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The Mutual Exclusive Ps: Pregnancy and Promotion

Abstract

Although pregnancy discrimination is illegal, women still face discrimination when confronting their employers with their pregnancy. In this case Mary D. has not been granted a promotion and therefore been treated unethically, because managers perceived her pregnancy as an inability to fulfill job requirements.

Although *Class Ceiling* is a commonly used term to describe the invisible barrier blamed for limiting the career prospects of females, it is usually only indirectly related to pregnancy discrimination. However, discrimination because of an actual or a possible pregnancy is often a sign of such a glass ceiling. In order to get equal job opportunities, all women and men have to carry responsibilities to avoid gender based discrimination. These responsibilities include not only to act in conformance with the law, but also to question the underlying ethical principles as known today.

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1 The Case: No Promotion for Mary D.ⁱ

Company Autoparts is a supplier for the automotive industry with its headquarter in North Carolina. Overall the company has employed 250 people locally and at their sales offices throughout the US. Since, 2002 most of the companies stocks are owned by KKR an investment firm, which currently engages in operational cost optimization and downsizing to increase the profit margin of Autoparts.

Autoparts has a small sales office in the Detroit area with 9 people working there. They have employed a general manager for the office, two key account managers, and six application engineers. One of the two key account manager for their major customers Ford and GM has just decided to leave the company. The customers GM and FORD lead to 40% of Autoparts net income, but are extremely demanding and require a close customer relationship. Currently three new large projects are in discussion and if accepted, increasing the profit by another 8%. Since the position needs to be filled immediately, the company thinks of promoting one of their best application engineers. Two application engineers, Mary D. and Peter T., have an outstanding performance evaluation. Both have been working for Autoparts for about 2 years and are familiar with the customers. The open position requires extensive traveling. Extensive means in general 3 days overnight trips a month, and at least 2 meetings at customer sites a week with up to 6h car rides. Usually overtime and weekend work occur frequently up to 10h a week. Since price negotiation is part of the job, a business degree is essential in that position. Peter T. has no business degree, but has already started a MBA program at a university close to Autoparts. Mary D. has besides her engineering background also a bachelor in business administration which makes her a more suitable candidate for the position. However, two days ago she has just

announced her pregnancy being in the third month. The pregnancy is not showing and she has not called in sick during her pregnancy so far.

However, Autoparts does not see a possibility to change the position to fit a pregnant woman. Therefore, the general manager decides to promote Peter T. In a short meeting the same day, he offers Peter T. the job, who accepts the offer getting a \$10,000 salary raise and a company car.

1.1 Ethical Dilemma

This case may present a pregnancy discrimination as many women face it today. A promotion is not granted, because the candidate is pregnant. Is the general manager of Autoparts making an ethical decision not to promote her?

The job requires extensive traveling and overtime. It seems unlikely that Mary D. could fulfill these job requirements. Ford and GM, their customers, are their major source of profit and require a close contact. However, she is the more suitable candidate for the position since she has all degree requirements. Her pregnancy is not showing yet and if the medical situation allows she might be able to work without major restrictions.

Is Mary D. facing the so called glass ceiling which hinders her in entering a management position? To answer the questions it is important to analyze the situation with regards to environmental forces and the position of important stakeholders. Pregnancy discrimination is part of a gender-based discrimination. In general, pregnancy discrimination is difficult to define, since there is an obvious temporary disability. Every mother experiences pregnancy and motherhood differently, therefore it is hard to define the duration of the disability and where discrimination might be ethical and where not.

It is also to be questioned whether our current ethical standards are suitable to evaluate the decision to promote a pregnant woman. A close related topic might be whether affirmative action even in case of a pregnancy can help women to break through the glass ceiling in the long run.

2 Analysis

2.1 *Environmental Forces*

It is crucial to put this case in the right historic background. According to Steiner (635) in 1910 in the United States only 21% women were in the labor force. After World War II this number increased to 35% because women were replacing men in defense factories. After that the number steadily increased. Today 60% of all women work. This is 47% of the total labor force.

Increased participation of women in the work force can be found worldwide. However there are differences. The rate depends usually on political ideology, culture, religion, and governmental regulations. Steiner (637) points out, that in socialist societies women tend to occupy about half of the jobs, whereas in countries with a strong cultural and religious belief in women's role as a mother and housewife, the rate is much lower.

Some comparison with other countries can help to evaluate this case. Although European trends parallel the trend seen in the United States, some differences cannot be neglected and help to uncover ways to a more diverse labor force. The way pregnancy is handled by the government with regards to the duration and pay for maternal and / or parental leave, the rate of woman in management positions is influenced. Reading the international Benchmarking of Eichhorst et. al. with regards to the compatibility of family and job, this influence has not been yet empirically defined. However, there is a tendency that the shorter the leave the better the employment level and relationship with the employer. The United States is one of the most advanced countries considering the employment rate of women. Their ability to implement laws to protect women rights can be an example for other countries. As a comparison, in Germany an anti pregnancy discrimination law has not been formulated. However, Edelmann summarizes that pregnant employees in Germany are protected from being fired and guaranteed 14 weeks of maternal leaveⁱⁱ while fully paid. They are able to go back to the same or a comparable job position even

on a part time basis. Nevertheless, this does not protect them from unfair discrimination concerning promotions and pay raises. This seems to indicate, the more expensive a woman's pregnancy is for an employer the more likely the discrimination.

The economic situation also needs to be considered, when evaluating this case. In a weak economy most companies tend to follow low cost strategies. However, different views whether pregnancy discrimination is acceptable in weak economies might exist. Adam Gellar makes clear that in several cases the economic downturn forces employers to make decisions that seem to be discriminatory but go in conformance with the organization's strategic objectives. These decisions sometimes seem to be the only solution to keep the company running efficiently.

In my opinion these decisions usually only have a short term effect on the financial performance of a company. The current trend to treat employees as liabilities and not as assets ignores that employees tend to perform better and be more loyal to an organization when motivated. If market capitalism is taken into consideration, I feel that the discrimination of an actual or potential pregnant employee is a step away from employing the most qualified employees to increase a company's performance. This seems to be against profit maximization in the long run.

2.2 Who Are the Stakeholders

According to the Stakeholder Model (Steiner 15) the primary stakeholders in this case are Peter T. and the other employees, the shareholders of Auoparts, the government, communities and the customers. The crucial secondary stakeholders are political interest groups, customers, competitors, and future generations. Their position in this case helps to understand my evaluation of the case.

2.2.1 The Legal Situation

Pregnancy discrimination is illegal as legible on the Website by the US Equal Employment Opportunity Commission EEOC: If a company has 15 or more employees, it is subject to a

federal law that protects pregnant women. The federal Pregnancy Discrimination Act of 1978 which is part of Title VII of the Civil Rights Act of 1964, provides that women affected by pregnancy, childbirth, or related medical conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work. The law protects women against being fired, being refused a job, or being denied a promotion when the sole reason is pregnancy.

The law describes Autoparts promotion denial as illegal, as long as Mary D. would be able to fulfill the job requirements. However, Autoparts might argue, that Mary D. lacks the flexibility to comply with the overtime and travel requirements and is therefore not a suitable candidate. To question is this argumentation considering Peter T., who is currently studying towards an MBA. Although he might have more freedom to choose how much and when to study, his flexibility is not granted. Furthermore, he has no business degree yet, which is part of the job description.

Comparing this case to another case shows the following: As mentioned by Cheryl Winokur Munk the EEOC has settled a lawsuit against retailer Walmart, because Walmart has rejected a pregnant applicant. Walmart is now forced to pay \$220,000. What makes the Walmart case different is, that in this case the sole argument for the rejection has been the pregnancy. Therefore, the rejection has been illegal.

As Sharon Waldrop made clear, it is unlawful to consider child bearing, potential or actual pregnancy as a reason to justify an employees unsuitability for a job. However, she also pointed out, that questions with regards to flexibility are fair-game, if flexibility is an essential part of the job. Since Mary D. has not been interviewed to give her own idea about her job suitability with regards to flexibility, her employers action could be regarded as an unlawful pregnancy discrimination.

2.2.2 The company and stockholders

KKR owns most of the company's stock. As an investment firm, they describe their principles on their Website as different from a holding company. Their average ownership of a firm is 8 years, and their primary goal, is to achieve high rates of return for the KKR funds. Since KKR are interested in increasing the rate of return, and have already started low cost strategies to increase the profit margin, the likelihood of them approving the promotion of pregnant Mary D. is low. Her inflexibility might be considered to work against profit maximization. Furthermore, managers perceive a pregnancy as a cost threat since maternity leave and other absenteeism cause costs. Although a pregnant employee must be treated the same as any other employee with a temporary disability, the perception of a pregnancy is different. Pregnancy is more subject to preconception and stereotyping. As summarized by Edelmannⁱⁱⁱ (11), the idea that a pregnancy is a cost threat to a company is a common thought. Most illnesses or accidents leading to a temporary disability are not perceived as being chosen or timed. An indication for this common thinking about pregnancy timing can be found on the EEOC Website. According to the a.m. lawsuit against Walmart, the job applicant Ms. Stern was told by the Assistant Manager to "come back after she had the baby".

Furthermore, employers fear, that the temporary disability is not over with the pregnancy itself. They fear mothers are less able to perform and focus more on their family. As legible in an article by Adam Gellar, employers still "ignore the law and act based on outdated notions about a mother's ability to do a job." And in the same article a quotation explains this idea further: "The root cause sort of stems from long-standing stereotypes about women and particularly about mothers in the workforce, and I think those stereotypes die very hard," said Jocelyn Frye, director of legal and public policy at the National Partnership for Women & Families, an advocacy group."

2.2.3 Other employees

The other employees might question the promotion of Peter T., since he has no business degree and is working only 2 years for the company. Most coworkers would know that Mary D. could have also been considered for the position. They might consider Peter's promotion as an violation of the theory of justice. However, as Barbara Lukesch found out, in daily business life a pregnant employee is been viewed with skepticism not only by managers but also by coworkers. Her pregnancy might cause unequal distribution of work, since coworkers might be forced to temporarily do part of her job. This is usually considered as being unfair, since others might be forced to engage more in overtime work.

Peter T. himself might consider his promotion as fair and just. He has worked in the past with high performance evaluations. Currently he is pushing his career further by studying towards an MBA. This indicates his interest in growing and making a career. He might know that Mary D. is likewise a suitable candidate. Probably, his ethical thinking would lead to a conventional approach: Just in businesses is other than in the outside world.

The pay raise and the company car seem to be a good reason to accept the promotion. His accepting cannot be considered unethically, since he did perform well and he is obviously interested in making a career.

2.2.4 Customers

The customers in this case want to get the products and services they are willing to pay for. As long as they get what they demand, they would not object a pregnant key account manager. However, they might require a substitution for her when absent, and will not accept a delay in the project proceeding because of her pregnancy. Since talking to various sales people can cause delays, misunderstandings and confusion, customers would prefer to have one responsible key account manager.

Therefore, the responsibility to satisfy customer wishes lies within Autoparts itself and requires them to make the right choice about whom to promote. Since the customers in this case contribute to 40% of net income, it is important to keep them satisfied to maintain or even increase the profit in the future.

2.2.5 Community

Although the community does not seem to be a stakeholder in this case, the community cannot be neglected. A community is shaped because of all the people forming the community. As legible, in Johanna Bond und das Geheimnis der Gläsernen Decke^{iv} (43-62) the distribution of people with regards to age, occupation, and political interest are responsible for the ideas and perception of a society as such. Currently more men than women occupy manager positions. If more women enter these higher paid positions, they will contribute to a more diverse community. Since money is often related with power, the female influence and power in a community increases likewise. According to Lynda Lange in Feminist Interpretation and Political Theory women entering the public civil life is against the idea of Rousseau's *amour propre* and in his view "diminishes men" (102). She points out that this is an example of how deeply the perception of a civil society is male orientated and how women need to increase their influence on society. However, understanding Rousseau's approach helps to comprehend the shape of a civil society and why feminism cannot neglect communities. Lange says, the feminist approach to achieve an equal standing between men and women can only include communities. Communal ways of life give women support to have both family and career and "women are worse off the more individualistic a society is." Lange connects individualistic with male dominated. To put her views together with the case, pregnancy discrimination allows a community to continue to exist male dominated, which she considers anachronistic.

2.2.6 Competitors

Competitors in this case have no direct influence on the decision in the case, but might need to be considered to evaluate the long-term effect of the decision. Customers might be unsatisfied with a less flexible service and therefore seek the contact with competitors more severely. This can lead to a profit loss.

Competitors might have a better corporate culture allowing female employees a better career perspective, which can target the best female applicants. A company might need to learn about the corporate culture of a competitor since a key success factor in the market place can be the organization's culture itself. If employees are driven by the company's mission, like the internal culture promoted by the managers, and enjoy good health care and other benefits, they are more likely to perform at their best.

2.2.7 Political Interest Groups

Since the issue of this case is directly related to gender discrimination, it is not surprising that political interest groups are an important stakeholder in this case. Although they have no direct influence on the decision in this case, feminist groups can have an effect on the promotional rate of women. If there are active feminist groups in the community, a case like Mary D. when taken to the public can lead to a campaign against Autoparts, leading to a negative recognition of the company. However, since this company does not sell directly to the end customer but to other companies within the automotive supply chain, the external perception of the company might be less important. Nevertheless, the awareness of employees of their rights increases through active political interest groups in the geographical area. The risk of a lawsuit against discriminatory action may then increase.

Political interest groups might lobby for affirmative actions, which then would require Mary D. to be promoted. This can have a reverse discriminatory affect on men and undergo the company's

corporate goals for profit maximization. Employees might be less motivated, when feeling that their efforts are not rewarded. For a company it seems to be better to promote a qualified woman voluntarily despite pregnancy, than later being legally forced to promote a less qualified employee because of affirmative action.

2.2.8 Current Trends in Society Help Future Generation

Since Internet is present in everybody's daily life, legal information available for each employee has increased. The political interest groups have therefore spread their influence away from geographical areas to a more national awareness. Networking is been considered an essential activity for women to improve their professional standing. Internet allows for an easier networking and women's awareness of their rights has furthermore increased over the years. The more woman enter management or higher paid positions, the more likely they will pull other woman after them. This idea can be also found in the article of Adam Gellar, the raising awareness lets more women fight for their rights.

Men have in many cases accepted that society is changing. They are even willing to take part time jobs, or go on parental leave. Eichhorst et. al. show that in 1999 in the US 36.5% of women with children below the age of 6 worked full-time, 35.1% did not work at all, while their husbands worked full-time. Only in about 2% both were not working. Relationships with men working full-time and women occupying part time jobs equaled 18.6%. The remaining 7.1 percent lived in alternative relationships, including men in part-time jobs or on parental leave. Eichhorst points out that women want more alternative relationships in the future. This trend is also visible internationally.

These findings might show that pregnancy discrimination is unacceptable today and even less in future. In the case of Mary D. her husband might have considered taking parental leave or a part

time job, in particular if she had been in a higher paid position. This would reduce Mary's absence.

Future Generations might profit from the current trend. However, as concluded by Debra Meyerson and Joyce Fletcher, aiming towards equality is not a revolution but a strategy of small wins. Years ago, gender discrimination was easier to spot in the corporate world, but today overt displays are rare.

2.3 *Did Mary Object?*

When Mary heard about the promotion, she did not complain or seek for a law suit. She thought that the promotion of Peter was justified, since she planned on concentrating more on motherhood and less on her career, anyway. In her opinion Peter was suitable for the job. When asked if she had accepted a promotion, she was not sure, since the benefit of having a salary raise and a company car could have improved her lifestyle and the possibility to pay for a good day care would allow her to pursue her career with more flexibility. However, her husband did not consider going on parental leave or taking a part time job. Therefore, she might have rejected the promotion offer.

Asking her what was missing in order to finally accept a promotion despite being pregnant, she hoped for an easier way to balance career and children. Her ideas included more flexibility in choosing work time, more take-home parts of the job preferably online, and better day cares.

3 Ethical Evaluation

3.1 *Current Ethical Standards*

In order to finally conclude whether the decision not to promote Mary D. is ethical, different ethical principles need to be considered. Two ethical principles directly seem to apply to support that Mary D. discrimination is wrong: the *Rights Ethic* and the *Theory of Justice*. However, there are other principles that need to be considered to get the whole picture.

Although the Pregnancy Discrimination Act forces Autoparts to treat Mary D. solely on her ability to do the job and not on the basis of her pregnancy, in this case inflexibility is a suitable reason for a performance disability. This indicates, that she has no right to be promoted and therefore the discrimination is legal. Businesses need to make profit and to continuously improve performance. As presented in the case, since KKR bought Autoparts, it is currently on a low cost strategy which drives the internal culture. Even though, a more diverse company might benefit the organization, in this case a conventionalist might argue, that Mary's expected inflexibility does not go conform with the organization's goals. Therefore the decision is not only legal but also ethical. KKR is one of the strongest stakeholder, whose wishes cannot be neglected. Nietzsche's "master morality" seems to be valid in this case as long as laws are not broken.

Although this explanation sounds smooth, it is not. As I already mentioned when describing the legal background in 2.2.1, pregnancy must not be a reason for a discriminatory act. Considering the facts of the case, Mary's inflexibility is solely based on assumptions. This indicates a bias towards her being pregnant, which would be an illegal discrimination.

Not promoting Mary D might sound unfair, because she has the qualification the job requires, which Peter T. does not have yet. Unfortunately, the organization's objectives and internal culture does not allow for her being promoted while not being able to travel and work overtime. Furthermore, since the organization seems to be thrifty, I assume that Autoparts does not engage in day care facilities and other supporting actions for women to balance job and family. Considering these circumstances, the ability to promote Mary D. is limited, a good short term solution to allow for a change of the position to better fit a pregnant woman is not in sight. Therefore, solely the non-promotion is not unethical.

What makes the situation unethical?

Not only her flexibility needs to be questioned also Peter might fall in this category, since he is a student and working towards his MBA. Both candidates fall under the ethical principle of Rawl's theory of justice, in particular the distributive justice according to Steiner (252). A good ethical approach would have involved interviewing both candidates and making a final decision based on their answers. Even though the final decision might have led to the same outcome, the procedure to get there would have been legal *and* ethical.

In my opinion, in this case the decision not to promote Mary D. is unethical considering the circumstances under which the decision is made. Two ethical principles - *Rights Ethics* and *Theory of Justice* -are violated.

3.2 *How Just is Just: A New Ethical Principle Needed?*

"How just is gender ?" asks Susan Moller Okin in Feminist and Political Theory, when identifying the generic male terms used in philosophy (181-4). In her opinion a flaw in Rawl's theory of justice is, that it is based on norms and values of a society in "whose past the innate characteristic of sex has been regarded as one of the clearest legitimizers for different rights and restrictions." Considering the evaluation 3.1, there is proof of how a woman can be discriminated without violating the law or common ethical thinking. This means, there is the need to question today's norms and values. The conflict in our current society is, that women might have the right to being equally treated, however the conditions and circumstances often do not allow for an *ideal* justice. Pregnancy discrimination is a good example of how the biological difference still is perceived as being a performance difference. According to today's business reality, an employee with the flexibility to work overtime and travel is a norm. Standardized by a male approach. According to the report Breaking through the glass ceiling women find these norms and rules hard to accommodate. Therefore, when seeking for a more diverse society with regards to male and female, this standard needs to be changed.

The more women enter these higher paid positions the more likely that the male norm will be changed towards a more diverse norm. Affirmative action can be a start to force more women in management position, but is no long term solution. Therefore, women need to be aware of their rights and communicate them. Pregnancy discrimination can be partly avoided, if a woman communicates her professional goal when informing management about her pregnancy. If she can demonstrate, that she is willing to pursue her career, the management itself does not have to conclude based on assumptions.

The need for a new ethical principle can be also found in Nancy Frasers approach in the Feminist Interpretations and Political Theory asking for gender-free roles in a societal model. She assumes that most roles in a society have a gender based subtext and calls the ignorance of this gender base “gender-blind” (242). She also assumes that most philosophical and political theories need to be rethought in order to analyze their current relevance for the society. Considering this approach, the ethical question in the Mary D. case would be: Is the decision “gender-blind”? Which in this case would be the case and therefore the decision would also be unethical.

4 Final Conclusion

Mary D. has been treated unethically, because her managers were victims of businesses’ biases towards pregnant women. Since the business world is male orientated, it is unlikely that promotional decisions are as just as they need to be in order to create equal opportunities for men and women. A way to create a more equal society is to lift more women in management positions. To achieve this goal, women have the responsibility to communicate their professional goals, if they want to pursue their career while having children.

Although companies need to optimize profit, the more motivated workers are the better their performance. Increasing benefits for new mothers therefore does not necessarily reduce profit.

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6 Endnotes

ⁱ This case is an actual case happened in 2003. However, the Mary D. and Autoparts did not want to be recognized. Peter and Mary’s real name are known to the author. Mary D. is a former colleague.

ⁱⁱ Mutterschutz = 8 weeks before giving birth, 6 weeks afterwards (Eichhorst et. al)

ⁱⁱⁱ Statistisches Monatsheft Baden Wuerttemberg

^{iv} title translation: Johanna Bond and the Secret of the Glass Ceiling

^v German translation: Ahead and then?

^{vi} German translation: Compatibility of family and job