

Immediately upon entering his office, Defendant Dickerson asked the question, “Do you always wear skirts that short, or just till you get the job?” SMITH indicated that she would abide by any dress code the corporation deemed appropriate, and asked if her dress was too short. Defendant Dickerson replied, “Not for me.” During the rest of the interview, Defendant Dickerson seemed to concentrate more on personal questions than SMITH’s job qualifications. Defendant Dickerson asked whether SMITH was available to work evenings if necessary, to travel with Defendant, and whether or not SMITH was happily married.

After approximately fifteen minutes of the interview, SMITH informed Defendant that she was interested in a job only and felt uncomfortable with the nature of the questions being asked in the interview. Defendant told SMITH that “You need to lighten up.” When SMITH said she would be glad to continue the interview if it concentrated on her work qualifications only, Defendant immediately rose from his chair and declared, “I think the interview just ended.”

Later that day, at approximately 4 p.m., Defendant called SMITH at her home. Defendant said that he regretted that the interview had ended on a bad note. He suggested that they meet at a bar to “get to know each other a bit better.” SMITH asked whether she was still in the running for the job, and the Defendant said it depended on how the meeting that night went. SMITH declined the offer to meet the Defendant.

SMITH subsequently received notice that she had not been selected for the position. SMITH alleges that she was denied the position due to her reluctance to engage in activities and conduct outside the job description for the position.

ISSUE

1. Can a potential employer who sexually harasses an applicant be sued for such conduct?

ARGUMENT

1. Can a potential employer who sexually harasses an applicant be sued for such conduct?

Case law establishes that an applicant may not be denied employment due to discrimination. In *Byers v. Helton Industries*, 994 F.2d 1248 (9th Cir. 1994), a woman applying for a secretarial position was told that she did not receive the position because the employer was looking for a single applicant. The reason given was that a married woman would have distractions, from pregnancy and childcare, to marital difficulties or divorce, and that the company found single secretaries more dependable. The woman sued, arguing discrimination based upon marital status. The 9th U.S. Circuit Court of Appeals upheld the lower court decision in holding:

In seeking employment, an applicant has the right to expect consideration based only upon relevant skills to the position sought. To hire based on real or perceived preconceptions of potential availability due to applicant's marital status constitutes ad hoc discrimination. Only skills and qualifications relevant to the actual position being sought may be considered in hiring, unless aspects of the job reasonably tend to require external qualifications to be considered.

994 F.2d at 1253

In the instant case, the discrimination was based upon the plaintiff's unwillingness to submit to the flirtatious nature of the interviewer. As soon as she stated that she was only interested in answering questions relevant to the job for which Plaintiff was interviewing, the Defendant ended the interview. *Byers v. Helton, supra*,

states that only “skills and qualifications relevant to the actual position being sought . . .” should be considered. This was all the Plaintiff expected and demanded as a qualified applicant. The defendant’s conduct clearly sought Plaintiff’s willingness to engage in “external” activities, such as travel and personal relationships. Such conduct, according to *Byers, supra*, constitutes “ad hoc discrimination.”

CONCLUSION

Defendant Dickerson by his conduct, and Defendant ROE CORP. as Defendant Dickerson’s employer, engaged in sexual harassment of an applicant, the Plaintiff in this action. When hiring is based upon such irrelevant criteria, the damaged party may sue for discrimination. The Plaintiff in this action was subjected to discrimination through sexual harassment in the interview process.

Submitted this ____ day of _____, 20__.

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