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Trends in employment discrimination cases based on race, sex and age

Kamilah Holder

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Abstract

Employer/ employee relations are a substantial part of all or lives. Historically employment discrimination has been a major issue for employers and employees alike. Similar to the past, today's society also faces the problem of employment discrimination. There are many federal and state laws aimed at preventing employment discrimination.

This project will examine current federal and state employment laws and assess how they are interpreted in current case law (specifically relating to race, gender and age discrimination in employment). It will also analyze this case to determine if there are any trends or patterns by the courts deciding these employment discrimination cases.

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TRENDS IN EMPLOYMENT DISCRIMINATION CASE BASED ON RACE, SEX AND AGE

by

Kamilah Holder

A Senior Thesis Submitted to the

Eastern Michigan University

Honors Program

In Partial Fulfillment of the Requirements for Graduation

With Honors in Legal Assisting

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Senior Honors Thesis

ABSTRACT

Author: Kamilah Holder
Department: College of Technology
Supervising Instructor: Dr. Darcelle White
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Title: Trends in Employment Discrimination Cases Based on Race, Sex, Age
Length: 27 pages
Completion: 1 – 26 – 04

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GLOSSARY

Motion for summary disposition pursuant to MCR 2.116(c)(10)- a party may move for dismissal of or judgment on all or part of a claim in accordance with this rule. The motion may be based on: (10) except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of laws.

Prima facie- at first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure.

Prima facie case- such as will suffice until contradicted and overcome by other evidence.

Deposition- the testimony of a witness taken upon interrogatories, not in open court, but in pursuance of a commission to take testimony issued by a court, or under general law on the subject, and reduced in writing and duly authenticated, and intended to be used upon the trial of an action in court.

Burden of proof- in the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a case.

CHAPTER I
INTRODUCTION

Employment plays a substantial role in all of our lives. Much like our personal life, we develop many relationships throughout our employment history. In some cases, these relationships become lasting, or on the other hand, employment discrimination may occur. Those relationships once thought to be long term, are cut off by the devastation of claims of discriminatory treatment.

Employment discrimination has been an issue since the first group of workers in United States. In the past, as well as present day, some employees were unjustly subjected to harsh working conditions, verbal abuse, child labor, denial of advancement, prejudice, in addition to many other injustices. There was also a perception that certain employees were being treated differently than other employees.

Because of the bias' that occurred in employment, the federal government decided there was a need to institute laws that would make employment discrimination illegal. Some federal laws prohibiting discrimination are: Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e), the Equal Pay Act of 1963 (29 U.S.C. § 206(d), the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621), Title I and Title V of the Americans with Disabilities Act of 1990 (U.S.C. § 12101), Sections 501 and 505 of the Rehabilitation Act of 1973 and the Civil Rights Act of 1991 (29 U.S.C. § 791).

Additionally, state governments also noticed the need to implement anti-discrimination laws to supplement the federal laws. In Michigan these include: the Elliott-Larsen Civil Rights Act of 1976 (MCL 37.2101) and the Persons with Disabilities Civil Rights Act (MCL 37.1101).

In reviewing the federal and state laws regarding employment discrimination, it is

important to analyze the structure of these laws, how they are interpreted in current cases, as well as to examine what the courts are relying on to come to their conclusions in reference to these cases.

CHAPTER II
OVERVIEW OF FEDERAL & MICHIGAN STATE EMPLOYMENT LAWS

Title VII of the Civil Rights Act of 1964 outlaws discrimination by federal, state,

and local employers with 15 or more employees. The primary purpose of Title VII is to make sure that employers make their employment decisions based on job qualifications and not on factors that courts and legislatures have determined to be illegal. Within the scope of Title VII, the term employment includes: recruiting, hiring, job classification, compensation, transfer, promotion, and termination.

The Equal Pay Act of 1963, an amendment to the Fair Labor Standards Act, mandates that male and female workers performing under similar working conditions and exerting the same skill, effort, and responsibility in a position, receive equal pay. In addition, the Equal Pay Act specifically prohibits labor unions from causing or attempting to cause an employer to discriminate on the basis of sex in the payment of wages.

The Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination by labor organizations, employers, and employment agencies based on age. Additionally, the ADEA prohibits the use of job advertisements that specify an applicant should be "young," a "recent graduate," or that use terms such as "retired" or "over 65."

Title I and Title V of the Americans with Disabilities Act of 1990 (ADA) covers a wide range of disabilities, from physical conditions affecting mobility, stamina, sight, hearing, and speech to conditions such as emotional illness and learning disorders. The purpose of the ADA is to recognize and protect the civil rights of people with disabilities and is modeled after earlier landmark laws prohibiting discrimination on the basis of race and gender.

Sections 501 and 505 of the Rehabilitation Act of 1973 specifically cover federal

employees and applicants for employment, making it against the law to discriminate based on disability. Supplying reasonable accommodations to the known physical and mental limitations of qualified employees or applicants with disabilities are a requirement of Federal agencies. Section 501 also requires affirmative action for hiring, placement and promotion of qualified individuals with disabilities.

The Civil Rights Act of 1991 applies to the private and public sectors of employment. In addition to extended remedies in sex discrimination and sexual harassment cases, there is also a restriction on damages that can be received, depending on the size of the employer.

While not covered under Title VII, employers with less than 15 employees are covered under The Elliott-Larsen Civil Rights Act of 1976 (MCL 37.2101). The Elliott-Larsen Civil Rights Act prohibits employment discrimination on the basis of religion, race, color, national origin, age, sex, pregnancy, sexual harassment, marital status, height, weight, or arrest record.

The Michigan Persons with Disabilities Civil Rights Act (MCL 37.1101) supplements Title I and Title V of the Americans with Disabilities Act of 1990, by defining the civil rights of people with disabilities in Michigan.

Although these laws above have been established to prevent unlawful employment discrimination, many cases of discrimination in the workplace are still filed every year. Even for those who believe they have been victims of illegal discrimination, there is an alternative to filing a lawsuit. They can contact the Equal Employment Opportunity Commission (EEOC). The EEOC coordinates all federal equal employment opportunity regulations, practices, and policies. The EEOC was established by Title VII

of the Civil Rights Act of 1964 and began operating on July 2, 1965. The commission interprets employment discrimination laws, monitors the federal sector employment discrimination program, provides funding and support to state and local Fair Employment Practices Agencies (FEPAs), and sponsors outreach and technical assistance programs.

A charge discrimination charge may be filed with the EEOC if an individual believes he or she has been discriminated against in employment. After investigating the charge, the EEOC determines if there is "reasonable cause" to believe that discrimination has occurred. If they believe that discrimination has occurred and a resolution cannot be reached, the commission may bring suit in federal court.

Below is a table compiled by the Equal Employment Opportunity Commission of the number of individual charge filings regarding employment discrimination from 1992 through 2002.

Statistics - FY 1992 Through FY 2002

	FY 1992	**FY 1993**	**FY 1994**	**FY 1995**	**FY 1996**	**FY 1997**	**FY 1998**	**FY 1999**	**FY 2000**	**FY 2001**	**FY 2002**
Total Charges	72,302	87,942	91,189	87,529	77,990	80,680	79,591	77,444	79,896	80,840	84,442
Race	29,548	31,695	31,656	29,986	26,287	29,199	28,820	28,819	28,945	28,912	**29,910**
	40.9%	36.0%	34.8%	34.3%	33.8%	36.2%	36.2%	37.3%	36.2%	35.8%	**35.4%**
Sex	21,796	23,919	25,860	26,181	23,813	24,728	24,454	23,907	25,194	25,140	**25,536**

	30.1%	27.2%	28.4%	29.9%	30.6%	30.7%	30.7%	30.9%	31.5%	31.1%	**30.2%**
National Origin	7,434	7,454	7,414	7,035	6,687	6,712	6,778	7,108	7,792	8,025	**9,046**
	10.3%	8.5%	8.1%	8.0%	8.6%	8.3%	8.5%	9.2%	9.8%	9.9%	**10.7%**
Religion	1,388	1,449	1,546	1,581	1,564	1,709	1,786	1,811	1,939	2,127	**2,572**
	1.9%	1.6%	1.7%	1.8%	2.0%	2.1%	2.2%	2.3%	2.4%	2.6%	**3.0%**
Retaliation											
All Statutes	11,096	13,814	15,853	17,070	16,080	18,198	19,114	19,694	21,613	22,257	22,768
	15.3%	15.7%	17.4%	19.5%	20.6%	22.6%	24.0%	25.4%	27.1%	27.5%	27.0%
Title VII	10,499	12,644	14,415	15,342	14,412	16,394	17,246	17,883	19,753	20,407	20,814
	14.5%	14.4%	15.8%	17.5%	18.5%	20.3%	21.7%	23.1%	24.7%	25.2%	24.6%
Age	19,573	19,809	19,618	17,416	15,719	15,785	15,191	14,141	16,008	17,405	**19,921**
	27.1%	22.5%	21.5%	19.9%	20.2%	19.6%	19.1%	18.3%	20.0%	21.5%	**23.6%**
Disability	*1,048	15,274	18,859	19,798	18,046	18,108	17,806	17,007	15,864	16,470	**15,964**
	1.4%	17.4%	20.7%	22.6%	23.1%	22.4%	22.4%	22.0%	19.9%	20.4%	**18.9%**
Equal Pay Act	1,294	1,328	1,381	1,275	969	1,134	1,071	1,044	1,270	1,251	1,256
	1.8%	1.5%	1.5%	1.5%	1.2%	1.4%	1.3%	1.3%	1.6%	1.5%	1.5%

The data are compiled by the Office of Research, Information, and Planning from EEOC's Charge Data System - quarterly reconciled Data Summary Reports, and the national database.

According to the data compiled by the Equal Employment Opportunity Commission, 84,442 charges were filed based on employment discrimination in 2002. The most individual charges were filed in the areas of race, sex and age. Race charges were made more often than the other charges at 35.4%, sex following at 30.2% and age being 23.6%. In view of that, it is important to analyze how the courts are deciding these cases, if any trends exist, and how the anti-discrimination laws are interpreted specifically in the areas of race, sex and age.

CHAPTER III
RACIAL EMPLOYMENT DISCRIMINATION CASES

The following cases involve discrimination in employment and were randomly chosen.

A recent case that deals with racial discrimination in employment is Harrison v

Olde Financial Corporation, 225 Mich App 601; 572 NW2d 679 (1997). Plaintiff Diane Harrison, who is African American, alleged racial discrimination in violation of the Michigan Civil Rights Act, MCL 37.2101. Ms. Harrison claims Olde Financial Corporation refused to hire her because of her race, and appeals as of right an order granting summary disposition asserting that a general issue of material fact did not exist pursuant to MCR 2.116(C)(10), to defendants Olde Financial Corporation, et al.

The trial court granted Olde Financial Corporation's motion for summary disposition asserting that they had legitimate, nondiscriminatory business reasons for declining to hire Ms. Harrison. However, the Court of Appeals reversed that decision and ruled that the trial court erred in granting summary disposition to Olde Financial Corporation because evidence of prior discrimination was present.

Diane Harrison worked at Olde Financial Corporation as a temporary legal secretary in 1994. Ms. Harrison was then invited by her Corporate Counsel, Bruce Campbell to apply for a permanent secretarial position within the company. Ms. Harrison was later interviewed by two staff attorneys, and soon after, testified in her deposition that during her temporary employment she overheard Karen Brink, one of the two attorneys saying, "although Ms. Harrison was a good secretary, she was the wrong color". Nevertheless, Karen Brink then recommended Ms. Harrison for a second interview by Bruce Campbell and Deanna Hatmaker, the personnel director. As Ms. Harrison was leaving her second interview, she testified that she overheard Ms. Hatmaker tell Mr. Campbell that "he should not permit Ms. Harrison to address him by his first name because she was black".

Consequently, the secretarial position was offered to someone with higher

qualifications, who ended up rejecting the offer because the salary was too low. Olde Financial Corporation then hired two non-minority women, who were allegedly less qualified to fit the position that included the duties of the original secretarial position, which Ms. Harrison held.

Ms. Harrison terminated her employment with Olde Financial Corporation in April 1994, and filed a lawsuit alleging racial discrimination.

The motive behind the Court of Appeals reversing the decision of the lower court was that they found that a genuine issue of material fact did exist. Ms. Harrison testified in her deposition that derogatory statements were made regarding her race in the past, which are grounds to create a genuine issue of material fact. The lower court relied on the McDonnell Douglas approach and stated:

> Under the McDonnell Douglas approach that Michigan has adopted in various forms, the court must first determine if the plaintiff has stated a prima facie case of discrimination. Meagher, supra at 710-711, "Prime facie case" in the McDonnell Douglas context means only that the plaintiff has provided enough evidence to create a rebuttable presumption of discrimination. Dixon v W W Grainger, Inc., 168 Mich App 107, 115; 423 NW2d 580 (1987). It does not mean that the plaintiff has provided sufficient evidence to allow the case to go to a jury. If the court concludes that the plaintiff has established a prima facie case of discrimination, the court then examines whether the defendant has articulated a legitimate, nondiscriminatory reason for its action. Meagher, supra at 711. If that articulation is made, the court next considers whether the plaintiff has proved by preponderance of the evidence that the reason offered by the defendant was a mere pretext for discrimination.

The Court of Appeals affirmed that the lower court correctly found that the plaintiff stated a prima facie case of discrimination under McDonnell Douglas, and the defendant declared nondiscriminatory reasons for its action proving the plaintiff failed to create a genuine issue of material fact. Ms. Harrison already had established that derogatory statements were made regarding her race in the past, which supports evidence

that past discrimination had occurred.

Another case that deals with racial discrimination in employment is Hazle v Ford Motor Co., 464 Mich. 456; 628 N.W.2d 515 (2001). Plaintiff, Blossom J. Hazle was denied a promotion and filed a lawsuit in violation of the Michigan Civil Rights Act MCL 37.2101, on the grounds that she had been discriminated against on the basis of her race. Summary disposition, which asserts that no genuine issue of material facts exist, was granted to the Defendant, Ford Motor Company, but was reversed by the Court of Appeals.

The case was then heard in the Michigan Supreme Court who found that the trial court properly granted summary disposition to Ford Motor Co., reversing the decision of the Court of Appeals and reinstated the trial court's order.

Blossom J. Hazle is an African American woman with an undergraduate degree in English. Ms. Hazle began working as a pension clerk for the Ford-UAW Retirement Board of Administration in July of 1980. When the manager of Ms. Hazle office retired in 1994, Ms. Hazle decided to apply for the position. Among the other applicants were Christine Ewald and Michelle Block, both white women. The candidates were then interviewed by two members of the board, Donald Harris, a UAW employee, and Mark Savitskie, who worked for Ford.

The position was given to Ms. Block, and Ms. Hazle was later notified that her experience and education were in line with their expectations and the requirements of the position, but she was not offered the position. Ms. Hazle then filed a lawsuit fourteen months after, asserting that "they did not offer the position as Officer Manager to her because she is an African American." *Hazle supra at 460*

Ford Motor Co. moved for summary disposition arguing that the Ms. Hazle did not establish a prima facie case of discrimination under McDonnell Douglas, supra. They further argued that even if Ms. Hazle could establish a prima facie case, she failed offer evidence that defendants' stated for reason for hiring Ms. Block, that she was more qualified, was a mere pretext for discrimination. Ms. Hazle responded that Ms. Block was not qualified and had misrepresentations on her resume.

In coming to its decision, the Supreme Court used the McDonnell Douglas approach because Ms. Hazle offered no direct evidence that racial discrimination existed.

> Under McDonnell Douglas, a plaintiff must first offer a "prima facie case" of discrimination. Here, plaintiff was required to present evidence that (1) she belongs to a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) the job was given to another person under circumstances giving rise to an interference of unlawful discrimination. Lytle, supra at 172-173; *McDonnell Douglas, supra 802*.

There is no dispute in this case regarding the first two elements because Ms. Hazle is black; and she did not receive the promotion for which she applied. The third element requires proof that Ms. Hazle was qualified for the position, which she was because it was stated in a letter from the Ford Motor Co. The fourth element requires proof that the job was given to another person under circumstances giving rise to an inference of discrimination. This was proven because Ms. Hazle had substantial work experience in the field, as well as prior education. The burden was now shifted to Ford Motor Co. to prove that they hired Michelle Block for nondiscriminatory reasons. Ford Motor Co. cited different reasons among them were Ms. Hazle's lack of experience in supervision, finance, and accounting.

The Supreme Court concluded that Ford Motor Co. made sufficient showing that

they had legitimate nondiscriminatory reasons for not hiring Ms. Hazle. The Supreme Court also stated that "Ms. Hazle has failed to create a triable issue for the jury concerning whether race was a motivating factor in Ford Motor Co.'s employment decision." *Hazle supra at 474*

CHAPTER IV
GENDER EMPLOYMENT DISCRIMINATION CASES

An additional form of employment discrimination that reported the second highest number of charges in 2002 was discrimination based on sex. These cases were also randomly chosen.

In the case of Smith v Goodwill Industries of West Michigan, Inc., 243 Mich App 438; 622 NW2d 337 (2000), Plaintiff Tamera Smith alleged Goodwill Industries of West

Michigan, Inc. discriminated against her on the basis of her gender and her pregnancy in violation of the Family and Medical Leave Act, 29 USC 2601 (FMLA). Defendants, Goodwill Industries of West Michigan, Inc. moved for summary disposition under MCL 2.116(c)(10) and the trial court granted it in their favor. On appeal, the decision of the trial court was upheld.

Ms. Smith began working as director of placement services in December of 1993, at Goodwill Industries of West Michigan, Inc. On December 8,1995, she took a maternity leave, pursuant to the Family and Medical Leave Act. When Ms. Smith returned to work on March 11, 1996, she was informed that under the corporate restructuring plan her position had been eliminated. According to Richard Carlson, the president of Goodwill Industries of West Michigan, Inc., they had begun considering a reorganization of its management staff since 1994. Under the new management plan, the positions of director of placement (plaintiff's position), assessment counselor, director of assessment, and work activities program director were all going to be encompassed in the position of a community service manager.

Unsatisfied with the decision, Ms. Smith filed an action against Goodwill Industries of West Michigan, Inc. in October of 1997.

The basis of the Court of Appeals decision was that Ms. Smith offered no direct evidence of discriminatory intent on the part of Goodwill Industries of West Michigan, Inc. In coming to its decision the Court of Appeals applied the McDonnell Douglas analysis. The court found that Ms. Smith did establish a prima facie case, as required by the McDonnell Douglas approach, in violation of the FMLA. There was also no issue that Ms. Smith took maternity leave in accordance with the FMLA and was dismissed before

returning from her leave. However, Goodwill Industries of West Michigan, Inc. presented evidence of the adoption of the management-restructuring plan under which Ms. Smith position was to be eliminated. After the defendant gave proof of the management plan, it was up to Ms. Smith to prove that there was a genuine issue of material fact in her case. However, Ms. Smith provided no evidence that a genuine issue of material fact existed regarding whether Goodwill Industries of West Michigan, Inc. stated reason for eliminating her position was subject to disbelief.

Additionally, Ms. Smith also argued that the McDonnell Douglas approach was inapplicable in her case because her claim is based on a "failure to restore" under the FMLA, and therefore Goodwill Industries of West Michigan, Inc. intent in terminating her employment was irrelevant. However, the Court of Appeals found that because Ms. Smith had alleged that Goodwill Industries of West Michigan, Inc. actions were discriminatory and retaliatory, she had "framed her claims on turning on her employer's intent", subsequently, the McDonnell Douglas analysis was appropriate. *Smith supra at 446*

In a different case, Allen v Comprehensive Health Services, 222 Mich App 426; 564 NW2d 914 (1997), sex employment discrimination was also alleged. Plaintiff, Robert Allen appeals as of right from an order granting summary disposition pursuant to MCR 2.116(c)(10) in favor of Defendants, Comprehensive Health Services. In this case the Court of Appeals affirmed the decision of the trial court.

Mr. Allen was hired by Comprehensive Health Services as a part-time data entry clerk in 1988. Following, in 1989 and 1990, Mr. Allen was rated as highly competent and given a raise. In addition, further reviews of Mr. Allen resulted in additional pay

increases in 1991 and 1992.

In 1993, Mr. Allen filed an internal complaint alleging that Comprehensive Health Services was discriminating against him by rating him below individuals whom he had outperformed. Not giving any merit to Mr. Allen's allegations, Comprehensive Health Services reclassified Mr. Allen's position to a higher salary level and different title, data entry coordinator. Mr. Allen was not satisfied with the modifications and filed an action that he had been discriminated against pursuant to the Elliott-Larsen Civil Rights Act. More specifically, Mr. Allen claimed he had been denied opportunities for advancement, increased responsibilities and greater earning capacity. In addition, Mr. Allen also stated that there were circumstances supporting the claim that Comprehensive Health Services is an unusual employer who discriminates against men, Mr. Allen applied and was qualified for the position and despite his qualifications, he was not promoted, and a female with similar qualifications was promoted instead.

The question for the Appellate Court that remains is: did the plaintiff give substantial evidence to establish a prima facie case? Relying on the McDonnell Douglas criteria to prove a prima facie case of intentionally disparate treatment, the court held that:

> A plaintiff who has no direct evidence of discriminatory intent mat establish a prima facie ELCRA claim of gender discrimination with respect to promotion by showing (I) background circumstances supporting the suspicion that Comprehensive Health Services is an unusual employer who discriminates against men (II) that the plaintiff applied and was qualified for the available position; (III) that, despite plaintiff's qualifications he was not promoted; and (IV) that a female employee of similar qualification was promoted. Upon this showing, a "presumption" of discriminatory intent is established for possible rebuttable by the employer. Absent this showing, a reverse discrimination plaintiff who has no direct evidence of discriminatory intent cannot proceed. *Allen supra at 433*

In view of the information regarding a claim under the McDonnell Douglas

approach the Court of Appeals concluded that Mr. Allen failed to establish a prima facie case of gender discrimination. Mr. Allen was unable to give any evidence that Comprehensive Health Services was an unusual employer that discriminated against males, or that the position he was qualified was given to a female employee. The decision of the trial court to grant summary disposition to plaintiff was upheld by the Appellate Court.

CHAPTER V
AGE EMPLOYMENT DISCRIMINATION CASES

While employment discrimination based on race and gender generated the most individual charges in 2002 (as reported by the EEOC), charges involving age employment discrimination was not too far behind. The following cases involve discrimination in employment and were randomly chosen. More specifically, DeBrow v Century 21 Great Lakes Inc., 463 Mich 534; 620 NW2d 836 (2001), dealt with employment discrimination based on age.

In DeBrow v Century 21 Great Lakes Inc., Plaintiff, Paul DeBrow was fired from

his job and sued Century 21 Great Lakes Inc. alleging age discrimination. Defendants moved for summary disposition and the trial court granted it. Subsequently, Mr. DeBrow appealed twice and both times the Court of Appeals affirmed the decision of the trial court. However, because Mr. DeBrow showed enough evidence to support a claim of age discrimination, the Michigan Supreme Court reversed the judgment in part of both the Court of Appeals and the trial court.

Mr. DeBrow's age discrimination case arose because at the age of forty-eight he was terminated from his position as an executive from Century 21 Great Lakes Inc. When the Supreme Court came to its decision, one question was asked: did the circuit err when it granted the former employer's motion for summary disposition with regard to the claim that it unlawfully discriminated against the plaintiff on the basis of age? The Court of Appeals used the McDonnell Douglas approach, however, failed to assert that Mr. DeBrow did in fact have direct evidence of unlawful age discrimination. Mr. DeBrow had testified in his deposition that in the conversation un which he was fired, his supervisor told him he was "getting too old for this sh--" The Supreme Court held that that remark alone was enough to establish that age was a factor in removing Mr. DeBrow from his position:

> Plaintiff testified in his deposition that when he was being removed, his superior, Century 21's Great Lakes Executive Vice President, Robert Hutchinson, told the plaintiff "you're too old for this shit." This statement is direct evidence of age animus. Moreover, because it was allegedly made in the context of the discussion in which plaintiff was being informed that he was being removed, it bears directly on the intent with which his employer acted in choosing to demote him. *DeBrow supra at 540*

The comment made by Robert Hutchinson shifted the burden of proof as described in the McDonnell Douglas approach.

Also dealing with age based employment discrimination, Krohn v Segwick James of Michigan Inc. 244 Mich App 289; 624 NW2d 212 (2001), alleged a similar case. In this case Plaintiff, Norine Krohn, 57, sought to overturn the jury's verdict because of the trial court's ruling. Defendants, Segwick James of Michigan Inc., requested that the trial court exclude a statement "out with the old and in with the new" made by Ms. Krohn's former supervisor. The trial court granted the defendants request, and on appeal, the Court of Appeals affirmed the decision of the trial court.

Ms. Krohn's claim is that she was fired because of her age as a part of the defendants' plan to terminate older employees and replace then with younger ones. In April of 1981 Segwick James of Michigan Inc. hired Ms. Krohn as an executive secretary. Ms. Krohn held several positions at the company and in 1995 she became a senior vice president of human resources. Around July of 1995, Segwick James of Michigan Inc. discovered they were operating at a financial deficit subsequently terminating Ms. Krohn, as well as some other employees. In the deposition, Ms. Krohn testified that the Managing Executive, Michael Rastigue, made a prior remark "out with the old and in with the new" about a year before. Following that, the defendants motioned to have that remark excluded from the record, and their motion was granted by the trial court. The Court of Appeals upheld the decision of the trial court stating that federal courts have consistently held that isolated or vague comments made by nondecision makers long before the adverse employment decision is made are not probative of an employer's discriminatory motivation.

In addition, the Court of Appeals also cited that Ms. Krohn failed to support her claim under the McDonnell Douglas Approach, specifically lacking to establish a prima

facie case:

> Because the manager made the statements nearly a year before the layoff, the comments were made too long before the layoff to have influenced the termination decision. In reviewing the case, we find that the disputed evidence is irrelevant. Finally, were we to find minimal relevancy in the "stray remark," we further hold that this disputed evidence was substantially more prejudicial than probative. *Krohn supra at 304*

CHAPTER VI
ANALYSIS OF SIGNIFICANT TRENDS

While all of the employment discrimination cases discussed earlier regarding race, sex and age had different case backgrounds and different outcomes, they all had one aspect in common. The courts relied on the McDonnell Douglas framework in each of the cases to come to an ultimate decision. It is important to now analyze why was the McDonnell Douglas approach so pivotal in race, gender, and age employment discrimination cases.

In Harrison v Olde Financial Corporation, the trial court granted the summary disposition to the defendants, however, the decision was reversed by the Court of

Appeals because they found that a genuine issue of material fact did exist. The trial court ruled that relying on the McDonnell Douglas framework there was no evidence to establish a racial discrimination claim. On the contrary, the Court of Appeals found that because the derogatory statements were made regarding her race in the past, it was direct evidence to support evidence of discriminatory animus.

Similar to Harrison v Olde Financial Corporation, in Hazle v Ford Motor Co., the courts also relied on the McDonnell Douglas approach. The trial court granted summary disposition to the defendants, the decision was reversed by the Court of Appeals, and then reverted back to the original judgment by the Michigan Supreme Court. The difference in Ms. Hazle's case was that she had no prior evidence to support a previous discrimination claim by Ford Motor Company.

Regarding Smith v Goodwill Industries of West Michigan, Inc., Defendants, Goodwill Industries of West Michigan, Inc. moved for summary disposition under MCL 2.116(c)(10) and the trial court granted it in their favor. On appeal, the decision of the trial court was upheld. When the McDonnell Douglas approach was applied the trial court as well as the Court of Appeals found that because Goodwill Industries of West Michigan, Inc. had evidence of plans to terminate Ms. Smith's position before her pregnancy leave, it was enough to dismiss the claim of discrimination against her on the basis of her gender and her pregnancy.

In analyzing Allen v Comprehensive Health Services, the Court of Appeals affirmed the decision of the trial court to grant the summary disposition in favor of the defendants, and in light of the McDonnell Douglas approach found that Mr. Allen failed to establish a prima facie case of gender discrimination.

After evaluating DeBrow v Century 21 Great Lakes Inc., it was clear that Mr. DeBrow was able to establish an age discrimination case under the McDonnell Douglas framework. In this case the defendants moved for summary disposition and the trial court granted it. Subsequently, Mr. DeBrow appealed twice and both times the Court of Appeals affirmed the decision of the trial court. However, because Mr. DeBrow showed enough evidence to support a claim of age discrimination, the Michigan Supreme Court reversed the judgment in part of both the Court of Appeals and the trial court.

Similar to DeBrow v Century 21 Great Lakes Inc., Krohn v Segwick James of Michigan Inc. also alleged age discrimination. On the contrary, since the comment Ms. Krohn was relying to prove prima facie discrimination was said a year before she was terminated, the trial court ruled, and the Court of Appeals affirmed that her evidence was not sufficient enough under the McDonnell Douglas approach.

There was no coincidence that all of these employment discrimination cases utilized the McDonnell Douglas approach to come to their conclusions. The key to applying the McDonnell Douglas approach is to analyze whether prior the facts in the case are adequate enough to prove the underlying conduct supporting the cause of action and thereby prevail.

The McDonnell Douglas standard arose from a 1973 United States Supreme Court opinion that sets out the legal framework for employment discrimination lawsuits. The framework requires the plaintiff/employee to show:

1. membership in a protected class,
2. qualifications for the job in question,
3. an adverse employment action, and

4. circumstances supporting an inference of discrimination.

According to DeBrow v Century 21 Great Lakes Inc. the McDonnell Douglas approach was adopted because many plaintiffs in employment-discrimination cases can cite no direct evidence of unlawful discrimination. The courts therefore allow a plaintiff to present a rebuttable prima facie case on the basis of proofs from which a factfinder could infer that the plaintiff was the victim of unlawful discrimination.

In an article entitled "Making sense of the McDonnell Framework: Circumstantial Evidence and Proof of Disparate Treatment Under Title VII" which appeared in the California Law Review in 1999, author Tristen K. Green felt that the McDonnell Douglas framework supplements Title VII and has a positive effect on employment law. "Title VII's effectiveness has been diluted. The McDonnell Douglas framework sets out a novel interpretation of the relationship between the existing framework and methods of proof. It also provides renewed strength to an oft-used but poorly understood doctrine." Green also stated that employment discrimination today mostly occurs in the covert form, a coherent framework, such as the McDonnell Douglas framework is necessary for identifying subtle forms of discrimination.

The McDonnell Douglas approach was originally developed in the context of race discrimination claims brought under Title VII. The McDonnell Douglas framework is so central in employment discrimination cases because it specifies who has to prove what, and in what order. As one can see this framework has since been extended to other kinds of intentional discrimination.

CONCLUSION

A great deal has been done on the federal and state end to prevent employment discrimination. Federal laws such as Title VII of the Civil Rights Act of 1964, which outlaws discrimination based on race, color, religion, sex and national origin with 15 or more employees. The Equal Pay Act of 1963, which bars discrimination on the basis of sex in payment of wages. The Age Discrimination in Employment Act of 1967 provided to preclude discrimination based on age. Title I and Title V of the Americans with Disabilities Act of 1990 designed to prohibit discrimination based on individuals with disabilities. Sections 501 and 505 of the Rehabilitation Act of 1973 and the Civil Rights Act of 1991 set up to protect individuals against retaliation from their employers. As well Michigan's Elliott-Larsen Civil Rights Act of 1976, averting discrimination based on

race, color, religion, sex and national origin with 15 or less employees; and Michigan's Persons with Disabilities Civil Rights Act defining the civil rights of people with disabilities in Michigan.

Nevertheless, despite all the efforts made by the federal and state governments to prevent discrimination, 84,442 charges were filed based on employment discrimination in 2002 (according to the EEOC). In 2002, 35.4% of the charges filed were in the area of race, 30.2% involved gender discrimination and 23.6% of the charges were based on age. The Equal Employment Opportunities Commission's main purpose is to interpret employment discrimination laws, examine the federal sector employment discrimination program, provide funding and support to state and try to come a resolution within these employment discrimination claims. However, much of these claims go unresolved.

Since much of these cases remain unresolved after mediation, they often go to trial. When at trial, it is not out of the ordinary to apply the McDonnell Douglas framework, as it is often applied to decide whether in fact discrimination is actually present. In many of these cases involving employment discrimination no direct evidence is present. Accordingly, as California Law Review author, Tristen Green stated the McDonnell Douglas framework is necessary for more understated cases of discrimination. Under McDonnell Douglas, it is important for the plaintiff to establish a prima facie case. The focus for the plaintiff is not so much as proving discrimination was the motivating factor in his dismissal, but raising an inference that such misconduct occurred.

The McDonnell Douglas approach will remain a standard of review in employment discrimination cases as long as there is no direct evidence outlining

discrimination in employment.

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