May an employer or supervisor play favorites among employees?

Giving special treatment to an employee because of his or her race, age, gender, national origin or lack of a disability may be illegal under federal and state anti-discrimination laws if the special treatment results in some disadvantage to non-favored employees. Examples of illegal favoritism include giving better sales territories or special assignments to employees of a certain gender or race, providing opportunities to such employees that make it more likely they will be promoted in the future, or judging their performance by easier standards, so that their performance reviews tend to be better. Although affirmative action has been publicized greatly, it is only permissible when it has been ordered by a court to remedy the effects of past discrimination, or in the government or certain employers working with the federal government.

On the other hand, it is not illegal to have favorite employees, to treat some employees better than others or even to be unfair-as long as such unfairness is not based on protected criteria like race or gender. In fact, it is not illegal for a supervisor to have a consensual affair with a subordinate, and then give that subordinate special favors or a promotion because of that affair. Courts have held that while this may appear to be discrimination, in fact, the favoritism is not based on illegal consideration of any employee's protected status, but instead upon the paramour's special relationship with the supervisor. Where such relationships are widespread in the workplace, however, it creates a corporate culture in which it appears that an employee must have an affair with his or her supervisor in order to be promoted or get ahead. In such cases, courts have found that the employer created an environment pervaded with quid pro quo sexual harassment, where an employee is required to submit to sexual conduct in order to receive certain employment terms.

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