

2.5: Supreme Court Cases

Learning Objectives

1. Summarize key Supreme Court cases regarding discrimination

As we saw with the passage of the Civil Rights Act of 1991, “justice”—at whatever level—is not always blind (or fair) and we may be entering another phase of regressive judicial activism with the recent appointments of conservatives Neil Gorsuch and Brett Kavanaugh to the bench. However, the Court has also contributed to diversity and preventing discrimination and, equally importantly, clarifying what is permissible under the law. Here are a few key discrimination decisions drawn from the EEOC’s list of [Selected Supreme Court Decisions](#).

Phillips v. Marin Marietta Corp. (1971)

The Supreme Court holds that Title VII’s prohibition against sex discrimination means that employers cannot discriminate on the basis of sex plus other factors such as having school-age children. In practical terms, EEOC’s policy forbids employers from using one hiring policy for women with small children and a different policy for males with children of a similar age.

Griggs v. Duke Power Co. (1971)

The Supreme Court decides that where an employer uses a neutral policy or rule, or utilizes a neutral test, and this policy or test disproportionately affects minorities or women in an adverse manner, then the employer must justify the neutral rule or test by proving it is justified by business necessity. The Court reasons that Congress directed the thrust of Title VII to the consequences of employment practices, not simply the motivation. This decision paves the way for EEOC and charging parties to challenge employment practices that shut out groups if the employer cannot show the policy is justified by business necessity.

Espinoza v. Farah Manufacturing Co. (1973)

The Supreme Court holds that non-citizens are entitled to Title VII protection and states that a citizenship requirement may violate Title VII if it has the purpose or effect of discriminating on the basis of national origin.

Alexander v. Gardener-Denver Co. (1974)

The Supreme Court rules that an employee who submits a discrimination claim to arbitration under a collective bargaining agreement is not precluded from suing his or her employer under Title VII. The court reasons that the right to be free of unlawful employment discrimination is a statutory right and cannot be bargained away by the union and employer.

UAW v. Johnson Controls (1991)

The Supreme Court addresses the issue of fetal hazards. In this case, the employer barred women of childbearing age from certain jobs due to potential harm that could occur to a fetus. The Court rules that the employer’s restriction against fertile women performing “dangerous jobs” constitutes sex discrimination under Title VII. The Court further rules that the employer’s fetal protection policy could be justified only if being able to bear children was a bona fide occupational qualification (BFOQ) for the job. The fact that the job posed risk to fertile women does not justify barring all fertile women from the position.

Oncale v. Sundowner Offshore Services (1998)

In a unanimous decision, the Supreme Court rules that sex discrimination consisting of same-sex sexual harassment is actionable under Title VII. The Court reiterates that the plaintiff must prove that there was discrimination because of sex and that the harassment was severe.

PRACTICE QUESTION

You are researching discrimination-related Supreme Court cases to incorporate in a discrimination training program. Which of the following is a clarification based on Supreme Court decisions that you may want to include?

- Only citizens are entitled to Title VII protection based on national origin.
- An employer can prohibit women of childbearing age from certain jobs due to potential harm that could occur to a fetus.
- Sexual harassment is only actionable under Title VII if it consists of male-female harassment.

- Sexual harassment is actionable under Title VII if it consists of either opposite sex or same-sex harassment.

Answer

Sexual harassment is actionable under Title VII if it consists of either opposite sex or same-sex harassment.

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