

Lawyer sues his old firm for sex discrimination

By: Pat Murphy ◉ January 28, 2021

An ex-associate of Preti, Flaherty, Beliveau & Pachios has filed a sex discrimination suit in federal court in Boston that alleges the firm terminated him shortly after he requested parental leave for the birth of his second child.

Now practicing in the Singapore office of global business law firm Allen & Overy, things appear to be on the upswing for Bryan O'Brien after ending poorly at Preti Flaherty.

According to the Title VII complaint O'Brien filed on Jan. 12 in U.S. District Court, the Maine-based law firm hired him in 2017 with the intention that the newly minted attorney would begin work in August of that year in its Boston office.

However, the defendant firm allegedly pushed back O'Brien's start date to November 2017 upon learning that his wife was expecting the couple's first child in September. O'Brien then took parental leave in February 2018 after which he alleges the defendant reduced the number of billable hours assigned to him.

The final, brief chapter of O'Brien's employment at Preti Flaherty began in spring 2018 when, the plaintiff claims, the firm learned that the O'Briens' second child was on the way, with a due date sometime in the fall.

According to the plaintiff's complaint, on Sept. 14, 2018, firm management decided to terminate O'Brien effective Nov. 15.

Unaware that his fate had already been decided, the plaintiff on Sept. 21 notified human resources that he would be requesting parental leave for the birth of his second child in November, according to the complaint.

O'Brien alleges it was then that management decided it would not wait until Nov. 15 to send him packing. Instead, it terminated him on Sept. 28, maintaining that O'Brien's firing had nothing to do with his sex or requests for parental leave but that he was let go for performance issues.



O'Brien filed a bias complaint with the Massachusetts Commission Against Discrimination, which was dismissed on jurisdictional grounds. In its Aug. 31, 2020, dismissal order, MCAD found that it lacked jurisdiction because the firm was based in Maine and the alleged acts of discrimination, particularly by firm management, occurred outside of Massachusetts.

In addition, the commission found that, even if it had jurisdiction, O'Brien was unable to establish that his termination was motivated by his gender or his request for parental leave. Specifically, it found that the firm decided to terminate the plaintiff before being informed that he was having another child and was requesting parental leave.

O'Brien, who is proceeding pro se, admits that his discrimination complaint in federal court is "skeletal" and tells Lawyers Weekly that he plans to file an amended complaint with more specifics and further allegations. Otherwise,

he declines to comment on the case.

Preti Flaherty likewise declined to comment.

Meanwhile, Boston employment attorney Rebecca Pontikes says it's difficult to gauge the merits of O'Brien's lawsuit given the bare-bones allegations in his current complaint.

However, she does see the case as highlighting an important employment issue related to law firms, specifically attitudes toward attorneys — both male and female — who are caregivers.

"Law firms want people billing as many hours as possible," Pontikes says. "Sadly, the stereotype against caregivers is that they are unavailable and poor workers — that they are distracted and won't work to the extent required at the firm."

According to Pontikes, associates sometimes do suffer discrimination based on their caregiver status.

"If they are not perceived to be available 24/7, a reduction in the number of assignments and therefore billable hours does happen," Pontikes says. "People start withholding work. Then they turn on you and say you haven't put in enough billable hours. So it can end up being very cyclical."

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