



Cultural Differences in the Workplace

The Fifth Circuit recently addressed national origin discrimination claims arising from an employer's adoption of workplace standards inconsistent with typical American expectations. *Keelan v. Majesco Software, Inc.*, 407 F.3d 332 (5th Cir. 2005). Majesco Software, Inc. is the wholly-owned subsidiary of a software/IT solutions outsourcing company headquartered in India. All of its non-sales work was performed by technicians from India who came to the United States on temporary work visas on a project-by-project basis.

The lawsuit arose because two sales professionals from Majesco's office in Irving, Texas claimed their sales performances were hindered and obstructed at Majesco due to the fact they are non-Indian. In support of this contention they pointed to Majesco's practice of staffing its projects only with Indian technicians on work visas even when the duration of the work visas was insufficient to allow the work to be completed. Majesco would not staff projects with local non-Indian hires and declined projects that could not be staffed by technicians from India. When asked why it would not hire local talent, Majesco's management stated "Americans need too much handholding."

It was also alleged that a company executive had stated at a sales meeting that he could foresee a time when the company would be totally Indian. Also, non-Indian management employees who resigned were routinely replaced by Indians. A high level executive admitted "Americans have never worked out." Of particular concern to the sales professionals was their working environment, which they felt failed to meet minimum American standards: no windows, very small cubicles, a prohibition against working from home, a mandatory office-time requirement, and admittedly inadequate marketing materials.

The final straw for the sales professionals was a reduction in their compensation. Each received a 10% pay cut, plus a conversion of their salary into a draw against commissions, and commissions were limited to exclude sales in excess of \$5 million. These changes were instituted as a result of a poor financial year for Majesco in which its revenues declined by almost \$20 million.

The Court denied the former employees' claims of national origin discrimination and found national origin was neither a motivating factor nor a pretext for discrimination against the sales professionals.



The Court was persuaded by the fact that all Majesco employees had to work in small cubicles with no windows, use substandard marketing materials, and accept substantial pay cuts. The Court was also persuaded by the absence of any evidence that employees were pushed to quit or that their duties were reduced. The poor performance of the sales professionals clearly figured into the Court's analysis.

Employer Notes: Cultural differences need not equal discrimination so long as all employees are subject to exactly the same standard. Had the sales professionals working for Majesco been able to identify a similarly situated Indian employee who received more favorable treatment than they did, there is little doubt the plaintiffs would have won.

If you have any questions about this topic, please contact either of the following Legge Farrow partners, both of whom are Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization:

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