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7th Cir.: Employer's Disassembling Saves Employee's Retaliation Claim

By Nick Bauer 6/11/2015

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Two DeVry University admissions officers failed to show they were fired for complaining about their manager's alleged racial and ethnic remarks, but a third admissions officer raised a genuine dispute about his manager's motives, the 7th U.S. Circuit Court of Appeals held.

Under Title VII of the Civil Rights Act of 1964, employers may not retaliate against employees for engaging in activity protected by that law, which includes making complaints about discrimination and harassment. To provide evidence of unlawful retaliation, plaintiffs must show that an employer took adverse action against them because of the protected activity, for example, by pointing out suspicious timing and similarly-situated employees being treated differently, or by showing that the employer did not honestly believe that its stated reason for the adverse action was true.

In April of 2007, Elizabeth Castro, LaTonya Brooks and Michael Florez—admissions officers at DeVry University—complained to the university's human resources department about their manager's racially and ethnically derogatory comments. Three months later, the university reorganized the department, transferring the offending manager to a field position, placing Brooks and Florez under a different manager, and demoting and transferring Castro to another office.

Months after the reorganization, each of the plaintiffs was terminated for what the employer asserted to be performance-related issues; for Florez it happened 10 months after the protected complaints, for Brooks after 15 months and for Castro after 30 months. DeVry also claimed that it fired Florez in part for "volatile" behavior based on two incidents involving "blow up" arguments with a supervisor and manager, and that it also fired Brooks for her repeated dishonesty. All three employees sued the university, claiming that they were actually fired for complaining about their former manager's offensive comments.

The district court found that none of the three plaintiffs produced sufficient evidence to discredit DeVry's explanations for terminating their employment, and that because they were all fired many months after their protected complaints, the timing alone was not sufficient evidence that their managers fired them in retaliation for those complaints.

On appeal, the 7th Circuit affirmed the decision below with respect to Brooks and Castro, but partially reversed the lower court and revived Florez's claim, finding that the evidence raised a genuine dispute about DeVry's motives in firing Florez. An e-mail stating that Florez's next performance evaluation would be rated as "meets standards" undermined the university's claim that he was fired for poor performance. Florez's and DeVry's accounts of the "volatile" arguments also differed so markedly that they were "not obviously the stuff of honest disagreement." A co-worker's testimony supporting Florez's version of events, and revealing that one of Florez's managers had bribed the co-worker with a new office to pretend she did not witness one of the incidents, weakened DeVry's claim that it believed Florez to be volatile, the court observed. Finally, DeVry's statement before the Equal Employment Opportunity Commission (EEOC) that this same manager did not know about Florez's protected complaints at the time she recommended firing him was contradicted by the manager's testimony, and could lead a reasonable person to conclude that the university lied to the EEOC to hide a retaliatory motive, the court noted.

» The district court also incorrectly found that, even if DeVry did not honestly believe Florez was volatile or a poor performer, he could not prove that the protected complaints were the reason for his termination, the 7th Circuit held. In an e-mail that recommended firing Florez, a DeVry HR manager observed—when listing reasons for terminating his employment—that, "He is also one of the people who complained about a previous supervisor (with Liz Castro)." A later e-mail indicated that firing Florez would be a "risk." Despite DeVry's contentions that these comments merely referred to Florez's potentially litigious nature, these statements, in conjunction with DeVry's apparent dishonesty, were sufficient evidence for a jury to find that Florez was fired because he complained about his previous supervisor's derogatory remarks, the court concluded. The case was accordingly remanded for trial.

Castro v. DeVry Univ. Inc., 7th Cir. No 13-1934 (May 13, 2015).

Professional Pointer: Florez's claims may not have gained traction had his managers clearly and consistently documented his performance problems.

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