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Gender Stereotyping Constitutes Sex Discrimination

Every once in a while, everything goes right for the employee in a fight to get employment claims heard by a jury. The case of [Nancy Falco Chedid, M.D. vs. Children's Hospital & others](#) is one such example. Here's what happened in this recent illuminating decision involving the hot issue of [caregiver discrimination](#).

Facts Of The Case

Dr. Nancy Falco Chedid worked at Children's Hospital and the Boston Plastic and Oral Surgery part time as a plastic surgeon beginning in 2005. At that time, she re-entered her practice after taking six years off for the birth and caretaking of her three children.

In August of 2006, Chedid's boss, and Chief of Plastic Surgery, was replaced by Dr. John Meara. Shortly after his arrival Chedid had a meeting with Meara.

At that time, Chedid stated that she worked a reduced hours position and had family responsibilities. Meara expressed displeasure with her part time status and told her that there were certain subspecialties -- like dermatology -- which were more amenable to a part-time arrangement than plastic surgery.

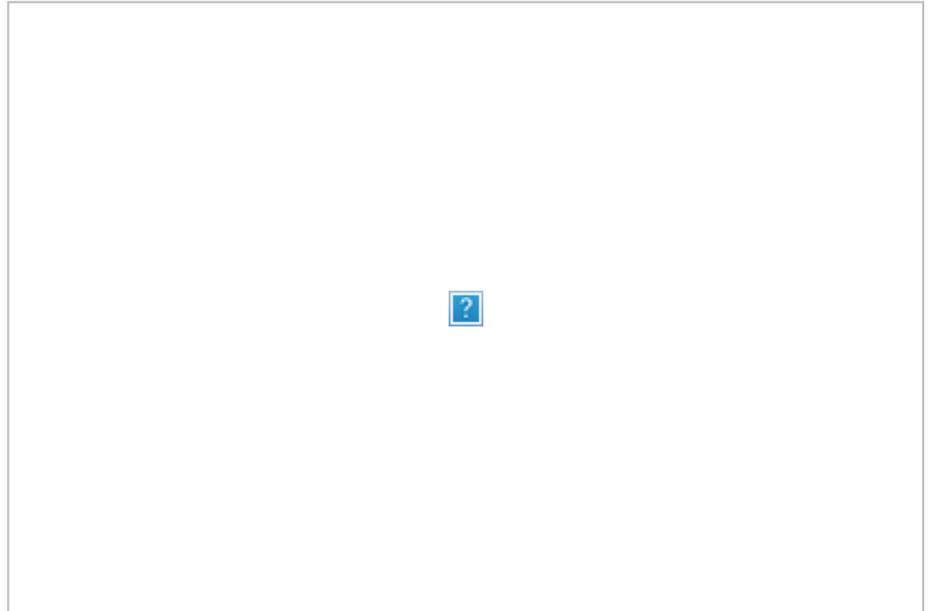
He also said that he wanted to rid the department of plastic surgery of all the "part timers." According to Chedid, when she asked Meara if he was pushing her out he nodded "yes" and that he did so without getting to know her or her abilities.

Because of her concern regarding Meara's intention to push her out, Chadid met with the hospital's Director of the Office of the Faculty Development, Dr. Jean Emans. Part of Emans' job was to act as a problem solver for faculty with issues related to career advancement.

Emans explained that Children's had a large number of part-time physicians and that with regard to work and family balance some chiefs "get it" and others do not. Chedid stated that she would be willing to increase her

hours if it meant saving her job.

Chedid sent a letter to Meara on November 8, 2006 and met with him eight days later. They also exchanged e-mails. Chedid made a number of proposals and explained to him how she could fit into his vision for the department. He assured her that he was not pushing her out, but then stated his intention to hire a full time surgeon in 2007, which might mean that Chedid would have to leave. She reiterated her desire to stay including her willingness to work more hours. Meara again stated that Chedid would not have an indefinite position given his vision and goals for the department. Without Chedid, the department would be all male.



In the months that followed, Chedid continued to address her concern to hospital administrators including the COO and Vice President of Human Resources --- specifically her concern that Meara was pushing her out because she was a woman with childcare responsibilities. They explained that they believed what she was saying, but stated that Meara, as department head, had a right to eliminate part-time positions from the department.

In March or 2007, Emans and Stewart informed Chedid that Meara would only allow her to work through June. Emans explained that Meara wanted someone with special pediatric training in the department and that Chedid should obtain the special training and reapply in the future. She asked why she had to apply when a co-worker was invited to join the Foundation without an application and another doctor was hired with far less experience. In addition, Chedid, who had pediatric training, offered to work full time.

Stewart became exasperated and angry at Chedid's offer, but said that she would draft a memo of the meeting and discuss matters with Meara. The memo was never circulated.

On March 23, 2007, Meara informed Chedid that her employment with the Foundation would end on June 30th of that year. After learning that Chedid had been terminated, several of her colleagues circulated a petition to protest the termination. As stated in the opinion, the record contains not a word of criticism about Dr. Chedid's abilities as a physician and surgeon.

The Lawsuit

Background

Chadid sued for gender discrimination under [Massachusetts law](#). Like [federal law](#), (Title VII) the Massachusetts anti-discrimination statute makes it illegal for an employer to refuse to hire or discharge from employment or discriminate against an individual because of the individual's sex.

Like federal law, in cases that rely on circumstantial evidence, the court applies a three stage order of proof. In the first stage, the employee shows that:

- *she is a member of a protected class*
- *performed the job at an acceptable level*
- *was terminated*
- *the position was filled with another individual with qualifications similar to plaintiff*

These elements may vary depending on the facts of the case and vary slightly from one jurisdiction to another. Facts which establish these elements create an inference of discrimination.

In the second stage, the employer may rebut the plaintiff's assertion of discrimination by articulating a lawful reason or reasons for its employment decision. In the third stage, the burden shifts back to the employee to demonstrate that the reason advanced by the employer was a "mere pretext" -- in other words, not true or not believable -- from which the jury can conclude that the real reason was discrimination, or that discrimination was a motivating factor. (again, the language varies slightly from jurisdiction to jurisdiction)

In addition, there are two types of discrimination claims. First, there are claims of disparate treatment in which an individual claims that he was treated differently than a similarly situated employee who was not in a protected class (i.e. race, sex, disability, age, religion, nationality) Second, there are disparate impact claims, in which the plaintiff claims that an employment practice, while neutral on its face, has a disproportionately negative impact on a protected class. (for example, if a company has a policy of hiring only individuals that are 5 feet 4 inches or more, that policy would have an adverse impact on women)

In her disparate treatment claim, Chedid contended that the defendant treated her unfavorably based on a perceived stereotype that women with children are less capable of being skilled surgeons due to having family obligations.

In her disparate impact claim, the plaintiff claimed that the defendant's policy of hiring only full time surgeons has a disparate impact on women with children.

The Court Rules In Favor Of Chedid In Its Summary Judgment Ruling

Disparate Treatment Claim

The defendants filed a motion for summary judgment contending that based on the evidence, Chedid had no legal claims as a matter of law. The Court denied the motion, and found in favor of the plaintiff on all counts -- which means that Chedid has the right to take her case to a jury. With these facts, it seems to me that her chance of success in front of a jury is quite high, so the opinion is great news for Chedid.

As the Court sets forth in its opinion, "***an adverse employment action based on stereotypical belief that women with children will be less committed to their jobs due to their childcare responsibilities constitutes actionable sex discrimination.***" (citing *Chadwick v. Wellpoint*, [see here](#)) It was gender stereotyping which motivated the defendants according to Chedid. Any opinion which cites this language is important since "caregiving discrimination" -- a form of employment discrimination -- has been recently recognized and noted in very few

decisions.

As to the defendants' arguments, the Court noted in part:



Children's Hospital Boston

- *a jury could find that Chedid was at least as qualified as Dr. Greene, who was hired during that period of time*
- *there was a dispute in the evidence as to whether Meara's actual hiring practices were consistent with his stated criteria to hire only internationally known surgeons*
- *the evidence showed that the physicians spent most of their time doing mostly simple procedures not the complex procedures Meara emphasized in his testimony*
- *other physicians who worked part-time also had shortcomings in their performance*
- *after Chedid tried to persuade her employer to allow her to work part time, she offered to work full time, and the hospital never followed up on her offer*

The Court stated:

From these facts, the jury could find that Dr. Meara gave at least one, if not two false and pretextual reasons for terminating the plaintiff, for reducing her privileges and denying her a bonus, purportedly because of her level of qualifications and her alleged refusal to work full time, despite her March 16, 2007 offer to work full time

The defendant's motion for summary judgment of the plaintiff's sex discrimination claim is therefore denied.

Other Claims

The Court also denied summary judgment or reserved judgment on other claims including:

- *a claim for disparate impact discrimination based on a policy which has a disparate impact on part-time employees*
- *retaliation ("making things difficult for the plaintiff as a result of her asserting her sincere perceptions of gender discrimination"),*
- *intentional interference with contract/advantageous business relations (her supervisor maliciously interfered with her contract -- discrimination may constitute malice)*
- *breach of contract (patients were referred to Meara rather than Chedid; defendants failed to pay her a bonus and her share of profits for the 2006-2007 fiscal year)*
- *breach of implied covenant of good faith and fair dealing (every contract has an implied covenant of good faith which prohibits a party from exercising its discretionary power to deprive the right of the other party to receive the fruits of the contract) Unlike Massachusetts, most states do not recognize this claim*

for employees --- particularly employees at will.

This means that Dr. Chedid has a right to gather more evidence regarding her disparate impact discrimination claim, and take the rest of her claims to the jury. It will be up to the jury to decide whether Chedid was discriminated against because of her gender, and whether or not she should prevail on her other claims for relief. As I stated above, on these facts it seems to me that her likelihood of success looks quite good.

Conclusion

There are so many cases where courts throw out plaintiff's employment claims on summary judgment no matter how strong the evidence is. This case is an example of everything going right for the plaintiff and her lawyer. It's also another important win for working moms who face pervasive discrimination in the workplace.

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