



# DELAWARE

## EMPLOYMENT LAW LETTER

Part of your Delaware Employment Law Service

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### EVIDENCE

## **But I just *know* it was discrimination!**

by Lauren E. Moak

*Employers frequently face lawsuits from employees who have suffered an adverse employment action (e.g., a layoff, denial of a promotion, or demotion) and are convinced it was the result of discrimination. A new decision from the U.S. District Court for the District of Delaware reminds us that an employee's subjective belief that she suffered discrimination is not enough to win a case. The ruling likely won't stop employees from filing lawsuits, but it should provide some reassurance to employers that make carefully considered and well- documented employment decisions.*

### ***Facing facts***

In 2000, Dr. Lucy Luta, who is black, began working for the Delaware Department of Health and Social Services (DHSS) as a public health treatment administrator for an HIV/AIDS treatment program. Luta, who is a native of Kenya, received her medical degree from the University of Nairobi and a master's degree in public health from the University of Dundee in Scotland. In 2005, she applied for several available promotions within the DHSS.

Among the positions Luta applied for were (1) public health administrator II in the division of health statistics and epidemiology, (2) public health administrator I in the same division, and (3) public health administrator I, HIV/AIDS coordinator. She was considered qualified for each position and placed on a list of eligible candidates.

The positions in the health statistics and epidemiology division remained unfilled because the manager was unhappy with the eligible candidates. Instead, two women continued to fill those positions in a temporary capacity. The HIV/AIDS coordinator position was filled by a Caucasian

U.S. citizen named John Kennedy (we're not joking). Kennedy had 20 years' experience in the U.S. Air Force Medical Service Corps but had limited experience with HIV/AIDS.

When Luta wasn't selected for any of the available positions, she sued the DHSS, alleging race and national origin discrimination. The DHSS asked the court to dismiss the lawsuit after both parties had the opportunity to investigate the case thoroughly.

***There's no other explanation . . .***

In issuing its decision, the court focused primarily on the HIV/AIDS coordinator position. In support of her claims, Luta relied on the contention that she had more experience treating and researching HIV/AIDS than Kennedy. She asserted that an HR manager had informed her that HIV/AIDS experience was "essential" to the position. By contrast, the DHSS argued that management experience was a mandatory requirement for the position and that Kennedy had significantly more experience than Luta because he had managed hospitals and clinics and supervised more than 300 individuals at various times in his career.

In reviewing Luta's arguments, the court concluded that she hadn't met her burden of presenting evidence of discrimination. The court noted that the HR manager with whom Luta spoke wasn't authorized or qualified to elaborate on the skills required to perform medical positions. The statements of medical professionals who were responsible for making the hiring decision were given more weight and supported the contention that management experience was more important than knowledge of HIV/AIDS. The court also noted that contrary to Luta's assertions, Kennedy did have limited experience treating HIV/AIDS (but not researching them). Further, Kennedy was deemed a more desirable candidate because of his extensive management experience.

Setting aside their qualifications, the court emphasized that Luta needed to present at least some evidence of discrimination. According to the court, "A reasonable factfinder could not conclude, based solely on the fact that a white man with more managerial experience was hired over a black Kenyan woman with arguably more HIV/AIDS experience, . . . that racial and national origin discrimination had occurred." Based on that conclusion, the court dismissed Luta's claims. *Luta v. Delaware Department of Health and Social Services*.

***Bottom line***

When facing a factually unsupported lawsuit, employers generally are filled with a mix of fear and frustration. No one wants to be sued, but it's even worse when you know there's no evidence. Unfortunately, it's difficult to prevent employees from filing unsubstantiated lawsuits so long as they're acting in good faith. Nevertheless, the court's decision is a much-needed reminder that it requires more than an employee's subjective beliefs to win a lawsuit.

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