

# SEX DISCRIMINATION – Termination for Being Too Attractive Not Sex Discrimination

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Practices: Employment, Labor & Benefits

On December 21, 2012, the Iowa Supreme Court dismissed a case filed by Melissa Nelson, whom the Court described as an "irresistibly attractive" dental assistant who worked for James H. Knight's dental practice. Nelson alleged that she "did not do anything to get herself fired except exist as a female." The decision has received much press and deserves a look to see the Court's distinction between sex discrimination and a lawful termination.

The Court first stated the question as follows: "Can a male employer terminate a female employee because the employer's wife is concerned about the nature of the relationship between the employer and the employee?" Later, the Court stated that the question was "whether an employee who has not engaged in flirtatious conduct may be lawfully terminated simply because the boss views the employee as an irresistible attraction." The facts show that Knight complained to Nelson that her clothing was too tight and distracting. Knight also referred to his private male anatomy when talking with Nelson, referred to Nelson as a "Lamborghini in the garage" that has not been driven, and he asked her how often she experienced an orgasm. Both Knight and Nelson have children and began texting each other about both work and personal matters outside the workplace. Knight's wife worked in the dental office also. Mrs. Knight discovered the texts, confronted Knight, consulted with a pastor at their church and insisted that Knight terminate Nelson because she saw her as a threat to their marriage. One of the Knight's pastors attended the termination meeting during which Knight stated that he was terminating Nelson because "their relationship had become a detriment to Dr. Knight's family." Knight told Nelson's husband that he "feared he would try to have an affair with her down the road if he did not fire her."

Importantly, this was not a sexual harassment case. The texts were mutual, consensual and, apparently, non-sexual. Instead, this was a sex discrimination case, Nelson alleging that Knight terminated her because of her gender. Importantly, the Court stated that the sex discrimination laws "are not general fairness laws, and an employer does not violate them by treating an employee unfairly so long as the employer does not engage in discrimination based upon the employer's protected status." In addition, the Court quoted another court's decision that "Title VII [does not] authorize courts to declare unlawful every arbitrary and unfair employment decision." Nevertheless, the Court cited a federal appellate court's decision which dismissed a case because the basis for the female employee's termination was not because of her gender but instead to "allay [the male employer's] wife's concerns." Therefore, the Court dismissed the case stating that a termination caused by a

consensual workplace relationship is not discrimination, especially where the doctor's wife viewed Nelson as a threat to the wife's marriage.

Despite this Court's ruling, employers need to tread carefully. Nelson's lawyers argued that the laws protect women who are terminated "because of a boss's physical interest" in her. In addition, Nelson argued that the Court should not enforce stereotypes and permit pretexts in which an employer justifies an adverse employment action. Knight should have recognized his position in the business and acted accordingly. He should not have engaged in the conduct leading to his wife's concerns. However, once the issue arose, Knight and his wife should have found a way to resolve the issues in the best interest of all concerned, including Nelson and the business.