

## No Girls Allowed Isn't Allowed: Even Roughnecks Have to Follow the Law - re: Discriminate Against Female Applicants

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Even in the “manliest” of jobs, employers must be careful not to discriminate against female applicants, or it will cost them. On March 24, the United States District Court for the Northern District of Oklahoma denied an employer’s motion for summary judgment against the EEOC in ***EEOC v. Unit Drilling Company***, finding issues of fact regarding female applicants’ discriminatory failure to hire claims.

Unit Drilling Company operates oil drilling rigs and was hiring for the position of floor-hand, an entry-level job that requires no prior drilling rig experience. Husband and wife Michael and Patsy Craig both applied for such positions, and while Michael was hired, Patsy was turned away. One manager told her the unit could not provide housing for her, and one went as far as to tell her he could not hire her because the men on the rig would look at her instead of working. Kim Wilson applied and was told she probably would not be hired because the unit could not accommodate a female working on a rig. Hali Yonkey applied and was turned away after being told she was “too pretty” and that the men “wouldn’t get anything done” with her around.

The court found that the EEOC was able to establish a prima facie case of discriminatory failure to hire. Unit Drilling Company’s legitimate, nondiscriminatory reason was that it hired more qualified candidates. However, the court held that the EEOC could establish that this reason was a pretext for discrimination.

First, the court found there were shifting reasons for not hiring the female applicants. For example, Patsy Craig was told she was not hired because she would distract male employees and then was told there was no housing for women – and now was being told she was not the most qualified applicant. The court found there was a genuine issue of fact regarding the authenticity of Unit Drilling Company’s reason.

Second, and perhaps more interesting, the court found pretext on statistical evidence alone. Rarely do statistics play into a disparate treatment case, but the court relied on an exception where there are “gross statistical disparities” and an “inexorable zero.” Of the 1,600 floor-hands hired in the previous two years, zero were female, despite the job qualifications stating nothing about excluding females and despite the availability of female applicants.

While the case is somewhat of an outlier because this use of statistical analysis in disparate treatment cases is rare, it is still educational. If your workforce is so entirely one-dimensional that such statistics can be used against you, then you likely need to examine how you have ended up with so little diversity, as at some point it begins to look suspicious.

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