

WHO IS A “SIMILARLY SITUATED” EMPLOYEE?

by

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I. CIRCUIT COURT DEFINES “SIMILARLY SITUATED”

In Petzel v. Redflex Traffic Sys., No. 15-3671 (6th Cir., Ohio 2016), Redflex hired Catherine Petzel to work as a regional sales manager in early 2009. In that position, she sold electronic traffic monitoring devices that allow cities to ticket vehicles without police officers being present. During her time at Redflex, she was either the lone woman or one of just two women on its sales force.

Because Petzel had not made any sales in 2011 and failed to satisfy a sales quota set for all salespeople, Redflex put Petzel on a performance improvement plan (PIP). The company fired her when she didn't attain the PIP's goals.

Petzel filed suit, alleging she was discriminated against based on her gender.

She admitted that she didn't satisfy either the sales quota given to all Redflex salespeople or her PIP. However, she claimed her termination was discriminatory because Redflex did not fire a similarly situated male employee, Darren Kolack, who also failed to satisfy the sales quota and was on a PIP.

The district court granted summary judgment in favor of Redflex, and Petzel appealed the dismissal of her case without a trial to the Sixth Circuit Court of Appeals.

On appeal, Redflex argued that Kolack wasn't similarly situated to Petzel.

First, Kolack had a better sales history than she did over the course of their careers at Redflex, despite not making his current sales goals.

Second, Redflex had stopped selling to two of the three states he covered because of operational and political challenges in those states.

Finally, during the PIP period, Redflex had given Kolack development responsibilities for a new product, while Petzel had no similar responsibilities.

The court agreed with Redflex, holding that even though Kolack didn't meet his sales goals and was also on a PIP, he was not **similarly situated** to Petzel in "all relevant respects."

The court reasoned that even though an employee is not required to show an "exact correlation" with another employee who receives more favorable treatment in order to establish a "similarly situated" argument, the courts are entitled to make independent determinations about the relevancy of a particular aspect of her employment status.

In order to be deemed similarly situated, the coworker must have been subjected to the **same standards** and **must have engaged in the same conduct** "without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it."

The court found that Kolack worked under "differentiating or mitigating circumstances that . . . distinguish [his] conduct" and therefore explained Redflex's treatment of him compared to Petzel. His overall history of better sales, limited sales territory, and responsibility for another project explained why he wasn't terminated and she was.

WHAT DOES THIS MEAN TO HR?

This case is important for employers to understand because it outlines an important lesson about how to differentiate between different employees when it comes to "equal treatment."

Employers must remember that it is not always enough to just evaluate whether an employee who is having problems at work is meeting the performance standards or violated a policy. Employers must consider how they treated other employees in similar situations previously.

Notice: Legal Advice Disclaimer

The purpose of these materials is not to act as legal advice but is intended to provide human resource professionals and their managers with a general overview of some of the more important employment and labor laws affecting their departments. The facts of each instance vary to the point that such a brief overview could not possibly be used in place of the advice of legal counsel.

Also, every situation tends to be factually different depending on the circumstances involved, which requires a specific application of the law.

Additionally, employment and labor laws are in a constant state of change by way of either court decisions or the legislature.

Therefore, whenever such issues arise, the advice of an attorney should be sought.



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Business First's 20 People To Know In HR

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Scott Warrick combines the areas of law and human resources to assist organizations in **"Solving Employee Problems BEFORE They Happen."** Scott uses his unique background of **LAW** and **HUMAN RESOURCES** to help organizations get where they want to go, which includes coaching and training managers and employees in his own unique, practical, entertaining and humorous style.

[Scott Trains Managers and Employees ON-SITE in over 50 topics](#)

Scott's book,
["The Human Resource Professional's Complete Guide To Federal Employment And Labor Law,"](#)
is a favorite among HR professionals and students.

Scott's academic background and awards include:

Capital University College of Law (Class Valedictorian (1st out of 233))

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