

Notable Performance Review Discrimination Cases

Price Waterhouse v. Hopkins (1989)

U.S. Supreme Court, 490 U.S. 228

Facts:

Ann Hopkins was a senior manager at Price Waterhouse accounting firm.

Despite bringing in \$25 million in business and having strong performance metrics, she was denied partnership while less qualified male colleagues were promoted.

Partner feedback included gender-stereotyped language:

- "Macho," "overcompensated for being a woman"
- Advised to "walk more femininely, talk more femininely"
- Described as "abrasive" and needing "a course at charm school"

Ruling:

The Supreme Court held that employment decisions based on sex stereotypes violate Title VII, even when other legitimate reasons also exist. The decision established that gender-stereotyped language in evaluations can constitute evidence of discriminatory intent.

Legal Precedent:

This case established the "mixed-motive" framework where discrimination need not be the sole reason for an adverse employment decision. Stereotyped language in performance reviews became admissible evidence of bias.

Impact:

Organizations must ensure performance evaluations are free from gender-stereotyped language and based on job-related criteria applied consistently across genders.

Dukes v. Walmart Stores, Inc. (2011)

U.S. Supreme Court, 564 U.S. 338

Facts:

Class action lawsuit representing 1.5 million female Walmart employees alleging systematic gender discrimination in pay and promotions. Evidence included statistical analysis showing women received lower performance ratings and fewer promotions than similarly qualified men.

Key Evidence:

- Statistical disparities in performance ratings by gender
- Subjective evaluation systems without structured criteria
- Gendered language patterns in performance reviews
- Women concentrated in lower-paying positions despite tenure

Outcome:

While the Supreme Court ruled against class certification on procedural grounds, Walmart subsequently settled numerous individual and smaller class claims totaling over \$20 million.

Lessons Learned:

- Statistical analysis of performance ratings is admissible evidence
- Subjective evaluation systems create legal vulnerability
- Pattern evidence across multiple employees strengthens claims
- Defense costs can exceed \$100M even without class certification

EEOC v. Bloomberg L.P. (2007-2015)

Facts:

EEOC alleged Bloomberg discriminated against pregnant employees and mothers through biased performance evaluations, denied promotions, and hostile work environment. Performance reviews allegedly penalized women for pregnancy and maternity leave.

Evidence:

- Performance ratings dropped for women after maternity leave
- Biased language in reviews referencing family responsibilities
- Statistical disparities in promotion rates
- Testimony about discriminatory comments from managers

Settlement:

Bloomberg settled for undisclosed amount (estimated \$10M+) and agreed to:

- Revise performance evaluation systems
- Implement anti-discrimination training
- Regular monitoring and reporting to EEOC
- Neutral language requirements in reviews

Key Takeaway:

Performance evaluations that reference family status or use different standards for parents vs. non-parents violate Title VII and the Pregnancy Discrimination Act.

Velez v. Novartis Pharmaceuticals Corp. (2010)

Facts:

Class action alleging systematic gender discrimination in sales force. Female sales representatives received lower performance ratings and

smaller bonuses despite meeting or exceeding sales targets.

Evidence:

- Statistical analysis: Women rated lower across all performance categories
- Language analysis: Women's reviews emphasized "soft skills" while men's emphasized "business results"
- Quota achievement data showed women meeting targets at same rates as men
- Testimony about gender-stereotyped feedback

Outcome:

\$253 million jury verdict (later reduced to \$175M on appeal) covering back pay, compensatory damages, and punitive damages for approximately 7,600 female sales representatives.

Impact:

Largest gender discrimination settlement in pharmaceutical industry.
Demonstrated that statistical analysis of performance ratings combined with language analysis creates compelling evidence of systemic bias.

Rizo v. Yovino (2018)

U.S. Court of Appeals, Ninth Circuit, 887 F.3d 453

Facts:

While primarily a pay equity case, the decision addressed how performance evaluations must be based on job-related factors, not protected characteristics or stereotypes.

Holding:

Employers cannot justify pay disparities or performance rating differences based on prior salary history or subjective factors that perpetuate

historical discrimination.

Application to Performance Reviews:

Performance evaluations must be based on:

- Observable job-related behaviors
- Measurable outcomes
- Consistently applied standards
- Documentation of specific examples

Cannot be based on:

- Stereotypical assumptions about protected classes
- Subjective "fit" or "potential" without clear criteria
- Different standards applied to different groups

Key Legal Principles from Case Law

1. Statistical Evidence is Admissible

Courts accept statistical analysis of performance ratings as evidence of systemic discrimination. Organizations should proactively monitor rating distributions by protected class.

2. Language Matters

Gender-stereotyped language (e.g., "abrasive" vs. "assertive," "collaborative" as faint praise) can constitute evidence of discriminatory intent.

3. Subjective Systems Create Liability

Performance evaluation systems without structured criteria and consistent application create legal vulnerability.

4. Pattern Evidence is Powerful

Individual cases become class actions when statistical patterns demonstrate systematic bias across protected classes.

5. Mixed Motives are Sufficient

Discrimination need not be the sole reason for a rating or decision.

If bias is "a motivating factor," liability exists.

Cost of Non-Compliance

Average legal costs:

- Defense costs: \$200K - \$500K even if employer prevails
- Settlement amounts: \$50K - \$500K per plaintiff
- Class actions: \$10M - \$250M
- Reputational damage: Immeasurable

Beyond financial costs:

- EEOC investigations and monitoring
- Mandatory training and system overhauls
- Negative publicity affecting recruitment
- Decreased employee morale and productivity
- Executive time diverted to litigation

Best Practices to Minimize Risk

1. Implement structured evaluation criteria
2. Train managers on bias recognition and interruption
3. Monitor rating distributions quarterly
4. Flag and remediate gendered language
5. Conduct calibration sessions
6. Document specific behavioral examples
7. Regular audits by legal/HR compliance
8. Maintain records for at least 3 years

9. Respond promptly to internal complaints
10. Use AI-powered detection systems for real-time compliance

Legal Standard Summary

Title VII Requirements:

- No disparate treatment based on protected class
- No policies with disparate impact unless job-related
- Evaluation criteria must be job-related and consistently applied
- Burden shifts to employer once prima facie case established

Employer Defenses:

- Legitimate, non-discriminatory reasons for decisions
- Business necessity for policies with disparate impact
- Structured, documented evaluation processes
- Good faith efforts to prevent and remedy bias

Plaintiff's Burden:

- Prima facie case: Member of protected class + adverse action
- Statistical evidence of pattern/practice
- Direct evidence (e.g., discriminatory comments)
- Comparative evidence (similarly situated employees treated differently)