

A Case Analysis for an EEO Sex Discrimination Charge

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ABSTRACT: *In this Equal Employment Opportunity discrimination charge, Sue cited, in addition to her gender, several work-related issues. This disguised case is appropriate for undergraduate management/human resource management courses.*

CASE NARRATIVE

Sue Edwards was terminated from Wilson Industries after working as a production employee for approximately four years. One month following her discharge, she filed a complaint with the Equal Employment Opportunity Commission (EEOC) charging Wilson Industries with sex discrimination. Mark Brown, Vice-President of Human Resources, received the charge and was responsible for investigating the charge and responding to the EEOC.

Wilson Industries specialized in safety and signaling equipment for the airline industry. John Wilson, an entrepreneur, established the company in 1949, building the first products in his garage. The company evolved and grew until it became the premier airline supplier in the United States, doing business throughout the world. Starting as a family-owned business, Wilson Industries developed into a firm that was publicly traded over NASDAQ, with a sales volume over six hundred million dollars.

The company was dedicated to a total quality management approach and was highly regarded in the industry because of its excellent customer service and positive work environment. Its culture was based on trust, truthful communications, accountability, and supporting employees. Employees were encouraged to take risks and challenge processes for continuous improvement.

Mark worked at the holding company in Springfield, Missouri, and he was responsible for the human resource management function throughout seven subsidiaries located across the United States and Europe. Each subsidiary had a human resource representative on site, who reported directly to the president of the subsidiary and indirectly to Mark.

Wilson Industries did not have a pattern of discrimination charges because of its culture and positive work environment. The team-based company valued input from employees, and employees felt they had ownership in the decision-making process. Honest, open communication was encouraged among employees and management.

In addition to other policies and procedures, the *Employee Handbook* explained policies on attendance, overtime, job transfer, cross-training, performance evaluation, sexual harassment, and employee complaint procedures. Policies as they were stated in the *Employee Handbook* are presented in Figure 1. Every employee verified with a signature that he/she was informed of the company's policies. In addition, production supervisors and managers kept personnel records; copies of some of the documents that were in Sue's personnel file are in Exhibits 1-7.

Alan Jones, Sue's production manager, had severely injured his back; he was recovering from back surgery. Because of his doctor's recommendations, Alan had been placed on medical leave for several months; therefore, Jack Smith, production supervisor, was fulfilling Alan's duties in his absence. Alan was on medical leave when Sue was asked to work overtime and when Sue was terminated.

The actual discrimination charge as presented by Sue Edwards, a female and former employee, to the EEOC follows in Figure 2. In the days that follow, what should Mark Brown, Vice-President of Human Resources, do to determine if this is a bona fide discrimination charge? What should Mark consider in gathering information to provide a response to the EEOC?

Figure 1

Attendance—Nonexempt Employees. Each employee is essential to the operation of the Company. Inasmuch as the Company is on a Bonus Plan and Profit Sharing Program, the absence or tardiness of anyone from the job is harmful to co-workers and the overall plant efficiency.

The attendance percentage will be computed based on the last 12 months work, 2,080 hours. Computation for percent of absence for new employees with less than one year service will be based on actual hours worked.

When evaluating absenteeism, the Company will consider: a) the reason for the absence, b) the number of instances, c) the type of absence, and d) the percent of absences. In the event an employee reaches 3% unexcused absence rate, he/she will be counseled and receive a written notification. A second notification will be sent if the employee's excessive unexcused rate continues. Absences after a second notification will subject the employee to further disciplinary action, up to and including termination. (*Employee Handbook*, 4)

In addition, the following provisions will apply: A. More than four tardies in a 3-month period will be considered excessive. (*Employee Handbook*, 5)

Scheduled Overtime. Scheduled overtime is defined as work time in excess of 40 hours in a week which is announced no less than 48 hours (2 days) prior to the beginning of the shift. Employees who normally do the work will be requested to work overtime. A refusal of overtime will subject an employee to disciplinary action unless he/she can present extenuating circumstances as to why the overtime cannot be worked. (*Employee Handbook*, 8)

Figure 2

Charge of Discrimination: Equal Employment Opportunity Commission

Cause of discrimination based on my sex. On October 21, 2008, I was discharged from my job as an assembler. I had been employed with the company for approximately four years. My rate of pay was \$14.20 per hour. There are at least ninety employees in the plant.

On October 21, 2008, Jack Smith, Department Supervisor/male, informed me over the phone that I was terminated because I refused to work a day of overtime and that I was absent too much. I believe I was discharged because of my sex, being a female, in that:

1. I had been employed with the company for four years with a good work record.
2. My last evaluation was good.
3. My evaluation in the attendance category showed great improvement.
4. After I refused to go out with Alan, my manager, I was taken out of my job to do cross training.
5. There have been several instances of females "associating" with Alan and they have either been promoted or discharged.
6. Other people in the department needed cross training more than I did.
7. I was put on a year's probation, and I never went over the company absenteeism policy.
8. Whenever I was absent, I gave proper notification, through the proper channels and chain of command.
9. According to the company policies, I was not late or absent enough to be terminated.
10. The reason for my discharge was untrue.

As a remedy, I seek reinstatement, back pay, benefits, seniority, and anything else the Commission deems just and proper.

Discussion Questions

1. What legal issues must Mark consider before he can respond to the discrimination charge that Sue filed with the EEOC?
2. What documentation was needed and what was the relevance of documentation to determine if Sue was terminated on factors other than sex?

Exhibit 1

EMPLOYEE COUNSELING FORM

Employee's Name Sue Edwards Department 22

Date April 23, 2008 Supervisor Alan Jones Location Warrensburg

Nature of Concern	<input checked="" type="checkbox"/>	Attendance	<input type="checkbox"/>	Safety	<input type="checkbox"/>	Misconduct
	<input type="checkbox"/>	Violation of Co. Policy	<input type="checkbox"/>	Substandard Work	<input type="checkbox"/>	Other

Please describe the employee's behavior: show facts, time, place, witnesses, and specify what company policy was violated.

Excess tardies - Re; Page 5 Employee Handbook, Item "A". "More than four tardies in a three month period will be considered excessive."

Has the employee been counseled previously? ___ Yes X No When? _____
Number of verbal counselings? _____ Number of written counselings? _____

Describe the behavior and/or performance expected in the future:

Attendance is to be within the company policy

What action is to be taken?

Further tardies will result in further disciplinary action, up to and including termination.

I have read and understand this statement:

Employee
Signature Sue Edwards
Date 4-23-2008

Supervisor's
Signature Alan Jones
Date 4-23-2008

Distribution: Personnel File, Department Head

Exhibit 2

(The following was originally handwritten.)

TO: Sue Edwards

FROM: Jack Smith

RE: Failure to report on time card

Due to a failure to report 5-23-2008 and 5-26-2008, it is imperative that the seriousness of the situation be brought to your attention and to advise that any further instances will be regarded as a tardy on your attendance record and to further advise that the time card is each individuals' responsibility and is very important to you as it provides an "official" record of your attendance and hours worked. I'm sure this situation will not reoccur and your cooperation in this matter is greatly appreciated.

Read to Sue Edwards
6-2-2008 Jack Smith

Jack Smith
Production Supervisor, Corporate Division

Exhibit 3

EMPLOYEE COUNSELING FORM

Employee's Name Sue Edwards Department 28

Date 6-16-2008 Supervisor Jack Smith Location Warrensburg

Nature of Concern	<input checked="" type="checkbox"/>	Attendance	<input type="checkbox"/>	Safety	<input type="checkbox"/>	Misconduct
	<input type="checkbox"/>	Violation of Co. Policy	<input type="checkbox"/>	Substandard Work	<input type="checkbox"/>	Other

Please describe the employee's behavior: show facts, time, place, witnesses, and specify what company policy was violated.

See attached forms from file (Exhibits 1 & 2).

Has the employee been counseled previously? ___ Yes X No When? not to my knowledge
Number of verbal counselings? _____ Number of written counselings? _____

Describe the behavior and/or performance expected in the future:

Attendance pattern must improve or further action will be taken

What action is to be taken?

To be placed in employee's personnel file

I have read and understand this statement:

Employee

Supervisor's

Signature Sue Edwards

Signature Jack Smith

Date 6-16-2008

Date 6-16-2008

Distribution: Personnel File, and Department Head

Exhibit 4

(The following note was originally handwritten.)

7-16-2008 Gave Sue Edwards verbal counseling on attendance. Jack Smith

7-30-2008 Gave Sue Edwards verbal counseling on attendance. Jack Smith

Exhibit 5

To: Sue Edwards

October 15, 2008

Since your written employee counseling on 6/16/08 and verbal counseling on 7/30/2008 and 10/7/2008 regarding an unacceptable attendance pattern, an additional four tardies and three absences have occurred. This does not reflect an improvement in your attendance pattern. The reasons for your tardiness are unacceptable and the total number of instances (21) reflects no change in your attendance.

Following is a list of your unacceptable attendance pattern:

Jan.	28	-	tardy	June	1	-	tardy
Jan.	29	-	tardy		3	-	tardy
Feb.	3	-	tardy		16	-	counseling
Feb.	9	-	absent	July	15	-	absent
Mar.	4	-	tardy		27	-	tardy
	10	-	tardy	Aug.	11	-	tardy
	16	-	absent		12	-	tardy
Apr.	21	-	tardy	Sept.	24	-	absent
Apr.	22	-	tardy	Oct.	4	-	tardy
May	7	-	tardy		8	-	absent
	19	-	absent				

As stated in your previous employee counseling form, "Attendance pattern must improve or further action will be taken." Please consider this letter a second and final notification of your unacceptable attendance. Your attendance pattern must improve immediately or your employment with Wilson Industries will be subject to termination.

(signature on original document)

(signature on original document)

Jack Smith, Production Supervisor

Alan Jones, Production Manager

I have received a copy of this statement above. (signature on original document)

Sue Edwards

Exhibit 6

Wilson Industries Non-Exempt Evaluation Form

Employee Sue Edwards Dept. 28 Job Title Comp Fabricator Date 9-27-2008
 Supervisor Jack Smith

PURPOSE: The purpose of this review is two-fold; to identify strengths and weaknesses and determine the course of action (training, improved attendance, self-development, etc.) necessary in order for the employee to improve his/her performance. The results should be discussed with the employee, evaluation areas needing improvement and pointing out methods by which the employee can accomplish the desired improvement. The employee conference will allow supervisors to express appreciation for good to excellent performance. The evaluation will assist in developing training programs, promotions, transfers, recognition, and creates a common understanding between management and employees on job expectations. Upon completion of the interview, the employee will sign in the place provided on the back, acknowledging that their evaluation has been discussed with them.

INSTRUCTIONS: Listed below are a number of traits, characteristics and abilities. Please check the box which most nearly describes the person being evaluated. Consider the entire past one year. Consider the employee's job duties and standards of performance.

PERFORMANCE FACTORS	DOES NOT MEET JOB REQUIREMENTS	PARTIALLY MEETS JOB REQUIREMENTS	MEETS JOB REQUIREMENTS	EXCEEDS JOB REQUIREMENTS	FAR EXCEEDS JOB REQUIREMENTS
<u>Quality of work</u> Accuracy, skill, thoroughness, or correctness of work. <input type="checkbox"/>	Careless, makes frequent errors, below requirements. Unsatisfactory work <input type="checkbox"/>	Recurrent errors, occasionally unsatisfactory work <input type="checkbox"/>	Average, meets expected standards of a good employee <input checked="" type="checkbox"/>	Skillful, above average, sometimes superior <input type="checkbox"/>	Consistently superior, highest level work, exceptional <input type="checkbox"/>
<u>Quantity of work</u> Output, volume of work produced, time. <input type="checkbox"/>	Insufficient output, slow, usually behind, disorderly. <input type="checkbox"/>	Marginal productivity Frequently below requirements, gets by. <input type="checkbox"/>	Meets requirements satisfactorily. <input type="checkbox"/>	Frequently exceeds requirements. <input checked="" type="checkbox"/>	Superior Productivity consistently exceeds requirements. <input type="checkbox"/>
<u>Dependability</u> Follows instructions, good safety habits, responsible, carries out assignments <input type="checkbox"/>	Undependable, requires close supervision, unreliable. <input type="checkbox"/>	Needs occasional follow-up, requires prompting. <input type="checkbox"/>	Performs necessary assignments, reasonable promptness. <input type="checkbox"/>	Needs very little supervision, reliable, seldom requires follow-up. <input checked="" type="checkbox"/>	Requires minimum supervision, completely trustworthy on job assignments. <input type="checkbox"/>
<u>Cooperation</u> Works as a team member, pleasant, adaptive, positive approach. <input type="checkbox"/>	Uncooperative, disgruntled, not able to adapt to change, negative approach, not a team player <input type="checkbox"/>	Frequently uncooperative, does not adapt easily to change, sometimes positive, rarely supports team efforts. <input type="checkbox"/>	Cooperative, usually pleasant, adapts to change, team player, usually positive. <input checked="" type="checkbox"/>	Very cooperative, always pleasant, adapts easily to change, very positive. <input type="checkbox"/>	Exceptionally cooperative, encourages team spirit, very pleasant, encourages change, positive approach. <input type="checkbox"/>

<u>Job Knowledge</u> Understands work duties gained through experience, education, specialized training. <input type="checkbox"/>	Does not learn assignments. <input type="checkbox"/>	Lacks understanding of some duties, regularly requires instruction. <input type="checkbox"/>	Informed, has good knowledge of job duties and skills. <input checked="" type="checkbox"/>	Understands all aspects of work, informed on job requirements. Has knowledge of plant operation. <input type="checkbox"/>	Complete mastery of all duties. Complete knowledge of plant operations. <input type="checkbox"/>
<u>Alertness/Initiative</u> Ability to grasp instructions, meet changing conditions, contributes to job, imaginative <input type="checkbox"/>	Slow to "catch on", seldom has ideas, unimaginative. <input type="checkbox"/>	Requires more than average instruction, needs repeated explanations, occasionally has suggestions. <input type="checkbox"/>	Understands instructions with average ability, moderately imaginative. <input type="checkbox"/>	Usually quick to learn assignments, understands with explanation, frequently has good ideas. <input checked="" type="checkbox"/>	Exceptionally keen and alert, seldom needs explanations, imaginative. <input type="checkbox"/>
<u>Attendance</u> On time, reliable to be on the job, gives proper notice when absent. <input type="checkbox"/>	Excessive unexcused absences, frequently late, lack of notification. <input type="checkbox"/>	Marginal in attendance or reporting on time. (Greatly Improved) <input checked="" type="checkbox"/>	Usually present on time, good attendance. <input type="checkbox"/>	Very prompt, regular, seldom absent or late. Rarely leaves early. <input type="checkbox"/>	Always regular and prompt. <input type="checkbox"/>

Supervisor: Please complete and return completed form to Human Resources.

1. On what specific items do you feel improvement should be made?

2. What actions do you plan to suggest to help bring about these improvements?

3. Describe any change in performance or progress since last appraisal.

4. What unique strengths does the employee have?

I hereby acknowledge that my supervisor has discussed my evaluation with me on the date indicated below.

Employee comments:

Date 9-27-2008 Employee's Signature Sue Edwards

Supervisor's Signature Jack Smith Manager's Signature Alan Jones James Nelson

Exhibit 7

(The following message was originally handwritten.)

RE: Sue Edwards

In view of employee's final notification of unacceptable attendance pattern since April 1, 2008, of which is on file at the rate of 3.6 percent at this time and the situation in which the employee did not call in or report to work on scheduled overtime 10-15-2008, but stated she was not under the impression she had to work although all of the fellow employees were aware they were working and were given proper notification at the same time as employees. I feel it is in the best interest of the company and of the fellow employees that I recommend termination of employment of Sue Edwards with Wilson Industries for unacceptable attendance and refusal to work overtime of which both are not in compliance with company policy.

Sue Edwards
Terminated 10/21/2008

10-18-2008
Jack Smith
Production Supervisor

Teaching Note/Instructor Manual available from the Journal of Business Cases and Applications.
