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Win in parental discrimination case raises issues for employers

By Ameet Sachdev, Tribune reporter

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Dena Lockwood, with her daughter Lily Lockwood, 7, at home.

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Dena Lockwood, 39, has been a working mother since she was 18 but never felt she was treated differently in the workplace because of her family responsibilities. Then she took a sales position in 2004 at Professional Neurological Services Ltd.

Her commission rate was lower than that of sales people who were not parents. She was ignored in sales meetings. The company was more lax about time off taken by single people.

One day in 2006 when she had to take a day off because her 4-year-old daughter was sick, her manager responded by firing her.

Working mothers face discrimination on the job, but Lockwood's story has gained attention because of her rare accomplishment: Instead of going to court, she filed a discrimination claim against her former employer at the Chicago Commission on Human Relations and won.

The low-profile administrative agency enforces the city's regulations that prohibit discrimination in housing and employment. Chicago's ordinance also is one of the few local statutes nationwide that expressly prohibits job discrimination against parents.

Yet, the commission is seen as a place of last resort because cases are not tried in front of a jury and lawyers assume awards might be smaller than outcomes in state and federal courts.

The decision in Lockwood's case could start changing perceptions about local discrimination laws and be a wake-up call for employers. In July the commission awarded her more than \$213,000, including \$100,000 in punitive damages. A few months later, a hearing officer also recommended that Lockwood's attorneys receive \$87,000 in fees.

After getting word of the commission's decision, Lockwood said, "I was ecstatic about winning. It was like a weight was lifted off my back."

The size of Lockwood's recovery was large enough that her case was cited in a recent study about an evolving area of employment law known as family responsibilities discrimination.

"While the scope of local laws may seem limited, their impact can be significant and costly for employers," said Stephanie Bornstein, associate director of the Center for WorkLife Law at the University of California Hastings College of Law, which released the study last month.

Most workers today must balance job and caregiving responsibilities. More than 70 percent of children grow up in a family with either a working single parent or with two parents who both work, according to statistics cited by Heather Boushey, senior economist at the Center for American Progress Action Fund.

Many employers have responded with family-friendly policies, such as flexible work arrangements. Federal law also requires larger employers to offer unpaid time off under the Family and Medical Leave Act.

But no statute specifically prohibits discrimination against those with family responsibilities, which can include caring for spouse and aging parents. That has not stopped creative lawyers from filing lawsuits under existing workplace anti-bias laws, and they are doing so with increasing frequency.

From 1996 to 2005, there were 481 cases alleging family responsibilities discrimination filed in U.S. courts, up from 97 brought during the previous decade, according to a 2006 report by the WorkLife Law Center.

The legal landscape and demographic trends pushed the U.S. Equal Employment Opportunity Commission in 2007 to issue enforcement guidance to explain how existing laws prohibiting job discrimination based on gender, pregnancy or disability can protect caregivers as well. It offered examples: denying an out-of-town management position to a female worker with teenage children based on a stereotype that women should not live away from home during the week, or removing a female cop who had just adopted a baby from high-profile cases on the assumption that her caregiving role will make her unreliable.

With gaps in federal and state laws leaving caregivers vulnerable, local governments, including several major urban areas with large labor forces, have passed their own protections. Chicago's discrimination law has been on the books since 1990.

Still, employment bias cases at the city's commission involving parental status claims are infrequent compared with race and gender claims. In 2006, for example, the city received 93 employment complaints. Only three alleged parental status discrimination.

There could be several reasons for the small caseload, legal experts say, including limited public awareness of the statute. But local lawyers say the lack of a jury is a deterrent to filing cases at the commission.

That did not stop Lockwood and her attorney, Ruth Major.

Lockwood's ordeal began in 2004, when the west suburban single mother began working for Chicago-based Professional Neurological Services, which sells medical tests to doctors. Her children were 2 and 16 at the time. Her story is compiled through commission documents and interviews with Lockwood and her attorney. A lawyer for the company said it intended to appeal the decision and declined further comment, and an owner of the company did not return phone calls.

During one of her job interviews, after she volunteered that she had kids, one of the sales managers asked her whether having children would "prevent her from working 70 hours a week." Lockwood assured her that it would not.

The company, which had fewer than 50 employees at the time, originally offered her a salary of \$25,000 and a 10 percent commission. Other female sales reps with similar experience who did not have kids at the time they were hired were making as much as \$45,000 and 10 percent commissions.

After negotiations, Lockwood increased her base salary to \$45,000, but the company lowered her commission to 5 percent. Her contract also said that if she reached total sales of \$300,000, her commission would increase to 10 percent.

The contract also provided her with five vacation days a year. When she objected, the owners assured her, "Don't worry about it."

After about a year, Lockwood met her \$300,000 sales goal. When she informed one of the owners, Dr. Malcolm Herzog, he refused to honor the contract. The owners then increased her sales goals to be eligible for a commission increase.

On June 2, 2006, a Friday, her daughter came down with pinkeye. Lockwood called one of the managers to reschedule a meeting that day because she could not come to work. He agreed to postpone the meeting until the following Monday.

But 30 minutes later, the manager called back and gave her an ultimatum: Be fired with cause or without cause, or resign.

The sudden threat of termination left her in shock. When she recovered enough to ask why she was being fired, the manager said "it just wasn't working out." He followed up by telling her to come in on Monday for a meeting.

When she showed up on Monday, Lockwood said she was again not given any reasons why she was being fired.

The loss of her job devastated her, she said. She had recently bought a house and her son was getting ready to go off to college.

Lockwood, the youngest of eight children, had always provided for her family. She was a college-bound high school student when she became pregnant. Her mom said if she wanted to keep the baby, she would have to support it.

She postponed college and started working as a receptionist. When her son was 7, she enrolled at Eastern Illinois University, taking her son to the library with her.

Lockwood, who had sales experience and an interest in medicine, was excited about the opportunity to work in medical sales.

After she was fired, she could not pay her mortgage on time. She had to get forbearance on her student loans.

"The worst part about this is that my children had to see me stressed, depressed and anxious," Lockwood said.

The city commission's investigation cited several examples of Lockwood being treated differently than other employees. For example, the company gave a saleswoman the day off to take care of a home repair.

The company said in its responses to Lockwood's complaint that she was fired for "performance-based" reasons, including "excessive absences." But the company produced no evidence at the hearing to suggest any criticism of her work. The commission wrote in its final order that Lockwood was the victim of "blatant" discrimination against employees with children.

The administrator who presided over the hearing noted that Lockwood's claim was the first parental status discrimination case to have proceeded to the commission board for a ruling.

"I'm excited because there aren't too many opportunities in the employment arena to have the first of something," said Major, Lockwood's attorney. "I hope it creates the opportunity for employers to pay more attention to this issue and take proper precautions so it doesn't happen."

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