



EEOC v. Ruby Tuesday: An Off-the-Menu Discrimination Case

News

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Hagood Tighewas quoted in *Corporate Counsel* on February 2, 2015. The article “*EEOC v. Ruby Tuesday: An Off-the-Menu Discrimination Case*” examined a law suit against a Ruby Tuesday employee in Oregon, who claimed he was discriminated against because he and other male employees were deprived of the opportunity in the summer of 2013 to apply for temporary server or bartender positions with the company in Park City, Utah.

Hagood told CorpCounsel.com that most cases alleging sex discrimination under Title VII of the Civil Rights Act deal more with the particulars of the job description, rather than where employees are housed. “Usually when you’re talking about an issue like this, you’re really focusing on the job itself,” he said.

In order to prove that someone’s sex is a legally acceptable reason to decline to hire them, companies must prove that for that particular job, sex is a bona fide occupational qualification (BFOQ). For example, Hagood explained, there have been claims that sex is a BFOQ in prison guard jobs, where guards need to accompany inmates into bathrooms and showers, and sometimes courts have agreed. However, it’s usually difficult to prove gender is a BFOQ. “There have been many efforts, but not many successes from an employer’s standpoint on BFOQ,” Hagood said.

Although he is not working on this case and has no knowledge of the facts beyond publicly available documents, Hagood suspects that perhaps Ruby Tuesday knows some additional information that could bolster its arguments. Or else why not just settle, considering the sum owed to the plaintiffs would be relatively small for a large company? For now, only Ruby Tuesday knows.

“Employers should really not be making hiring or employment decisions based on gender or any other protected classification,” Hagood noted. “Ruby Tuesday may very well have a good defense and may one day win the case. But even if they do, the general rule for 99.9 percent of the time is that they should not be making decisions based on any protected classification.”

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