

## Sex-Plus X – What’s That? Discrimination

Article By:

Cortlin Bond

Anne R. Yuengert

J. William Manuel

---

Here’s a refresher: Discriminating against a subclass of a sex (e.g., older women or black women) is still discrimination. In *McCreight v. AuburnBank*, the Eleventh Circuit clarified a few things for the lawyers related to the different theories of liability, but the court also provided a good refresher on “sex-plus” discrimination, or discrimination based on a subclass of sex.

### The Background

Two plaintiffs, Julia McCreight and Rebecca Wester, sued their former employer, AuburnBank, and former manager alleging they were fired because they were older women and were retaliated against due to their complaints to human resources. Both plaintiffs were long-time employees who were terminated after a series of serious mistakes. However, plaintiffs claim they were fired because they were older women and because they had complained to human resources about their manager before.

Plaintiffs sued under Title VII for sex-plus-age discrimination, hostile work environment, and retaliation. They also sued pursuant to federal and state age discrimination laws and brought a variety of state tort claims. The Eleventh Circuit affirmed the district court’s order in favor of defendants, which dismissed all claims at summary judgment.

### What are the highlights?

Why are we blogging about this when the employer won? Because the Eleventh Circuit provided a good refresher on sex-plus claims, including what they are and what they are not.

**What they are.** Sex-plus claims are sex discrimination claims alleging that a person has been discriminated because of their sex and their membership in a particular subgroup. Sex-plus claims require adverse treatment due to sex but also necessarily require that not all members of that class are included in the adverse treatment. For example, treating women who have preschool-age children different than men with preschool-age children is sex-plus discrimination. (An issue raised by

the United States Supreme Court in *Phillips v. Martin Marietta Corporation* in 1971). The discrimination is against only a subclass of women, those with preschool-age children, but it does not involve women without preschool-age children. Other examples of sex-plus discrimination include sex-plus age discrimination (as discussed in *McCreight*) and sex-plus-race discrimination (discussed by the Fifth Circuit in *Jefferies v. Harris County Community Action Association*). Note that the “plus” part does not require the subgroup to be a protected class.

**What they are not.** Sex-plus claims are not claims that allege “more than one type of discrimination caus[ed] the adverse action” as the *McCreight* plaintiffs argued. Sex-plus claims must be supported by evidence of adverse treatment based on sex and the subgroup membership. They may be supported by either:

- A single-motive theory (i.e., my employer did this because I am woman who is a mother); or
- A mixed-motive theory (i.e., my employer may have fired me because I messed up, but they would not have done so had I not been a woman who is a mother).

**They require more than “bits and pieces” of evidence.** Both theories require evidentiary support, and “bits and pieces” are not enough. Like generalized sex-discrimination claims, a plaintiff claiming sex-plus discrimination must show that sex played a role in his or her adverse employment action. There must be evidence that subgroup members of another sex are treated differently. General evidence, such as the alleged comments and complaints, did not carry the day in *McCreight*. The Eleventh Circuit held that plaintiffs failed to tie the adverse employment action to their sex. So, while comments may create an inference, sparse examples of animus toward a particular group are insufficient when the plaintiff fails to connect that animus to the adverse employment action at issue.

## Takeaways

The *McCreight* decision is not new law, but it is a good reminder to employers to make sure that your policies and your employees’ actions are not treating a subgroup of employees in one sex differently than the same subgroup of another sex. It can be tricky and not always apparent as it does not impact the whole group. Evaluate your policies and train your managers. If you have questions, reach out to your favorite employment lawyers.

[Listen to this post](#)

© 2025 Bradley Arant Boult Cummings LLP

---

National Law Review, Volume XIV, Number 270

Source URL: <https://natlawreview.com/article/sex-plus-x-whats-discrimination>