



### **THIRD CIRCUIT UPDATE: FALL 2005**

*This bulletin provides an update of recent employment laws for employers in states served by the United States Court of Appeals for the Third Circuit, including Pennsylvania, Delaware, New Jersey, and the Virgin Islands. Please contact us if you have any questions about these decisions or about their effects on your business.*

#### **When Hiring, Choose the Qualifications You Can Live With**

In Cherie Hugh v. Butler County Family YMCA, decided on August 12, 2005, the Third Circuit Court of Appeals examined what it means to be “qualified” for a position. In January 1998, Cherie Hugh was hired as a part-time volunteer recruiter by the Butler County (Pennsylvania) Family YMCA. In June 1999, the YMCA promoted Hugh to the position of full-time volunteer coordinator. In May 2000, Hugh was named Director of the Big Brothers, Big Sisters program at the YMCA – despite the fact that the job description for Director required the successful applicant to have both a degree in social work as well as experience as a social caseworker. Hugh had neither.

Although the YMCA was aware that Hugh did not possess the stated qualifications, it promoted her into the position anyway. The YMCA later explained that Hugh deserved a chance to do the job, based upon her previous successes and recognized experience in her previous positions with the YMCA.

In April 2001, the YMCA informed Hugh that it was terminating her for poor job performance. The YMCA claimed that she lacked sufficient leadership skills. As examples of Hugh’s poor leadership, the YMCA noted that Hugh canceled a meeting among YMCA personnel without giving sufficient advance notice of the cancellation, failed to complete a sign for a YMCA-sponsored program, and dressed inappropriately for a meeting.

Importantly, Hugh was never counseled, warned, disciplined, or reprimanded by the YMCA for the acts of alleged misconduct that it identified after her termination and the YMCA didn’t identify or describe any particular acts of misconduct which she

allegedly committed in the termination letter that it sent to Hugh. Hugh was replaced by a male employee who was paid a higher salary than Hugh had received.

Hugh presented evidence of interactions with her supervisors that suggested discrimination was afoot. Among other things, Hugh claimed that the male members of the YMCA's Advisory Council (the oversight body to which she reported) often made program decisions without first consulting with her; that they ignored her at meetings; that they disregarded chain of command by conferring with Hugh's male predecessor (instead of with her) in relation to operational issues; and that they generally treated Hugh with disrespect.

After Hugh filed suit, the YMCA responded by saying that Hugh was terminated because she didn't possess the necessary qualifications for the job (i.e., she didn't have a degree in social work and she had no experience as a social caseworker). Hugh noted, however, that when the YMCA decided to promote her, it did so with full knowledge of her background. Hugh also pointed out that she had never misrepresented her qualifications when she sought the promotion.

The court wholeheartedly agreed with Hugh, stating that "an employer cannot choose to promote an employee despite a known lack of qualifications and then later rely on the lack of those qualifications as a reason for termination." In keeping with many courts recently, the court focused on the YMCA's inconsistencies in its varying explanations for Hugh's termination. Those inconsistencies convinced the Court that Hugh had presented sufficient evidence to support her claim that the YMCA's reasons for terminating her were pre-textual. The Third Circuit decided to overturn a lower court's decision, and allowed Hugh to proceed in her case against the YMCA.

What can we take from this case? First, when developing job descriptions, employers should choose what is really needed in the way of qualifications for the position. Once those qualifications are established, the company must live with them (or formally change them) – it only makes an employer look incompetent or dishonest to have carefully-established requirements that are then ignored.

In all situations, get your story straight before you terminate someone; finally deciding on the **real** reason for a termination several months later after a lawsuit is filed does not help the employer in its efforts to be credible and naturally leads to a claim of pretext.

*This Third Circuit update was prepared by Donna Eich Brooks, an attorney with the law firm of Lehr, Middlebrooks, Price & Vreeland. Donna can be reached for questions/further information at [dbrooks@impv.com](mailto:dbrooks@impv.com) or at (205) 226-7120.*

Lehr Middlebrooks Price & Vreeland, P.C.  
P.O. Box 11945  
Birmingham, AL 35202-1945  
(205) 326-3002

The Alabama State Bar Requires The Following Disclosure:  
"No Representation Is Made That The Quality Of The Legal Services To Be Performed  
Is Greater Than The Quality Of Legal Services Performed By Other Lawyers."

142742