

by Boyd Byers

Honor Thy Working Mothers

Seventy percent of American women with children under 18 now work outside the home. Since Mother's Day falls in the month of May, we thought it would be appropriate for a refresher course on "mom" discrimination.

It depends on what the definition of 'mom' is

Mother's Day is the most popular day of the year to dine out, but one working mother may still be suffering from indigestion after her discrimination lawsuit was thrown out of court. Kimberly Peters alleged that she was denied a promotion because she's a woman. Her main evidence was her supervisor's statement that he hadn't selected her for a promotion because he felt she couldn't travel because she is a "mom."

The court, citing the dictionary, explained that the word "mom" means "mother," which is a "female parent." The term thus has two components, one concerning gender and the other concerning parental status. So the supervisor's use of the term "mom" alone wasn't evidence of gender discrimination, a 2-1 majority of the court reasoned, because it could have been used in reference only to parental status, not gender. A dissenting judge would have let the case go to trial, believing that the supervisor's statement "demonstrates clearly impermissible sex-stereotyping." *Peters v. Shamrock Foods Co.*

Is 'mom' a four-letter word?

While Peters' employer was able to get her case dismissed before trial (although its wallet was undoubtedly lightened by having to defend the lawsuit), others haven't been as fortunate when supervisors made negative comments about working mothers. A case decided last year involved a midlevel manager who applied for a promotion. During her interview for the position, a senior VP asked her personal questions, such as whether she had children, what her child-care responsibilities were, what her family thought about her commute, and how her husband would handle her not caring for her family. After the employee was denied the job, the VP told her the primary reason was that the male candidate he selected didn't have children at home and was willing to relocate. The court found that to be "powerful evidence" of gender bias. *Lettieri v. Equant, Inc.*

In a well-known case a few years ago, a school psychologist sued her employer after she was denied tenure. She alleged that after she returned from maternity leave, the personnel director made comments about childcare and suggested that she couldn't do the job while raising children. The principal told her that she "did not know how she could perform her job with little ones," that it was "not possible for her to be a good mother and have the job," and that the job was "not for a mother." The court ruled that "it takes no special training to discern stereotyping in the view that a woman cannot 'be a good mother' and have a job that requires long hours" and that stereotyping women as caregivers "can by itself and without more be evidence of an impermissible, sex-based motive." *Back v. Hastings on Hudson Union Free School District*.

Avoid the 'mother' of all lawsuits

Your supervisors should already know that federal and state laws prohibit discrimination because of gender as well as pregnancy, childbirth, and related medical conditions. But make sure they also understand the finer point that it's unlawful to make employment decisions based on gender stereotypes. Instruct hiring managers to avoid asking questions or making comments to applicants that might create the *perception* that their decisions are influenced by gender-based assumptions. Interviewers shouldn't ask women different questions regarding family and childcare than they do men.

Also, if your company is covered by the Family and Medical Leave Act (FMLA), your supervisors need to be aware that eligible employees — both men and women — are entitled to 12 weeks of leave for the birth or adoption of a child and to care for a child with a serious health condition. Denying an employee's right to take FMLA leave, firing an employee for taking leave, or making employment decisions based on an employee's use or prospective use of protected leave can result in FMLA liability.

She said it

You're going to poke your eye out.

— Mom