



7th Circuit: 'Admissions' by Managers Admissible in Discrimination Lawsuit

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Statements allegedly made by a human resource director regarding discriminatory motives behind the termination of an employee were admissible against the employer as having been made within the scope of the HR director's employment, according to the 7th U.S. Circuit Court of Appeals.

The employer, SmithAmundsen, granted Marketing Director Laura Makowski maternity leave under the Family and Medical Leave Act (FMLA). On Nov. 5, 2007, Makowski's obstetrician placed her on bed rest. With SmithAmundsen's permission, she worked from home until her leave began in late November.

In January 2008, after assessing the firm's overall structure, SmithAmundsen's executive committee decided to eliminate Makowski's position. The committee asked Human Resource Director Molly O'Gara to consult with outside counsel about terminating Makowski. According to O'Gara, part of her regular duties included consultations regarding the termination of employees in order to ensure compliance with federal antidiscrimination laws.

On Feb. 4, 2008, SmithAmundsen terminated Makowski while she was still on maternity leave, explaining that the firm was eliminating her position as part of an organizational restructuring. Later that day, while Makowski was retrieving her belongings from the office, O'Gara told Makowski that she was "let go because of the fact that [Makowski] was pregnant and ... took medical leave."

Makowski sued SmithAmundsen, alleging pregnancy discrimination under Title VII of the Civil Rights Act of 1964 (Title VII) as amended by the Pregnancy Discrimination Act (PDA), as well as interference, retaliation and a violation of her rights to a bonus under the FMLA. Makowski attempted to admit O'Gara's statements as evidence of discrimination.

The district court excluded O'Gara's statements as inadmissible hearsay and granted summary judgment in favor of SmithAmundsen. On appeal, the 7th Circuit reversed the district court's evidentiary rulings and the grant of summary judgment.

With respect to Makowski's evidentiary challenge, the 7th Circuit asserted that under the Federal Rules of Evidence, O'Gara's statements were allowed as admissions because they concerned a matter within the scope of O'Gara's employment. The 7th Circuit ruled that an employee need not have been personally involved in the disputed employment action for the employee's statement to qualify as an admission; involvement in the decision-making process is enough. In Makowski's case, although O'Gara did not directly terminate Makowski, O'Gara's consultation with outside counsel regarding the termination indicated that she had been part of the decision-making process. Therefore, O'Gara's statements were admissible to support Makowski's claim of discrimination under the PDA.

The 7th Circuit's admission of O'Gara's statements also required the reversal of summary judgment on Makowski's FMLA retaliation and interference claims. Regarding Makowski's retaliation claim, the 7th Circuit ruled that O'Gara's statements provided the causal connection between Makowski's maternity leave under the FMLA and her termination. With respect to Makowski's interference claim, the 7th Circuit asserted that a jury could have found that, based on O'Gara's statements, SmithAmundsen denied Makowski her right to reinstatement under the FMLA because she took maternity leave. Accordingly, the 7th Circuit reversed the district court's grant of summary judgment.

Makowski v. SmithAmundsen LLC, No. 10-3330, 7th Cir. (Nov. 9, 2011).

Professional Pointer: Statements by managers can be considered an admission in the employment discrimination realm. The outcome of this case demonstrates the need for training so that managers understand that they are deemed "the company" for many legal reasons, including demonstrating discriminatory intent by the employer.

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Editor's Note: *This article should not be construed as legal advice.*

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