

[Employment Law Daily Wrap Up, STRATEGIC PERSPECTIVES—The green-eyed monster at work: When does jealousy become unlawful discrimination?, \(Oct. 25, 2017\)](#)

Employment Law Daily

[Click to open document in a browser](#)

By [Lorene D. Park, J.D.](#)

What happens when a good employee, through no fault of her own, is fired because her boss's jealous wife doesn't want him working with her? Is that sex discrimination? The answer is that it depends on whether the jealousy is really "because of" gender. Arguably, the only reason for the jealousy is because of the potential for a romantic relationship due to the employee's status as a member of the opposite sex, but courts don't necessarily see it this way. In some cases, it simply depends on whether it was the employee in particular who was the focus of the jealousy (due to a friendship or other consensual relationship) or whether all individuals of the same gender would also have been targeted. To those courts, only the latter case would be unlawful discrimination.

Wife jealous of all women. For example, in an October 2, 2017, decision, a federal court in Pennsylvania refused to dismiss Title VII and state law claims by a trucking company's female service operations manager who was treated differently than male colleagues and fired because the company president's wife did not want him working with women, period. The president had avoided eye contact and excluded the plaintiff from meetings and directed her subordinates to relay important information to her. She was also told that she was no longer allowed to go into the president's office or to address him directly in the workplace, including by email.

The employer claimed it could lawfully fire an employee due to spousal jealousy, but the court was unconvinced. It noted that neither the Third Circuit nor the U.S. Supreme Court have spoken directly on this issue, but other courts that have found spousal jealousy to be a lawful reason for firing have done so "only where the spouse was jealous of a particular individual, not where the spouse was jealous of an entire sex." With this in mind, the court concluded that jealousy is not a lawful explanation for an adverse employment action if it encompasses the entire gender, as appeared to be the case here ([Sztroin v. PennWest Industrial Truck, LLC](#)).

Based on relationship or gender? This is not the only court that has appeared to distinguish between an employment decision based on a personal relationship (e.g., jealous of a particular individual) and a decision truly based on gender. For example, in an older case out of Iowa, a long-time dental hygienist developed a friendship with the dentist, whom she considered to be a father figure, and they would exchange texts after hours (mostly about their kids). However, there was some indication that he was attracted to her (he complained to her that her clothing was too tight and "distracting") and after his wife became jealous, the hygienist was fired. Affirming summary judgment against her sex discrimination claim, the state's highest court concluded that it was not unlawful gender discrimination to fire the hygienist because the wife "unfairly or not, viewed her as a threat to her marriage." The court noted that the employee was replaced by a female and that all of the dentist's assistants were female, but only the plaintiff was the subject of the wife's jealousy ([Nelson v. James H. Knight DDS](#)).

Sexual attraction to "cute" employee is gender-based. In other cases, courts have found that jealousy directed at a particular individual is gender-based when it involves sexual attraction. For example, a New York appeals court held that firing an employee due to jealousy by the boss's wife could be actionable under state and city law. The husband and wife owned a chiropractic and wellness company and the plaintiff was a yoga and massage therapist. Though the boss praised her performance and she claimed their relationship was "purely professional," he also allegedly told her that his wife might become jealous because she was "too cute." About four months later, the wife sent the plaintiff a text message in the middle of the night stating, "You are NOT welcome any longer at Wall Street Chiropractic, DO NOT ever step foot in there again, and stay the [expletive]

away from my husband and family!!!!!! And remember I warned you." Later that morning, she received an email from the husband stating that she was fired.

Reversing the dismissal of her sex discrimination claim, the state appeals court found that she alleged facts from which it could be inferred that the husband and wife were motivated to fire her by the wife's jealousy and belief that her husband was sexually attracted to the plaintiff. This was related to gender, noted the court, and "a discharge is actionable if the spouse urged the discharge for unlawful, gender-related reasons" ([Edwards v. Nicolai](#)).

But for her status as a woman . . . It's hard not to compare these jealousy cases to other contexts in which courts must decide if an atypical fact pattern involves discrimination "because of" gender. In one recent case, an employee's supervisor, who was also the CEO's mother, repeatedly pressured the employee to marry the CEO and became angry when she married someone else. Thereafter, she criticized the employee's performance and spread rumors about her. Based on this, a reasonable jury could find that, "but for her status as a woman," the employee would not have been subjected to the offensive conduct, ruled a federal court in Maryland, denying the employer's motion for summary judgment ([Allen v. TV One, LLC](#)).

Had the courts in the jealousy cases applied the same reasoning, the results of some of these cases might have been different. But for the female employees' status as women, their bosses' wives would not have been jealous and they would not have been fired, right? Food for thought.

So when is jealousy-based decisionmaking unlawful? For now, and depending on the jurisdiction of course, courts are more likely to find that adverse actions prompted by jealous decisionmakers or spouses constitute unlawful sex discrimination if the jealousy is directed at an entire gender. They are also more likely to find discrimination if there is evidence of sexual attraction, even if there are no allegations of sexual harassment or quid pro quo demands.

MainStory: [LitigationNewsTrends SexualHarassment SexDiscrimination Discrimination Discharge GCNNews](#)