

News Story

Woman Fired After Maternity Leave Awarded \$5.5M For Bias

Employer Made 'Stereotypical Assumptions'

By Kelly A. McCauley

Can a 17-year employee who was discharged shortly after returning from maternity leave successfully sue her employer for discrimination even though the employer claimed her firing was part of a company-wide staff reduction?

The answer is "yes," based on a \$5.5 million verdict in the Eastern District of Michigan believed to be the second largest in Michigan for this type of case.

Troy attorney Raymond J. Sterling, who represented the plaintiff, said the key to winning was proving that the employer treated his client differently because she was a woman.

The employer made "a stereotypical assumption that a woman with a family wouldn't fit in with the company's future plans," he told *Lawyers Weekly*.

Sterling noted that a large part of this different treatment was the pay discrepancy between male and female employees.

"There were 15 employees in the same department as my client and, with only one exception, the men were at the 'top' and the women were at the 'bottom,'" he said. "Even though the women were achieving more than the men, there was an \$8,000-\$10,000 discrepancy in their rates of pay."

According to Sterling, attorneys handling similar discrimination cases should:

- conduct effective cross-examinations of witnesses;
- show the jury that you believe in your client and the cause of action;

- view any obstacles as motivators; and
- be persistent.

[Click here](#) for a Trials & Settlements report on the case, *Morton v. Unisys Corp.*

Staff Reduction

Plaintiff Victoria Morton was a computer consultant for defendant Unisys Corporation. The plaintiff had worked at Unisys for 17 years (since graduating from college).

According to Sterling, the plaintiff's coworkers considered her to be the "expert's expert" and, when employees couldn't solve their problems, "she was the troubleshooter."

During her employment, the plaintiff had 13 different bosses, 12 of whom rated her work as "exemplary" in performance reviews. However, her last boss -- who, according to Sterling, had "worked with her for only a few weeks" -- rated her work performance as "mediocre, even though he was not in the position to supervise her work."

The plaintiff then became pregnant with her third child and took maternity leave. A short time after she returned from her leave of absence, the defendant claimed it had to cut costs and was forced to reduce staff positions, including the plaintiff's. As a result, the plaintiff was discharged.

The plaintiff sued the defendant in the U.S. District Court, Eastern District of Michigan. She alleged the reason for her discharge was the defendant's "stereotypical assumption that, as a woman with a family, she wouldn't fit in with the new business plans of the company."

According to Sterling, a "modest" settlement proposal was made several weeks prior to trial, but no settlement discussions took place.

The jury ultimately awarded the plaintiff \$5.5 million: \$294,000 for back wages, \$3.1 million for future wage loss and \$2.1 million for emotional distress.

Sterling noted that the defendant has filed a motion for a new trial.

'Impeachment' Proceedings

Sterling explained that a crucial step in winning was his thorough cross-examination and impeachment of the defendant's witnesses.

He said that the explanations surrounding the plaintiff's discharge "made no common or logical sense."

"There were about 30 to 40 witnesses for the defense, and they repeatedly contradicted themselves on what the real story was," Sterling said. "I impeached all of their testimony. It was comical how dramatically their stories changed from their depositions."

Sterling explained that he also got the plaintiff's supervisors to acknowledge that there was "no rational business reason" for her discharge.

"The boss's boss said more than 100 times in deposition that he didn't know or didn't remember the plaintiff," Sterling said. "But this was something that someone in his position had to know about."

According to Sterling, this particular witness had a "miraculous memory recovery come trial time" and acknowledged that he had "a lot of 'I don't remembers' at deposition."

Since the time of his deposition, this witness claimed to have "read a lot of documentation that had refreshed his memory," Sterling noted.

But Sterling said he was able to show the jury that this witness had reviewed the very same documents prior to his deposition testimony.

Sterling also said that having his client testify was an important factor which helped him win the case.

"My client was on the stand for about 11 hours," Sterling said. "And her testimony wasn't impeached once."

Angry Jury

Sterling, who spoke with some of the jurors after the trial,

said they were "angry that the defendant tried to bring out the 'negative,' which didn't exist."

He said the jurors believed that the defendant had ignored "17 years of 'positives' about my client."

According to Sterling, the jurors said they were also "appalled by the inconsistencies" of the defense witnesses' testimony and "offended" by the manner in which the company treated the plaintiff.

"The witnesses' contradiction of existing documentation and the fact that they had absolutely nothing positive to say about my client really angered the jurors," Sterling asserted.

"She was a loyal employee who always displayed a willingness to go above and beyond the call of duty, and the jurors recognized that," he observed.

Don't Get 'Knocked Off Track'

Sterling said that other factors in his success were "persistence" and "having an unshakable belief in the client and the cause."

"Attorneys shouldn't worry so much about what's happening" and should use pressure and obstacles as motivators, he advised.

"You're going to run into obstacles. You're going to get the feeling like the entire system is against you in this type of case, and you have to face all of the pressures to either resolve or dismiss the case," Sterling said. "But you have to just believe in your cause, keep walking forward and never let them knock you off track."

Moreover, Sterling said that he doesn't believe there are grounds for remittitur in this case because "it was uncontroverted what [the plaintiff's] losses were because they were so accurately done."

The defendant "apparently didn't see any need to try to show different damages because they knew that I had calculated conservatively," Sterling commented. "They made a strategic decision to not contest our damage calculations."

According to Sterling, the large verdict could reflect the fact that, even though his client had extensive computer skills and experience, she was unable to find similar work. He attributed this to the fact that the defendant is a traditional mainframe company and that his client was in essence "born and raised there."

"[The defendant is] not a Compaq or Microsoft my client was indoctrinated in the Unisys way, and those skills are not that easily transferrable to other areas," Sterling explained. "When she was discharged in 1994, it was before the Internet was really popular. Now what every employer wants is people who have Internet, web design and networking skills. She never worked on that at Unisys because the company just didn't get involved in it."

Meanwhile, Sterling said he doesn't necessarily see an increasing number of cases in this area of law.

However, he acknowledged that "the public may be taking more interest and may be more cognizant of this type of law" because of the way the public perceives some employers treat employees.

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