
Losing Your Female Talent: A Case Study in Gender Discrimination

Student Notes: The Case

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VIENNA DISTRICT COURT

GROUP OF FORMER FEMALE ASSOCIATES (MORTON, KELLY & EISENBERG), Plaintiff,

v.

MANAGING PARTNERS (MORTON, KELLY & EISENBERG), Defendant.

Civil Action No. 1:25-cv-25318 Trial, 29-30. April 2023.

The complaint

The law company Morton, Kelly & Eisenberg (MKE) is being sued for gender discrimination. The plaintiffs, female associates who have joined MKE in 2012, have left the firm at the end of 2018 and filed a complaint to initiate a lawsuit against their previous employer. They allege that they earned less than comparable male colleagues and show quantitative evidence to prove a pattern of systematic discrimination. The defendants deny that discrimination has taken place and articulate that protected characteristics (such a gender) has nothing to do with the observed disparities between wages. They maintain that MKE has a strict no-discrimination policy.

The Court has taken on the case, which is in the phase of presenting evidence. Your job as part of the legal team of either the plaintiff or the defendant, working with data provided by the company and with other teams through *discovery*: determine and argue whether or not gender discrimination has taken place in actual MKE salary practices.

The law

Employment discrimination cases follow the **disparate impact** doctrine. The plaintiffs have to show that the business practice *impacted* them in a discriminatory way, but do not have to prove discriminatory intent. The burden of proof is shared between plaintiff and defendant, as explained in Title VII of the Civil Rights Act (1964, amended 1991):

- (k) Burden of proof in disparate impact cases (1)(A) An unlawful employment practice based on disparate impact is established under this subchapter only if-
- (l) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity;

(Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964). <https://www.govinfo.gov/content/pkg/STATUTE->

78/pdf/STATUTE-78-Pg241.pdf)

Therefore, employment discrimination cases usually proceed in three steps.

1. First, plaintiffs try to show *prima facie* evidence for disparate impact, for example, that women earned less than men. Without such evidence, the Court may dismiss the case.
2. Second, if plaintiffs succeeded in the first step, defendants try to show that such practices reflect legitimate business reasons and are not discriminatory.
3. Third, defendants try to refute such arguments by challenging whether the reasons are legitimate or just a pretext for discrimination.

The defendant

MKE is a general law firm covering many areas of the law. It has 970 attorneys in addition to paralegals, secretaries and other support staff. This case only concerns attorneys.

The typical career path for attorneys at the firm is that they join as an associate.

The company has an up-or-out policy. If after 10 years an associate is not promoted to partner, they have to leave.

The main business of the company is to serve long-term clients on a time and cost-plus basis. Most clients are corporations, coming from all sectors of the economy. The primary source of revenue is attorney time billed to clients at a marked-up rate. Attorneys receive a flexible salary, with performance-based pay taking into account the time they bill to clients ("billable hours") as well as the number and lucrativeness of new client relationships they brought to the firm. Importantly, not all work done by attorneys is billable to a client.

The firm is split into seven departments. Each department has relative autonomy in hiring associates and setting their salaries.

Department	Description
Bankruptcy	Corporate bankruptcy proceedings
Corporate	General non-litigation legal service for corporations, contracting, including M&As
Intellectual property	Representing clients in patent and IP proceedings, including infringement cases

Department	Description
Litigation	Representing clients during litigation (such as civil rights, employment, health)
Real estate	Specialized legal services for real estate development
Securities	Legal work on issuing financial instruments
Tax	Tax advice and representation for high net-worth individuals

Discovery and evidence

During discovery, a collection of data and documents were shared with both sides. These can be introduced as evidence. During our process, no other evidence can be brought (such as witness testimonies).

Every exhibit you want to show has to be shared with the Court and the other side beforehand. You can do this by sharing your exhibit number with the Court clerk, who will share it with the other side. You don't have to say how you will use this exhibit and what you want to demonstrate with it.

Oral arguments

Each side selects a counsel to make oral arguments in front of the Court. Counsels can change between rounds. The first time a counsel makes an appearance, it is customary to address the judge as "Your Honor" or "Judge X," and start your statement with "May it please the court."

Plaintiffs start each round.

Plaintiff's counsel presents the exhibits and makes arguments favoring their case. They may be interrupted by the Judge and court-appointed experts to clarify what is being presented and how it can be interpreted. After the presentation, the counsel from the opposing side gets a chance to quickly rebut the arguments. They cannot bring new evidence at this stage. They can, however, point out errors in reasoning or differences in opinion.

Defendant's counsel then presents their evidence in a similar fashion. They can also be interrupted (by Court officials only). Plaintiff is also given a chance of quick rebuttal.

Glossary

complaint The initial document filed with the court.

plaintiff The party initiating the lawsuit.

defendant The party being sued for damages.

discovery The process of obtaining data and documents from both sides.

motion A document filed with the court requesting an action to be taken.

disparate impact Business practices may have a disparate impact on protected groups, even if not intentionally.

disparate treatment Deliberately treating protected groups differently than others.

Gameplay

Before each lesson, the Court gives instructions to each team. These may include expert materials that the teams have to review before embarking on their fact finding mission.

Teams work separately given written and oral instructions from the Court. They can communicate with other teams, but only via the Court. In each lesson, teams will solve a small number of analytics exercises.

After each team is done with their work, they present their findings in Court. They also explain the merits of the methods they used. They can be challenged by the other side and by representatives of the Court.

The lesson closes with a mediation round, in which all parties freely discuss what they learned with the facilitation of the Instructors.

Using cards

You do operations on data cards.

Each card has a unique identifier. Data cards are single letters, including 0 and @ (there are 28 data cards).

Data cards have a set of numbers in the top right column. These will reveal the result of each attempted operation.

Operation cards (a single letter and a number, like S1) have holes in the top right. To execute an operation on data table, place the operation card on the data card. The numbers shown in the holes represent the *result* of that operation. If there are multiple holes, they should be read top to down, not left to right.



DATA F

id	gender	department	salary	joined
10020	male	intellectual_property	2085600	2012
10478	male	intellectual_property	1899900	2012
10679	male	corporate	193100	2012
10941	male	securities	158600	2012
11817	...	corporate	153100	2012
...
19350	male	litigation	122300	2013
19610	male	real_estate	168300	2013
19634	male	corporate	199400	2013
19707	male	bankruptcy	180500	2013
19858	male	securities	240900	2013

57 rows

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Figure 1: A DATA card



Figure 2: An OPERATION card

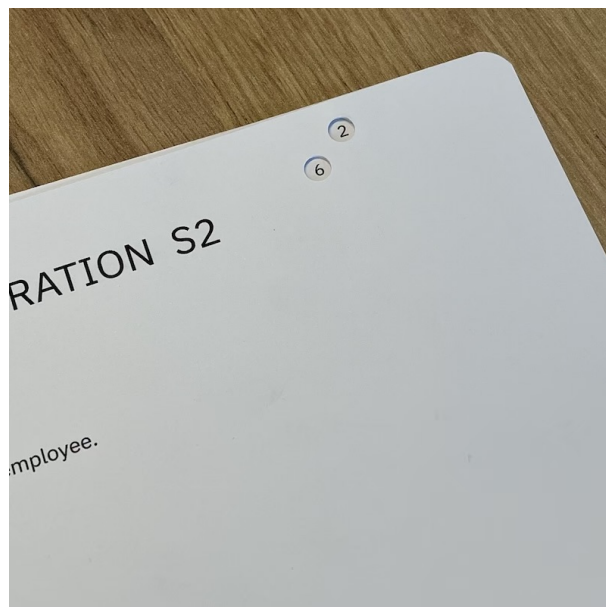


Figure 3: The holes reveal the result

EXHIBIT 26

department	count	mean_salary
bankruptcy	6	139633
corporate	15	176280
intellectual_property	15	142280
litigation	4	168985
real_estate	7	166156
securities	3	175490
tax	4	

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Figure 4: An EXHIBIT card

If the operation cannot be executed on the data table, an error results. There are two error cards, noted by + and -. If these show up in any of the error holes, this means an error, even if the other hole reveal a proper number or letter.

There are exercises for which two operations have to be combined (“chained”). You should do these

operations one by one. Find the result of the first operation and then do the operation on this result. For example, a data table may need to be filtered before analyzed further. The result of the filtering (“select rows” operation) is a new data table. Find this data table and do the analysis on this.

Organizing your work

You will have some (not all) data cards and all operation and error cards at the beginning. Everything else you have to “compute” yourself. The result of an operation may be a data card you already have, a new data card, an exhibit, or a model. If you do not have the result among your cards, request it from the Court (two-team version) or the Data Science Team (three-team version).

Soon you will have many cards at each team. They are not helpfully labeled, so it can be confusing which card is which. You should keep an order among the cards. For example, mark them with post-its or colored stickers. You can also stack them appropriately.

During discussion, you may wish to share a card with the Court. Call out the identifier of the card, and the Court projects it on the screen for all to see.

Making notes

Each team will have to file a written expert report summarizing their arguments after the oral arguments are over. (This is an in-role class assignment.) Make sure to note all important details of claims and rebuttals.

Use the worksheet. Note the exhibit numbers you wish to present. You will have to show it to the Judge *before* being allowed to present. You can also note your arguments and the opposing side’s rebuttal here.