

76. Men are more than four times more likely than women to negotiate salary, which generally means higher salaries for men. This can lead women to lose more than \$500,000 by age 60. Linda Babcock and Sara Laschever, *Women Don't Ask: Negotiation and the Gender Divide* (Princeton, NJ: Princeton University Press, 2003). See also Lee E. Miller and Jessica Miller, *A Woman's Guide to Successful Negotiating: How to Convince, Collaborate, & Create Your Way to Agreement* (New York: McGraw-Hill, 2001); Phyllis Mindell, *How to Say It for Women: Communicating with Confidence and Power Using the Language of Success* (Upper Saddle River, NJ: Prentice-Hall, 2001). Online tools for researching salary data preparatory to negotiating include salary.com and payscale.com. Tory Johnson, "Take Control: How to Negotiate Your Salary," ABC News, April 24, 2007, [http://www.abcnews.go.com/GMA/TakeControlOfYourLife/story?id\(3071603&page\(1](http://www.abcnews.go.com/GMA/TakeControlOfYourLife/story?id(3071603&page(1).
77. 550 U.S. ___, 127 S. Ct. 2162 (2007).
78. 755 F. Supp.808(N.D. IL. E.D 1991)
79. 429 U.S. 125 (1976).
80. 471 F.3d 588 (6th Cir. 2006).
81. EEOC Dec. No. 74-112, 19 FEP Cases 1817 (April 15, 1974); EEOC Guidelines, 29 C.F.R. § 1604.10(c).
82. 499 U.S.187 (1991).

Cases

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Wedow v. City of Kansas City, Missouri 442 F.3d 441 (8th Cir. 2006)

Female firefighters were not given proper firefighting uniforms (while male firefighters were given two uniforms), which put them at risk for years; were not given restroom or shower facilities; and were otherwise not treated comparably to male firefighters. The court found that despite the fire department's arguments to the contrary, this was gender discrimination.

Hansen, J.

Firefighters are each issued two sets of personalized protective clothing called bunker gear, consisting of a coat, pants, boots, helmet, gloves, a tool belt, and a self-contained breathing apparatus. Two sets are necessary because if protective gear becomes wet or soiled with

chemicals at one fire, there is a danger of injury from steam when the same gear must be worn at another fire that day. The protective clothing must fit properly to ensure that the body is protected from injury due to smoke, water, heat, gasoline, and chemicals and to ensure the

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mobility needed while fighting a fire. The City issued and required Ms. Wedow and Ms. Kline to wear ill-fitting male firefighting clothing, although female clothing and gear were available and management officials knew of sources from which female gear could be obtained. Because the protective clothing did not fit Ms. Wedow and Ms. Kline properly, they suffered injuries from fire and chemicals when the coats would not close properly, or too large hats and boots would fall off while fighting a fire. Ms. Wedow's and Ms. Kline's movements were cumbersome and restricted by pants that caused them to trip or prevented them from easily climbing ladders. Excess length in the fingers of gloves made it difficult to grip objects such as the fire hose. The City's failure to procure protective clothing tailored for women and its provision of only male-sized protective clothing to Ms. Wedow and Ms. Kline made their jobs more difficult and more hazardous than was necessary.

Despite their complaints, no one in the Fire Department made any effort to provide Ms. Kline and Ms. Wedow with adequately fitting protective clothing from 1990 through October 1998. In October 1998, the Fire Department provided Ms. Kline with one set of female-sized protective clothing, although each male firefighter is given two sets of properly fitting clothing. In late 1998, Ms. Wedow received a female-sized pair of bunker pants and a male-sized coat; she never received a complete set of adequately fitting protective clothing during the relevant time period.

Ms. Kline and Ms. Wedow also complained of a lack of adequate restrooms, showers, and private changing facilities (referred to collectively as "facilities"). Showering at the station after fighting a fire is necessary to maintain good health when serving in 24-hour shifts. At a number of stations that Ms. Wedow and Ms. Kline visited on a daily basis as battalion chiefs, the restrooms were located in the male locker rooms with the male shower room, doors were not secure, males had the keys, and where female restrooms existed, they were unsanitary and often used as storage rooms. Food and water for the station's pet dog were kept in the women's room in two stations and sexually explicit magazines and a poster were kept in the female restroom in station 23. Most of the female restrooms that existed did not contain shower rooms and in some stations, the women's shower could be accessed only through the male bunkroom.

Department officials were aware of complaints about the facilities as early as 1993. From 1994 through 2000, the Fire Department submitted yearly budgets to

the City requesting money for female locker room upgrades, and every year the City allocated money for this purpose, but the money was diverted to a whole-station upgrade at station 4, which already had a female restroom.

The City argues that it is entitled to judgment as a matter of law on the claim of disparate treatment in protective clothing and facilities because the plaintiffs failed to demonstrate that they suffered an adverse employment action. "An adverse employment action is a tangible change in working conditions that produces a material employment disadvantage." "Mere inconvenience without any decrease in title, salary, or benefits" or that results only in minor changes in working conditions does not meet this standard.

We cannot say as a matter of law that being required to work as a firefighter with inadequate protective clothing and inadequate restroom and shower facilities is a mere inconvenience. Title VII makes it unlawful to discriminate on the basis of sex with regard to the "terms, conditions, or privileges of employment" and prohibits an employer from depriving "any individual of employment opportunities or otherwise adversely affecting his status as an employee" on the basis of sex. The record amply demonstrates that the terms and conditions of a female firefighter's employment are affected by a lack of adequate protective clothing and private, sanitary shower and restroom facilities, because these conditions jeopardize her ability to perform the core functions of her job in a safe and efficient manner. The danger inherent in the job of a firefighter compounded by the need to move and work efficiently in those dangerous circumstances, to quickly change in and out of gear, to shower for health reasons following a fire, and the need to serve in 24-hour shifts, combine to make the provision of adequate protective clothing and facilities integral terms and conditions of employment for a firefighter. **JUDGMENT FOR PLAINTIFF AFFIRMED.**

Case Questions 7538719 2014/09/13 71.225.57.65

1. Are you surprised that this is a 2006 case? Why or why not?
2. How do you think the fire department should have responded when the women registered complaints about their uniforms? Explain.
3. Why do you think the fire department treated the female employees as it did?