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SEX PLUS AGE DISCRIMINATION: DOUBLE JEOPARDY FOR OLDER FEMALE EMPLOYEES

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ABSTRACT

Academic studies show that older females are subject to negative stereotypes that cause employment discrimination. Although federal and state equal employment laws list separate categories of protection such as race, sex, and age, courts have developed the theory of "sex plus" discrimination to protect certain subsets of the population such as black females (sex plus race), and pregnant women (sex plus pregnancy). A logical additional subset should also be sex plus age. Although such claims may be brought under state fair employment laws or under Title VII of the Civil Rights Act of 1964, as sex plus age discrimination claims, discrimination against older females may also violate the Age Discrimination in Employment Act (age plus sex discrimination).

Many academic studies and legal decisions illustrate discrimination against women in hiring, pay, and other aspects of employment. An equal number illustrate discrimination based on age. However, little is written concerning the double jeopardy of being an older woman in today's job market. Employment discrimination against women over forty years of age appears to be common, resulting in significant disparity in the treatment of older men and women in the workplace.

Census Bureau statistics show women between fifteen and twenty-four years of age earn 92.5 percent as much as men in the same age group. However, as age increases pay disparity increases. Women aged forty-five to fifty-four typically earn sixty-four cents for every dollar paid to men [1]. Some contend this disparity is the result of past discrimination and social practices that resulted in older women receiving less education and having less good job experience, and that the problem will disappear as better-educated, career-oriented young women become

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older. However, while these factors may reduce the disparity, they do not offer a solution.

A recent study in the *Academy of Management Journal* showed that even when education, skill, and other variables were eliminated, the disparity between male and female wages increases with age [2]. Furthermore, a 1994 job-testing program conducted by the Massachusetts Commission Against Discrimination illustrates that discrimination against older women occurs in the hiring process, even when entry-level retailing jobs paying only $6.00 an hour are involved [3]. The job testers consisted of four pairs of white women matched for education, experience, and personal qualities. Each pair consisted of a forty-five-year-old woman and a twenty-two-year-old woman. The twenty-two-year-old women were frequently offered full-time, permanent jobs with fringe benefits, while the forty-five-year-old women were not offered jobs, or were offered temporary jobs with no benefits. Some employers would not even accept the resumes of the older women.

GENDER AND AGE STEREOTYPES

Academic and scientific studies indicate common stereotypes based on gender and age create a double jeopardy of sex plus age discrimination. Employers and managers should be aware of the results of these studies to avoid unintentionally applying negative stereotypes to female job applicants and employees.

The authors of the *Journal of Academy Management* study mentioned above interviewed 240 full-time employees who worked for two organizations—one a manufacturing company and the other a governmental unit. Despite the fact that both employers were unionized and had formalized pay and promotion policies, by age thirty-five the difference in pay between male and female workers was significant, and it continued to rise thereafter. This confirmed another study published in 1992 [4].

A major study published in 1995 examined the perceptions of 232 young adults and 233 older adults of younger and older men and women [5]. Among other questions, individuals were asked to think of a typical older man and a typical older woman, and identify characteristics of the older man and older woman from a list of sixty-nine attitudinal measures. Both groups (younger and older individuals) perceived older women as less self-centered, more nurturing, and more sensitive than older men. Furthermore, older women were judged to be nicer, more generous, and neater than older men. All of these are good personal qualities, but they are not necessarily the key characteristics employers desire of employees.

Older women were perceived as exhibiting more cognitive decline, and being more passive and dependent than older men. Participants tended to describe older men as more intelligent and wise, more autonomous, and more competent. All of

these stereotypes favoring men show characteristics of a good employee, especially in managerial, technical, and professional jobs.

Other studies have found that women are thought to reach middle age earlier than men [6], and that ageist stereotypes of women and men are most divergent between age forty and fifty-five [7]. These studies support the conclusion that employment discrimination based on a combination of gender and age is a separate and distinct subset of prohibited employment discrimination, i.e., sex plus age discrimination. However, very few legal decisions have recognized this subset.

SEX PLUS DISCRIMINATION IN THE COURTS

The category of "sex plus" discrimination arose in the only U.S. Supreme Court decision on sex discrimination during the first ten years after enactment of Title VII of the Civil Rights Act of 1964, *Phillips v. Martin-Marietta Corp.* [8]. The Fifth Circuit Court of Appeals had upheld summary judgment for the employer on the grounds that the company did not violate Title VII by refusing to hire women (but not men) with preschool children. The fifth circuit stated that a ". . . violation of the Act can only be discrimination based solely on one of the categories, i.e., in the case of sex; women vis-a-vis men. When another criterion of employment is added to one of the classifications listed in the Act, there is no longer apparent discrimination based solely . . . on . . . sex . . ." [9]

On appeal, the Supreme Court vacated the summary judgment for the employer, finding that although not all women were affected for the employer's rule against hiring women with preschool children, Title VII does not permit "one hiring policy for men and another for women" [8, at 544]. In effect, the Supreme Court ruled that a woman can prove a *prima facie* case of sex discrimination if she can prove she would have been hired if she were a man, even if other women (those without preschool children) were not subject to hiring discrimination. This resulted in creating a subcategory of women entitled to protection, i.e., women with preschool children, and the establishment of the theory of "sex plus" discrimination.

The Supreme Court's adoption of a sex plus approach is supported by the legislative history of Title VII of the Civil Rights Act of 1964. An amendment offered in the House of Representatives that would have modified the prohibition against discrimination based on sex to prohibit discrimination based *solely* on sex was defeated [10].

The First Decade of Sex Plus Cases

Over the next decade lower courts expanded the sex plus concept applied by the Supreme Court in *Phillips* [8]. Courts ruled that employers violated employment discrimination laws when they required female cabin attendants with

children to accept ground duty positions [11], abolished a female's job when she complained of sexual harassment [12], fired a single woman who became pregnant [13], imposed a no-marriage rule for female flight attendants [14], refused to hire married women [15], and required married women to change their names to their husband's name [16].

The first decade of sex plus decisions ended with the decision in *Jefferies v. Harris County Comm. Action Assn.* [17]. The lower court had dismissed claims of a black, female plaintiff after trial because the judge determined the statistics and other evidence submitted did not prove the defendant-employer had discriminated based either on race or on sex. The lower court refused to consider black females as a distinct subset protected under Title VII (sex plus race). However, the court of appeals ruled the trial court had improperly failed to address the claim of sex plus race discrimination. It stated that discrimination against black females can exist even in the absence of discrimination against black men or white women. The court pointed out that:

> The only significant group of cases to reject the "sex plus" theory of discrimination are cases in which plaintiffs have claimed that hair length regulations for men constitute "sex plus" discrimination. In holding that these rules do not constitute unlawful discrimination, courts have distinguished the other sex plus cases as involving regulations which concern sex plus an immutable characteristic or a constitutionally protected activity such as marriage or child rearing—regulations which present obstacles to employment of one sex that cannot be overcome [17, at 1033].

The *Jefferies* decision quoted with approval a statement contained in an earlier Fifth Circuit Court of Appeals case:

> Equal employment opportunity may be secured only when employers are barred from discriminating against employees on the basis of immutable characteristics, such as race and national origin. Similarly, an employer cannot have one hiring policy for men and another for women if the distinction is based on some fundamental right [18, at 1091].

The Second Decade and One-Half of Sex Plus Cases

In a 1981 decision, *Spirides v. Reinhardt* [19], the court held that sex plus citizenship may be treated as a distinct subset of persons subject to illegal discrimination under Title VII of the Civil Rights Act of 1964. Other decisions finding discrimination against various subsets followed, including *King v. Trans World Airlines* [20], where a female was denied a job after being asked about her marital status, child-care arrangements, and future pregnancy plans where male applicants were not asked questions about family responsibilities; *Newport News Shipbldg. & Dry Dock Co. v. EEOC* [21], involving discrimination against

pregnant women; *Crawford v. Scotch 'n Sirloin* [22}, where an employer allowed a male to work the more profitable night shift because he had a family to support and the female did not; and *Hicks v. Gates Rubber Co.* [23], in which black women were ruled to be a separate subclass for purposes of sexual harassment. During this period two U.S. Supreme Court cases finding illegal sex plus discrimination were decided: *Price Waterhouse v. Hopkins* [24], involving sex plus gender stereotypes; and *United Automobile Workers v. Johnson Controls* [25], sex plus fertility.

In a 1994 case decided by the Ninth Circuit Court of Appeals, *Lam v. University of Hawaii* [26], the trial court had granted summary judgment to the university's law school when a woman of Vietnamese descent alleged sex and race or national origin discrimination in hiring. The court of appeals reversed, stating:

> The district court's second justification for granting summary judgment was based on the defendant's favorable consideration of two other candidates . . . [for the job]: one an Asian man, the other a white woman. In assessing the significance of these candidates, the court seemed to view racism and sexism as separate and distinct elements amenable to almost mathematical treatment, so that evaluating discrimination against an Asian woman became a simple matter of performing two separate tasks: looking for racism "alone" and looking for sexism "alone," with Asian men and white women as the corresponding model victims. The [district] court questioned Lam's claim of racism in the light of the fact that the Dean had been interested in the late application of an Asian male. Similarly, it concluded that the faculty's subsequent offer of employment to a white woman indicated a lack of gender bias. We conclude that in relying on these facts as a basis for its summary judgment decision, the district court misconceived important legal principles.
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> . . . [W]here two bases for discrimination exist, they cannot be neatly reduced to distinct components. . . . Like other subclasses under Title VII, Asian women are subject to a set of stereotypes and assumptions shared neither by Asian men nor by white women. In consequence, they may be targeted for discrimination "even in the absence of discrimination against (Asian) men or white women [citing *Jefferies* [17] and *Hicks* [23], cited earlier in this article]. Accordingly, we agree with the *Jefferies* court that, when a plaintiff is claiming race *and* sex bias, it is necessary to determine whether the employer discriminates on the basis of that *combination* of factors, not just whether it discriminates against people of the same race or of the same sex. . . . [26, 65 EPD at 81,552-4].

SEX PLUS AGE DISCRIMINATION

The principles of law stated in *Lam* and the other cases mentioned above apply equally to sex plus age discrimination. Age is an immutable characteristic, just as

race was in *Jefferies* [17]. Furthermore, as shown by the studies presented earlier in this article, older women are subject to a set of stereotypes and assumptions shared neither by men nor by younger women, just as in *Lam*, where Asian women were subject to stereotypes not applied to Asian men or white women.

Surprisingly, few reported case decisions involve sex *and* age discrimination cases brought by middle-aged and older females. And the majority of decisions either refuse to recognize a sex plus age claim, or they treat the claims as separate causes of action. Some courts have simply not been receptive to sex plus age claims. In *Thompson v. Mississippi State Personnel Board* [27], the court stated that "[a]lthough Title VII prohibits discrimination based on sex and the ADEA prohibits discrimination based on age as to all individuals who are at least 40, neither statute recognizes the subset of women over 40 as being protected from adverse treatment as opposed to men over 40. Thus the plaintiff's statistical data showing the different qualification rates of women over 40 and men over 40 without any data as to men and women younger than 40 is not probative in proving age discrimination [27, 45 EPD at 50,552].

As a result of this and similar cases, attorneys may have refrained from bringing claims of sex plus age discrimination under Title VII and other equal employment laws. There may also be other reasons for the lack of sex plus age discrimination claims.

First, prior to the enactment of the Civil Rights Act of 1991, plaintiffs may have chosen to sue for age discrimination to obtain double back pay that is awarded for willful violations of the Age Discrimination in Employment Act, whereas they were limited to back pay under Title VII. For example, one of the key pieces of evidence in *Spanier v. Morrison's Management Services* [28], was a statement made to the plaintiff that she was removed from managing a cafeteria because the executives of the facility wanted male managers. Notwithstanding this, she successfully sued for age discrimination only, and was awarded double back pay.

Second, plaintiff's attorneys and judges may have become accustomed to placing sex and age discrimination into two separate categories since they are covered in two separate federal laws (Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act). In a 1995 decision, *Walker v. Nation's Bank* [29], the Eleventh Circuit Court of Appeals upheld a district court's determination that an older female bank manager's discharge did not violate laws prohibiting employment discrimination based on sex and age. However, the court treated the claims of sex and age discrimination as two different problems. It ruled that Walker had not proven intentional discrimination based on sex *or* age, or that age *or* sex motivated the bank's termination decision.

Even when sex and age discrimination is covered by the same law, as is often the case under state fair employment laws, attorneys and courts have a tendency to treat them as two separate causes of action. In *Lytle v. Malady* [30], the plaintiff alleged a number of causes of action, including separate claims of age

discrimination and gender discrimination under Michigan's Elliott-Lawson Civil Rights Act. In reversing the trial court's granting of summary disposition, the appellate court discussed evidence of age discrimination and evidence of gender discrimination under separate headings. It found evidence of age discrimination sufficient to overcome the defendant's motion for summary disposition in the fact that the employer retained less senior and allegedly less qualified employees who were younger than the forty-four-year-old plaintiff. Separately, the court found possible evidence of gender discrimination in the allegations that the employer treated males more favorably than it treated the female plaintiff.

Recognizing Sex Plus Age Claims

Only a very few court decisions have recognized that sex plus age is a factually distinct subclass of illegal discrimination. The first case decision appears to be a 1980 decision in *Hoth v. Grinnell College* [31]. In *Hoth*, a female plaintiff in her late thirties alleged sex discrimination in violation of Title VII, as well as violations of the Equal Pay Act and Title IX of the Education Amendments of 1972. A section of the complaint alleged discrimination based on her sex and age under Title VII. The defendant moved for partial summary judgment on the age claim since the plaintiff was not forty years of age or older as required for coverage under the Age Discrimination in Employment Act. The court ruled "that because plaintiff is not alleging a separate count based upon age discrimination, the allegations made by plaintiff in her complaint which allege age discrimination should not be stricken" [31, at 18,979]. Thus the court appeared to imply, without discussion, that sex plus age discrimination evidence could be used to prove a violation of Title VII.

In a 1991 case, *EEOC v. Independent Stave Company, Inc.* [32], the court did not discuss or find sex plus age discrimination, but did treat the two claims jointly, without separation, as sex and age discrimination. The court found the employer guilty of sex and age discrimination based in part on the fact that at the time the plaintiff was laid off from employment she was the only female employee and the oldest employee. However, as in *Hoth* [31], the court did not offer a discussion concerning joining the two claims for sex and age discrimination.

In applying the New York Human Rights Act in 1991, a state court held that a forty-six-year-old disabled female was denied a promotion and ultimately fired because of the combined factors of sex, age, and disability [33]. The plaintiff had problems in proving sex discrimination because the person chosen to fill her prior position was a female. And she had difficulty in proving age discrimination because her replacement was over forty. However, the court found that her theory of the combined factors of her sex, age, and disability created a recognizable subclass sufficient to uphold a jury verdict in her favor.

Arnett v. Aspin

The first case to specifically recognize sex plus age discrimination as a recognized subclass for which a Title VII case can be proven, along with giving a full discussion of the court's reasoning is *Arnett v. Aspin* [34], a 1994 U.S. District Court decision. Mary Arnett, age forty-nine, applied for a promotion to an equal employment specialist position that was given to a thirty-year-old woman. She then applied for another open equal employment specialist position that went to a twenty-nine-year-old woman. Arnett complained that she was not given either position because she was a woman over forty. The defendants admitted that all of their female equal employment specialists were under forty and that all of their male equal employment specialists were over forty. Arnett sued the employer alleging two causes of action: Count 1, a violation of the Age Discrimination in Employment Act; and Count 2, sex plus age discrimination, in violation of Title VII.

The defendant sought summary judgment on Count 2, arguing that Title VII does not allow sex plus age discrimination claims, and that Count 2 should be divided into two separate claims, one for sex discrimination and the other for age discrimination. Once this was done, the defendant argued, summary judgment should be given the employer on the sex discrimination charge because the two promotions were given to women, and summary judgment should be given on the age discrimination charge since many equal employment specialists were over forty (the men). The court agreed that if forced to analyze these claims separately, it is clear that each would not survive summary judgment. However, the court stated that:

> Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes . . . [34, 64 EPD at 79,857].
>
> [Plaintiffs may] bring a Title VII claim for sex discrimination if they can demonstrate that the defendant discriminated against a subclass of women (or men) based on either (1) an immutable characteristic or (2) the exercise of a fundamental right.
>
> Arnett claims that because age is an immutable characteristic, she has a viable sex-plus discrimination claim under Title VII. In response, the defendants argue that this case is different from those cited above because it combines a classification afforded protection by Title VII with a classification afforded protection by the ADEA [age discrimination law], a completely separate statute. The defendants point out that the cases finding a viable sex-plus claim under Title VII have combined sex with either an unprotected classification, such as marital status, or another classification also protected by Title VII, such as race. The defendants, however fail to cite relevant case authority or to explain why this distinction is significant except to say that the remedies

afforded plaintiffs by the ADEA and Title VII are different. And after much thought, I conclude the distinction is insignificant.

> . . . I find that the current line drawn between viable and nonviable sex-plus claims is adequate—that the "plus" classification be based on either an immutable characteristic or the exercise of a fundamental right. And, although I have uncovered no other case that recognizes a "sex plus" age discrimination claim under Title VII, it is clear that age is an immutable characteristic. . . . [The court then ruled that] Arnett has shown a prima facie case . . . [of disparate treatment] because (1) she is a member of a protected subclass, that is women over 40, (2) she was qualified for and applied for the positions in question, (3) despite her qualifications, she was denied the positions, and (4) other employees outside her protected class were selected, in this case two women under forty [34, 64 EPD at 79,857-8].

The court was undoubtedly correct in ruling that sex plus age claims should be allowed even though protection against age discrimination is contained in another law with different remedies. To rule otherwise would lead to a ridiculous result. The consequence would be that a person discriminated against on two different grounds Congress considered serious enough to prohibit under federal law (sex and age) would not be protected, while discrimination that combined a subject Congress chose to prohibit (sex), added to one Congress chose not to protect (say, marital status), would be protected.

In lawsuits under many state fair employment laws the issue of two different laws does not exist since many state laws prohibit both sex and age discrimination in the same status. In a study of 335 cases alleging both sex and age discrimination from 1975 to 1995, the Women's Legal Defense Fund found that state fair employment laws were invoked in 39 percent of all cases [35].

AGE PLUS SEX DISCRIMINATION

In theory, if one is allowed to sue under Title VII for sex plus age discrimination, one should also be able to allege age plus sex discrimination under the Age Discrimination in Employment Act (ADEA). Although recent changes in Title VII allowing capped compensatory and punitive damages for disparate treatment may give sufficient compensation for successful older female plaintiffs suing under Title VII [36], some cases might bring a higher recovery under the ADEA. For example, assume a fifty-eight-year-old woman proves intentional discrimination under Title VII when her employer, who has ninety employees, fires her from her $60,000 per year professional job and she is not able to find comparable work. Three years later, at trial, the court may award back pay of $180,000, and under the Civil Rights Act of 1991, additional compensatory and punitive damages up to $50,000, for maximum total of $230,000, plus attorneys' fees and costs. Under ADEA, the court might award $360,000 in double back

pay, and $240,000 in front pay (from age 61 to age 65), for a total of $600,000, plus attorneys' fee and costs.

However, because there is little or no case precedent for age plus sex discrimination, courts are more likely to recognize sex plus rather than age plus discrimination. Furthermore, while not common in Title VII cases, courts should, and sometimes do apply front pay to Title VII cases [37]. This appears to be appropriate any time the facts match those in a typical front pay age discrimination award where the plaintiff is unlikely to be able to find comparable work and is reasonably near normal retirement age. This would bring the total Title VII recovery in the example given above to $470,000, much closer to the recovery under the ADEA.

THE FUTURE

Because of the increase in women workers who have entered the labor force since 1965, the number of female workers aged forty to midsixties is rapidly increasing. For example, the number of women aged fifty-five to sixty-four in the work force rose from 41 percent in 1978 to 47 percent in 1994 [38]. Interestingly, the median age of the entire U.S. work force will exceed forty years by 2003 [39]. Therefore, for the first time, more than half of American workers will come under the protection of the federal Age Discrimination in Employment Act.

Managerial, technical, and professional employees pose the most danger of equal employment claims because they tend to have high salaries, more often know the law, and are less intimidated in seeking legal help. And increasing numbers of women over forty hold managerial, technical, and professional jobs [40]. The study by the Women's Legal Defense Fund cited above found that the largest number of lawsuits alleging both sex and age discrimination were brought by plaintiffs in the professional specialty, while the second largest category of plaintiffs came from the executive, managerial, and administrative category [35, p. 5]. The study also showed that over one-half of the plaintiffs were fifty to fifty-nine years of age, and that 58 percent of the lawsuits alleged discriminatory discharge, which is the type of employment lawsuit that results in the highest damage awards [35, pp. 4, 7].

SUMMARY

The combination of discriminatory stereotypes concerning older women, the development of a sex plus age subclass for which there is a legal remedy, and the expanded numbers of women over forty in the work force, especially in management, technical, and professional positions, make it likely there will be a major increase in sex plus age discrimination claims. Therefore, companies and managers should examine their own policies and decision-making processes to insure that older women do not suffer discrimination that comes from the

stereotypes we hold in American society concerning older women. The academic studies and legal case decisions now make this reexamination both a moral and legal imperative.

* * *

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ENDNOTES

1. As of 1993. Information taken from Census Bureau and the Institute for Women's Policy Research report posted on the WorldWide Web at http://www.iwpr.org/wagegap.htm.
2. P. Barnum, R. Linden, and N. Ditomaso, Double Jeopardy for Women and Minorities: Pay Differences with Age, *Academy of Management Journal, 38*:3, pp. 863-880, 1995; containing numerous citations to other studies.
3. M. M. Gullette, The Wonderful Woman on the Pavement, *Dissent*, pp. 508-514, Fall 1995.
4. F. D. Blau and L. M. Kahn, Race and Gender Pay Differentials, published in *Research Frontiers in Industrial Relations and Human Resources*, D. Lewin and O. S. Mitchell (eds.), Industrial Relations Research Assoc., Madison, Wisconsin, pp. 381-416, 1992.
5. S. Canetto, P. Kaminski, and D. Felicio, Typical and Optimal Aging in Women and Men: Is There a Double Standard? *International Journal of Aging and Human Development, 40*:3, pp. 187-207, 1995, containing numerous citations to other studies.
6. J. Drevenstedt, Perceptions of Onsets of Young Adulthood, Middle Age and Old Age, *Journal of Gerontology, 31*, pp. 53-57, 1976.
7. M. M. Gergen, Finished at 40: Women's Development within the Patriarchy, *Psychology of Women Quarterly, 14*, pp. 471-493, 1990.
8. *Phillips v. Martin-Marietta Corp.*, 400 U.S. 542 (1971).
9. *Phillips v. Martin-Marietta Corp.*, 411 F.2d at 3-4.
10. 110 Cong. Rec. 2728, 1964.
11. *In re Consolidated Pretrial Procedures*, 582 F.2d 1142 (7th Cir. 1978).
12. *Barnes v. Costle*, 561 F.2d 983 (D.C. Cir. 1977).
13. *Jacobs v. Martin Sweets Co.*, 550 F.2d 371 (6th Cir. 1979).
14. *Sprogis v. United Airlines*, 444 F.2d 1194 (7th Cir. 1971).
15. *Jurinko v. Wiegarnd Co.*, 331 F. Supp. 1184 (W.D.Pa. 1971).
16. *Allen v. Lovejoy*, 553 F.2d 522 (6th Cir. 1977).
17. *Jefferies v. Harris County Comm. Action Assn.*, 615 F.2d 1025 (5th Cir. 1980).
18. *Willingham v. Macon Telegraph Publ. Co.*, 507 F.2d 1084, (5th Cir. 1975).
19. *Spirides v. Beinhardt*, 486 F.Supp. 685 (D.D.C. 1980), *aff'd* 656 F.2d 900 (1981).
20. *King v. TransWorld Airlines*, 738 F.2d 255 (8th Cir. 1984).
21. *Newport News Shipbldg. & Dry Dock Co. v. EEOC*, 462 U.S. 669 (1983).

22. *Crawford v. Scotch 'n Sirloin*, 47 FEP 473 (N.D.N.Y. 1988).
23. *Hicks v. Gates Rubber Co.*, 833 F.2d 1406 (10th Cir. 1987).
24. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).
25. *United Automobile Workers v. Johnson Controls*, 499 U.S. 187 (1991).
26. *Lam v. University of Hawaii*, 40 F.3d 1551, 65 EPD sec. 43,341 (9th Cir. 1994).
27. *Thompson v. Mississippi State Personnel Board*, 674 F.Supp. 198, 45 EPD sec. 37,700 (N.D. Miss. 1987).
28. *Spanier v. Morrison's Management Services*, 822 F.2d 975, 44 EPD sec. 37,319 (11th Cir. 1987).
29. *Walker v. Nation's Bank*, Nos. 93-3380, 94-2134, 11th Cir. 6/12/95.
30. *Lytle v. Malady*, 66 EPD sec. 43,482 (Mich. Ct. App. 1995).
31. *Hoth v. Grinnell College*, 5 EPD sec. 31,493 (S.D. Iowa 1980).
32. *EEOC v. Independent Stave Co., Inc.*, 754 F.Supp. 713, 55 EPD sec. 40,583 (E.D. Mo. 1991).
33. *Sogg v. American Airlines, Inc.*, 63 EPD sec. 42,872 (N.Y. App. Div. 1993).
34. *Arnett v. Aspin*, 846 F.Supp. 1234, 64 EPD sec. 43,044 (E.D. Pa. 1994).
35. *Employment Discrimination Against Midlife and Older Women. Vol. I: How Courts Treat Sex-and-Age Discrimination Cases*, A Report by the Women's Legal Defense Fund for the American Association of Retired Persons, AARP, Washington, D.C., p. 9, 1996.
36. Pub. L. No. 102-392, 106 Stat. 1724 (Effective Oct. 6, 1992), that caps compensatory and punitive damages at $50,000 for firms with 100 or fewer employees, $100,000 for firms with 101-200 employees, $200,000 for firms with 201-500 employees, and $300,000 for firms with 501 or more employees.
37. See *Weaver v. Casa Gallardo, Inc.*, 922 F.2d 1515, 55 EPD sec. 40,540 (11th Cir. 1991); *Carter v. Sedgwick County, Kansas*, 929 F.2d 1501, 56 EPD sec. 40,699 (10th Cir. 1991); *Edwards v. Occidental Chemical Corp.*, 892 F.2d 1442, 52 EPD sec. 39,585 (9th Cir. 1990); and *Shore v. Federal Express Corp.*, 777 F.2d 1155, 38 EPD sec. 35,776 (6th Cir. 1985).
38. A. Bennett, More and More Women Are Staying on the Job Later in Life Than Men, *Wall Street Journal*, p. B1, September 1, 1994.
39. The American Workforce, 1992-2005, *Bulletin to Management*, Bureau of National Affairs, pp. 404-406, December 23, 1993.
40. J. G. Frierson, *Preventing Employment Lawsuits: An Employer's Guide to Hiring, Discipline and Discharge*, BNA Books, Washington, D.C., pp. 302-303, 1994.

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