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Federal Resources

## 6th Cir.: Termination Partly Based on Protected Complaints May Be Retaliation

By Amy Smith 8/7/2015

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Labeling an employee's complaints of unfair treatment and discrimination as insubordinate and using them as partial basis for the employee's termination is direct evidence of retaliation, according to the 6th U.S. Circuit Court of Appeals.

In 2010, Reza Yazdian, an Iranian-American, was terminated by his employer, ConMed Endoscopic Technologies Inc., where he had worked as a medical device salesperson. Yazdian subsequently sued ConMed, alleging unlawful workplace discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964.

Yazdian reported to a district manager, Tim Sweatt, from 2008 until Yazdian's termination in mid-2010. The men's relationship was rocky from the start. Their conflicts came to a head in April 2010, when Sweatt told Yazdian that an article he wrote would not be published in the company newsletter. When Yazdian confronted Sweatt about the article, he commented that Sweatt did not like the way he wrote or talked and stated, "I guess you don't like my race, either."

A few months later, in a telephone conference, Yazdian complained to Sweatt about several issues, including stating that Sweatt was creating a hostile work environment. Yazdian later requested to be transferred to a different manager, but ConMed denied his request.

In the meantime, Sweatt met with the vice president of human resources to discuss what he viewed as Yazdian's unacceptable behavior. After the meeting, Sweatt sent an e-mail to human resources citing several instances of negative behavior, including Yazdian's complaint of a hostile work environment and his comment that Sweatt did not like his race. Human resources sent a written warning to Yazdian based on Sweatt's e-mail. ConMed did not conduct a meaningful investigation into Yazdian's complaints of a hostile work environment, according to the court.

After Yazdian received the warning, he and Sweatt discussed it over the phone. Yazdian indicated that he would respond to the warning through his counsel and that he was going to bring a lawsuit against ConMed.

A few weeks later, Yazdian was terminated. Sweatt characterized Yazdian's complaints about him as insubordinate and indicated that these complaints formed part of the basis for the termination. The trial court ruled for ConMed on summary judgment, but the 6th Circuit reversed. While the court found no evidence of discrimination on the basis of race or nationality, the court did conclude that Yazdian's claims of retaliation should go to a jury.

» The court found that Yazdian's statements regarding a hostile work environment, race, his attorney and a lawsuit were protected and that a jury could conclude that if the statements triggered the firing, the firing was unlawful retaliation. The court also noted that Sweatt's e-mail citing Yazdian's complaints of unfair treatment was direct evidence from which a jury could conclude that Sweatt fired Yazdian because he made the protected statements.

*Yazdian v. ConMed Endoscopic Technologies Inc.*, 6th Cir., No. 14-3745 (July 14, 2015).

**Professional Pointer:** An employee's complaints of unfair treatment should be investigated thoroughly by a nonparticipant. A termination that is even modestly tainted by a suggestion of retaliation invites trouble.

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