

Are “Cute” Employees A New Protected Class in New York?

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New York employers now have a new class of employees to be wary of - the “cute”. A New York appellate court just issued a decision reviving a gender discrimination claim brought by a female plaintiff, who alleged that she was fired because her employer’s wife thought she was too “cute” and a threat to her marriage. [Edwards v. Nicolai](#).

The Claim

Plaintiff Dilek Edwards was hired by Charles Nicolai, a chiropractor, to be a yoga and massage therapist in his practice in April 2012. Nicolai’s wife, Stephanie Adams, a former Playboy Playmate, also works in his practice. Plaintiff alleged that, despite defendant’s praise of her work, he also told her that his wife was “jealous” of her because she was “too cute”. A few months later, Edwards was abruptly fired by the wife after a late night text rant from Ms. Adams telling the plaintiff she should “stay the --- away from my husband.”

The text message went on to say: “you are NOT welcome at Wall Street Chiropractic, DO NOT ever step foot in there again, and stay the F*** away from my husband and family!!!!!!.” The next day, Nicolai sent Edwards an email telling her she was fired.

Plaintiff sued for gender discrimination under the New York State and City Human Rights Laws as well as for defamation.

The Decision

Initially a lower court granted defendants’ motion to dismiss the complaint but the decision was just overturned by an appeals court in New York.

First, the appellate court held that malice could be inferred from the allegations in the complaint, and thus plaintiff did have a defamation claim.

Second, the court also revived plaintiff’s gender discrimination claim stating: “While plaintiff does not allege that she was ever subjected to sexual harassment at WSCW, she alleges facts from which it can be inferred that **Nicolai was motivated to discharge her by his desire to appease his wife’s unjustified jealousy, and that Adams was motivated to discharge plaintiff by that same jealousy. Thus, each defendant’s motivation to terminate plaintiff’s employment was sexual in nature.**”

The panel noted that Plaintiff alleged that she had received praise for her work and reasoned that plaintiff did have a claim for gender discrimination because “adverse employment actions motivated by sexual attraction are gender based and, therefore, constitute unlawful gender discrimination.” Defendants argued that this case is similar to the line of ‘spousal jealousy’ cases involving

employees being terminated after having consensual affairs with their boss. However, the court found them distinguishable and reasoned that in those cases it was the employee's behavior (the affair), not just a perceived attraction, that led to termination. The court found that there was no allegation that Plaintiff Edwards has ever behaved inappropriately or that she had any affair with Dr. Nicolai. Thus, it was only her gender that was the basis for the termination.

Lessons Learned

Of course, this is just an initial motion and Ms. Edwards has a long way to go and must now prove her claims. Nonetheless, this case does signal yet another expansion of employment protections in New York.

The core lesson from this decision is - employers cannot assume New York is an "at will" state any more. Due to the expanding breadth of our state and city discrimination laws, virtually every employee fits into some protected category and courts and juries will often find a way to challenge irrational or unfair employment decisions as discriminatory.

As a management attorney, I could argue the employer's side, that a jealous wife should be able to fire a "cute" employee, as her employment was "at will". However, the First Department clearly did not agree and felt that this decision - as evidenced by the text message - was based on plaintiff's female gender and some imagined threat that the wife perceived that plaintiff presented to the employer's marriage. It appears the judges on the panel did not believe there was a legitimate reason for the plaintiff to lose her job.

It's an old adage, but the bottom line is - if you are going to terminate an employee, make sure that you have a legitimate reason for the decision. It is also important to document work and performance issues to support that decision.

And lastly, don't send angry text messages to your employees in the middle of the night.