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THIRD CIRCUIT LOWERS THRESHOLD FOR ESTABLISHING *PRIMA FACIE* CASE UNDER TITLE VII

On December 19, 2006, the Court of Appeals for the Third Circuit held that an employer that hires an individual who lacks objective qualifications for the position cannot rely on the absence of those same qualifications in another applicant as justification for rejecting that other applicant. (*Scheidemantle v. Slippery Rock Univ. State System of Higher Education*, No. 05-3850, 12/19/06). An unqualified individual may establish a *prima facie* case of gender discrimination under Title VII of the Civil Rights Act of 1964 (“Title VII”), the court held, if the employee establishes that the employer hired or promoted an individual who was also unqualified.

In *Scheidemantle*, defendant Slippery Rock University (“Slippery Rock”) posted a locksmith position vacancy that required two years of locksmithing experience. Plaintiff, a woman who worked as a labor foreman for Slippery Rock, applied for the job. She had a professional locksmithing license, but lacked two years’ locksmithing experience. Three men also applied for the position; none possessed the requisite two years’ experience. Slippery Rock gave the job to a male applicant, Calvin Rippey, from the carpentry department, who had more experience as a locksmith, but no coursework toward licensure.

In April 2004, Rippey was promoted out of the locksmith position and Slippery Rock again posted the position. Scheidemantle applied, although she still lacked the required two years of locksmithing experience. Meanwhile, Rippey informally assigned an employee from the carpentry department to perform the locksmithing duties. That employee had little experience locksmithing and had completed no coursework in locksmithing until November 2004. Slippery Rock made no further effort to permanently fill the position.

In October 2004, Scheidemantle filed a complaint in the United States District Court, alleging gender discrimination as to both the 2003 and 2004 rejections. The district court granted Slippery Rock’s motion for summary judgment, concluding that the plaintiff had failed to establish a *prima facie* case of discrimination because she did not meet the qualifications for the position according to the listed objective criteria. Scheidemantle appealed to the Third Circuit.

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Prior to analyzing the issues, the court explained that Title VII is a remedial statute that must be interpreted broadly and that, consequently, the threshold is low for establishing a *prima facie* case of employment discrimination. To establish a *prima facie* case of gender discrimination, the court explained, Scheidmantle was required to demonstrate that (a) she was a member of a protected class; (b) she was qualified for the locksmith position; and (c) another individual, not in the protected class, was treated more favorably.

Slippery Rock had argued, and the lower court had agreed, that the plaintiff could not satisfy the second criteria needed to establish a *prima facie* case because she lacked the objective qualifications for the job. Scheidmantle countered that she did not need to meet the objective qualifications stated in the job posting because she was at least as qualified as the male employees Slippery Rock had hired for the position. The Third Circuit agreed, holding that “by departing from a job posting’s objective criteria in making an employment decision, an employer establishes different qualifications against which an employee or applicant should be measured for the position.” The court reasoned that if an employer could appeal to objective qualifications to defeat any female job applicant’s challenge to its hiring of an objectively unqualified male in her place, discrimination law would have “no bite.” The court concluded that Title VII requires employers to apply the same standards for hiring individuals in protected classes that they apply to all other applicants. Accordingly, the court reversed the district court’s entry of summary judgment in favor of Slippery Rock and remanded the case to the district court.

The *Scheidmantle* decision should serve as a reminder to employers to ensure that they hire and promote applicants who meet the objective qualifications for the position. When an employer selects an individual who fails to meet the job criteria, the employer must be able to demonstrate that it has a legitimate business reason for having done so. Failure to hire and promote in accordance with published job descriptions, or hiring or promoting an individual who does not meet the objective qualifications of a position, increases the risks of legal challenge and discrimination claims.

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Please feel free to contact **Maxine Neuhauser** in the firm's **Newark** office at 973/639-8269 if you have any questions or comments. Ms. Neuhauser's e-mail address is mneuhauser@ebglaw.com. **Daniel R. Levy**, an associate in the Labor and Employment Department, assisted in the preparation of this Alert.

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