____

3. Who has the ultimate burden in proving age discrimination in this case and what is that burden?

4. What policies should the county adopt to reduce the possibility of age discrimination suits in the future?

5. Could Palm Beach County be vulnerable to a future ADEA lawsuit using a "disparate impact" theory? If so, who would have the ultimate burden in such a case and what would the burden be? What critical Supreme Court rulings are relevant to these questions?