

EXERCISE 3.5: JOSEPH GARCIA V. HOOTERS; CAMERON V. LAVEILLE MAISON

Overview

What is allowable as a BFOQ? The Supreme Court has said that BFOQs are allowable if they are “reasonably necessary to the normal operation of that particular business.” What if a business has a competitive strategy that appeals to a particular segment of the population that has certain strong preferences for services to be provided by the establishment? (Recall the Chapter 3 discussion of the *Diaz v. Pan American* Supreme Court case.) The 1991 decision in *UAW v. Johnson Controls* stated that the exception to Title VII in the form of BFOQs applies only to policies that involve the “essence of the business.” The purpose of this exercise is to present two cases with characteristics that are hardly unique for the industry. We will ask you to take a position as to the legality of a company policy that the company claims falls under the “business essence” or BFOQ exception to Title VII.

Learning Objectives

After completing this exercise, you should be able to

1. Understand the conditions under which a BFOQ or an “essence of the business” argument is a legal defense.

2. Know the role of customer preference in Title VII cases.
3. Consider the implications of the cases for related policies.

Procedure

- Step 1. Prior to class, read the case histories in Exhibit 3.5.1 and answer the questions on Form 3.5.1.
- Step 2. In groups of about six people, each student should review the other group members’ responses and then attempt to reach group consensus on each of the questions. One person should be designated as the group spokesperson, and the group position should be presented.

Exhibit 3.5.1

JOSEPH GARCIA V. HOOTERS

Hooters Restaurants had a competitive strategy of appealing to the young, affluent male population through a number of features. Large-screen television for sports events, happy hours, sports celebrity events, and very attractive waitresses were part of their strategy. Joseph Garcia was a waiter from Chicago who had worked at similar restaurants for over 10 years. He heard from a friend that Hooters was hiring. However, he was told he would have to apply in person. When he showed up at one of the establishments, he was told that they in fact were not hiring. He learned a few weeks later that an attractive female had been hired at the same restaurant. He filed a timely claim with the EEOC.

CAROL CAMERON V. LAVEILLE MAISON

LaVeille Maison is a five-star restaurant in East Cupcake, Michigan. Carol Cameron, a waitress with over 10 years’ experience in “upscale” restaurants and an esoteric knowledge of wine, applied for a job at LaVeille Maison at a period when the restaurant was hiring waiters in preparation for the heavy winter season. The restaurant only employs waiters and makes the argument that five-star French restaurants traditionally employ only waiters. After learning that LaVeille Maison had hired three new waiters, Ms. Cameron filed a timely Title VII lawsuit against the restaurant.

Name _____

Group _____

FORM 3.5.1

1. Was Mr. Garcia a victim of illegal sex discrimination? Explain your answer in some detail based on your understanding of BFOQs.

Learning Objectives

After completing this exercise, you should be able to:

1. Recognize the elements of a BFOQ defense.
2. Apply the BFOQ defense to a specific case.
3. Determine if the BFOQ defense is a valid defense to a claim of sex discrimination.

Procedure

Part A: Individual Analysis

Read the facts, read Chapter 3 and the scenario below, and complete Form 3.5.1.

Part B: Group Analysis and Class Discussion

In groups of about six, students read the scenario and complete Form 3.5.1 and then attempt to reach consensus on the questions. Then the form is designated by the student or class discussing will focus on key laws and provisions.

Scenario

Mr. Garcia is a 45-year-old male who has been working for the City of San Francisco for 15 years. He is a member of the City's Police Department and is currently a sergeant. He is a member of the City's Police Department and is currently a sergeant.

2. Was Ms. Cameron a victim of sex discrimination?

Ms. Cameron is a 35-year-old female who has been working for the City of San Francisco for 10 years. She is a member of the City's Police Department and is currently a sergeant. She is a member of the City's Police Department and is currently a sergeant. She is a member of the City's Police Department and is currently a sergeant.

Ms. Cameron is a 35-year-old female who has been working for the City of San Francisco for 10 years. She is a member of the City's Police Department and is currently a sergeant. She is a member of the City's Police Department and is currently a sergeant.

Form 3.5.1

The following information is provided for your use in completing Form 3.5.1. It is not intended to be a substitute for the law, but rather a guide to help you understand the law and apply it to the facts of the case.

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The Interview

After arriving for her appointment, Ms. Cameron is greeted by a friendly receptionist and asked to wait in the lobby. She has many ideas and thoughts about how to perform the job.

David is under pressure to fill the position. He has been promoted to the position of sergeant and is looking for a replacement. He is looking for a replacement who is a member of the City's Police Department and is currently a sergeant.

David: So, you must be Anna. You must be the person that you were talking about.

Anna: That's right. I must be the person that you were talking about.

David: No, not at all. Let's begin the interview. What do you think about the position that you were talking about?

Anna: Yes, it is a great job. I would like to work for the City of San Francisco. I would like to work for the City of San Francisco. I would like to work for the City of San Francisco.

David: Tell me, Anna, how did you get the position that you were talking about?

Anna: Well, I applied for the position and was selected. I was selected for the position and was selected for the position and was selected for the position.

David: That's not all, is it? I mean, I don't know much about the position that you were talking about. I don't know much about the position that you were talking about. I don't know much about the position that you were talking about.

FORM 3.5.1 (Continued)

Group _____

Name _____

3. In principle, do you see these cases as the same in terms of your interpretation of legal BFOQs, business necessity, "essence of the business," or "job relatedness"?

4. What if, in doing a background check on Ms. Cameron, it is discovered that Ms. Cameron had quit a previous employer complaining that she had developed carpal tunnel syndrome. Could management use this information and reject Ms. Cameron on this basis?